



DIVISION OF  
CORPORATION FINANCE

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

March 20, 2018

Margaret R. Cohen  
Skadden, Arps, Slate, Meagher & Flom LLP  
margaret.cohen@skadden.com

Re: Hospitality Properties Trust  
Incoming letter dated January 16, 2018

Dear Ms. Cohen:

This letter is in response to your correspondence dated January 16, 2018 and February 13, 2018 concerning the shareholder proposal (the "Proposal") submitted to Hospitality Properties Trust (the "Company") by the New York City Employees' Retirement System et al. (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponents' behalf dated January 31, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair  
Senior Special Counsel

Enclosure

cc: Kathryn E. Diaz  
The City of New York  
Office of the Comptroller  
kdiaz@comptroller.nyc.gov

March 20, 2018

**Response of the Office of Chief Counsel**  
**Division of Corporation Finance**

Re: Hospitality Properties Trust  
Incoming letter dated January 16, 2018

The Proposal asks the board to provide proxy access with the procedures and criteria set forth in the Proposal.

We are unable to concur in your view that the Company may exclude the Proposal under rules 14a-8(b), 14a-8(i)(1) or 14a-8(i)(2). Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rules 14a-8(b), 14a-8(i)(1) or 14a-8(i)(2).

Sincerely,

Kasey L. Robinson  
Attorney-Adviser

**DIVISION OF CORPORATION FINANCE**  
**INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS**

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

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February 13, 2018

Office of the Chief Counsel  
Division of Corporate Finance  
U.S. Securities & Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

RE: Hospitality Properties Trust  
Securities and Exchange Act of 1934  
Omission of Shareholder Proposal Pursuant to Rule 14a-8

Ladies and Gentleman:

On behalf of Hospitality Properties Trust (the “*Company*”), I write regarding the letter of Kathryn Diaz, General Counsel of the Comptroller of the City of New York (the “*Comptroller*”), on behalf of the New York City Employees’ Retirement System, the New York City Fire Pension Fund, The New York City Teachers’ Retirement System, the New York City Police Pension Fund and the New York City Board of Education Retirement System (together, the “*Proponents*”), dated January 31, 2018 (the “*Comptroller’s Third Letter*”), to the Staff of the Division of Corporate Finance (the “*Staff*”) of the Securities and Exchange Commission. The Comptroller’s Third Letter relates to my letter on behalf of the Company, dated January 16, 2018 (the “*Company’s Letter*”), requesting that the Staff concur with the Company’s view that the Company may exclude the shareholder proposal and supporting statement of the Proponents from the Company’s proxy materials for the 2018 annual meeting of shareholders. *Please note that capitalized terms used in this letter that are not otherwise defined herein have the meanings given to them in the Company’s Letter.*

This letters supplements, and does not replace, the Company’s Letter. Pursuant to Staff Legal Bulletin No. 14D, this letter is being delivered by email to

Office of Chief Counsel  
Division of Corporate Finance  
U.S. Securities and Exchange Commission  
February 13, 2018  
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shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), a copy of this letter is being sent simultaneously to the Proponents. If the Proponents elect to submit further correspondence to the Commission or the Staff with respect to the Proposal or this letter, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D. The Company requests that such copy be emailed to me at margaret.cohen@skadden.com.

For the reasons set forth in the Company's Letter, it is the Company's position that the Proposal is excludable from the 2018 Proxy Materials under clauses (b), (i)(1) and (i)(2) of Rule 14a-8. We respectfully submit that the Comptroller's Third Letter offers no persuasive support for a contrary view.

As noted in the Company's Letter, Staff recently adopted SLB 14I, which clarifies the requirements a shareholder must meet when its agent submits a proposal to a company on such shareholder's behalf. In the Deficiency Letter, the Company made requests for documentation from the Proponents – such requests pulled directly from SLB 14I – that would demonstrate the Comptroller had authority to submit the Proposal on the Proponents' behalf. However, rather than provide the documents contemplated by SLB 14I, the Comptroller takes the position that SLB 14I does not apply because the Comptroller is an "investment advisor" to the Proponents. The Comptroller states its view that SLB 14I applies "when someone who is *not* (or not obviously) a fiduciary or an investment advisor files a proposal and claims to be representing the shareholder proponent." The Comptroller goes on to suggest that, as a result of its being an "investment advisor" to the Proponents, the burden is on the Company to satisfy itself as to the Comptroller's authority from the public record. Yet, while directing the Company to satisfy itself as to the Comptroller's authority from the public record, the Comptroller's Third Letter noticeably offers no explanation for the apparent inconsistency in the public record between the Comptroller's statements that it is an "investment advisor" to the Proponents and the absence of any reporting on Form 13F by the Comptroller, as would be required under Exchange Act §13(f) and Rule 13f-1 promulgated thereunder.

