

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

**FORM 8-K  
CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported) February 10, 2021**

**Federal Realty Investment Trust**

(Exact name of registrant as specified in its charter)

**Maryland**  
(State or other jurisdiction  
of incorporation)

**1-07533**  
(Commission  
File Number)

**52-0782497**  
(IRS Employer  
Identification No.)

**909 Rose Avenue, Suite 200 North Bethesda, Maryland 20852**  
(Address of principal executive offices) (Zip Code)

**Registrant's telephone number including area code: 301/998-8100**

<u>Title of Each Class</u>	<u>Trading Symbol</u>	<u>Name of Each Exchange On Which Registered</u>
Common Shares of Beneficial Interest \$.01 par value per share, with associated Common Share Purchase Rights	FRT	New York Stock Exchange
Depository Shares, each representing 1/1000 of a share of 5.00% Series C Cumulative Redeemable Preferred Stock, \$.01 par value per share	FRT-C	New York Stock Exchange

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
  - Emerging growth company
  - If an emerging growth company, indicate by checkmark if the registrant has elected not use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.
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## **Item 5.02. Departure of Directors or Principal Officers; Election of Directors; Appointment of Principal Officers.**

On February 10, 2021, the Board of Trustees (“Board”) of Federal Realty Investment Trust (“Company”) promoted Mr. Jeffrey S. Berkes, 57, to President and Chief Operating Officer of the Company. Mr. Berkes served as the Company’s Executive Vice President-Western Region President from 2011 to 2021 and prior to that time held other officer positions within Company, including Chief Investment Officer (2003 – 2011). Mr. Donald C. Wood will remain the Company’s Chief Executive Officer.

In connection with Mr. Berkes’ promotion, he will receive the following compensation: (a) an annual base salary of \$575,000; (b) eligibility for an annual bonus under our annual bonus plan targeted at 100% of his annual base salary; (c) eligibility for an annual equity award under our long-term incentive plan with a target level of \$1,000,000; (d) a \$1,000,000 restricted share award that vests equally over five years subject to Mr. Berkes’ continued employment with the Company; and (e) a performance share award of between \$500,000 and \$2,000,000 depending on the Company’s total annual shareholder return relative to the total annual shareholder return of the Bloomberg REIT Shopping Center Index during the four-year period from 2021 through 2024. The performance share award agreement is filed as an exhibit to this report.

The Company and Mr. Berkes also entered into an amended and restated severance and change in control agreement that will provide for payments and benefits to Mr. Berkes in the event he is terminated without cause, resigns on constructive termination or there occurs a change in control, subject to the terms and conditions described in the agreement. The amended and restated severance agreement is filed as an exhibit to this report.

Also on February 10, 2021, the Compensation Committee (“Committee”) of the Board approved payment of an annual bonus to Donald C. Wood, our Chief Executive Officer equal to 50% of his target award under our annual bonus plan, and an annual bonus to each of Dawn M. Becker, our Executive Vice President-General Counsel and Secretary, and Daniel Guglielmone, our Executive Vice President-Chief Financial Officer and Treasurer, equal to 75% of their respective target award under our annual bonus plan. The Committee exercised its discretion in making these annual bonus awards in light of the work that was done to address the impacts of COVID-19 on the Company’s business.

## **Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year**

On February 10, 2021, the Board approved an amendment to the Company’s bylaws to provide for proxy access. The amendment provides that the Company will include in its proxy statement individuals nominated to stand for election to the Board by any shareholder or group of up to 20 shareholders who have owned at least 3% of the Company’s stock for at least 3 years. The number of potential nominees shareholders can submit for any annual meeting is limited to the greater of 2 or 20% of the total number of trustees on the Board. Proxy access is subject to procedural and other conditions and requirements as described more fully in our bylaws. The proxy access provision is included in Article II, Section 13 of our bylaws, a copy of which is filed as an exhibit to this report and is incorporated by reference into this Item 5.03.

## **Item 9.01. Financial Statements and Exhibits.**

(d) *Exhibits*

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## SIGNATURES

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

### FEDERAL REALTY INVESTMENT TRUST

Date: February 12, 2021

/s/ Dawn M. Becker

Dawn M. Becker  
Executive Vice President-  
General Counsel and Secretary

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## EXHIBIT INDEX

<b>Exhibit Number</b>	<b>Description</b>
<a href="#">10.1</a>	Performance Award Agreement for Mr. Berkes
<a href="#">10.2</a>	Amended and Restated Severance Agreement for Mr. Berkes
<a href="#">3.1</a>	Amended and Restated Section 13 of Article II of the Amended and Restated Bylaws
104	Cover Page Interactive Data File (the Cover Page Interactive Data File is embedded within the Inline XBRL document)

### Section 13. NOMINATIONS AND PROPOSALS BY SHAREHOLDERS.

(a) Annual Meetings of Shareholders. Nominations of persons for election to the Board and the proposal of business to be considered by the shareholders may be made at an annual meeting of shareholders: (i) pursuant to the Trust's notice of meeting; (ii) by or at the direction of the Trustees; or (iii) by any shareholder of the Trust in accordance with the requirements of Section 13.

#### (b) Shareholder Nominees in Proxy Statement

(1) Subject to the provisions of this Section 13(b), the Trust shall include in its proxy statement and ballot for any annual meeting of shareholders the name of any person nominated for election (the "Nominee"), by any Eligible Holder (as defined below) or group of up to 20 Eligible Holders that has (individually and collectively, in the case of a group) satisfied, as determined by the Board all applicable conditions and complied with all applicable procedures set forth in this Section 13(b) (such Eligible Holder or group of Eligible Holders being a "Nominating Shareholder"). Whenever the Eligible Holder consists of a group of shareholders: (i) each provision in this Section 13(b) that requires the Eligible Holder to provide any written information, statements, representations, undertakings, agreements or other instruments or to meet any other conditions shall be deemed to require each shareholder (including each individual fund) that is a member of such group to provide such information, statements, representations, undertakings, agreements or other instruments and to meet such other conditions (except that the members of such group may aggregate the shares that each member has Owned continuously throughout the three-year period preceding and including the date of submission of the Nomination Notice in order to meet the 3% Ownership requirement), and (ii) a breach of any obligation, agreement or representation under this Section 13(b) by any member of such group shall be deemed a breach by the Eligible Holder. No shareholder may be a member of more than one group of shareholders constituting an Eligible Holder with respect to any annual meeting.

(2) The maximum number of Nominees nominated by all Eligible Holders that will be included in the Trust's proxy statement with respect to an annual meeting of shareholders shall not exceed the greater of two or 20% of the number of trustees in office as of the last day on which a Nomination Notice may be submitted pursuant to and in accordance with this Section 13(b) or, if such amount is not a whole number, the closest whole number below 20% (the "Maximum Number"). For purposes of determining when the maximum number of Nominees provided for in Section 13 has been reached, each of the following persons shall be counted as one of the Nominees: (i) any individual nominated by an Eligible Holder for inclusion in the Trust's proxy statement pursuant to Section 13 whose nomination is subsequently withdrawn; and (ii) any individual nominated by an Eligible Holder for inclusion in the Trust's proxy statement pursuant to Section 13 whom the Board decides to nominate for election to the Board; and (iii) any trustee in office as of the Nomination Notice who was included in the Trust's proxy statement as a Nominee for either of the two (2) preceding annual meetings of shareholders (including any individual counted as a Nominee pursuant to the immediately preceding clause (ii)) and whom the Board decides to renominate for election to the Board. In the event that one or more vacancies for any reason occurs on the Board after the deadline set forth in this Section 13(b) but before the date of the annual meeting, and the Board resolves to reduce the size of the board in connection therewith, the Maximum Number shall be calculated based on the number of trustees in office as so reduced. Any Eligible Holder submitting more than one Nominee for inclusion in the Trust's proxy statement pursuant to Section 13 shall rank such Nominees based on the order in which the Eligible Holder desires such Nominees to be selected for inclusion in the Trust's proxy statement in the event that the total number of Nominees submitted by all Eligible Holders pursuant to Section 13 exceeds the maximum number of Nominees provided for in this Section 13(b). In the event that the number of Nominees submitted by Eligible Holders pursuant to Section 13(b) exceeds the maximum number of Nominees provided for in Section 13(b), the highest ranking Nominee who meets the requirements of Section 13 from each Eligible Holder will be selected for inclusion in the Trust's proxy statement until the maximum number is reached, going in order of the amount (largest to smallest) of shares of beneficial interest of the Trust each

Eligible Holder disclosed as owned in its Nomination Notice. If the maximum number is not reached after the highest ranking Nominee who meets the requirements of Section 13 from each Eligible Holder has been selected, then the next highest ranking Nominee who meets the requirements of this Section 13(b) from each Eligible Holder will be selected for inclusion in the Trust's proxy statement, and this process will continue as many times as necessary, following the same order each time, until the maximum number is reached. If, after the deadline for submitting a Nomination Notice as set forth in this Section 13(b), a Nominating Shareholder becomes ineligible or withdraws its nomination or a Nominee becomes unwilling to serve on the Board, whether before or after the mailing of the definitive proxy statement, then the nomination shall be disregarded, and the Trust shall not be required to include in its proxy statement or on any ballot or form of proxy the disregarded Nominee or any successor or replacement nominee proposed by the Nominating Shareholder and may so communicate to its shareholders, including without limitation by amending or supplementing its proxy statement or ballot or form of proxy, that the Nominee will not be included as a Nominee in the proxy statement or on any ballot or form of proxy and will not be voted on at the annual meeting.

(3) For purposes of this Section 13(b), an "Eligible Holder" is a person who has owned at least 3% of the Trust's outstanding common shares of beneficial interest ("Required Shares") continuously for the three-year period preceding and including the date of submission of the Nomination Notice ("Required Holding Period") and continues to own such minimum amount through the date of the annual shareholder meeting. The foregoing 3% ownership requirement can be satisfied collectively by a group of up to 20 shareholders each of whom has owned its portion of the Trust's common shares of beneficial interest continuously for the three-year period preceding and including the date of submission of the Nomination Notice. Concurrently with delivery of the Nomination Notice, the Eligible Holder or group of Eligible Holders shall provide to the Secretary of the Trust evidence of its satisfaction of the ownership requirements in a form that the Board or its designee, acting in good faith, determines would be deemed acceptable for purposes of a shareholder proposal under Rule 14a-8(b)(2) under the Securities Exchange Act of 1934 (the "Exchange Act") (or any successor rule). For purposes of this Section 13(b), an Eligible Holder shall be deemed to "own" only those outstanding shares of beneficial interest of the Trust as to which the shareholder possesses both (i) the full voting and investment rights pertaining to the shares; and (ii) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (i) and (ii) shall not include any shares: (x) sold by such shareholder or any of its affiliates in any transaction that has not been settled or closed; (y) borrowed by such shareholder or any of its affiliates for any purposes or purchased by such shareholder or any of its affiliates pursuant to an agreement to resell; or (z) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar instrument or agreement entered into by such shareholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of beneficial interest outstanding of the Trust, if, in any such case, such instrument or agreement has, or is intended to have, the purpose or effect of reducing in any manner, to any extent or at any time in the future, such shareholder's or its affiliates' full right to vote or direct the voting of any such shares and/or hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such shareholder or affiliate. Without limiting the foregoing, to the extent not excluded by the immediately preceding sentence, an Eligible Shareholder's "short position" as defined in Rule 14e-4 under the Exchange Act shall be deducted from the shares otherwise "owned." A shareholder shall "own" shares held in the name of a nominee or other intermediary so long as the shareholder retains the right to instruct how the shares are voted with respect to the election of trustees and possesses the full economic interest in the shares. A shareholder's ownership of shares shall be deemed to continue during any period in which: (A) the shareholder has loaned such shares, provided that the shareholder has the power to recall such loaned shares on five business days' notice and includes with the Nomination Notice an agreement that it will promptly recall such loaned shares upon being notified that any of its Nominees will be included in the Trust's proxy statement and will continue to hold such shares through the date of the annual meeting; or (B) the shareholder has delegated any voting power by

means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the shareholder. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of beneficial interest of the Trust are "owned" for these purposes shall be determined by the Board or any committee thereof. For purposes of this Section 13(b), the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the General Rules and Regulations under the Exchange Act.

