

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

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|-----------------------------|---|-------------------------|
| Bernice Polage, et al., |) | |
| v. |) | CONSOLIDATED |
| Christopher H. Cole, et al. |) | C.A. No. 24-C-13-006665 |

* * * * *

**AMENDED STIPULATION AND RELEASE
AND AGREEMENT OF COMPROMISE AND SETTLEMENT**

This Amended Stipulation and Release and Agreement of Compromise and Settlement (“Stipulation”), dated December __, 2014, is entered into by the undersigned parties to the action captioned *Bernice Polage, et al. v. Christopher H. Cole, et al.*, Consol. C.A. No. 24-C-13-006665 (“Action”) pending before the Circuit Court for Baltimore City, Maryland (“Court”). The plaintiffs in the Action are: Bernice Polage, Joseph Operman, Marjorie Rodgers, Gerald L. Branham, Dan Bauer, Bryan Flynn, Robert Corwin, Peggy Green, Carl Hutto, Vicki Hutto, and Vickiy Morgan (collectively, “Plaintiffs”). The defendants in the Action are: Christopher H. Cole, Marc T. Nemer, Thomas A. Andruskevich, Scott P. Sealy, Sr., and Leonard W. Wood (collectively, “Director Defendants”); Cole Real Estate Investments, Inc., f/k/a Cole Credit Property Trust III, Inc. (“CREI”); American Realty Capital Properties, Inc. (“ARCP”); and Clark Acquisition, LLC (“Merger Sub,” and, with the Director Defendants, CREI, and ARCP the “Defendants,” and with each of Defendants and Plaintiffs a “Party” and together the “Parties”). This Stipulation states all of the terms of the settlement and resolution of this matter and is intended by the Parties to fully and finally compromise, resolve, discharge and settle the Released Claims (defined below), subject to the approval of the Court:

WHEREAS, on March 6, 2013, CREI, which was at the time operating under the name Cole Credit Property Trust III, Inc., announced that its board of directors had unanimously approved an agreement and plan of merger (“Cole Holdings Merger Agreement”) pursuant to which CREInvestments, LLC, a wholly owned subsidiary of CREI, would acquire Cole Holdings Corporation (“Cole Holdings Acquisition”).

WHEREAS, following the announcement of the Cole Holdings Acquisition, on March 20, 2013 and March 29, 2013, respectively, two putative derivative and class action lawsuits challenging the Cole Holdings Acquisition were filed in the Court, *Strub v. Cole Holdings Corp., et al.*, C.A. No. 24-C-13-001563 (Md. Cir. Ct.) (“*Strub* Action”), and *Fortner, et al. v. Andruskevich, et al.*, C.A. No. 24-C-13-001761 (Md. Cir. Ct.) (“*Fortner* Action”).

WHEREAS, on March 26, 2013, a putative class action lawsuit challenging the Cole Holdings Acquisition was filed in the Court, *Rodgers v. Cole Credit Property Trust III, Inc., et al.*, C.A. No. 24-C-13-001643 (Md. Cir. Ct.) (“*Rodgers* Action”).

WHEREAS, on March 27, 2013 and April 8, 2013, two putative derivative and class action lawsuits challenging the Cole Holdings Acquisition, including claims arising under the federal securities laws, were filed in United States District Court for the District of Arizona (“Arizona Court”): *Carter v. Cole Holdings Corp., et al.*, C.A. No. 2:13-cv-00629 (D. Ariz.) (“*Carter* Action”) and *Schindler v. Cole Holdings Corp., et al.*, C.A. No. 2:13-cv-00712 (D. Ariz.) (“*Schindler* Action”).

WHEREAS, on April 5, 2013, CREI announced the closing of the Cole Holdings Acquisition.

WHEREAS, on April 5, 2013, the Court denied Plaintiff’s Motion for Temporary

Restraining Order And Motion Setting A Briefing Schedule On Plaintiff's Motion for Permanent Injunctive and Declaratory Relief in the *Strub* Action.

WHEREAS, on April 8, 2013, counsel for Bernice Polage, a CREI stockholder, made a demand upon the CREI board of directors challenging the Cole Holdings Acquisition and demanding that the board of directors take certain actions with respect to the Cole Holdings Acquisition ("Polage Demand"), which, among other things, alleged that the Director Defendants breached their fiduciary duties to CREI in pursuing the Cole Holdings Acquisition while rejecting a proposed business combination with ARCP, and further demanded (i) the disgorgement by Defendant Cole of \$20 million in cash and 10,711,225 shares of CREI stock that he received in connection with the Cole Holdings Acquisition, (ii) rescission of the employment agreements of Defendants Cole and Nemer that were entered into in connection with the Cole Holdings Acquisition; and (iii) the recovery for the benefit of the Company and its stockholders the damages they have sustained as a result of the Cole Holdings Acquisition.

WHEREAS, thereafter, a committee of outside directors on the CREI board of directors ("Special Committee") took under advisement and investigated the allegations of the Polage Demand.

WHEREAS, on April 22, 2013, the Court consolidated the *Strub*, *Fortner*, and *Rodgers* Actions ("Consolidated Cole Holdings Action").

WHEREAS, on May, 20, 2013, counsel for plaintiffs and defendants in the Consolidated Cole Holdings Action met in-person in New York City to discuss positions on the propriety of the consideration exchanged in the Cole Holdings Acquisition, and counsel for plaintiffs demanded that any settlement framework of the Consolidated Cole

Holdings Action include a reduction in contingent payments made to Christopher Cole and his affiliates in connection with the Cole Holdings Acquisition.

WHEREAS, on August 2, 2013, the parties to the Consolidated Cole Holdings Action entered into a Confidentiality Agreement to govern the exchange of confidential settlement information.

WHEREAS, on August 12, 2013, plaintiffs in the Consolidated Cole Holdings Action made a confidential settlement demand on defendants in the Consolidated Cole Holdings Action, demanding, among other things, a reduction in the contingent payments payable to Defendants Cole and Nemer and certain other executives.