The Company disagrees with the Comptroller's view of the limited application of SLB 14I. The Company respectfully submits that the Comptroller is best positioned to provide appropriate documentation demonstrating the Comptroller's authority to submit the proposal on behalf of the Proponents. In view of the continued failure of the Comptroller and the Proponents to provide the documentation contemplated by SLB 14I despite the Company's request therefore, the Company respectfully submits that it may exclude the Proposal pursuant to Rule 14a-8(f)(i).

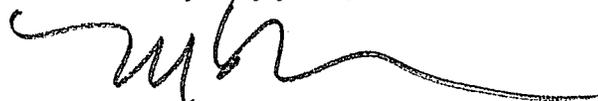
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February 13, 2018  
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The Comptroller misunderstands *Chipotle Mexican Grill, Inc.* (Feb. 6, 2013) (“*Chipotle*”). In the Comptroller’s Third Letter, the Comptroller states that the Staff “denied no-action relief because ‘the proponent has provided a written statement regarding its intent to hold Chipotle’s common stock through the date of the meeting of shareholders as required by rule 14a-8(b).’ Period. Full Stop.” But the Comptroller should have continued reading. In *Chipotle*, the Amalgamated Bank – the entity with investment discretion over the proponent’s investment in the company’s common stock – specifically advised the company that it had put in place a procedure to ensure that \$2,000 of the company’s shares would be retained by the proponent through the meeting date. Here, no such statement was made by the Comptroller, the Proponents or any external investment manager to the Proponents. Without procedures in place to ensure that the external investment managers retain the requisite amount of common shares of the Company, the Proponents and the Comptroller cannot credibly state the Proponents’ intention to continue to hold those common shares through the Company’s 2018 annual meeting of shareholders.

The Comptroller also appears to be of the mistaken belief that the Proponents will continue to hold the requisite number of Company common shares because the Proponents have investments that track the S&P 500. The Comptroller twice states that the Company is a member of the S&P 500 (*see* pp. 1-2 of the Comptroller’s Third Letter), and takes care to explain that the proponent in *Chipotle* held shares in an S&P 500 index fund. The Comptroller’s statements and corresponding assumptions in this regard are mistaken, as the Company is *not* a member or component of the S&P 500.

If the Staff has any questions or comments regarding the foregoing, please contact the undersigned at 617-573-4859.

Very truly yours,



Margaret R. Cohen

cc: Jennifer Clark, Secretary, Hospitality Properties Trust  
Kathryn Diaz, General Counsel, The Comptroller of the City of New York  
Michael Garland, Assistant Comptroller, The Comptroller of the City of New York



**KATHRYN E. DIAZ**  
GENERAL COUNSEL

CITY OF NEW YORK  
**OFFICE OF THE COMPTROLLER**  
SCOTT M. STRINGER

OFFICE OF THE GENERAL COUNSEL

January 31, 2018

By Electronic Mail: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

Office of the Chief Counsel  
Division of Corporation Finance  
Securities & Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: Shareholder proposal to Hospitality Properties Trust from the New York City Employees' Retirement System, the New York City Fire Pension Fund, the New York City Teachers' Retirement System, the New York City Police Pension Fund and the New York City Board of Education Retirement System

Dear Counsel:

I write on behalf of the New York City Employees' Retirement System, the New York City Fire Pension Fund, the New York City Teachers' Retirement System, the New York City Police Pension Fund and the New York City Board of Education Retirement System (collectively the "Systems") in response to the letter from counsel for Hospitality Properties Trust ("HPT" or the "Company") dated January 16, 2018 ("HPT Letter") in which HPT advises that it intends to omit from its 2018 proxy materials a proposal submitted by the Systems (the "Proposal"). For the reasons set forth below, we respectfully ask the Division to deny the requested no-action relief. Because HPT's letter raises objections based on the laws of the state of Maryland, where HPT is incorporated, we include with this filing an opinion letter from Maryland counsel that responds to these points.

### **The Resolution and HPT's Objections**

The Systems' Proposal is a straight forward request that HPT establish a "proxy access" regime whereby the Company will include in its proxy materials the names of candidates for the HPT board of directors who have been nominated by holders of at least three percent of the Company's stock for a period of three years prior to the time of their nomination.

The Systems offered this proposal at HPT's 2017 annual meeting, at which time it was endorsed by 84% of the shares voted, representing 65% of HPT's outstanding shares. HPT is one of well over 200 S&P 500 companies to which a "proxy access" proposal has been submitted since 2012. During that time the issue has been voted at over 150 companies, and a total of 306

S&P 500 companies have adopted a “proxy access” bylaw, either voluntarily or as the result of a shareholder vote at the annual meeting. HPT is thus an outlier among its large cap peers.