- (4) To be in proper form for purposes of this Section 13(b), the Nomination Notice must include the following:
- (i) a written statement by the Eligible Holder setting forth and certifying as to the number of shares it owns and has owned continuously during the Required Holding Period, and the Eligible Holder's agreement to provide immediate notice if the Eligible Holder ceases to own any of the Required Shares prior to the date of the annual meeting;
  - (ii) one or more written statements from the record holder of the Required Shares (and from each intermediary through which the Required Shares are or have been held during the Required Holding Period) verifying that, as of a date within seven calendar days prior to the date the Nomination Notice is delivered to the Secretary of the Trust, the Eligible Holder owns, and has owned continuously for the Required Holding Period, the Required Shares, and the Eligible Holder's agreement to provide, within five business days after the later of the record date for the annual meeting and the date on which notice of the record date is first publicly disclosed, one or more written statements from the record holder and such intermediaries verifying the Eligible Holder's continuous ownership of the Required Shares through the record date;
  - (iii) a copy of the Schedule 14N (or any successor form) that has been filed with the United States Securities and Exchange Commission ("SEC") as required by Rule 14a-18 under the Exchange Act;
  - (iv) the information required by Section 13(c) (including the consent of each Nominee to being named in the proxy statement as a nominee and to serving as a trustee if elected);
  - (v) a representation that the Eligible Holder: (A) will continue to hold the Required Shares through the annual meeting date; (B) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the Trust, and does not presently have such intent; (C) has not nominated and will not nominate for election to the Board at the annual meeting any person other than the Nominee(s) it is nominating pursuant to Section 13; (D) has not engaged and will not engage in, and has not and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(l) under the Exchange Act in support of the election of any individual as a trustee at the annual meeting other than its Nominee(s) or a nominee of the Board; (E) has not distributed and will not distribute to any shareholder of the Trust any form of proxy for the annual meeting other than the form distributed by the Trust; (F) has complied with and will comply with all laws and regulations applicable to solicitations and the use, if any, of soliciting material in connection with the annual meeting; and (G) has provided and will provide facts, statements and other information in all communications with the Trust and its shareholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make such information, in light of the circumstances under which it was or will be made or provided, not misleading; and
  - (vi) an undertaking that the Eligible Holder agrees to: (A) assume all liability stemming from any legal or regulatory violation arising out communications with the shareholders of the Trust by the Eligible Holder, its affiliates and associates or their

respective agents and representatives, either before or after providing a Nomination Notice pursuant to Section 13, or out of the facts, statements or other information that the Eligible Holder or its Nominee(s) provided to the Trust pursuant to this Section 13(b) or otherwise in connection with the inclusion of such Nominee(s) in the Trust's proxy statement pursuant to Section 13; (B) indemnify and hold harmless the Trust and each of its trustees, directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Trust or any of its trustees, directors, officers or employees arising out of any nomination submitted by the Eligible Holder pursuant to Section 13; and (C) file with the SEC any solicitation or other communication with the shareholders of the Trust relating to the meeting at which its Nominee(s) will be nominated, regardless of whether any such filing is required under Regulation 14A of the Exchange Act or whether any exemption from filing is available for such solicitation or other communication under Regulation 14A of the Exchange Act.

(5) In addition to the information required pursuant to Section 13(b)(4) or any other provision of these Bylaws, the Trust may require: (i) each Nominee to furnish any other information: (A) that may reasonably be requested by the Trust to determine whether the Nominee would be independent under the rules and listing standards of the principal United States securities exchanges upon which the common shares of beneficial interest of the Trust is listed or traded, any applicable rules of the SEC or any publicly disclosed standards used by the Board in determining and disclosing the independence of the Trust's trustees (collectively, the "Independence Standards"); (B) that could be material to a reasonable shareholder's understanding of the independence, or lack thereof, of such Nominee; or (C) that may reasonably be requested by the Trust to determine the eligibility of such Nominee to be included in the Trust's proxy statement pursuant to Section 13 or to serve as a trustee of the Trust; (ii) each Nominee to complete the Trust's director's and officer's questionnaire; and (iii) the Eligible Holder to furnish any other information that may reasonably be requested by the Trust to verify the Eligible Holder's continuous ownership of the Required Shares for the Minimum Holding Period and through the date of the annual meeting.

(6) The Eligible Holder may, at its option, provide to the Secretary of the Trust, at the time the Nomination Notice is provided, a written statement, not to exceed 500 words, in support of Nominee(s)' candidacy (a "Supporting Statement"). Only one Supporting Statement may be submitted by an Eligible Holder (including any group of shareholders together constituting an Eligible Holder) in support of its Nominee(s). Notwithstanding anything to the contrary contained in Section 13, the Trust may omit from its proxy materials any information or Supporting Statement (or portion thereof) that it, in good faith, believes would violate any applicable law or regulation.

(7) Notwithstanding anything to the contrary contained in this Section 13(b), the Trust may omit from its proxy statement any Nominee and any information concerning such Nominee (including a Nominating Shareholder's statement in support) and no vote on such Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the Trust), and the Nominating Shareholder may not, after the last day on which a Nomination Notice would be timely, cure in any way any defect preventing the nomination of the Nominee, if: (A) the Trust receives a notice pursuant to Section 13(c) of Article II of these Bylaws that a shareholder intends to nominate a candidate for trustee at the annual meeting; (B) the Nominating Shareholder or the designated lead group member, as applicable, or any qualified representative thereof, does not appear at the meeting of shareholders to present the nomination submitted or the Nominating Shareholder withdraws its nomination; (C) the Board determines that such Nominee's nomination or election to the Board would result in the Trust violating or failing to be in compliance with the Trust's bylaws or declaration of trust or any applicable law, rule or regulation to which the Trust is subject, including any rules or regulations of any share exchange on which the Trust's securities are traded; (D) the Nominee was nominated for election to the Board pursuant to this Section 13(b) at one of the Trust's two preceding annual meetings of shareholders and either withdrew or



became ineligible or received a vote of less than 25% of the common shares of beneficial interests entitled to vote for such Nominee; (E) the Nominee has been, within the past three years, an officer or director of a competitor; or (F) the Trust is notified, or the Board acting in good faith determines, that a Nominating Shareholder has failed to continue to satisfy the ownership requirements described above, any of the representations and warranties made in the Nomination Notice ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statement not misleading), the Nominee becomes unwilling or unable to serve on the Board or any material violation or breach occurs of the obligations, agreements, representations or warranties of the Nominating Shareholder or the Nominee made under this Section 13(b). Further, notwithstanding anything to the contrary, the Trust may omit from its proxy statement, or may supplement or correct, any information, including all or any portion of the statement in support of the Nominee included in the Nomination Notice, if the Board in good faith determines that: (1) such information is not true in all material respects or omits a material statement necessary to make the statements made not misleading; (2) such information directly or indirectly impugns character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations, without factual foundation, with respect to, any person; or (3) the inclusion of such information in the proxy statement would otherwise violate the SEC proxy rules or any other applicable law, rule or regulation. The Trust may solicit against, and include in the proxy statement its own statement relating to, any Nominee.

(c) Any Nomination Notice or submission for other business to be properly brought before an annual meeting by a shareholder pursuant to this Section 13, the shareholder must have given timely notice thereof in writing to the Secretary of the Trust and such other business must otherwise be a proper matter for action by shareholders. To be timely, a shareholder's notice shall be delivered to the Secretary at the principal executive offices of the Trust not later than the close of business on the 120<sup>th</sup> calendar day and not earlier than the 150<sup>th</sup> calendar day prior to the first anniversary of the date of the Trust's proxy statement released to shareholders in connection with the preceding year's annual meeting; provided, however, that in the event that the date of the current year's annual meeting has been changed by more than 30 days from the date of the preceding year's meeting or if the Trust did not hold an annual meeting the preceding year, notice by the shareholder to be timely must be so delivered within a reasonable time before the Trust begins to print and mail its proxy materials. In no event shall the public announcement of a postponement or adjournment of an annual meeting to a later date or time commence a new time period for the giving of a shareholder's notice as described above. Such shareholder's notice shall set forth: (1) as to each person whom the shareholder proposes to nominate for election or reelection as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Regulation 14A under the Exchange Act (including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (2) as to any other business that the shareholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such shareholder and of the beneficial owner, if any, on whose behalf the proposal is made together and (3) as to the shareholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made, (A) the name and address of such shareholder, as they appear on the Trust's books, and of such beneficial owner and (B) the number of each class of shares of the Trust which are owned beneficially and of record by such shareholder and such beneficial owner.

(d) Special Meetings of Shareholders. Only such business shall be conducted at a special meeting of shareholders as shall have been brought before the meeting pursuant to the Trust's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of shareholders at which Trustees are to be elected: (i) pursuant to the Trust's notice of meeting; (ii) by or at the direction of the Board; or (iii) provided that the Board has determined that Trustees shall be elected at such special meeting, by any shareholder of the Trust who was a shareholder of record both at the time of giving of notice provided for in this Section 13(d) and at the time of the special meeting, who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 13(d). In the event the Trust calls a special meeting of shareholders for the purpose of electing one or more Trustees to the

Board, any such shareholder may nominate a person or persons (as the case may be) for election to such position as specified in the Trust's notice of meeting, if the shareholder's notice containing the information required by paragraph (a)(2) of this Section 13(d) shall be delivered to the Secretary at the principal executive offices of the Trust not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Trustees to be elected at such meeting. In no event shall the public announcement of a postponement or adjournment of a special meeting to a later date or time commence a new time period for the giving of a shareholder's notice as described above.

(e) General.

(1) Only such persons who are nominated in accordance with the procedures set forth in Section 13(b) shall be eligible to serve as Trustees and only such business shall be conducted at a meeting of shareholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 13. The chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 13 and, if any proposed nomination or business is not in compliance with this Section 13, to declare that such nomination or proposal shall be disregarded.