WHEREAS, on October 22, 2013, the Court dismissed with prejudice the Consolidated Cole Holdings Action. Subsequently, on November 19, 2013, plaintiffs in the Consolidated Cole Holdings Action filed a Notice of Appeal in the Court of Special Appeals for the State of Maryland. On July 31, 2014, the appeal was dismissed. Defendants agreed to reimburse plaintiffs in the Consolidated Cole Holdings Action in the amount of \$100,000.

WHEREAS, on October 23, 2013, CREI and ARCP announced that their respective boards of directors had unanimously approved an agreement and plan of merger (“Merger Agreement”) pursuant to which ARCP would acquire CREI for 1.0929 shares of ARCP common stock or \$13.82 in cash for each share of CREI common stock, with the cash consideration not to exceed 20% of CREI’s outstanding shares of common stock, in a transaction valued at approximately \$11.2 billion (“Transaction”).

WHEREAS, upon the request of the Special Committee in connection with its investigation of the Polage Demand, and in consideration of plaintiffs’ demands in the

Consolidated Cole Holdings Action, Defendants Cole and Nemer and certain other CREI executives agreed in connection with the Transaction to reduce by \$50 million the maximum amount of contingent payments that would be payable to them under the Cole Holdings Merger Agreement (“Contingent Payment Reduction”), and ARCP agreed to increase the aggregate merger consideration payable to CREI stockholders by a corresponding \$50 million.

WHEREAS, following the announcement of the Transaction, on October 25, 2013 and November 18, 2013, respectively, two putative class action lawsuits challenging the Transaction were filed in the Arizona Court: *Wunsch v. Cole Real Estate Investments, Inc., et al.*, C.A. No. 2:13-cv-02186 (D. Ariz.) (“*Wunsch* Action”) and *Sobon v. Cole Real Estate Investments, Inc., et al.*, C.A. No. 2:13-cv-02361 (D. Ariz.) (“*Sobon* Action”).

WHEREAS, between October 30, 2013 and November 14, 2013, eight putative class action lawsuits challenging the Transaction were filed in the Court: *Polage v. Christopher H. Cole, et al.*, C.A. No. 24-C-13-006665 (Md. Cir. Ct.) (“*Polage* Action”); *Operman, et al. v. Cole Real Estate Investments, Inc., et al.*, C.A. No. 24-C-13-006610 (Md. Cir. Ct.) (“*Operman* Action”); *Branham, et al. v. Cole Real Estate Investments, Inc., et al.*, C.A. No. 24-C-13-006619 (Md. Cir. Ct.) (“*Branham* Action”); *Wilfong v. Cole Real Estate Investments, Inc., et al.*, C.A. No. 24-C-13-006639 (Md. Cir. Ct.) (“*Wilfong* Action”); *Flynn v. Cole Real Estate Investments, Inc., et al.*, C.A. No. 24-C-13-006713 (Md. Cir. Ct.) (“*Flynn* Action”); *Corwin v. Cole Real Estate Investments, Inc., et al.*, C.A. No. 24-C-13-006715 (Md. Cir. Ct.) (“*Corwin* Action”); *Green, et al. v. Cole Real Estate Investments, Inc., et al.*, C.A. No. 24-C-13-006758 (Md. Cir. Ct.) (“*Green* Action”).

Action”); and *Morgan v. Cole Real Estate investments, Inc., et al.*, C.A. No. 24-C-13-006851 (Md. Cir. Ct.) (“*Morgan Action*”), each alleging that the Director Defendants breached their fiduciary duties to CREI’s stockholders in connection with the Transaction and that CREI, ARCP, and Merger Sub aided and abetted those breaches, and each seeking, among other things, an order enjoining the Transaction.

WHEREAS, the *Polage Action* also purported to bring derivative claims on behalf of CREI challenging the Cole Holdings Acquisition.

WHEREAS, on November 5, 2013, CREI and ARCP filed a preliminary joint proxy statement/prospectus in connection with the Transaction on Form S-4 with the Securities and Exchange Commission (“Preliminary Proxy Statement”).

WHEREAS, on November 8, 2013, plaintiff in the *Polage Action* amended her complaint to add additional claims based on alleged material deficiencies in the Preliminary Proxy Statement and further filed a Motion for Expedited Proceedings, which Defendants opposed.

WHEREAS, on December 12, 2013, the Court consolidated the *Polage, Operman, Branham, Wilfong, Flynn, Corwin, Green, and Morgan Actions* into the Action and appointed the law firms of Brower Piven, A Professional Corporation, and Kessler Topaz Meltzer & Check, LLP interim co-lead counsel (“Co-Lead Counsel”).

WHEREAS, on December 12, 2013, the Court denied plaintiff Polage’s Motion for Expedited Proceedings in part, but granted expedited discovery in two limited respects and set a preliminary injunction hearing for January 10, 2014.

WHEREAS, the Parties thereafter engaged in expedited discovery, including the production of documents by CREI and ARCP.

WHEREAS, on December 17, 2013, plaintiffs Polage, Bauer, and Branham, on behalf of all Plaintiffs, filed a Consolidated Complaint asserting derivative claims on behalf of CREI challenging the Cole Holdings Acquisition and class claims on behalf of similarly situated CREI stockholders challenging the Transaction.

WHEREAS, on December 23, 2013, CREI and ARCP filed a definitive joint proxy statement/prospectus in connection with the Transaction on Form S-4 with the Securities and Exchange Commission (“Definitive Proxy Statement”).

WHEREAS, on December 24, 2013, Plaintiffs filed their motion for a preliminary injunction and brief in support thereof.

WHEREAS, on January 3, 2014, Defendants filed briefs in opposition to Plaintiffs’ motion for a preliminary injunction.

WHEREAS, on January 7, 2014, the Court denied Plaintiffs’ request for additional discovery, including depositions, and Plaintiffs filed a reply brief in support of their motion for a preliminary injunction.