We make these points in part because nothing has changed in terms of the Systems’ holdings or activities since the last HPT annual meeting. Indeed, as we pointed out in answering HPT’s deficiency letter (cited by HPT as our “second letter” and attached to HPT’s filing as HPT Ex. F), the Systems provided ownership confirmation letters from State Street Bank and Trust Company attesting to ownership of 226,019 shares of Company stock, worth approximately \$6.78 million. To put these numbers in perspective, a recent Morningstar survey showed that the Systems own more shares of HPT stock than all but one of the mutual Systems that include HPT stock in Systems that they offer to retail investors (HPT Ex. F, p. 1).

Nonetheless, HPT has decided to launch a wholesale attack not merely on the proposal, but on the way that the Systems have for decades engaged with companies in their combined \$191.2 billion portfolios. Specifically, HPT challenges the ability of the Comptroller of the City of New York (the “Comptroller”) to act as the agent for the Systems, and to submit proposals on the Systems’ behalf, as well as the adequacy of the Systems’ holdings of HPT stock. This, despite the fact that the Systems’ cover letter to HPT and the supporting documentation are identical to the documents that the Systems submitted in support of the same resolution last year. See Ex. 1 to this letter. HPT professed no doubt as to the Systems’ eligibility to submit the same proposal a year ago, and nothing has changed since then.

What is new is the Division’s recent *Staff Legal Bulletin 14I* (2017), which has emboldened HPT to raise questions of proof of ownership and authorization when shareholder proposals are submitted by a purported agent of the beneficial owner and when there is no evidence to indicate that the agent is properly authorized to submit a proposal to a company. As we discuss more fully below, the concerns expressed in the *Bulletin* do not reach the situation we have here, where the beneficial owner is a fiduciary, and the agent is himself a fiduciary.

HPT decided to take advantage of this *Bulletin* by sending the Systems a deficiency letter that raised questions about ownership and authorization in a deficiency letter (HPT Ex. E), to which the Systems provided a detailed response (HPT Ex. F). Predictably, HPT claims that these answers are woefully inadequate and seeks to re-litigate every single point. To its prior arguments HPT adds a new twist, namely, assertions that the Proposal may be excluded under the (i)(1) and (i)(2) exclusions in Rule 14a-8, the theory being that the proposal is not a proper subject for action by shareholders and that requiring the board to include the Proposal in the 2018 proxy materials would cause board members to violate state law.

## Discussion

### **1. The documentation submitted by the Systems confirms the authority of the Comptroller to file this Proposal on behalf of the Systems.**

Exalting form over substance, HPT argues that a proposal must contain adequate information signed by the proponent that confirms the proponent’s delegation of authority to the agent. We are told that the Systems “did not include any documentation signed by the

Proponents.” HPT Letter, p. 5. Specifically, HPT challenges the fact that the documents provided by the Systems (as opposed to the Comptroller) failed to identify HPT as the company to which the proposal is directed and failed to identify the topic of the proposal and the meeting for which the proposal is being submitted, claiming that this is inconsistent with *Staff Legal Bulletin 14I*.

Moreover, HPT challenges the assertion in our second letter that the Comptroller acts as an investment advisor to the Systems — although HPT offers no reason why either the Comptroller or the Systems would misrepresent the Comptroller’s status in this regard.<sup>1</sup> HPT also professes confusion about whether the Comptroller simply executes the Systems’ governance policies and shareholder engagements or whether his power is broader than simple execution of policy. HPT Letter, pp. 5–7. Citing the supposed lack of documentation as to the Comptroller’s scope of authority, HPT claims that it is “entitled to receive signed and currently dated documentation from the Proponents expressly confirming the authority of the Comptroller to submit the Proposal to the Company for consideration at the Company’s 2018 annual meeting on behalf of the Proponents.” HPT Letter, p. 7 (footnote omitted). We respond as follows.

What are the Comptroller’s responsibilities to the Systems? His responsibilities are summarized on his web site: <https://comptroller.nyc.gov/about/duties-of-the-comptroller/>. This is a public document with which HPT is familiar, having cited that web page in HPT’s deficiency letter. HPT Ex. E, p. 3 n.1. Specifically the Comptroller’s site states that the “Comptroller is the investment advisor to and custodian of assets of the City’s five public pension Systems, which provide retirement security for more than 700,000 current and former City employees.” That web page further states: “In order to improve the long-term financial performance of public corporations in which the City’s Pension Systems invest, the Comptroller’s Office also addresses corporate governance policies and practices.”

That is not the only public document shedding light on this topic. The April 2017 *Corporate Governance Principles and Proxy Voting Guidelines* for four of the five Systems also set forth the Comptroller’s responsibilities. See [https://comptroller.nyc.gov/wp-content/uploads/documents/NYCRS-Corporate-Governance-Principles-and-Proxy-Voting-Guidelines\\_April-2016-Revised-April-2017.pdf](https://comptroller.nyc.gov/wp-content/uploads/documents/NYCRS-Corporate-Governance-Principles-and-Proxy-Voting-Guidelines_April-2016-Revised-April-2017.pdf) (at p. 6).<sup>2</sup> See *id.* at 9 (“The Office of the Comptroller executes the corporate governance policies of the Systems, including proxy voting, portfolio monitoring, and *shareowner engagements and initiatives*. The Bureau of Asset Management at the Office of the Comptroller, through its Corporate Governance and Responsible Investment division, is responsible for casting the Systems’ proxy votes, consistent with the policies adopted by each System, *engaging portfolio companies and regulators, and submitting shareowner proposals that have been approved by each System*” (emphasis added).