(2) For purposes of this Section 13, "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable news service or in a document publicly filed by the Trust with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(3) Notwithstanding the foregoing provisions of this Section 13, a shareholder shall also comply with all applicable requirements of state law and of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 13. Nothing in this Section 13 shall be deemed to affect any rights of shareholders to request inclusion of proposals in, nor the right of the Trust to omit a proposal from, the Trust's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

**FEDERAL REALTY INVESTMENT TRUST  
PERFORMANCE AWARD AGREEMENT  
(Restricted Stock Units)**

**THIS PERFORMANCE AWARD AGREEMENT** (this “Agreement”) dated effective as of February 10, 2021 (“Effective Date”) is made by and between Federal Realty Investment Trust (together with its subsidiaries, the “Company”) and Jeffrey S. Berkes (“Executive”).

**1. Award Grant, Calculation and Settlement of RSUs.**

**(a) Grant of Award Ranges.** The Company grants to Executive pursuant to the Federal Realty Investment Trust 2020 Performance Incentive Plan (“Plan”) the opportunity to earn the following number of restricted stock units (“RSUs”) granted:

Threshold RSU Amount:	5,220
Target RSU Amount:	10,441
Stretch RSU Amount:	20,882

The actual number of RSUs earned shall be determined pursuant to Section 1(c) and subject to the satisfaction of the service vesting conditions set forth in Section 1(d). This award of RSUs made under this Agreement is designated as a Performance Award (as defined in the Plan) pursuant to Article 15 of the Plan.

**(b) Performance Metric/Performance Levels.** The number of RSU’s ultimately earned by Executive will be determined by comparing the Company’s annualized TSR (defined below) for the entirety of the Performance Period (defined below) by the annualized TSR for the Index (defined below) for the entirety of the Performance Period and determining where such comparative performance falls against the following performance levels:

Threshold Level	Company annualized TSR of not less than 5% below annualized Index TSR	50%
Target Level	Company annualized TSR at least equal to annualized Index TSR	100%
Stretch Level	Company annualized TSR of at least 10% more than annualized Index TSR	200%

The final payout percentage shall be determined using linear interpolation if actual performance falls between threshold and target, or between target and stretch levels (“Payout Percentage”). In the event that actual performance does not meet the threshold level, the Payout Percentage shall be zero. In no event will the final payout exceed the Stretch Level, regardless of Company performance.

For purposes of this Agreement, the following terms shall have the meanings set forth below:

“Index” means the Bloomberg REIT Shopping Center Index. If the Bloomberg REIT Shopping Center Index is no longer being reported at the end of the Performance Period, then the FTSE NAREIT US Shopping Center Index (or other reasonably comparable index selected by the Committee in its discretion) shall be substituted and measured for the entire Performance Period.

“Performance Period” means the period from January 1, 2021 through and including December 31, 2024.

“TSR” means the annualized total return earned by shareholders of the Company or for all companies in the Index, as applicable, during the Performance Period, taking into account share price appreciation and assuming reinvestment of dividends expressed as a percentage and rounded to the nearest decimal point.

**(c) Calculation of RSUs Earned.** Following the last day of the Performance Period, the Payout Percentage shall be determined and, provided Executive is still employed by the Company through the last day of the Performance Period, Executive will have earned and become fully vested in a number of RSUs equal to the product obtained by multiplying the Target RSU Amount by the Payout Percentage. The foregoing calculation shall be made and approved by the Compensation Committee of the Board of Trustees of the Company no later than sixty (60) days following the last day of the Performance Period (such date being referred to as the “Determination”).

Date”). After approval of the calculation, the Company shall notify the Executive of the total number of Shares earned and issuable pursuant to this Agreement (rounded down to the nearest whole number RSU).

**(d) Vesting.** Subject to Section 3, all of the RSUs earned under this Agreement shall vest on the Determination Date.

**(e) Issuance of Shares.** Shares underlying an earned RSU which has vested in accordance with Section 1(d) or Section 3 shall be transferred to Executive as soon as administratively practicable following the applicable date on which they vest. No Shares shall be issued to the Executive in respect of an earned RSU prior to the date on which they vest in accordance with Section 1(d) or Section 3. After an earned RSU vests, the Company shall promptly cause to be registered in Executive’s name or in the name of the executor or personal representative of the Executive’s estate, as the case may be, one Share in payment for each such earned RSU. In the event a fractional portion of an RSUs vests pursuant to this agreement, the number of vested RSUs shall be rounded down to the nearest whole number prior to issuing Shares. For purposes of this Agreement, the date on which vested RSUs are converted into Shares shall be referred to as the “Settlement Date.”

**2. Dividend Equivalent Rights.** Each earned RSU shall have a Dividend Equivalent Right associated with it with respect to any cash dividends on Shares that have a record date after the Effective Date and prior to the applicable Settlement Date for such RSU (the total accrued dividends for each earned RSU as of the Settlement Date, a “Dividend Equivalent Amount”). For avoidance of doubt, no Dividend Equivalent Amount shall accrue in respect of an RSU which is not earned pursuant to this Agreement. The Dividend Equivalent Amount shall be calculated by crediting a hypothetical bookkeeping account for the Executive with an amount equal to the amount of cash dividends that would have been paid on the dividend payment date with respect to the number of Shares underlying the unsettled earned RSUs (or RSUs which become earned in accordance with this Agreement) if such Shares had been outstanding on the dividend record date. The Executive’s Dividend Equivalent Amount shall not be credited with interest or earnings. Any Dividend Equivalent Amount: (a) shall be subject to the same terms and conditions applicable to the earned RSU to which the Dividend Equivalent Right relates, including, without limitation, the restrictions on transfer and the forfeiture conditions contained in this Agreement; (b) shall vest and be settled upon the same terms and at the same time of settlement as the earned RSUs to which they relate; and (c) will be denominated and payable solely in cash. The payment of Dividend Equivalent Amounts on the Settlement Date will be net of all applicable withholding taxes pursuant to Section 4(f).

### 3. Effects of Certain Events.

**(a) General.** If Executive voluntarily terminates employment with the Company other than in connection with a Constructive Termination (defined below), any RSUs and related Dividend Equivalent Rights that have not been fully earned and/or that have not fully vested shall be forfeited automatically and without further action.

**(b) Qualifying Termination.**

**(i)** If Executive experiences a Qualifying Termination (defined below) prior to the completion of the Performance Period, then the Performance Period shall be deemed to have ended on the Executive’s Termination Date (defined below). Promptly after the Termination Date, the Company shall determine the number of RSUs and related Dividend Equivalent Rights earned by the Executive by completing the calculations described in Section 1(b) and (c) and multiplying the results thereof by a fraction, the numerator of which shall be the number of days elapsed from the start of the Performance Period through and including the Termination Date and the denominator of which shall be 1,826 which is the total number of days in the entire Performance Period. The number of RSUs so determined, together with the associated Dividend Equivalent Rights, shall be deemed immediately vested in full on the date of the Company’s determination (to be no later than sixty (60) days following the Termination Date) which shall be deemed the Vesting Date for such RSUs and Dividend Equivalent Rights and such vested RSUs and Dividend Equivalent Rights shall be settled as provided in Section 1(e).

For purposes of this Section 3(b), the following terms shall have the meanings set forth below:

“Qualifying Termination” means a termination of Executive’s employment by the Company without Cause, by the Executive as a result of a Constructive Termination, or as a result of Executive’s death or Disability. For purposes of this provision, the terms Cause, Constructive Termination and Disability shall have the meanings set forth in the Amended and Restated Severance Agreement dated as of the Effective Date between the Company and Executive (“Severance Agreement”).

“Termination Date” means the effective date of a termination that qualifies as a “separation from service” of the Executive from the Company, as defined under Section 409A of the Internal Revenue Code of 1986, as amended.

(ii) If Executive experiences a Qualifying Termination after the completion of the Performance Period but prior to the earned RSUs and related Dividend Equivalent Rights being fully vested, all such earned RSUs and related Dividend Equivalent Rights shall be deemed immediately vested in full on the Termination Date. The Termination Date shall be settled as provided in Section 1(e), as if no such Qualifying Termination had occurred.

(c) **Termination for Cause.** In the event Executive’s employment is terminated for Cause at any time, the RSUs (whether or not earned or vested) and any associated Dividend Equivalent Rights and any shares underlying RSUs that have not yet been transferred to the Executive shall be automatically forfeited as of the Termination Date.

**(d) Change of Control.**

(i) If there is a Change of Control (as defined in the Severance Agreement) prior to the completion of the Performance Period, then the Performance Period shall be deemed to have ended on the day prior to the closing of the Change of Control transaction (“COC Date”). Promptly after the COC Date, the Company shall determine the number of RSUs and related Dividend Equivalent Rights earned by the Executive by completing the calculations described in Section 1(b) and (c). The number of RSUs so determined, together with the associated Dividend Equivalent Rights, shall be deemed earned by the Executive effective as of the COC Date and shall vest on the earlier of: (i) Executive’s Termination Date if Executive resigns as a result of a Constructive Termination within two (2) years following the COC Date or if Executive is terminated without Cause or as a result of death or Disability; or (ii) provided Executive is still employed by the Company or its successor, on the last day of the Performance Period. Such dates shall be deemed the Vesting Date for such RSUs and related Dividend Equivalent Rights and such vested RSUs and Dividend Equivalent Rights shall be settled as provided in Section 1(e).

(ii) In the event of a Change of Control during the Executive’s employment that is after the end of the Performance Period and prior to the Settlement Date, all earned RSUs and the related Dividend Equivalent Rights shall become vested as of the date of such Change of Control and settled pursuant to Section 1(e), with the “Vesting Date” meaning the date of the Change of Control.

**4. Miscellaneous.**

(a) **Agreement Subject to Plan; Amendment.** By entering into this Agreement, the Executive agrees and acknowledges that the Executive has received and read a copy of the Plan. The RSUs granted hereunder are subject to the Plan. The terms and provisions of the Plan, as it may be amended from time to time, are hereby incorporated herein by reference. In the event of a conflict between any term or provision contained herein and a term or provision of the Plan, the applicable terms and provisions of the Plan will govern and prevail. The terms of the Agreement may be amended from time to time by the Committee in its sole discretion in any manner that it deems appropriate; provided, that any such amendment that would materially and adversely affect any right of the Executive shall not to that extent be effective without the written consent of the Executive.

(b) **Executive is General Unsecured Creditor.** The Executive and the Executive’s heirs, successors, and assigns shall have no legal or equitable rights, interest, or claims in any specific property or assets of the Company. Assets of the Company shall not be held under any trust for the benefit of the Executive or the Executive’s heirs, successors, or assigns, or held in any way as collateral security for the fulfilling of the obligations of the Company under the Agreement or the Plan. Any and all of the Company’s assets shall be, and remain, the general unrestricted assets of the Company. The Company’s sole obligation under this Agreement and in respect of

the Award shall be merely that of an unfunded and unsecured promise of the Company to pay the Executive in the future, subject to the conditions and provisions of the Agreement and the Plan.