WHEREAS, Co-Lead Counsel and counsel for Defendants in the Action engaged in arm’s-length negotiations concerning Plaintiffs’ demand for a possible settlement of the Action. As a result of these negotiations, the Parties hereto entered into a Memorandum of Understanding (“MOU”) on January 10, 2014, containing the terms for the Parties’ agreement-in-principle to resolve the Action. Among other things, the MOU set forth the Parties’ agreement-in-principle that, in consideration for the full and final settlement and dismissal with prejudice of the Action and the release of any and all Released Claims, Defendants would:

- make additional disclosures (“Supplemental Disclosures”) in a Form 8-K filed with the SEC (Defendants filed a Form 8-K with

the Supplemental Disclosures on January 14, 2014, which is attached hereto as Exhibit A); and

- deposit \$14 million into a settlement fund (“Settlement Fund”) to be distributed, net of fees and expenses to be paid to Plaintiffs’ Counsel for the benefits achieved in this Settlement by Plaintiffs and their counsel (to wit, the Contingent Payment Reduction, the Supplemental Disclosures, and the Settlement Fund, as provided for in paragraph 9 of this Stipulation), to members of the Class in the form of a one-time damages payment to be distributed after the entry of an order and final judgment by the Court granting final approval of the Settlement and dismissal with prejudice of the Action and the affirmance of such approval on appeal or the expiration of the time to take any further appeal (“Damages Payment”).

WHEREAS, on January 23, 2014, at a special meeting of CREI’s stockholders, the stockholders voted to adopt the Transaction, which was thereafter consummated on February 7, 2014.

WHEREAS, on January 31, 2014, counsel for plaintiff in the *Sobon* Action filed a notice of voluntary dismissal, dismissing the *Sobon* Action, which had been previously consolidated with the *Wunsch* Action.

WHEREAS, on February 13, 2014, the Arizona Court entered an order staying the *Schindler* Action, until 20 days after a ruling from this Court concerning final approval of the settlement described herein.

WHEREAS, on February 14, 2014, the Arizona Court entered an order staying the *Wunsch* Action until further order of the Court in light of the mooted effect of the settlement described herein.

WHEREAS, on February 20, 2014, the Arizona Court entered an order staying the *Carter* Action, until 20 days after a ruling from this Court concerning final approval of the settlement described herein.

WHEREAS, in order to further confirm the fairness, reasonableness, and

adequacy of the settlement, Defendants produced, and Co-Lead Counsel reviewed, over 5000 pages of documents, including without limitation Board minutes, related Board materials, correspondence, attachments, and investment banker presentations. On March 17, 2014, Co-Lead Counsel deposed a representative of CREI management, probing, among other things, CREI's generation and use of its internal projections in connection with the Transaction. Then, on March 20, 2014, Co-Lead Counsel deposed a representative of Goldman Sachs & Co., advisor to the CREI Board of Directors ("Board") in connection with the Transaction and former advisor to the special committee of the Board in connection with the Cole Holdings Acquisition. Finally, on April 11, 2014, Co-Lead Counsel deposed former CREI director and current director of ARCP Thomas A. Andruskevich, who was a member of the Special Committee which negotiated the terms of the Cole Holdings Acquisition and demanded the Contingent Payment Reduction.

WHEREAS, Co-Lead Counsel had previously retained and consulted with a financial expert in connection with the prosecution of Plaintiffs' claims and reviewed with their expert confidential discovery materials as well as publicly available information.

WHEREAS, confirmatory discovery is now complete, and Plaintiffs have confirmed the fairness, adequacy and reasonableness of the Settlement.

WHEREAS, on August 14, 2014, the parties executed the Stipulation and Release and Agreement of Compromise and Settlement ("Original Stipulation").

WHEREAS, on August 25, 2014, the Court granted preliminary approval to the proposed settlement set forth in the Original Stipulation.

WHEREAS, on October 29, 2014, ARCP issued a press release and filed a Form 8-K describing an investigation into certain identified accounting issues at ARCP.

WHEREAS, in view of the ARCP Announcement (defined below), the parties have agreed to modify the scope of the release to be provided pursuant to the Settlement.

WHEREAS, Defendants each have denied, and continue to deny, that they have committed or aided and abetted in the commission of any violation of law or breaches of duty or engaged in any of the wrongful acts alleged in the Action, and expressly maintain that they diligently and scrupulously complied with their fiduciary, disclosure, and other legal duties, and that they are entering into this Stipulation solely to eliminate the risk, burden, and expense of further litigation.

WHEREAS, Plaintiffs and Co-Lead Counsel believe that the claims asserted by the Plaintiffs have merit, that the entry by Plaintiffs into this Stipulation is not an admission as to the lack of merit of any of the claims asserted in the Action, and that Plaintiffs are entering into the Settlement set forth in this Stipulation to secure substantial relief for CREI and the Class (as defined below) because they believe that the Contingent Payment Reduction, the Damages Payment, and the Supplemental Disclosures provide CREI and its stockholders with very substantial benefits, including additional financial consideration and the ability to cast a more fully informed vote on the Transaction.

WHEREAS, Plaintiffs and Co-Lead Counsel believe that the terms contained in this Stipulation are fair and adequate to both CREI and its stockholders and that it is reasonable to pursue a settlement of the Action based upon the substantial benefits and protections offered herein.

NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED, by Plaintiffs in the Action, for themselves and on behalf of CREI and the Class, and the Defendants that, subject to the approval of the Court and pursuant to Maryland Rule 2-231 and the other conditions set forth herein, for the good and valuable consideration set forth herein and conferred on CREI, Plaintiffs and the Class, the Action shall be finally and fully settled, compromised and dismissed, on the merits and with prejudice, and that the Released Claims shall be finally and fully compromised, settled, released and dismissed with prejudice as to the Released Persons, in the manner and upon the terms and conditions hereafter set forth.

A. Definitions

1. The following capitalized terms, used in this Stipulation, shall have the meanings specified below:

(a) “Action” means the consolidated derivative and class action captioned *Bernice Polage, et al. v. Christopher H. Cole, et al.*, Consol. C.A. No. 24-C-13-006665 pending before the Circuit Court for Baltimore City, Maryland.

(b) “ARCP” means American Realty Capital Properties, Inc., and any of its predecessors, successors, divisions, or affiliates.