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<sup>1</sup> That the Comptroller may act on behalf of the Systems is clear from NYC ADMIN CODE § 13-702, entitled *Delegation of investment powers to the Comptroller*. The authorities cited in the text are clear that the Comptroller has the requisite investment powers.

<sup>2</sup> The guidelines for the fifth fund are substantially similar. See <https://www.trsnyc.org/memberportal/WebContent/publications/CorporateGovernanceandProxyVotingGuidelines>.

These public documents are clear enough to establish the Comptroller's authority. As an investment adviser, the Comptroller has a fiduciary responsibility to the Systems. He is also a trustee of four of the five Systems, all of which have fiduciary responsibilities to their participants and beneficiaries. Notwithstanding these obvious facts and a duty that is beyond cavil, HPT professes to find ambiguity because our second letter to the Company states that the Comptroller's responsibility extends to "decisions to submit shareholder proposals and other steps pertaining to the governance of portfolio companies." HPT Letter, p. 6. Does this statement mean that the Comptroller has authority to decide what proposals are submitted, HPT asks? If so, what is one to make of the statement in our second letter that each Fund utilizes a Proxy Committee that "reviews and approves the annual shareholder proposal plan and proxy voting guidelines"? HPT Letter, p. 7. And what about the statement that the Systems have Proxy Committees that hold fall meetings, at which time they review the prior year's initiatives and approve "the proposals to be submitted to specific companies in the upcoming year, as happened this year as to the specific proposal submitted" to HPT. *Id.*

The most obvious and natural reading of all this is that the Comptroller has fiduciary responsibilities when he submits shareholder proposals that the Systems have decided to submit as to specific companies and specific topics. If there is any doubt on this score, the Systems' second letter attached five additional letters from the five Systems attesting to the authority of the Comptroller to represent them in this regard. HPT Ex. F, at Ex. 2 thereof. HPT's objections are much ado about nothing.

There is thus no merit to the Company's claim that the Systems' submissions are inadequate because there is no specific statement from each Fund authorizing the Comptroller to file a proposal on proxy access at HPT. HPT's argument on this score derives from an overly broad reading of *Staff Legal Bulletin 14I*,

Section D of that *Bulletin* re-affirmed the Division's "view that a shareholder's submission by proxy is consistent with Rule 14a-8." That said, the Division identified two concerns with submissions by proxy neither of which is present here. The first concern is a company's inability to determine whether the \$2000/one-year eligibility requirements have been satisfied, and the second concern is that the "shareholders may not know that proposals are being submitted on their behalf." To address those concerns, the Division indicated that "in general" it would be appropriate to identify the proponent and the proxy, the company to which the proposal is directed and the meeting for which a proposal is being submitted, all of which should be signed and dated by the shareholder.

The qualifier just quoted — "in general" — is significant because it demonstrates that the Division did not intend this to be a hard-and-fast rule in every case. We deal here with proponents who have fiduciary obligations to 700,000 individuals and who are using as their agent a public official who himself has fiduciary obligations to the proponents and who serves on the boards of trustees of four of these five proponents. Moreover, the relationship between the Systems and the Comptroller, as their agent, are publicly available to HPT and to anyone else who is interested.

This is a far cry from the situation of concern in the *Bulletin*, *i.e.*, where an individual submits a proposal claiming to be the agent of an individual shareholder, yet there are no objective indicia that would allow a company to conclude that yes, the proponent knows that the agent is acting for the proponent as to a specific resolution.

A more specific showing may be appropriate when someone who is *not* (or not obviously) a fiduciary or an investment advisor files a proposal and claims to be representing the shareholder proponent. Here, however, both the proponents and their agent are fiduciaries, and they have demonstrated that the proponents hold considerably more than the \$2,000 minimum required by Rule 14a-8. They have also stated to the Company (and would repeat here) that each Fund selects and approves each shareholder proposal for each company. Finally, the proponents are public entities, and their guidelines for engaging with portfolio companies are publicly available. Under the circumstances HPT should have no reasonable doubt as to the Comptroller's authority to submit this proposal on behalf of the Systems.