**(c) No Transferability; No Assignment.** Neither the Executive nor any other person shall have any right to commute, sell, assign, transfer, pledge, anticipate, mortgage or otherwise encumber, transfer, hypothecate, alienate or convey in advance of actual receipt, the RSUs. No part of the RSUs or the Shares delivered in respect of any vested RSUs, and/or amounts payable under this Agreement shall, prior to actual settlement or payment, be subject to seizure, attachment, garnishment or sequestration for the payment of any debts, judgments, alimony or separate maintenance owed by the Executive or any other person, be transferable by operation of law in the event of the Executive's or any other person's bankruptcy or insolvency or be transferable to a spouse as a result of a property settlement or otherwise.

**(d) No Right to Continued Employment.** Neither the Plan, this Agreement nor the Executive's receipt of the award hereunder (or RSUs issued in settlement of such award) shall impose any obligation on the Company or any affiliate of the Company to continue the employment of the Executive. Further, the Company or any affiliate of the Company (as applicable) may at any time terminate the employment of such Executive, free from any liability or claim under the Plan or this Agreement, except as otherwise expressly provided herein or in any written employment agreement between the Executive and the Company (or any affiliate).

**(e) Limitation on Shareholder Rights.** The Executive shall have no rights as a shareholder of the Company, no dividend rights (subject to Dividend Equivalent Rights as set forth in [Section 2](#)) and no voting rights with respect to the RSUs and any Shares underlying or issuable in respect of such RSUs until such Shares are actually issued to and held of record by the Executive. No adjustments will be made for dividends or other rights of a holder for which the record date is prior to the date of issuance of the Shares except for the Dividend Equivalent Rights set forth in [Section 2](#).

**(f) Tax Withholding.**

**(i)** Regardless of any action the Company takes with respect to any or all federal, state or local income tax, employment tax or other tax related items ("[Tax Related Items](#)"), the Executive acknowledges that the ultimate liability for all Tax Related Items associated with the RSUs (and the Dividend Equivalent Rights associated therewith) is and remains the Executive's responsibility and that the Company: (A) makes no representations or undertakings regarding the treatment of any Tax Related Items in connection with any aspect of the RSUs, including, but not limited to, the grant or vesting of the RSUs, the delivery of the Shares, the subsequent sale of Shares acquired at vesting and the receipt of any Dividend Equivalent Rights; and (B) does not commit to structure the terms of the grant or any aspect of the RSUs to reduce or eliminate the Executive's liability for Tax Related Items. Further, if Executive has relocated to a different jurisdiction between the date of grant and the date of any taxable event, Executive acknowledges that the Company may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

**(ii)** Prior to the relevant taxable event, the Executive shall pay or make adequate arrangements satisfactory to the Company, in its sole discretion, to satisfy all withholding and payment on account obligations for Tax Related Items of the Company. In this regard, the Executive authorizes the Company, in its sole discretion, to satisfy the obligations with regard to all Tax Related Items legally payable by the Executive with respect to the RSUs by withholding in Shares Stock otherwise issuable to the Executive, provided that the Company withholds only the amount of Shares necessary to satisfy the minimum statutory withholding amount using the fair market value of the Shares on the Settlement Date. Executive shall pay to the Company any amount of Tax Related Items that the Company may be required to withhold as a result of the RSUs that are not satisfied by the previously described method. The Company may refuse to deliver the Shares to the Executive if the Executive fails to comply with Executive's obligations in connection with the Tax Related Items as described in this Section.

**(g) Compensation Recovery Policy.** The compensation under this Agreement shall be subject to being recovered under the Company's compensation recovery policy, if any, or any similar policy that the Company may adopt from time to time. For avoidance of doubt, compensation recovery rights to Shares issued under this Agreement shall extend to any proceeds realized by the Executive upon the sale or other transfer of such Shares and any Dividend Equivalent Amounts paid on any Shares recovered. Without limiting the generality of the foregoing,

if in the opinion of the independent trustees of the Board: (i) the Company's financial results are restated or were materially misstated due in whole or in part to intentional fraud or misconduct by the Executive; and (ii) the payment or equity or equity-based award made or issued pursuant to this Agreement based on the corrected financial results would be less than the amount previously paid or issued, then by approval by a majority of the independent trustees of the Board, the Board may, based upon the facts and circumstances surrounding the restatement, direct that the Company recover all or a portion of any payment or equity or equity-based award made or issued pursuant to this Agreement, and the Executive shall be required, in addition to any other remedy available (on a non-exclusive basis), to pay to the Company, within 10-business days' of the Company's request to Executive therefore, an amount equal to the excess, if any, of: (1) the aggregate after-tax proceeds (taking into account all amounts of tax that would be recoverable upon a claim of loss for payment of such proceeds in the year of repayment) Executive received upon the sale or other disposition of, or distributions in respect of the RSUs and any Shares issued in respect of such RSUs over (2) the aggregate Cost of such Shares (if any). For purposes of this Agreement, "Cost" means, in respect of any share of Common Stock, the amount paid by Executive for such share, as proportionately adjusted for all subsequent distributions.

**(h) Section 280G of the Code.** In the event that the accelerated vesting of the RSUs or the amounts payable under this Agreement, together with all other payments and the value of any benefit received or to be received by the Executive, would result in all or a portion of such payment being subject to excise tax under Section 4999 of the Code (the "Excise Tax"), then the Executive's payment shall be either the full payment or such lesser amount that would result in no portion of the payment being subject to the Excise Tax, whichever of the foregoing amounts, taking into account the applicable federal, state, and local employment taxes, income taxes, and the Excise Tax, results in the receipt by the Executive, on an after-tax basis, of the greatest amount of the payment notwithstanding that all or some portion of the payment may be taxable under Section 4999 of the Code. Any such reduction shall be made by the Company in compliance with all applicable legal authority, including Section 409A. All determinations required to be made under this Section shall be made by the nationally recognized accounting firm which is the Company's outside auditor immediately prior to the event triggering the payments that are subject to the Excise Tax (the "Accounting Firm"). The Company shall cause the Accounting Firm to provide detailed supporting calculations of its determinations to the Company and the Executive. All fees and expenses of the Accounting Firm shall be borne solely by the Company. The Accounting Firm's determinations must be made with substantial authority (within the meaning of Section 6662 of the Code).

**(i) Section 409A Compliance.** The award under this Agreement and the Shares and amounts payable under this Agreement are intended to be exempt from (or otherwise to comply with) the requirements of Section 409A so as to prevent the inclusion in gross income of any benefits accrued hereunder in a taxable year prior to the taxable year or years in which such amount would otherwise be actually distributed or made available to the Executive. The Agreement shall be administered and interpreted to the extent possible in a manner consistent with that intent. Notwithstanding the terms of Section 1 or Section 3, if Executive is a "specified employee" within the meaning of Section 409A, no payments (or Share issuances) in respect of any award or RSU that are "deferred compensation" subject to Section 409A and which would otherwise be payable upon the Executive's "separation from service" (as defined in Section 409A) shall be made to such Executive prior to the date that is six months after the date of the Executive's "separation from service" or, if earlier, the Executive's date of death. Following any applicable six month delay, all such delayed payments (or Share issuances) will be paid in a single lump sum on the earliest date permitted under Section 409A that is also a business day. The Executive is solely responsible and liable for the satisfaction of all taxes and penalties under Section 409A that may be imposed on or in respect of the Executive in connection with this Agreement, and the Company shall not be liable to any Executive for any payment that is determined to result in an additional tax, penalty or interest under Section 409A, nor for reporting in good faith any payment made under this Agreement as an amount includible in gross income under Section 409A.

**(j) Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Maryland applicable to contracts made and performed wholly within the State of Maryland, without giving effect to the conflict of law provisions thereof. Any dispute, controversy or claim between the Company and Executive or other person arising out of or relating to this Agreement shall be settled by arbitration conducted in Montgomery County, Maryland, in accordance with Maryland law and the rules of the American Arbitration Association then in force within thirty (30) days after written notice from one party to the other identifying a dispute hereunder. The arbitration decision or award shall be binding and final upon the parties. The arbitration award shall be in writing and shall set forth the basis thereof. The parties hereto shall abide by all

awards rendered in such arbitration proceedings, and all such awards may be enforced and executed upon in any court having jurisdiction over the party against whom enforcement of such award is sought. Each party shall be responsible for its own costs and expenses in any dispute or proceeding regarding the enforcement of this Agreement. Each of the Executive and the Company hereby irrevocably waives: (i) any objections which it may now or hereafter have to this agreement being governed by Maryland law or to the resolution of any dispute being resolved by binding arbitration; and (ii) any right to a jury trial.

**(k) Signature in Counterparts.** This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement effective as of the day and year first above written.

**FEDERAL REALTY INVESTMENT TRUST**

**EXECUTIVE:**

By:

\_\_\_\_\_  
Donald C. Wood  
Chief Executive Officer

\_\_\_\_\_  
Jeffrey S. Berkes



## AMENDED AND RESTATED SEVERANCE AGREEMENT

**THIS AMENDED AND RESTATED SEVERANCE AGREEMENT** (“Agreement”) is made effective as of February 10, 2021 by and between **FEDERAL REALTY INVESTMENT TRUST**, a Maryland real estate investment trust (the “Company”) and **JEFFREY S. BERKES** (“Employee”).

**WHEREAS**, the Company and the Employee previously entered into a Severance Agreement dated May 1, 2000 (as amended, the “Prior Agreement”); and

**WHEREAS**, concurrently with execution of this Agreement, the Company is promoting Employee to President and Chief Operating Officer of the Company and the Company and Employee desire to enter into this Agreement to replace and supersede the Prior Agreement in its entirety to reflect terms commensurate with the role and responsibilities of President.

**NOW, THEREFORE**, in consideration of the promises and mutual covenants contained herein and for other good and valuable consideration, including the Employee’s promotion to President of the Company, the Employee and the Company agree as follows:

**1. Position, Duties and Authority.** Effective as of the date first written above, Employee shall serve as the President of the Company and shall have primary oversight responsibility for the operation, management and development of the Company’s real estate operations. Employee acknowledges that he shall be a fiduciary of the Company, and may be an employee of an operating partnership subsidiary of the Company with the same title, roles and responsibilities as he has for the Company. Executive agrees to travel as needed to perform his duties, consistent with any then current federal, state or local restrictions imposed in connection with the Covid pandemic.

### **2. Termination and Severance not Related to a Change of Control.**

**(a) Generally.** Employee may resign from his position as President of the Company and terminate his employment by giving the Board of Trustees of the Company (“Board”) at least sixty (60) days prior written notice; provided that any notice in connection with a Constructive Termination shall be governed by Section 2(f) below. The Company shall have the right to terminate the Employee at any time and for any reason subject to the notice and other provisions of this Agreement. Upon Employee’s resignation or termination, Employee shall be deemed to have automatically resigned as an officer, director or trustee from the Company any and all entities owned, controlled or managed by the Company without any further action or notice.