(c) “ARCP Announcement” means the press release and Form 8-K issued and/or filed by or on behalf of ARCP on October 29, 2014, describing an investigation into accounting and financial issues at ARCP for fiscal year end December 31, 2013 and the first and second quarters for the fiscal year end December 31, 2014.

(d) “ARCP Financials” means ARCP’s reported financial information, public disclosures, accounting, business condition, value, value of its

securities, operations, controls, management, or personnel, including but not limited to any and all matters related or connected to the ARCP Announcement.

(e) “Authorized Class Members” means all Class Members who held or beneficially owned shares of CREI common stock at the time of the Transaction; *provided that* any Person (as defined below) holding CREI stock at the time of the Transaction solely on behalf of, or for the benefit of, any Defendant or its respective affiliates shall not be an Authorized Class Member with respect to the CREI shares so held.

(f) “Class” means any and all persons or entities who held shares of CREI common stock, either of record or beneficially, at any time between March 5, 2013 (the date the CREI board of directors approved the Cole Holdings Acquisition) and the date of closing of the Transaction (February 7, 2014), including any and all of their respective successors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under any of them, other than the Defendants, their subsidiary companies, affiliates, assigns, and members of their immediate families, as the case may be. For purposes of the Settlement only, the class action claims in the Action shall be certified as a non-opt-out class action pursuant to Maryland Rules 2-231(a), 2-231(b)(1) and 2-231(b)(2).

(g) “Class Member” means a member of the Class.

(h) “Co-Lead Counsel” means counsel appointed by the Court for Plaintiffs in this Action (Brower Piven, A Professional Corporation and Kessler Topaz Meltzer & Check, LLP).

- (i) “Court Approval” means the entry of the Judgment.
- (j) “CREI” means Cole Real Estate Investments, Inc., and any of its predecessors, successors, divisions, or affiliates.
- (k) “Defendants” means CREI, ARCP, the Director Defendants, and Merger Sub.
- (l) “Defendants’ Released Claims” means all claims, penalties, allegations or sanctions (including Unknown Claims) that have been, could have been, or in the future can or might be asserted in any court, tribunal, or proceeding, by or on behalf of the Released Persons (defined below), whether individual, direct, class, representative, legal, equitable, or any other type or in any other capacity against the Releasing Persons (defined below) and Plaintiffs’ counsel, arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims.
- (m) “Director Defendants” means Christopher H. Cole, Marc T. Nemer, Thomas A. Andruskevich, Scott P. Sealy, Sr., and Leonard W. Wood.
- (n) “Effective Date” means the first business day following the date the Judgment becomes final and unappealable, whether by affirmance on or exhaustion of any possible appeal or review, writ of certiorari, lapse of time or otherwise. The finality of the Judgment shall not be affected by any appeal or other proceeding, or any unexpired period for appeal or other proceeding, regarding solely an application for, or the award of, attorneys’ fees, costs or expenses.
- (o) “Judgment” means the Order and Final Judgment to be entered in the Action substantially in the form attached as Exhibit B hereto.

(p) “Merger Sub” means Clark Acquisition, LLC.

(q) “Parties” means Plaintiffs and Defendants.

(r) “Person” means any individual, corporation, partnership, limited liability company, association, affiliate, joint stock company, estate, trust, unincorporated association, entity, government and any political subdivision thereof, or any other type of business or legal entity.

(s) “Plaintiffs” means Dan Bauer, Bernice Polage, Joseph Operman, Marjorie Rodgers, Gerald L. Branham, Bryan Flynn, Robert Corwin, Peggy Green, Carl Hutto, Vicki Hutto, and Vickiy Morgan.

(t) “Released Claims” means all known and unknown claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, amounts, duties, suits, costs, expenses, matters, and issues, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, including Unknown Claims (defined below), that have been, could have been, or in the future can or might be asserted in any court, tribunal, or proceeding (including but not limited to any claims arising under federal, state, foreign, or common law, including the federal securities laws and any state disclosure law), by or on behalf of the Releasing Persons (defined below), whether individual, direct, class, derivative, representative, legal, equitable, or any other type or in any other capacity against the Released Persons (defined below), which have arisen, could have arisen, arise now, or hereafter may arise out of or relate in any manner to the allegations, facts, events, transactions, acts, occurrences, statements, representations, misrepresentations, omissions or any other

matter, thing, or cause whatsoever, or any series thereof, embraced, involved, set forth or otherwise related to the Action, the Cole Holdings Acquisition (including the negotiation or consideration of the Cole Holdings Acquisition or any agreements or disclosures relating thereto), the Transaction (including the negotiation or consideration of the Transaction or any agreements or disclosures relating thereto), the Cole Holdings Merger Agreement, the Merger Agreement, or any preliminary or definitive joint proxy statement, proxy solicitation material, or other written material in connection with the solicitation or offer of securities, including supplements and amendments, filed or distributed to stockholders in connection with the Cole Holdings Acquisition or the Transaction (including without limitation the Preliminary Proxy Statement and the Definitive Proxy Statement), including without limitation any disclosures, non-disclosures or public statements made in connection with any of the foregoing; provided, however, that the Released Claims shall not include, encompass, impact, release or diminish (i) the right to enforce the Settlement, the Stipulation, or any aspect thereof, or (ii) any claims, demands, rights, actions, causes of action, liabilities, damages, losses, obligations, judgments, amounts, duties, suits, costs, expenses, matters, and issues, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, liquidated or unliquidated, matured or unmatured, accrued or unaccrued, apparent or unapparent, including Unknown Claims (defined below), that have been, could have been, or in the future can or might be asserted in any court, tribunal, or proceeding (including but not limited to any claims arising under federal, state, foreign, or common law, including the federal securities laws and any state disclosure law), against any Released Persons, relating to or based upon the ARCP Announcement or ARCP Financials except that