**2. The Systems have provided a “credible statement” of their intention to hold at least \$2,000 in market value of HPT stock through the date of HPT’s annual meeting.**

There can be no doubt that the Funds meet the \$2,000 minimum-holding requirement set forth in SEC Rule 14a-8, given that the ownership confirmation letters from State Street Bank and Trust Company attest to ownership of 226,019 shares of Company stock, worth approximately \$6.78 million. HPT's objection rests on the fact that the Systems' portfolios are managed predominantly by external investment managers who have investment discretion over the accounts that they manage. HPT Letter, p. 5. HPT's deficiency letter (HPT Ex E) asserted that the Systems could not therefore state a valid intent to hold shares through the date of HPT's annual meeting because the Fund managers might sell off the Systems' shares prior to that date. HPT's letter went on to demand (1) documentation of each Fund's ability to determine continued holding of HPT stock, (2) documentation from each Fund confirming that intent, and (3) confirmation that, because each Fund is “predominantly managed by external investment managers,” each Fund has the authority to vote the shares for the 2018 annual meeting.

The Systems' second letter responded with a complete answer to these objections and requests (HPT Ex. F). HPT was advised that the Systems' trustees long ago expressed their intent to invest the substantial majority of their allocation to domestic equities broadly across the entire market, by investing in all companies included in broad market indices. Fund trustees have consistently reaffirmed this intent when periodically reviewing and approving their respective Fund's asset allocation. Of the \$61.7 billion the Systems invested in U.S. public equity (out of total assets of \$191.2 billion) as of October 31, 2017, 87 percent was invested through passive index strategies that include investments in HPT. Although these strategies are managed by external managers, the Systems beneficially own all portfolio companies and retain the legal and contractual right to instruct managers to purchase or sell (and thus presumably hold) a particular security. The remaining 13 percent is invested in active strategies, and some of these portfolios include HPT.

HPT was also advised that the ability of the Systems to instruct managers regarding their holdings of particular securities is made clear by an examination of the standard contracts that the each of the Systems signs with asset managers, both as to Systems that are actively managed and those that are passive investments. HPT was provided with the standard contract language, which appears in the footnote.<sup>3</sup>

HPT was further advised that, in addition to their allocations to public equity — including investments in REITS such as HPT — the Systems have allocated an additional \$2.2 billion (at October 31, 2017) for REIT investments as part of their allocation to real estate. This portfolio — which is actively managed — also includes investments in HPT, and the Systems retain the legal and contractual right to instruct managers regarding holdings in these accounts as well.<sup>4</sup>

Finally, as discussed at pp. 3–4, *supra*, the Systems’ *Corporate Governance Principles and Proxy Voting Guidelines* clearly demonstrate that the Systems have and do exercise voting authority, with the Comptroller having been delegated the vote under instructions from the Systems. See *Corporate Governance Principles and Proxy Voting Guidelines*, at p. 9 (“The

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<sup>3</sup> The Systems’ standard agreement states in pertinent part as follows:

“1.1. Discretionary Investment.

“1.1.1. The Manager shall invest and reinvest Fund assets in accordance with the Investment Guidelines and other provisions of this Agreement. Except as otherwise provided in this Agreement, the Manager shall have full discretion in managing the Fund. In the event the Comptroller amends the Investment Guidelines, the Manager agrees to be bound by any such amendments upon receipt of written notice from the Comptroller and to acknowledge such amendments in writing.

“1.1.2. Notwithstanding the Manager’s discretionary investment authority, *the Comptroller may direct the Manager in writing from time to time to sell any Security in the Fund or to purchase any Security with available Systems.* Upon receipt of such direction, the Manager shall arrange such purchase or sale and instruct the Custodian to receive or deliver the Security against payment. The Manager shall have no duty to question any such instruction from the Comptroller concerning such purchase or sale.

“1.1.3. The Manager shall have the authority *to direct the Trustee with respect to (i) the acquisition or disposition (by purchase, sale, exchange, subscription or otherwise) of Securities in the Fund; (ii) the portion of the Fund assets that shall be held in cash or cash-equivalents; and (iii) the exercise of conversion rights, subscription rights, warrants, or other options relating to the assets of the Fund.* The Manager may direct the Trustee to invest Fund assets in short-term or other cash-equivalents for such periods of time as may be deemed reasonably prudent by the Manager, with such assets to be invested by the Trustee in accordance with the Trust Agreement.”

<sup>4</sup> Information about allocations of investments of the five Systems is publicly available at <https://comptroller.nyc.gov/services/financial-matters/pension/asset-allocation/>.

Bureau of Asset Management at the Office of the Comptroller, through its Corporate Governance and Responsible Investment division, is *responsible for casting the Systems' proxy votes, consistent with the policies adopted by each System. . . .*" (emphasis added)).

These facts are more than enough to establish that the Systems and the Comptroller possess what HPT's deficiency letter referred to as the "unceded power to determine that at least \$2,000 worth of the Company's common shares then held by it, would continue to be held (and not sold) through the date of the Company's annual meeting." HPT Ex. E, p. 5.

These documents and explanation are more than enough to substantiate the Systems' stated intention to hold at least \$2,000 of the Systems' current investment of \$6.78 million in HPT stock through that date. No further showing is required.