**(b) Termination for Cause.** If the Company terminates Employee’s employment for Cause (defined below), Employee’s employment shall automatically terminate on the date set by the Board and Employee shall not be entitled to any payments or benefits other than those that accrued through the date of such termination or are otherwise required to be provided by law or pursuant to any of the Company’s employee benefit plans on termination. For purposes of this Agreement, “Cause” shall mean any one or more of the following events:

**(i)** Employee is convicted of committing a felony or a misdemeanor involving moral turpitude under any state, federal or local law;

**(ii)** Employee breaches in any material respect this Agreement or the policies and procedures of the Company and Employee fails to cure the breach to the reasonable satisfaction of the Board provided that breaches falling within Section 2(b)(v) shall be governed by that subsection;

**(iii)** Employee engages in conduct that constitutes willful gross neglect or willful gross misconduct in performing Employee’s duties, or engages in fraud, misappropriation or embezzlement with respect to Company property or information;

**(iv)** Employee engages in any willful act or omission that causes harm in any material respect to the financial condition or business reputation of the Company; or

(v) Following a thorough investigation by a neutral third-party investigator, Employee is found to have engaged in sexual misconduct, discrimination, harassment, retaliation, assault, or other improper or violent act toward any employee or third party, in each case that in the good faith determination of the Board has or could result in reputational or financial harm to the Company, or constitutes a violation of law, or a material breach of any policy, procedure, rule, regulation, or directive of the Company.

No act or failure to act shall be considered to be willful unless done or omitted to be done in bad faith and without reasonable belief it was in the best interests of the Company. Any act or failure to act based upon express direction given pursuant to a resolution of the Board or upon the express instructions of the Chairman of the Board (provided that Employee was not the Chairman of the Board at the applicable time) shall be conclusively presumed to be done, or omitted to be done, by Employee in good faith and in the best interests of the Company. The Company may only terminate Employee for Cause following a resolution approved by a majority of the Board. If matters constituting Cause become known to the Company within one (1) year after Employee's termination occurs, then the Board may, by delivery of written notice to Employee, treat such termination as being for Cause, cease and terminate any severance payments or benefits then remaining to be paid, and seek reimbursement of all payments made and benefits provided, with interest, by any available legal means. The foregoing is an exclusive list of the acts or omissions that shall be considered Cause for the termination of Executive's employment. If the Board reasonably determines that any act or failure to act alleged to constitute Cause is curable, Employee shall be provided with notice of at least thirty (30) days to cure any act or omission alleged to constitute Cause and Employee shall have an opportunity to present his case to the full Board (with the assistance of his own counsel) before any termination for Cause is finalized by a vote of a majority of the Board. The Board's determination as to whether an act alleged to constitute Cause is curable is binding on Employee.

**(c) Termination without Cause.** In the event that Employee is terminated for any reason other than a termination for Cause or a termination on death or disability, the Board shall give Employee at least sixty (60) days prior written notice of such termination. Upon such termination, Employee shall be entitled to receive the Accrued Obligations (as defined in Section 11(k)) together with the following payments and benefits:

**(i)** A cash amount equal to the sum of: (A) one year of Employee's annual base salary in effect as of the date of termination; plus (B) an amount equal to the highest annual bonus earned by Employee in the last three (3) completed fiscal years of the Company prior to the termination. For purposes of such calculation, it shall be assumed that all annual bonuses were paid 100% in cash; plus (C) if Employee elects continuation of medical, vision and dental group insurance coverage (as applicable) under COBRA (including dependent coverage), the Company shall reimburse Employee, on an after-tax basis, for up to a period of twelve (12) months an amount equal to the difference between the cost of such continuation of benefits and the amount Employee paid for such coverage (on a monthly premium basis) immediately prior to the date of termination. Such payments due under Section 2(c)(i)(A) and (B) hereof shall be paid to Employee no later than two and one-half (2½) months following Employee's termination.

**(ii)** All of Employee's outstanding unvested stock options, restricted stock awards, dividend equivalent rights or other similar equity awards that vest solely on the basis of the passage of time and continued employment shall become fully vested as of the date of termination. Any shares that vest as aforesaid shall be deemed vested on the date of Employee's termination. Notwithstanding anything to the contrary in any stock option agreement, upon termination of employment due to a termination without Cause, Employee shall be entitled to exercise all vested stock options until the earlier of one (1) year after termination of employment and the original term of the option.

**(iii)** Some or all of Employee's outstanding performance share awards, related dividend equivalent rights or other similar performance based equity awards shall be earned as of the date of termination based on the level of achievement of the performance goals established for such awards as of such date and then pro-rated based on the portion of the performance period that has elapsed as of the date of Employee's termination. For purposes hereof, the level of achievement of the performance goals established for each such award will be determined on the day immediately prior to the effective date of Employee's termination as follows: (A) if the performance goal is a market-based goal, such as total shareholder return, stock price or relative funds from operations multiple, then the actual performance for the performance period through such date shall be used; (B) if the goal is a financially based, non-market-based goal, then the level of achievement of such goal shall be based on

the most recently reported number(s) by the Company in its reports filed with the Securities and Exchange Commission or if such numbers are not so filed, based on the numbers as prepared internally by the Company for the quarter ending prior to the date of termination; and (C) if the performance goal is based on achievement of a company-wide strategic objective or satisfaction of individual performance criteria, the level of achievement of such goal will be deemed to have been accomplished at target level. Any shares that are earned and vest as aforesaid shall be deemed earned and vested on the effective date of Employee's termination of employment.

(iv) All other employee benefits Employee would be entitled to receive under any employee benefit plan of the Company, payable in accordance with the terms and conditions of any such tax qualified employee benefit plans.

**(d) Termination on Death.** Termination of Employee's employment will be effective upon the date of Employee's death. Upon such termination, Employee or Employee's estate, survivors or beneficiaries (as the case may be) shall be entitled to receive the Accrued Obligations together with the following payments and benefits:

(i) A cash amount equal to the sum of: (A) Employee's base salary through the last day of the month in which Employee's death occurs; plus (B) the annual cash bonus for the year in which Employee's death occurs pro-rated through the date of Employee's death and based on the level of bonus payout recorded on the Company's books and records for the last fiscal quarter completed prior to Employee's death. This calculation shall not take into account any election made by the Employee to have a portion of such annual bonus paid in the form of Company shares. Such payments shall be paid to Employee no later than the sixtieth (60<sup>th</sup>) day following Employee's death.

(ii) All of Employee's outstanding unvested stock options, restricted stock awards, dividend equivalent rights or other similar equity awards that vest solely on the basis of the passage of time and continued employment shall become fully vested as of the date of Employee's death. Notwithstanding anything to the contrary in any stock option agreement, upon termination of employment due to the Employee's death, Employee or Employee's estate, as applicable, shall be entitled to exercise all vested stock options until the earlier of one (1) year after termination of employment due to death and the original term of the option.

(iii) Some or all of Employee's outstanding performance share awards, related dividend equivalent rights or other similar performance based equity awards shall be earned as of the date of termination based on the level of achievement of the performance goals established for such awards as of such date and then pro-rated based on the portion of the performance period that has elapsed as of the date of Employee's termination. For purposes hereof, the level of achievement of the performance goals established for each such award will be determined on the day immediately prior to the effective date of Employee's termination as follows: (A) if the performance goal is a market-based goal, such as total shareholder return, stock price or relative funds from operations multiple, then the actual performance for the performance period through such date shall be used; (B) if the goal is a financially based, non-market-based goal, then the level of achievement of such goal shall be based on the most recently reported number(s) by the Company in its reports filed with the Securities and Exchange Commission or if such numbers are not so filed, based on the numbers as prepared internally by the Company for the quarter ending prior to the date of termination; and (C) if the performance goal is based on achievement of a company-wide strategic objective or satisfaction of individual performance criteria, the level of achievement of such goal will be deemed to have been accomplished at target level. Any shares that are earned and vest as aforesaid shall be deemed earned and vested on the date of Employee's death.

(iv) All other death benefits under any applicable plans and programs of the Company in accordance with the terms and provisions of such plans.

**(e) Termination on Disability.** Termination of Employee's employment will be effective thirty (30) days after notice from the Board in the event Employee has experienced a Disability. For purposes hereof, "Disability" shall mean Employee's inability to perform, with or without reasonable accommodation, Employee's duties under this Agreement due to a physical or mental illness or injury for a period of six (6) consecutive months or for an aggregate of twelve (12) months in any consecutive twenty-four (24) month period. Any question as to the existence of the Disability of Employee as to which Employee and the Company cannot agree shall be determined in writing by a qualified independent physician mutually acceptable to Employee and the Company. If Employee and

the Company cannot agree as to a qualified independent physician, each shall appoint such a physician and those two physicians shall select a third physician who shall make such determination in writing. The determination of Disability made in writing to the Company and Employee shall be final and conclusive for all purposes of this Agreement. Upon such termination, Employee or Employee's estate, survivors or beneficiaries (as the case may be) shall be entitled to receive the Accrued Obligations together with the following payments and benefits:

(i) A cash amount equal to equal to the sum of: (A) the annual cash bonus for the year in which Employee's termination for Disability occurs pro-rated through the date of Employee's termination and based on the level of bonus payout recorded on the Company's books and records for the last fiscal quarter completed prior to Employee's termination. This calculation shall not take into account any election made by the Employee to have a portion of such annual bonus paid in the form of Company shares; plus (B) if Employee elects continuation of medical, vision and dental group insurance coverage (as applicable) under COBRA (including dependent coverage), the Company shall reimburse Employee, on an after-tax basis, for up to a period of twelve (12) months an amount equal to the difference between the cost of such continuation of benefits and the amount Employee paid for such coverage (on a monthly premium basis) immediately prior to the date of termination. Such payments due under clause (A) hereof shall be paid to Employee no later than two and one-half (2½) months following Employee's termination.

(ii) All of Employee's outstanding unvested stock options, restricted stock awards, dividend equivalent rights or other similar equity awards that vest solely on the basis of the passage of time and continued employment shall become fully vested as of the date of termination. Any shares that vest as aforesaid shall be deemed vested on the date of Employee's termination. Notwithstanding anything to the contrary in any stock option agreement, upon termination of employment due to the Employee's Disability, Employee or Employee's estate, as applicable, shall be entitled to exercise all vested stock options until the earlier of one (1) year after termination of employment due to Disability and the original term of the option.

(iii) Some or all of Employee's outstanding performance share awards, related dividend equivalent rights or other similar performance based equity awards shall be earned as of the date of termination based on the level of achievement of the performance goals established for such awards as of such date and then pro-rated based on the portion of the performance period that has elapsed as of the date of Employee's termination. For purposes hereof, the level of achievement of the performance goals established for each such award will be determined on the day immediately prior to the effective date of Employee's termination as follows: (A) if the performance goal is a market-based goal, such as total shareholder return, stock price or relative funds from operations multiple, then the actual performance for the performance period through such date shall be used; (B) if the goal is a financially based, non-market-based goal, then the level of achievement of such goal shall be based on the most recently reported number(s) by the Company in its reports filed with the Securities and Exchange Commission or if such numbers are not so filed, based on the numbers as prepared internally by the Company for the quarter ending prior to the date of termination; and (C) if the performance goal is based on achievement of a company-wide strategic objective or satisfaction of individual performance criteria, the level of achievement of such goal will be deemed to have been accomplished at target level. Any shares that are earned and vest as aforesaid shall be deemed earned and vested on the date of Employee's termination.