nothing in this clause (ii) shall impair the completeness of the release of any of the Director Defendants, former CREI officers or outside advisors to CREI and/or to the Director Defendants for conduct occurring before the Merger closed on February 7, 2014 to the extent such Director Defendants, former officers or outside advisors were acting in their capacity as directors or officers of CREI or advising the Director Defendants or former officers of CREI in their capacity as directors or officers of CREI (the claims described in this clause (ii) hereinafter referred to as the “Excluded Claims”). For the avoidance of doubt, it is intended by the parties that no Released Persons named currently or in the future as a defendant in any action relating to the Excluded Claims, whether brought directly or derivatively, individually or in a representative capacity, in any tribunal, including without limitation, any state or federal court, shall argue, assert, raise, proffer, or otherwise contend that this Release serves to release any Excluded Claims, as a defense to any Excluded Claims, to reduce damages on account of any Excluded Claims, or as an offset against any Excluded Claims against said Released Persons. Also for the avoidance of doubt, it is understood that Released Persons shall be released in all future or other proceedings from all Released Claims that are not Excluded Claims, including without limitation all claims based on alleged breaches of duty and/or violations of law in connection with their service as directors and/or officers of CREI, or any advisors thereto, before the Merger closed on February 7, 2014 related to the Cole Holdings Acquisition, the Cole Holdings Merger Agreement, the Transaction, the Merger Agreement, and any related public disclosures.

(u) “Released Persons” means Defendants (or any Defendant), or any of their respective past or present parent entities, controlling persons, associates,

predecessors, successors, affiliates, or subsidiaries, and each and all of their respective past or present officers, directors, executives, stockholders, principals, representatives, employees, attorneys, financial or investment advisors, consultants, accountants, auditors, investment bankers, commercial bankers, entities providing fairness opinions, underwriters, brokers, dealers, insurers, advisors or agents; and as to any individuals, their families, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, managers, joint ventures, personal or legal representatives, estates, administrators, predecessors, successors, and assigns .

(v) “Releasing Persons” means Plaintiffs and all Class Members, and their respective heirs, executors, administrators, estates, predecessors, successors in interest, successors and assigns.

(w) “Settlement” means the settlement of the Action between and among Plaintiffs, on behalf of themselves, CREI and the Class, and the Defendants, as set forth in this Stipulation.

(x) “Settlement Hearing” means the hearing to be held by the Court to determine whether to certify the Class for settlement purposes, whether Plaintiffs and Plaintiffs’ Counsel have adequately represented CREI and the Class, whether the proposed Settlement should be approved as fair, reasonable, and adequate, whether all Released Claims should be dismissed with prejudice, whether an Order and Judgment approving the Settlement should be entered, and whether Co-Lead Counsel’s application or motion for an award of attorneys’ fees and reimbursement of expenses should be granted.

(y) “Unknown Claims” means (i) any claim that a Releasing Person does not know or suspect exists in his, her, or its favor at the time of the release of the Released Claims as against the Released Persons, including without limitation those which, if known, might have affected the decision to enter into the Settlement and (ii) any claim that a Released Person does not know or suspect exists in his, her, or its favor at the time of the release of the Defendants’ Released Claims as against the Releasing Persons and Plaintiffs’ counsel, including without limitation those which, if known, might have affected the decision to enter into the Settlement. This shall include a waiver of any rights pursuant to § 1542 of the California Civil Code (or any similar, comparable or equivalent provision), which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Releasing Persons acknowledge that members of the Class and/or other CREI stockholders may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention, as Plaintiffs and on behalf of the Class, to fully, finally, and forever settle and release any and all claims released hereby known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of such additional or different facts. Plaintiffs and the other undersigned parties acknowledge, and the members of the Class by operation of law shall be deemed to have acknowledged, that the inclusion of Unknown Claims in the definition of Released Claims was separately bargained for, constitutes separate consideration for, and was a key element of the Settlement and was relied upon by each

and all of the Defendants in entering into the Stipulation. The Released Persons acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but it is their intention, to fully, finally and forever release any and all claims released hereby known or unknown, suspected or unsuspected, which now exist, or heretofore existed, or may hereafter exist, and without regard to the subsequent discovery or existence of such additional or different facts.

B. Settlement Consideration and Scope of the Settlement

1. CREI provided the Supplemental Disclosures identified in the document attached hereto as Exhibit A in a filing with the SEC on Form 8-K, which was filed on January 14, 2014. Defendants' agreement to make the Supplemental Disclosures shall not be deemed an admission that this additional information is material to stockholders or is otherwise required under any applicable state or federal law, statute, rule, regulation, or duty. Without admitting any wrongdoing, Defendants agree that the pendency of the Action and the efforts of Co-Lead Counsel were the sole cause for the dissemination of the Supplemental Disclosures.

2. CREI will deposit \$14 million into a settlement fund ("Settlement Fund") no later than seven (7) business days before the Settlement Hearing. ARCP will distribute the Settlement Fund, net of fees and reimbursed expenses ordered by the Court to be paid to Co-Lead Counsel for the benefits achieved in this Settlement by Plaintiffs and their counsel, to wit, the Contingent Payment Reduction, the Supplemental Disclosures, and the Settlement Fund, as provided for in paragraph 9 of this Stipulation, to Authorized Class Members in the form of a one-time damages payment to be distributed within ten (10) business days after the last to occur of the entry of an order

and final judgment by the Court granting final approval of the Settlement and dismissal with prejudice of the Action, the entry of a final and non-appealable order granting Co-Lead Counsel's application and/or motion for an award of attorneys' fees and reimbursement of expenses, and the affirmance of one or both such orders on appeal or the expiration of the time to take any further appeal ("Damages Payment"). As set forth in paragraph 9 below, any fees and expenses awarded to Co-Lead Counsel in the Action shall be paid from the Settlement Fund.

3. CREI or its successor in interest shall cause notice of the Settlement, substantially in the form attached hereto as Exhibit D ("Notice"), to be provided to the Class by U.S. Mail or in a form and manner approved by the Court, and CREI, its successor and/or assigns, and/or its insurer(s), and/or the insurer(s) of the Director Defendants shall pay for any costs and expenses related to the notice and administration of the Settlement.