Doubtless recognizing that the Systems have made an adequate showing, HPT shifts gears in its letter to the Division, arguing that "importantly, neither the Comptroller nor any of the Proponents has represented or demonstrated that any of them have, in fact, instructed the external investment managers who have the investment power to sell the Company's common shares in the accounts of the Proponents to continue to hold (and not sell) at least \$2,000 in market value, or 1%, of the Company's common shares through the date of the Company's annual meeting of shareholders." HPT Letter, pp. 8–9 (emphasis in original). Without such an instruction, HPT argues (but with no underlining), the "Comptroller and the Proponents cannot credibly provide the written statement required by Rule 14a-8(b)(2) that the Proponents 'intend to continue to hold the securities through the date of the meeting of shareholders.'" *Id.* at 9.

This argument ignores the fact that the Division has already decided this issue, and not in the Company's favor. The same basic objection was raised in *Chipotle Mexican Grill, Inc.* (Feb. 6, 2013), where an S&P 500 index fund submitted a proposal. The company objected, indicating that because the proponent's holding of Chipotle stock was indexed, the proponent could not credibly state an intent to continue holding the shares until the meeting date. The proponent responded that it had "anticipated this objection a number of years ago," and its "governing documents explicitly allow the Fund to retain continuous ownership of the requisite level of holdings past the date that a portfolio company is dropped from an S&P index through the date of the annual meeting where a resolution will be voted. The Fund has maintained shares in that situation in the past and will do so here if Chipotle is removed from the S&P 500."

As with HPT, Chipotle was not satisfied and demanded more, specifically, the production of the trust documents containing these provisions and a recitation of other instances where the proponent had held shares past a company's meeting date. The proponent demurred, noting that the text of Rule 14a-8(b) simply requires a proponent to "state an intent" at the time of submitting a proposal, and that "intent" had been stated.

The Division agreed and denied no-action relief because "the proponent has provided a written statement regarding its intent to hold Chipotle's common stock through the date of the meeting of shareholders as required by rule 14a-8(b)." Period. Full stop.

This makes perfect sense. The Rule simply requires a proponent to “state an intent,” as the Systems have done here. When dealing with externally managed holdings, *Chipotle* was thus satisfied with a statement that the proponent has the *authority* to hold on to the stock in the event of an unforeseen event, with no need for documentary proof of instructions to a money manager about what to do in the event of an unseen future event. There will be time enough to deal with any such hypothetical situation later on.

This is logical because the “intent to hold” requirement is separate, both temporarily and otherwise from the requirement in the Rule 14a-8(b) that a proponent “must continue to hold those securities through the date of the meeting.” If a company is concerned about ownership as the meeting date draws near — perhaps because the company has been dropped from the index upon which the proponent is relying — it would be a simple matter to contact the proponent at that time. There is no need to make things more complicated at this point of the proceedings by interpreting the Rule to require documentary proof as to hypothetical situations that may or may not arise in the future. If a concern about continued ownership should arise after the submission date, proponents and companies are capable of resolving those issues on their own.<sup>5</sup>

The protocols that the Systems thus have in place are designed to assure accountability of the Systems to their participants and beneficiaries, as well as of the Comptroller to the Systems. These sources also demonstrate that the Systems have the power to retain those shares through the date of the HPT annual meeting and to vote those shares in connection with that meeting. The concerns expressed in *Staff Legal Bulletin 14I* are thus not germane as to these investors.

### **3. The Systems’ securities are entitled to vote on the proposal.**

HPT next claims that the Systems are not entitled to vote on their proposal because the “subject matter” lies within the “exclusive purview” of HPT’s board of trustees under section 2.17 of the HPT bylaws, which entitles the board to deny shareholder the right to vote on a proposal that falls into that category.

This argument relies on an opinion of Maryland counsel and *RAIT Financial Trust* (Mar. 10, 2017) (“*RAIT*”), which granted no-action relief on this ground as to a proposal to a Maryland REIT to “externalize management.”

We attach to this letter a letter from Maryland counsel explaining why the Systems’ proposal is different from the proposal at issue in *RAIT*, primarily because the pertinent provisions of the companies’ respective bylaws are different. Also resort to Maryland law is unnecessary because the HPT bylaw, taken on its own terms, does not grant the board the sweeping power the Company claims. We rely upon that letter to respond to HPT’s arguments here and in the following two sections, which address HPT’s arguments that Maryland state law allows exclusion of the Systems’ proposal under the (i)(1) and (i)(2) exclusions of Rule 14a-8.

---

<sup>5</sup> Indeed, it is not uncommon for companies to state in their proxy materials that shareholders who plan to attend a meeting, regardless of whether they are sponsoring a shareholder resolution, must provide a recent broker statement or some other proof of ownership in order to enter the meeting.