(iv) All other disability benefits under any applicable plans and programs of the Company in accordance with the terms and provisions of such plans.

**(f) Resignation on Constructive Termination.** If Employee intends to resign as a result of a Constructive Termination (defined below), Employee shall provide to the Board a written notice within ninety (90) days after the initial existence of the condition supporting the Constructive Termination that specifies the Employee's intention to resign as a result of the Constructive Termination and specifically identifies the condition that is the cause of the Constructive Termination. The Company shall have a period of thirty (30) days after the date of such notice to cure the condition supporting the Constructive Termination. If the Company does not cure the condition within such 30-day period, the Employee's termination will occur on the day immediately following the end of the cure period. If the Company cures the condition within such 30-day cure period, then Employee will be deemed to have withdrawn his notice of termination effective as of the date the cure is effected. If Employee is terminated as a result of a Constructive Termination, Employee shall be entitled to receive the Accrued Obligations together with the following payments and benefits:

(i) A cash amount equal to the sum of: (A) one year of Employee's then current annual base salary as of the date of termination; plus (B) an amount equal to the highest annual bonus earned by Employee in the last three (3) completed fiscal years of the Company prior to the termination. For purposes of such calculation, it shall be assumed that all annual bonuses were paid 100% in cash; plus (C) if Employee elects continuation of medical, vision and dental group insurance coverage (as applicable) under COBRA (including dependent coverage), the Company shall reimburse Employee, on an after-tax basis, for up to a period of twelve (12) months an amount equal to the difference between the cost of such continuation of benefits and the amount Employee paid for such coverage (on a monthly premium basis) immediately prior to the date of termination. Such payments due under Section 2(f)(i)(A) and (B) hereof shall be paid to Employee no later than two and one-half (2½) months following Employee's termination.

(ii) All of Employee's outstanding unvested stock options, restricted stock awards, dividend equivalent rights or other similar equity awards that vest solely on the basis of the passage of time and continued employment shall become fully vested as of the date of termination. Any shares that vest as aforesaid shall be deemed vested on the date of Employee's termination. Notwithstanding anything to the contrary in any stock option agreement, upon termination of employment due to a Constructive Termination, Employee shall be entitled to exercise all vested stock options until the earlier of one (1) year after termination of employment and the original term of the option.

(iii) Some or all of Employee's outstanding performance share awards, related dividend equivalent rights or other similar performance based equity awards shall be earned as of the date of termination based on the level of achievement of the performance goals established for such awards as of such date and then pro-rated based on the portion of the performance period that has elapsed as of the date of Employee's termination. For purposes hereof, the level of achievement of the performance goals established for each such award will be determined on the day immediately prior to the effective date of Employee's termination as follows: (A) if the performance goal is a market-based goal, such as total shareholder return, stock price or relative funds from operations multiple, then the actual performance for the performance period through such date shall be used; (B) if the goal is a financially based, non-market-based goal, then the level of achievement of such goal shall be based on the most recently reported number(s) by the Company in its reports filed with the Securities and Exchange Commission or if such numbers are not so filed, based on the numbers as prepared internally by the Company for the quarter ending prior to the date of termination; and (C) if the performance goal is based on achievement of a company-wide strategic objective or satisfaction of individual performance criteria, the level of achievement of such goal will be deemed to have been accomplished at target level. Any shares that are earned and vest as aforesaid shall be deemed earned and vested on the date of Employee's termination.

(iv) All other employee benefits Employee would be entitled to receive under any employee benefit plan of the Company, payable in accordance with the terms and conditions of any such tax qualified employee benefit plans.

For purposes of this Agreement, a "Constructive Termination" shall be deemed to have occurred upon any one of the following conditions: (1) a material negative change to Employee's title or a material diminution of the Employee's authority, duties or responsibilities from those described in Section 1 hereof that is not agreed to by Employee; (2) a material diminution of the Employee's base pay or total annual target compensation opportunity (including base pay, annual bonus opportunity, and value of annual equity award target) from the amounts in place as of the date of this Agreement; (3) the relocation of Employee's primary office location to a location that is more than fifty (50) miles from San Jose, California or any other location to which Employee has agreed to move; or (4) any other action or inaction by the Company that constitutes a material breach of this Agreement. No condition shall give rise to a Constructive Termination if employee consents to such condition in advance.

### **3. Termination and Severance Related to a Change in Control.**

(a) **Payments and Benefits.** In the event that within the six (6) months prior to or the two (2) years following a Change in Control, Employee's employment is terminated without Cause or the Employee terminates the Employee's employment as a result of a Constructive Termination, Employee shall be entitled to receive the

Accrued Obligations together with the following payments and benefits, in lieu of receiving any benefits under Section 2 above:

**(i)** A cash amount equal to the sum of: (A) two (2) years of Employee's annual base salary in effect as of the date of termination; plus (B) an amount equal to two hundred percent (200%) of the highest annual bonus earned by Employee in the last three (3) completed fiscal years of the Company prior to the termination. For purposes of such calculation, it shall be assumed that all annual bonuses were paid 100% in cash; plus (C) if Employee elects continuation of medical, vision and dental group insurance coverage (as applicable) under COBRA (including dependent coverage), the Company shall reimburse Employee, on an after-tax basis, for up to a period equal to the lesser of twenty-four (24) months or the maximum time Employee can continue insurance coverage under COBRA an amount equal to the difference between the cost of such continuation of benefits and the amount Employee paid for such coverage (on a monthly premium basis) immediately prior to the date of termination. Such payments due under Section 3(a)(i)(A) and (B) hereof shall be paid to Employee no later than two and one-half (2½) months following Employee's termination.

**(ii)** All of Employee's outstanding unvested stock options, restricted stock awards, dividend equivalent rights or other similar equity awards that vest solely on the basis of the passage of time and continued employment shall become fully vested as of the date of termination. Any shares that vest as aforesaid shall be deemed vested on the date of Employee's termination. Notwithstanding anything to the contrary in any stock option agreement, upon termination of employment as provided in this Section 3(a), Employee shall be entitled to exercise all vested stock options until the earlier of one (1) year after termination of employment and the original term of the option.

**(iii)** Some or all of Employee's outstanding performance share awards, related dividend equivalent rights or other similar performance based equity awards shall be earned as of the date of termination based on the level of achievement of the performance goals established for such awards as of such date and then pro-rated based on the portion of the performance period that has elapsed as of the date of Employee's termination. For purposes hereof, the level of achievement of the performance goals established for each such award will be determined on the day immediately prior to the effective date of Employee's termination as follows: (A) if the performance goal is a market-based goal, such as total shareholder return, stock price or relative funds from operations multiple, then the actual performance for the performance period through such date shall be used; (B) if the goal is a financially based, non-market-based goal, then the level of achievement of such goal shall be based on the most recently reported number(s) by the Company in its reports filed with the Securities and Exchange Commission or if such numbers are not so filed, based on the numbers as prepared internally by the Company for the quarter ending prior to the date of termination; and (C) if the performance goal is based on achievement of a company-wide strategic objective or satisfaction of individual performance criteria, the level of achievement of such goal will be deemed to have been accomplished at target level. Any shares that are earned and vest as aforesaid shall be deemed earned and vested on the date of Employee's termination.

**(iv)** All other employee benefits Employee would be entitled to receive under any employee benefit plan of the Company, payable in accordance with the terms and conditions of any such tax qualified employee benefit plans.

For purposes of this Agreement, a Change in Control shall have the meaning set forth in the Company's 2020 Performance Incentive Plan for a "Change in Control."

**(b) Excise Tax.** In the event it is determined that any payment or benefit (within the meaning of Section 280G(B)(2) of the Internal Revenue Code of 1986 (as amended, the "Code"), to Employee or for his benefit paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise in connection with, or arising out of, his employment ("Payments"), would be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties are incurred by Employee with respect to such excise tax (such excise tax, together with any such interest and penalties, are hereinafter collectively referred to as the "Excise Tax"), then the Payments shall be payable either: (a) in full; or (b) in such lesser amount that would result in no portion of such Payments being subject to an excise tax under Section 4999 of the Code, whichever of the foregoing amounts, taking into account the applicable federal, state and local income or excise taxes (including the excise tax imposed by Section 4999), results in the Employee's receipt on an after-tax basis of the greatest amount or benefits under this

Agreement, notwithstanding that all or some portion of such benefits may be taxable under Section 4999 of the Code. In that event, Employee shall designate those rights, payments, or benefits under this Agreement, any other agreements, and any benefit arrangements that should be reduced or eliminated so as to avoid having the payment or benefit to Employee under this Agreement be deemed to be an excess parachute payment; provided, however, that in order to comply with Section 409A of the Code, the reduction or elimination will be performed in the order in which each dollar of value subject to a right, payment, or benefit reduces the parachute payment to the greatest extent. All determinations under this paragraph shall be made at the expense of the Company by a nationally recognized public accounting firm selected by the Company and subject to approval of Employee, which approval shall not be unreasonably withheld. Employee shall be deemed to have approved any nationally recognized public accounting firm then serving as the Company's independent auditor or internal auditor. Such determination shall be binding upon Executive and the Company in the absence of manifest error. To the extent the terms of this paragraph conflict with the terms of an equity award granted pursuant to Employee, this paragraph shall control.

**4. Restrictive Covenants.** Employee acknowledges and recognizes the highly competitive nature of the businesses of the Company and its affiliates and accordingly agrees as follows, subject to the terms and conditions of applicable law:

**(a) Non-Competition.** For a period of one (1) year following the date Employee ceases to be employed by the Company plus the length of time during which Employee is in breach of the terms hereof as determined by any court of competent jurisdiction on the Company's application for injunctive relief (the "Restricted Period"), Employee will not, directly or indirectly, own, manage, operate, control, consult with, be employed by or otherwise provide services to, or participate in the ownership, management, operation or control of any company listed as of the date Employee ceases to be employed by the Company in the Bloomberg REIT Shopping Center Index, the FTSE NAREIT Shopping Center Index or a list of non-publicly traded companies that is agreed to by the Company and Employee from time to time ("Protected Business"). Notwithstanding the foregoing, Employee's ownership solely as a passive investor of 2% or less of the outstanding securities of any class of any company shall not, by itself, be considered to violate this Section 4(a).

**(b) Non-Solicitation.** During Restricted Period, Employee will not, whether on Employee's own behalf or on behalf of or in conjunction with any person or entity ("Person"): (i) solicit or encourage (which shall not include providing references on behalf of any such employee or issuing a non-targeted general employment advertisement) any employee of the Company or its subsidiaries ("Restricted Group") at or above the level of Director or any leasing agent (including specialty leasing agents) who was employed by the Company during the Restricted Period or the sixty (60) days preceding Employee's termination to leave the employment of the Company or its subsidiaries, or hire any such employee; or (ii) intentionally encourage any material consultant engaged in the Protected Business and retained by the Restricted Group to cease working with the Restricted Group.