4. As of the Effective Date, the Action and the Released Claims shall be dismissed with prejudice, on the merits and without costs, except as provided herein.

5. As of the Effective Date, the Releasing Persons shall fully, finally and forever release, settle and discharge the Released Persons from and with respect to the Released Claims, and will be forever barred and enjoined from commencing, instituting or prosecuting any action or other proceeding, in any forum, asserting any Released Claims against any of the Released Persons; provided, however, that the Released Claims shall not include Plaintiffs' and Plaintiffs' Counsel's rights to enforce the Settlement or the Stipulation.

6. As of the Effective Date, the Released Persons shall fully, finally, and forever release, relinquish, settle and discharge the Releasing Persons and Plaintiffs' counsel from the Defendants' Released Claims, and will be forever barred and enjoined from commencing, instituting or prosecuting any action or other proceeding, in any forum, asserting any of Defendants' Released Claims against any of the Releasing Persons or Plaintiffs' counsel; provided, however, that Defendants' Released Claims shall not include Defendants' rights to enforce the Settlement or the Stipulation.

C. Submission of the Settlement to the Court for Approval

7. As soon as practicable after this Stipulation has been executed, the Parties shall jointly apply to the Court for entry of an Order in the form attached hereto as Exhibit C (the "Preliminary Approval Order"), providing for, among other things: (a) the mailing to the Class Members of the Notice, substantially in the form attached hereto as Exhibit D; (b) the scheduling of the Settlement Hearing to consider: (i) the proposed Settlement, (ii) the joint request of the parties that the Judgment be entered substantially in the form attached hereto as Exhibit B, (iii) certification of the Class, and (iv) Plaintiffs' application for attorneys' fees and expenses, and any objections to the foregoing; and (c) the injunction against the prosecution of any of the Released Claims pending further order of the Court. At the Settlement Hearing, the Parties shall jointly request that the Judgment be entered substantially in the form attached hereto as Exhibit B.

D. Conditions of Settlement

8. This Stipulation shall be subject to the following conditions and, except as provided in paragraph 25, shall be cancelled and terminated unless:

(a) the Settlement receives final approval by the Court and such approval is affirmed on appeal or the time to take any further appeal expires (except that

a modification or reversal on appeal of the amount of attorneys' fees, costs and reimbursed expenses awarded by the Court as a result of Co-Lead Counsel's applications and/or motion for an award of attorneys' fees and reimbursement of expenses shall not be considered a failure to affirm approval on appeal);

(b) a complete release of all the Released Claims as to the Released Persons and the Defendants' Released Claims as to the Releasing Persons and Plaintiffs' counsel is approved by the Court, in a form customarily approved by the Court in connection with settlements of this type;

(c) the Preliminary Approval Order and the Judgment includes a provision enjoining all members of the Class from asserting any of the Released Claims; and

(d) the Action is dismissed with prejudice in accordance with the terms of this Stipulation.

E. Attorneys' Fees and Expenses

9. Co-Lead Counsel intend to petition the Court for an award of attorneys' fees and expenses incurred in connection with the Action ("Fee Application"). Defendants acknowledge that Plaintiffs' counsel are entitled to be paid reasonable attorneys' fees, and reimbursement of reasonable and necessary expenses incurred by Plaintiffs' counsel, for their efforts in prosecuting the Action and in achieving the benefits of the Settlement described in this Stipulation. After agreeing upon all other terms attendant to the Settlement, the Parties negotiated in good faith regarding the amount of the attorneys' fees, costs, and expenses to be paid to Plaintiffs' counsel in the Action, subject to approval of the Court. The Parties have agreed that Defendants shall not object to or oppose any application for fees made by Co-Lead Counsel in the Action,

provided that such application is for an award no greater than seven million dollars (\$7,000,000). ARCP, CREI, its successor and/or assigns, and/or their insurer(s), and/or the insurer(s) of the Director Defendants, shall pay the fees and expense reimbursements awarded by the Court to an account jointly controlled by Co-Lead Counsel from the Settlement Fund as a result of Co-Lead Counsel's application and/or motion for an award of attorneys' fees and for reimbursement of expenses filed in the Action within ten (10) business days after the entry of an order by the Court awarding such fees and reimbursed expenses. Such payment shall be subject to the joint and several obligation of Plaintiffs' counsel to refund, within ten (10) business days, the amounts received and any interest accrued or accumulated thereon, if and when, as a result of any appeal, or successful collateral proceeding, the fee or expense award is reduced or reversed or if the award order does not become final, if the Settlement itself is voided by any Party as provided in the Stipulation, or if the approval of the Settlement is later reversed by any court. Any failure by the Court to approve the amount of such fees shall not affect the validity of the terms of the Settlement, and Court approval of the Settlement shall not in any way be conditioned on Court approval of any application for attorneys' fees and/or expenses. Any attorneys' fees, costs, or expenses to be paid to Plaintiffs' counsel shall be paid entirely from the Settlement Fund, and no Defendant shall have any responsibility to contribute to any such fees, costs, or expenses beyond its contribution to the Settlement Fund. Defendants shall have no responsibility for, or the right to influence, any allocation or distribution of the fees and expenses award among Plaintiffs' counsel. Except as provided herein, the Released Persons shall bear no other expenses, costs, damages, or fees alleged or incurred by Plaintiffs in the Action or by any of Plaintiffs'

attorneys, experts, advisors, agents, or representatives. Notwithstanding any of the foregoing, any failure of the Court to approve the Settlement or failure of the Settlement to become final shall not preclude Co-Lead Counsel from applying for an award of attorneys' fees and expenses on grounds of mootness or otherwise.

10. Co-Lead Counsel warrants that no portion of any such award of attorneys' fees or reimbursed expenses shall be paid to any named plaintiff or any Class Member, except as approved by the Court.

F. Stay Pending Court Approval

11. Plaintiffs agree to continue the stay of proceedings in the Action and not to initiate any other proceedings other than those incident to the Settlement itself or this Stipulation pending the occurrence of the Effective Date. The Parties also agree to use their best efforts to seek the stay and dismissal of, and to oppose entry of any interim or final relief in favor of any Class Member in, any other proceedings against any of the Released Persons that challenge the Settlement, including any transactions contemplated thereby, or otherwise involves, directly or indirectly, a Released Claim.