HPT's argument relies heavily on section 2.17 of its bylaws, which states in pertinent part that "any shareholder proposal for business the subject matter or effect of which would be within the exclusive purview of the Board of Trustees . . . shall be deemed not to be a matter upon which the shareholders are entitled to vote." Two points that are relevant as to this language.

- First, shareholders are entitled to propose business for a vote at HPT's annual meeting.
- Second, the "subject matter" of that "proposal" or "business" must lie "within the exclusive purview of the Board of Trustees."

The nomination and election of directors is the "subject matter" of the Systems' proposal, and that subject matter does not lie with the board's "exclusive purview," as a reading of the bylaws will demonstrate. No extended discussion should be required, since the dictionary definition of "subject matter" is clear — a "matter presented for consideration in discussion, thought, or study. <https://www.merriam-webster.com/dictionary/subject%20matter>

Indeed, other provisions of the HPT bylaws that address the nomination and election of directors are quite clear that HPT shares have a role to play in the process.

Section 2.14 states explicitly states: "Nothing in this Section 2.14 shall be deemed to affect any right of a shareholder to request inclusion of a non-binding precatory proposal in, or the right of the Trust to omit a proposal from, any proxy statement filed by the Trust."

Section 2.14.1(a) specifies how HPT shareholders may propose candidates that the Nominating and Governance Committee may wish to consider nominating.

Section 2.14.1(b) sets forth the qualifications that an HPT shareholder must meet in order to nominate a candidate for consideration by shareholders at an annual meeting, e.g., the nominating shareholder must hold at least one percent of HPT's common shares for a three-year period. The criteria in this provision must be met simply to nominate a candidate; the nominating shareholder must still solicit proxies if the candidate is going to receive any votes.

Subsection 2.14.1(c) sets forth the "advance notice" requirements whereby shareholders may offer "nominations for election to the Board of Trustees or other business to be properly brought before an annual meeting by one or more shareholders pursuant to this Section 2.14.1."

Subsection 2.14.1(d) sets forth the requirements of "sworn verification of each shareholder making the nomination or proposal" that the requirements of the bylaws have been satisfied.

The remaining provisions of section 2.14 deal with technical or detail issues, including nominations or proposals that would cause covenant breaches or defaults (section 2.14.2) or that require governmental action (section 2.14.3), while section 2.15.4 deals with nominations and election sat special meetings, and section 2.14.5 addresses defects in nominations and ways they can be corrected.

A fair reading of these provisions thus establishes that the nomination and election of directors is not a topic or “subject matter” falling within the “exclusive purview” of HPT’s board of trustees. Accordingly, it cannot be said that HPT has demonstrated that its board of trustees has plenary power to exclude the Systems’ proposal under bylaw section 2.17.

#### **4. The Systems’ proposal is a proper subject for shareholder action.**

The (i)(1) exclusion allows the omission of a proposal if “the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company’s organization.” The note accompanying the (i)(1) exclusion indicates that the Commission was concerned about this situation:

“Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.”

The commentary accompanying the 1976 revision of what was then the (c)(1) exclusion is clear that this exclusion is limited to this type of distinction. The Commission noted that many states have laws that generally trust management of the company’s affairs to be the board of director, with the result that “proposals that mandate or direct the board to take certain action may constitute an unlawful intrusion on the board’s discretionary authority.” *Adoption of Amendments Relating to Proposals by Security Holders*, Release No. 34-12999, 41 Fed. Reg. 52994, 52996 (Dec. 3, 1976). Indeed, the Commission dropped from the final rule a reference to the proposal “as submitted,” thus indicating that binding proposals could be amended to make them precatory, and thus valid notwithstanding the (i)(1) exclusion. *Id.*

Distinctions between precatory and mandatory distinctions are irrelevant in this case, however, since that is not the basis of HPT’s objection. The (i)(1) exclusion is thus inapplicable. Indeed, were it to be read as broadly as HPT argues, it would overlap with the (i)(2) exclusion. More generally, even if the (i)(1) exclusion were not limited to mandatory/precatory situations, the Systems’ proposal does not involve a matter that “is not a proper subject for action” under state law. The Maryland Code does not limit the ability of shareholders to submit shareholder proposals of the sort at issue here. More specifically, the HPT bylaw on which the Company relies only allows the board to exclude a proposal if the “subject matter” of the proposal falls outside the board’s “exclusive purview.” The nomination and election of directors is not such a topic, as is discussed in the accompanying letter from Maryland counsel.

**5. The Systems' proposal would not require HPT board members to violate state law.**

The (i)(2) exclusion allows the omission of a proposal that, “would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject.” No such claim is made here. The Company never makes an argument that printing the proposal “would” cause HPT to violate law. Indeed, at multiple places in the letters from HPT’s SEC counsel and HPT’s Maryland counsel, HPT is careful not to assert that printing the proposal “would” cause HPT to violate Maryland law. The most they will concede is that printing the proposal “may” cause HPT to violate the law. HPT Letter, pp. 4, 14; Saul Ewing Letter, pp. 1, 6.