**(c) Confidentiality.** Employee may not at any time (whether during or after Employee's employment with the Company), disclose, divulge, reveal, communicate, share, transfer or provide access to any Confidential Information that he may obtain during his employment by the Company to any other Person, except: (i) in connection with performing his duties for the Company or its subsidiaries; (ii) to the Company or its subsidiaries, or to any authorized (or apparently authorized) agent or representative of any of them; (iii) when required to do so by law or regulation or requested by a court, governmental agency, legislative body, arbitrator or other person with apparent jurisdiction to order him to communicate, divulge or make accessible any such confidential information; (iv) in the course of any proceeding brought to enforce this Agreement; or (v) in confidence to any attorney or other professional advisor for the purposes of securing professional advice. For purposes of this Agreement, "Confidential Information" shall mean any proprietary or confidential information of the Company and its subsidiaries, and includes, without limitation, trade secrets, know-how, research and development, software, databases, inventions, processes, formulae, technology, designs and other intellectual property, information concerning finances, investments, profits, pricing, costs, products, services, vendors, customers, clients, partners, investors, personnel, compensation, recruiting, training, advertising, sales, marketing, promotions, government and regulatory activities and approvals; provided, however, that the term Confidential Information shall not include any document, record, data, compilation or other information that is known or generally available to the public, or within any trade or industry of the Company or any of its affiliates, other than as a result of Employee's violation of this Section 4(c), or not otherwise considered confidential by persons within such trade or industry. Upon termination of Employee's employment with the Company for any reason, Employee shall: (A) cease and not thereafter commence

use of any Confidential Information or intellectual property (including without limitation, any patent, invention, copyright, trade secret, trademark, trade name, logo, domain name or other source indicator) owned or used by the Company, its subsidiaries or affiliates; and (B) immediately destroy, delete, or return to the Company, at the Company's option as communicated to Employee, all originals and copies in any form or medium (including memoranda, books, papers, plans, computer files, letters and other data) in Employee's possession or control (including any of the foregoing stored or located in Employee's office, home, laptop or other computer, whether or not Company property) that contain Confidential Information or otherwise relate to the Protected Business of the Company and its subsidiaries, except that Employee may retain only those portions of any personal notes, notebooks and diaries that do not contain any Confidential Information and may retain any Company-issued cell phone, his contacts and calendars and any compensation-related information or information reasonably necessary for tax return purposes.

**(d) No Defamation.** Employee agrees not to participate in or facilitate the dissemination to the media or any other third party: of any defamatory information concerning the Company, any officer or trustee of the Company or Employee's experiences as an employee of the Company, without the Company's prior written consent except as may be required by law. Notwithstanding the foregoing, this Section 4(d) does not apply to information which is already in the public domain through no fault of the Employee. Further, upon Employee's termination, the Company shall direct all officers and trustees of the Company to refrain from disparaging Employee or Employee's performance as an employee of the Company, and shall be responsible for any breach by its officers and trustees of this Section 4(d). Nothing in this Section 4(d) or any other provision of this Agreement is intended to prevent the Parties from disclosing factual information regarding any claim for sexual harassment, sex discrimination, or retaliation for reporting sexual harassment or sex discrimination.

**(e) Intellectual Property.** If Employee creates, invents, designs, develops, contributes to or improves any works of authorship, inventions, intellectual property, materials, documents or other work product (including, without limitation, research, reports, software, databases, systems, applications, presentations, textual works, content, or audiovisual materials) ("Works"), either alone or with third parties, at any time during Executive's employment by the Company and within the scope of such employment and with the use of any the Company resources ("Company Works"), Executive shall promptly and fully disclose the same to the Company and hereby irrevocably assigns, transfers and conveys, to the maximum extent permitted by applicable law, all rights and intellectual property rights therein (including rights under patent, industrial property, copyright, trademark, trade secret, unfair competition and related laws) to the Company to the extent ownership of any such rights does not vest originally in the Company. Employee shall take all requested actions and execute all requested documents (including any licenses or assignments required by a government contract) at the Company's expense (but without further remuneration) to assist the Company in validating, maintaining, protecting, enforcing, perfecting, recording, patenting or registering any of the Company's rights in the Company Works. Employee shall not improperly use for the benefit of, bring to any premises of, divulge, disclose, communicate, reveal, transfer or provide access to, or share with the Company any confidential, proprietary or non-public information or intellectual property relating to a former employer or other third party without the prior written permission of such third party. Employee shall comply with all relevant policies and guidelines of the Company that are from time to time previously disclosed to Employee, including regarding the protection of Confidential Information and intellectual property and potential conflicts of interest. The assignments and transfers by Employee to Company hereunder do not apply to any invention which the Employee develops totally on his time without using the Company's equipment, supplies, facilities, or trade secret information except for the inventions which: (i) relate at the time of conception or reduction to practice of the invention to the Company's business, or actual or anticipated research or development of the Company; or (ii) result from any work done by the Employee for the Company.

**(f) Reasonableness.** The parties agree that the restrictive covenants in this Section 4 are necessary to protect the goodwill or other business interests of the Company and that such restrictive covenants do not impose a greater restraint than is necessary to protect such goodwill or other business interests.

**(g) Severability.** It is expressly understood and agreed that although Employee and the Company consider the restrictions contained in this Section 4 to be reasonable, if a final judicial determination is made by a court of competent jurisdiction that any restriction contained in this Section 4 is an unenforceable restriction against Employee, the provisions of this Agreement shall not be rendered void but shall be deemed amended to apply with such deletion or modification as such court may judicially determine or indicate to make the Agreement valid and



enforceable. The restrictions contained in this Section 4 shall be construed as separate and individual restrictions and shall each be capable of being reduced in application or severed without prejudice to the other restrictions contained in this Section 4 or to the remaining provisions of this Agreement.

**(h) Injunctive Relief.** The parties agree that any breach of this Section 4 will result in irreparable harm to the non-breaching party which cannot be fully compensated by monetary damages and accordingly, in the event of any breach or threatened breach of this Section 4, the non-breaching party shall be entitled to injunctive relief.

#### **5. Compliance with Code Section 409A.**

**(a)** The intent of the parties is that payments and benefits under this Agreement comply with or be exempt from Code Section 409A and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted to be in compliance therewith. If any provision of this Agreement (or of any award of compensation, including equity compensation or benefits) would cause Employee to incur any additional tax or interest under Code Section 409A, the Company shall, after consulting with and receiving the approval of Employee, reform such provision in a manner intended to avoid the incurrence by Employee of any such additional tax or interest.

**(b)** A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits that are considered nonqualified deferred compensation under Code Section 409A upon or following a termination of employment unless such termination is also a "separation from service" within the meaning of Code Section 409A, and, for purposes of any such provision of this Agreement, references to a "termination," "termination of employment" or like terms shall mean "separation from service." The determination of whether and when a separation from service has occurred for purposes of this Agreement shall be made in accordance with the presumptions set forth in Section 1.409A-1(h) of the Treasury Regulations.

**(c)** Any provision of this Agreement to the contrary notwithstanding, if at the time of Employee's separation from service, the Company determines that Employee is a "specified employee," within the meaning of Code Section 409A, then to the extent any payment or benefit that Employee becomes entitled to under this Agreement on account of such separation from service would be considered nonqualified deferred compensation under Code Section 409A, such payment or benefit shall be paid or provided at the date which is the earlier of: (i) six (6) months and one day after such separation from service; and (ii) the date of Employee's death (the "Delay Period"). Upon the expiration of the Delay Period, all payments and benefits delayed pursuant to this Section 4(c) (whether they would have otherwise been payable in a single sum or in installments in the absence of such delay) shall be paid or provided to Employee in a lump-sum, and any remaining payments and benefits due under this Agreement shall be paid or provided in accordance with the normal payment dates specified for them herein.

**(d)** Any reimbursements and in-kind benefits provided under this Agreement that constitute deferred compensation within the meaning of Code Section 409A shall be made or provided in accordance with the requirements of Code Section 409A, including that: (i) in no event shall any fees, expenses or other amounts eligible to be reimbursed by the Company under this Agreement be paid later than the last day of the calendar year next following the calendar year in which Employee provides verification reasonably acceptable to the Company that the applicable fees, expenses or other amounts were incurred; (ii) the amount of expenses eligible for reimbursement, or in-kind benefits that the Company is obligated to pay or provide, in any given calendar year shall not affect the expenses that the Company is obligated to reimburse, or the in-kind benefits that the Company is obligated to pay or provide, in any other calendar year, provided that the foregoing clause (ii) shall not be violated with regard to expenses reimbursed under any arrangement covered by Section 105(b) of the Code solely because such expenses are subject to a limit related to the period the arrangement is in effect; (iii) Employee's right to have the Company pay or provide such reimbursements and in-kind benefits may not be liquidated or exchanged for any other benefit; and (iv) in no event shall the Company's obligations to make such reimbursements or to provide such in-kind benefits apply later than Employee's remaining lifetime (or if longer, through the 6th anniversary of the Effective Date).

**(e)** For purposes of Code Section 409A, Employee's right to receive any installment payments shall be treated as a right to receive a series of separate and distinct payments. Whenever a payment under this

Agreement specifies a payment period with reference to a number of days (for example, “payment shall be made within thirty (30) days following the date of termination”), the actual date of payment within the specified period shall be within the sole discretion of the Company. In no event may Executive, directly or indirectly, designate the calendar year of any payment to be made under this Agreement, to the extent such payment is subject to Code Section 409A.

(f) To the extent the terms of this Section 5 conflict with the terms of an equity award granted to Employee, this Section 5 shall govern.

6. **Release.** Notwithstanding any provision herein to the contrary, the Company shall have no obligation to pay any amount or provide any benefit, as the case may be, under this Agreement (other than the Accrued Obligations and any amount that is required to be paid under applicable law or the terms of an applicable benefit plan upon termination), unless the Employee executes and delivers to the Company, and does not revoke (to the extent the Employee is allowed to do so as set forth in the General Release), a General Release in substantially the form attached hereto as Exhibit 1 within sixty (60) days of the Employee’s termination of employment.

7. **Set Off; Mitigation.** The obligation of the Company to pay or provide Employee the amounts or benefits under this Agreement shall be subject to set-off, counterclaim or recoupment of amounts owed by the Employee to the Company, as permitted by applicable law and/or any policy of the Company. In addition, except as provided in Section 3(b), the Employee shall not be required to mitigate the amount of any payments or benefits provided to the Employee hereunder by securing other employment or otherwise, nor will such payments and/or benefits be reduced by reason of the Employee securing other employment or for any other reason. Further, the Company shall withhold from all payments to Employee hereunder all amounts required to be withheld under applicable local, state or federal income and employment tax laws, including amounts necessary to satisfy tax withholding obligations on any restricted stock or other equity award that vests as provided in this Agreement.