G. Administration of the Settlement Fund

12. On behalf of all Defendants, ARCP has retained a settlement administrator (the "Settlement Administrator") which shall, subject to the jurisdiction, supervision, direction, and approval of the Court, oversee the administration and distribution of the Settlement Fund.

13. Prior to distribution to the Authorized Class Members, the Settlement Fund shall be used to pay: (a) all federal, state, or local taxes of any kind in connection with the Settlement Fund, including any penalties (collectively, "Taxes"); and (b) the reasonable expenses and costs in connection with determining the amount of, and paying,

any Taxes owed by the Settlement Fund (including, without limitation, reasonable expenses of tax attorneys and accountants), and for the preparation, mailing, administration, and distribution costs and expenses relating to the filing or the failure to file all necessary or advisable tax returns (collectively, the “Tax Expenses”).

14. Except as provided herein, or pursuant to orders of the Court, the monies in the Settlement Fund shall remain in the Settlement Fund until Final Approval of the Settlement. All monies held by the Settlement Fund shall be deemed to be in the custody of the Court and shall remain subject to the jurisdiction of the Court until such time as the monies shall be distributed or returned pursuant to the terms of this Stipulation and/or further order of the Court.

15. Prior to the distribution of the Settlement Fund to Authorized Class Members, following payment of any attorneys fees and expenses awarded to Co-Lead Counsel by the Court, Defendants shall present for the approval of the Court a final accounting of the receipts to and disbursements from the Settlement Fund and the proposed distribution of the Settlement Fund.

16. Within twenty (20) business days of the execution of this Stipulation, CREI or ARCP shall provide to the Settlement Administrator, to the extent available, (i) a list or report of the holders of record of CREI common stock as of the closing of the Transaction containing each holder’s name, address and the number of shares owned; (ii) any similar lists or reports identifying the beneficial owners of CREI common stock whose shares of CREI common stock were cancelled in the Transaction; (iii) lists or reports identifying accounts and number of shares held solely on behalf of, or for the benefit of, any Defendant or its respective affiliates; and (iv) lists or reports identifying

any holders of record or beneficial owners of CREI common stock whose shares were not cancelled in the Transaction. Each such list and report shall be provided in electronic form suitable to the Settlement Administrator to be used solely for the purpose of administering the Settlement Fund.

17. No Class Member shall have any claim against any Plaintiff, Co-Lead Counsel, the Defendants, the Released Persons, the Settlement Administrator, or any of their counsel, based on the distributions made substantially in accordance with this Stipulation and/or orders of the Court.

H. Plan of Allocation

18. The Settlement Administrator shall make distributions to Authorized Class Members in the following manner and subject to the following conditions (the “Plan of Allocation”): Each Authorized Class Member shall receive a distribution from the Settlement Fund, less (i) Taxes, (ii) Tax Expenses, and (iii) any fees and reimbursed expenses ordered by the Court to be paid to Co-Lead Counsel as provided for in paragraph 9 (together, “Net Settlement Fund”), equal to the product of the Net Settlement Fund and a fraction, (a) the numerator of which is the number of shares of CREI common stock held by such Authorized Class Member (“Authorized Shares”) at the time of the Transaction, and (b) the denominator of which is a number representing the total number of Authorized Shares held by all Authorized Class Members.

19. Payment from the Settlement Fund made pursuant to and in the manner set forth above shall be deemed conclusive evidence of compliance with this Stipulation.

20. Defendants hereby relinquish any right of themselves or their respective affiliates to receive any part of the Damages Payment, or any additional amount based on any claim relating to the fact that the Damages Payment is being received by any other

stockholder, in each case under any theory, including but not limited to contract, application of statutory or judicial law, or equity.

21. All proceedings with respect to the administration, processing, and determination of claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of claims, shall be subject to the jurisdiction of the Court.

22. The Net Settlement Fund shall be distributed to Authorized Class Members only after the conditions in Paragraph 2 have been satisfied and after: (i) all costs of taxes have been paid or reserved; and (ii) the Court has approved the proposed distribution of the Net Settlement Fund.

23. Any modification of the Plan of Allocation by the Court shall not affect the enforceability of the Stipulation or the Settlement, provide any of the Parties with the right to terminate the Settlement, impose an obligation on any of the Defendants to increase the consideration paid in connection with the Settlement, or affect or delay the binding effect, effectiveness, or finality of the Judgment and the release of the Released Claims. Finality of the Settlement shall not be conditioned on any ruling by the Court solely concerning the Plan of Allocation.

24. If there is any balance remaining in the Net Settlement Fund after one year from the date of its distribution to Authorized Class Members, the Settlement Administrator shall, after full payment of Taxes and Tax Expenses, reallocate, if feasible, such balance among Authorized Class Members who have been identified and located and cashed their respective previously issued checks from the Settlement Administrator. If such reallocation is not feasible or not permitted by the Court, any remainder in the Net

Settlement Fund shall, after full payment of Taxes and Tax Expenses, escheat to the State of Maryland. Following such reallocation, any balance remaining in the Net Settlement Fund after six months from the mailing of the reallocation checks shall escheat to the State of Maryland. No portion of the Settlement Fund shall be returned to CREI, ARCP or any of the Defendants except that in the event that the Settlement does not achieve Final Approval, the Settlement Fund (including any accumulated interest, but less any Taxes and Tax Expenses already incurred and paid or payable) shall be returned to CREI or its successor-in-interest.