8. **Recoupment.** All incentive-based compensation paid to Employee will be subject to the Company’s Incentive-Based Compensation Recoupment Policy as in effect from time to time and any other recoupment or clawback policies or requirements required by law.

9. **Governing Law/Dispute Resolution.** This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without regard to conflicts of law principles thereof. Except for injunctive relief authorized with respect to any violation of the restrictive covenants in Section 4 hereof, each of the Company and Employee hereby irrevocably submits to the exclusive jurisdiction of the United States District Court for the District of Maryland or the District Court of the State of Maryland sitting in Montgomery County, Maryland over any suit, action or proceeding arising out of or relating to this Agreement, and each of the parties agrees that any action relating in any way to this Agreement must be commenced only in the courts of the State of Maryland, federal or state. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted or not prohibited by law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding brought in such a court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum. Each of the parties hereto hereby irrevocably consents to the service of process in any suit, action or proceeding by sending the same by certified mail, return receipt requested, or by recognized overnight courier service, to the address of such party set forth in Section 11(e). The prevailing party in any dispute or proceeding arising out of or relating to this Agreement shall be awarded its attorney’s fees and costs.

10. **Survival.** The provisions of Sections 2 through 11 shall survive the termination of this Agreement to the extent necessary to enforce the rights and obligations described therein.

#### 11. Miscellaneous.

(a) **Entire Agreement; Amendments.** This Agreement (together with any schedules and exhibits attached hereto) contains the entire understanding of the parties with respect to the employment of Employee by the Company and supersedes all prior agreements and understandings, including, without limitation, the Prior Agreement and verbal agreements, between Employee and the Company and/or its current or former affiliates regarding the subject matters herein. Except for existing restricted stock award agreements in place as of the date of this agreement, there are no restrictions, agreements, promises, warranties, covenants or undertakings between the

parties with respect to the subject matter herein other than those expressly set forth herein. This Agreement (together with any schedules and exhibits attached hereto) may not be altered, modified, or amended except by written instrument signed by the parties hereto.

**(b) No Waiver.** The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.

**(c) Severability.** In the event that any one or more of the provisions of this Agreement shall be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

**(d) Assignment/Successors and Assigns.** Neither this Agreement nor any of Employee's rights and duties hereunder shall not be assignable or delegable by Employee. Any purported assignment or delegation by Employee in violation of the foregoing shall be null and void *ab initio* and of no force and effect. This Agreement shall be assigned by the Company to a person or entity which is a successor in interest ("Successor") to substantially all of the business operations of the Company and the Company shall require any Successor (whether direct or indirect, by purchase, merger, consolidation, or otherwise) to expressly assume and agree to perform under 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. Upon such assignment and assumption, the rights and obligations of the Company hereunder shall become the rights and obligations of such affiliate or Successor. This Agreement shall be binding upon and inure to the benefit of the Employee and the Employee's heirs and personal representatives, the Company and its successors, assigns and legal representatives.

**(e) Notices.** For the purpose of this Agreement, notices and all other communications provided for in the Agreement shall be in writing and shall be deemed to have been duly given when delivered by e-mail, hand or overnight courier addressed to the respective addresses set forth below in this Agreement, or to such other address as either party may have furnished to the other in writing in accordance herewith, except that notice of change of address shall be effective only upon receipt.

If to the Company:

Federal Realty Investment Trust  
909 Rose Avenue, Suite 200  
North Bethesda, Maryland 20852  
Attention: General Counsel

If to Employee:

The most recent address of Employee set forth in the personnel records of the Company

**(f) Counterparts.** This Agreement may be signed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

**(g) Negotiation of Agreement.** This Agreement has been negotiated by Employee and the Company, and both parties have had the opportunity to consult counsel. Accordingly, this Agreement is not to be construed in favor of one party or another, or its interpretation affected by whether a particular provision was drafted by one party or the other.

**(h) Headings.** Headings herein are inserted for convenience and shall not affect the interpretation of any provision of this Agreement.

**(i) Code Section References.** References to sections of the Exchange Act or the Code, or rules or regulations related thereto, shall be deemed to refer to any successor provisions, as applicable.

**(j) Supersedes other Severance Plans.** It is intended that the payments and benefits provided under this Agreement are in lieu of, and not in addition to, termination, severance or change of control payments and benefits provided under the other termination or severance plans, policies or agreements, if any, of the Company.

**(k) Accrued Obligations.** Upon any termination of Employee's employment with the Company, Employee shall be entitled to payment of final wages through the date of termination and reimbursement of all business expenses incurred prior to the date of termination and reflected in an expenses report submitted to Company within thirty (30) days after the date of termination ("Accrued Obligations"). Reimbursement of such business expenses shall be in accordance with and subject to the terms and limitations set forth in any employee expense reimbursement policy(ies) of the Company in effect at the time of termination.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement effective as of the day and year first above written.

**FEDERAL REALTY INVESTMENT TRUST**

**EXECUTIVE:**

By:

\_\_\_\_\_  
Donald C. Wood  
Chief Executive Officer

\_\_\_\_\_  
Jeffrey S. Berkes

Exhibit 1 Form of Release

**Exhibit 1****RELEASE**

**This Release** is entered into and effective for all purposes as of \_\_\_\_\_, 20\_\_\_\_, between **JEFFREY S. BERKES** ("Employee") and Federal Realty Investment Trust ("Company").

**IN CONSIDERATION** of the mutual promises and agreements set forth in that certain Amended and Restated Severance Agreement dated February 10, 2021 between Company and Employee ("Severance Agreement") and the mutual promises herein, the receipt and sufficiency of which are hereby acknowledged, Company and Employee hereby agree as follows:

1. Employee hereby irrevocably and unconditionally releases, remits, acquits, and discharges Company and any affiliate of Company and its present and former officers, trustees, agents, employees, contractors, successors and assigns (separately and collectively "Company Releasees"), jointly and individually, from any and all claims, known or unknown, which Employee, his heirs, successors or assigns have or may have against Company Releasees and any and all liability which the Company Releasees may have to him whether called claims, demands, causes of action, obligations, damages or liabilities arising from any and all basis, however called, including but not limited to claims of discrimination under any federal, state or local law, rule or regulation. This release relates to claims known or unknown arising prior to and during Employee's employment by Company, whether those claims are past or present, whether they arise from common law, contract or statute, whether they arise from labor laws or discrimination laws, or any other law, rule or regulation, provided, however, that this release does not apply to any rights or claims that may arise after the date of this Release. Employee specifically acknowledges that this release is applicable to any claim under the CIVIL RIGHTS ACT OF 1964, as amended, the AGE DISCRIMINATION IN EMPLOYMENT ACT, as amended, and/or the AMERICANS WITH DISABILITIES ACT. This release is for any relief, no matter how called, including but not limited to reinstatement, wages, back pay, front pay, severance pay, compensatory damages, punitive damages or damages for pain or suffering, or attorney fees. Notwithstanding the foregoing, Employee does not waive or release any claim which cannot be waived or released by private agreement, and further does not release any rights to defense and indemnification under any applicable agreements with the Company, the Company's articles or bylaws, the Company's insurance policies, or pursuant to California Labor Code section 2802.

2. Subject to Paragraph 4 below, Company and its successors and assigns hereby irrevocably and unconditionally release, remit, acquit, and discharge Employee from any and all claims, known or unknown, which Company has or may have against Employee and any and all liability which Employee may have to it whether called claims, demands, causes of action, obligations, damages or liabilities arising from Employee's employment with Company; provided, however, that such release does not extend to any claims, demands, causes of action, damages, or liabilities arising from fraud or willful misconduct by Employee, or acts or omissions by Employee that would constitute a violation of criminal law. This release relates to claims known or unknown arising prior to and during Employee's employment by Company, whether those claims are past or present, whether they arise from common law, contract or statute, whether they arise from labor laws or discrimination laws, or any other law, rule or regulation, provided, however, that this release does not apply to any rights or claims that may arise after the date of this Release. This release is for any relief, no matter how called, including but not limited to compensatory damages, punitive damages or damages for pain or suffering, or attorney fees.

3. Employee represents that he has not filed any administrative or judicial claim or complaint against Company Releasees. Company represents that it has filed no administrative or judicial claim or complaint against Employee.

4. This Release shall be and remain in effect despite any alleged breach of the Severance Agreement or the discovery or existence of any new or additional fact or any fact different from that which Employee or Company or their counsel now know or believe to be true. Notwithstanding the foregoing, nothing in this Release shall be construed as or constitute a release of Employee's or Company's rights to enforce the terms of the Severance Agreement, to seek relief, including but not limited to any damages, for any breach of the Severance Agreement or to recover any amounts allowed to be recovered pursuant to the terms of the Severance Agreement.

5. Employee acknowledges that he has read this Release, including, without limitation, the release set forth in Paragraph 1 above; that he has had a right to consult an attorney, and has been encouraged by the Company to review this Release with an attorney; that he has been given a period of not less than twenty-one (21) days in which to consider this Release; that he understands it; and that he accepts and agrees to all the provisions contained herein. Employee understands that this Release sets forth the entire understanding of the parties, and he acknowledges that he has not relied upon any other representations or promises in entering into this Release except as set forth in the Severance Agreement. Employee further acknowledges that he may revoke this Release at any time during the seven (7) days immediately following his execution of this Release, after which time this Release shall be irrevocable and enforceable in any court of competent jurisdiction. Employee agrees this Release will not be effective or enforceable nor the amounts set forth in the Severance Agreement paid until after the seven (7) day revocation period ends without revocation by Employee. Revocation can be made by delivery of a written notice of revocation to the General Counsel at 909 Rose Avenue, North Bethesda, Maryland 20852, by midnight on or before the seventh (7<sup>th</sup>) calendar day after Employee signs this Release.

6. This Release shall be binding on Company and Employee and upon their respective heirs, representatives, successors and assigns, and shall run to the benefit of the Company Releasees and each of them and to their respective heirs, representatives, successors and assigns.

7. This Release in all respects shall be interpreted and entered under the laws of the State of Maryland. The language of all parts of this Release in all cases shall be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties.

8. Company and Employee agree that in the event any provision of this Release is deemed to be invalid or unenforceable by any court or administrative agency of competent jurisdiction, or in the event that any provision cannot be modified so as to be valid and enforceable, then that provision shall be deemed severed from this Release and the remainder of this release shall remain in full force and effect.

9. **WAIVER:** The parties expressly waive all rights under Section 1542 of the Civil Code of California which provides:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her would have materially affected his or her settlement with the debtor or released party.”

The parties agree that the possibility that such unknown claims exist was taken into account in determining the amount of consideration to be paid for the giving of this Release.

**IN WITNESS WHEREOF**, the parties have executed this Release as of the date first above written.

**COMPANY:**

**FEDERAL REALTY INVESTMENT TRUST**

By:

Name:

Title:

**EMPLOYEE**

\_\_\_\_\_  
**JEFFREY S. BERKES**

**DATE:** \_\_\_\_\_