I. Effect of Disapproval, Cancellation or Termination

25. If either (a) the Court does not enter the Judgment in substantially the form of Exhibit B, (b) the Court enters the Judgment but on or following appellate review the Judgment is modified or reversed in any material respect, or (c) any of the other conditions of paragraph 8 are not satisfied, this Stipulation shall be cancelled and terminated unless counsel for Defendants and Co-Lead Counsel, within ten (10) business days from receipt of such ruling or the occurrence of such an event, agree in writing to proceed with the Settlement under the terms of this Stipulation as modified in order to accommodate any such ruling or event. For purposes of this Paragraph, an intent to proceed shall not be valid unless it is expressed in a signed writing. Neither a modification nor a reversal on appeal of the amount of attorneys' fees, costs and reimbursed expenses awarded by the Court as a result of Co-Lead Counsel's application and/or motion for an award of attorneys' fees and reimbursement of expenses shall be deemed a material modification of the Judgment or this Stipulation. However, the Damages Payment shall not be made until the finally-determined aggregate amount of attorneys' fees and reimbursed expenses has been established.

26. If the Effective Date does not occur, or if this Stipulation is disapproved, canceled or terminated pursuant to its terms, all of the parties to this Stipulation shall be deemed to have reverted to their respective litigation status immediately prior to the execution of the MOU (except that they shall have access to and may utilize all information and materials produced in discovery, subject to any confidentiality orders executed in the Action), and they shall proceed in all respects as if the MOU and this Stipulation had not been executed and the related orders had not been entered, and in that event all of their respective claims and defenses as to any issue in the Action shall be preserved without prejudice in any way, including Defendants' right to oppose certification of a class in any future proceedings. In such event, the terms and provisions of the Stipulation (including the recitals set forth above) shall have no further force and effect with respect to the parties to this Stipulation (except that neither Plaintiffs nor Co-Lead Counsel shall have any obligation to pay for or to reimburse any person for the cost and expense incurred in connection with the Settlement or the Notice or the mailing thereof) and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*.

J. Miscellaneous Provisions

27. All of the Exhibits referred to herein shall be incorporated by reference as though fully set forth herein.

28. This Stipulation may be amended, modified or waived only by a written instrument signed by Co-Lead Counsel and counsel for Defendants hereto or their successors.

29. The Parties represent and agree that the terms of the Settlement were negotiated at arm's length and in good faith by the Parties, and reflect a settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

30. Neither the provisions contained in this Stipulation nor any actions taken by Defendants in connection with settlement and resolution of this Action (including, without limitation, making the Supplemental Disclosures, funding the Settlement Fund or the Contingent Payment Reduction) shall be deemed a presumption, concession, or admission by any Defendant in the Action of any fault, liability or wrongdoing as to any facts or claims alleged or asserted in the Action, or any other actions or proceedings, or that any of the Supplemental Disclosures are material. Nor shall the provisions contained in this Stipulation or any actions taken by Plaintiffs in connection with settlement and resolution of this Action be deemed a presumption, concession, or admission by any Plaintiffs concerning the merits, or lack thereof, of any facts or claims alleged or asserted in the Action, or any other actions or proceedings, or that any of the Supplemental Disclosures are not material. The provisions contained in this Stipulation shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Action, or in any other action or proceeding, whether civil, criminal, or administrative, except in connection with any proceeding to enforce the terms of the Settlement, including any bar order contained in any order entered by the Court.

31. To the extent permitted by law, all agreements made and orders entered during the course of the Action relating to the confidentiality of documents or information shall survive this Stipulation.

32. The waiver by any Party of any breach of this Stipulation by any other Party shall not be deemed a waiver of that or any other prior or subsequent breach of any provision of this Stipulation by any other Party.

33. This Stipulation and the Exhibits hereto constitute the entire agreement among the Parties and supersede any prior agreements among the Parties with respect to the subject matter hereof. No representations, warranties or inducements have been made to or relied upon by any Party concerning this Stipulation or its Exhibits, other than the representations, warranties and covenants expressly set forth in such documents.

34. This Stipulation may be executed in one or more counterparts, including by facsimile and electronic mail, and as executed, shall constitute one agreement.

35. Co-Lead Counsel and Defendants and their respective counsel of record agree that they will use their best efforts to obtain all necessary approvals of the Court required by this Stipulation (including, but not limited to, using their best efforts to resolve any objections raised to the Settlement).

36. Co-Lead Counsel represent and warrant that plaintiffs Bernice Polage, Gerald L. Branham and Dan Bauer were stockholders of CREI prior to the consummation of the Transaction and had been stockholders at all relevant times and that none of Plaintiffs' claims or causes of action referred to in any complaint in the Action or this Stipulation, or any claims Plaintiffs could have alleged, have been assigned, encumbered, or in any manner transferred in whole or in part. Some or all of the Plaintiffs have

provided evidence establishing their ownership of CREI shares in a form reasonably acceptable to Defendants.

37. Each counsel signing this Stipulation represents and warrants that such counsel has been duly empowered and authorized to sign this Stipulation on behalf of their respective clients.

38. This Stipulation shall be binding upon and shall inure to the benefit of the Parties and the Class (and, in the case of the releases, all Released Persons) and the respective attorneys, representatives, heirs, executors, administrators, transferees, successors, and assigns of all such foregoing Persons and upon any corporation, partnership, or other entity into or with which any party may merge, consolidate, or reorganize.

39. The MOU, the Stipulation, the Settlement, and any and all disputes arising out of or relating in any way to any of them, whether in contract, tort or otherwise, shall be governed by and construed in accordance with the laws of the State of Maryland, without regard to conflict of laws principles. In regard thereto, each of the Parties (a) irrevocably submits to the personal jurisdiction of any state or federal court sitting in Baltimore, Maryland as well as to the jurisdiction of all courts to which an appeal may be taken from such courts, in any suit, action or proceeding arising out of or relating to this Stipulation or the Settlement, (b) agrees that all claims in respect of such suit, action or proceeding shall be brought, heard and determined exclusively in the Court (provided that, in the event that subject matter jurisdiction is unavailable in the Court, then all such claims shall be brought, heard and determined exclusively in any other state or federal court sitting in Baltimore, Maryland) or any available appellate court, and (c) expressly

waives, and agrees not to plead or to make any claim that any such action or proceeding is subject (in whole or in part) to a jury trial.

SIGNATURES ON THE NEXT PAGE

Dated: December __, 2014

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