“May” is not good enough, however. After all, “may” is a synonym for “may not,” and HPT has the burden of satisfying the (i)(2) exclusion *as written*, not as HPT might wish it had been written.

It is understandable why HPT and its Maryland counsel would want to fudge this issue. After all, HPT’s board last year decided to print the same proxy access proposal and let it go to a vote. If HPT’s decision to let shareholders vote this issue was legal last year, why would trustees be breaking the law by letting the same proposal go to a vote this year? We are never told.

**Conclusion**

For the foregoing reasons the Systems respectfully ask you to advise HPT that the Division cannot concur in HPT’s position.

Thank you for your consideration of these points. Please do not hesitate to contact us if we can provide further information.

Respectfully submitted,



Kathryn E. Diaz

cc: Margaret R. Cohen, Esq.

**EXHIBIT 1**



CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
SCOTT M. STRINGER

MUNICIPAL BUILDING  
ONE CENTRE STREET, 8<sup>TH</sup> FLOOR NORTH  
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[MGARLAN@COMPTROLLER.NYC.GOV](mailto:MGARLAN@COMPTROLLER.NYC.GOV)

Michael Garland  
ASSISTANT COMPTROLLER  
CORPORATE GOVERNANCE AND  
RESPONSIBLE INVESTMENT

October 25, 2016

Ms. Jennifer B. Clark  
Secretary  
Hospitality Properties Trust  
Two Newton Place, 255 Washington Street, Suite 300  
Newton, MA 02458

Dear Ms. Clark:

I write to you on behalf of the Comptroller of the City of New York, Scott M. Stringer. The Comptroller is the custodian and a trustee of the New York City Employees' Retirement System and the New York City Police Pension Fund, and custodian of the New York City Board of Education Retirement System (the "Systems"). The Systems' boards of trustees have authorized the Comptroller to inform you of their intention to present the enclosed proposal for the consideration and vote of stockholders at the Company's next annual meeting.

Therefore, we offer the enclosed proposal for the consideration and vote of shareholders at the Company's next annual meeting. It is submitted to you in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, and I ask that it be included in the Company's proxy statement.

Letters from State Street Bank and Trust Company certifying the Systems' ownership, for over a year, of shares of Hospitality Properties common stock are enclosed. Each System intends to continue to hold at least \$2,000 worth of these securities through the date of the Company's next annual meeting.

We would welcome the opportunity to discuss the proposal with you. Should the Board of Directors approve a proxy access bylaw that we consider responsive to the proposal, we will withdraw the proposal from consideration at the annual meeting.

Please feel free to contact me at (212) 669-2517 if you would like to discuss this matter.

Sincerely,

Michael Garland  
Enclosures

RESOLVED: Shareholders of Hospitality Properties Trust (the "Company") ask the board of directors (the "Board") to take the steps necessary to adopt a "proxy access" bylaw. Such a bylaw shall require the Company to include in proxy materials prepared for a shareholder meeting at which directors are to be elected the name, Disclosure and Statement (as defined herein) of any person nominated for election to the board by a shareholder or group (the "Nominator") that meets the criteria established below. The Company shall allow shareholders to vote on such nominee on the Company's proxy card.

The number of shareholder-nominated candidates appearing in proxy materials shall not exceed the larger of two or one quarter of the directors then serving. This bylaw, which shall supplement existing rights under Company bylaws, should provide that a Nominator must:

- a) have beneficially owned 3% or more of the Company's outstanding common stock continuously for at least three years before submitting the nomination;
- b) give the Company, within the time period identified in its bylaws, written notice of the information required by the bylaws and any Securities and Exchange Commission rules about (i) the nominee, including consent to being named in the proxy materials and to serving as director if elected; and (ii) the Nominator, including proof it owns the required shares (the "Disclosure"); and
- c) certify that (i) it will assume liability stemming from any legal or regulatory violation arising out of the Nominator's communications with the Company shareholders, including the Disclosure and Statement; (ii) it will comply with all applicable laws and regulations if it uses soliciting material other than the Company's proxy materials; and (iii) to the best of its knowledge, the required shares were acquired in the ordinary course of business and not to change or influence control at the Company.

The Nominator may submit with the Disclosure a statement not exceeding 500 words in support of each nominee (the "Statement"). The Board shall adopt procedures for promptly resolving disputes over whether notice of a nomination was timely, whether the Disclosure and Statement satisfy the bylaw and applicable federal regulations, and the priority to be given to multiple nominations exceeding the one-quarter limit.

## SUPPORTING STATEMENT

We believe proxy access will make directors more accountable and enhance shareholder value. A 2014 study by the CFA Institute concluded that proxy access could raise overall US market capitalization by up to \$140.3 billion if adopted market-wide, "with little cost or disruption." (<http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2014.n9.1>)

The proposed terms are similar to those in vacated SEC Rule 14a-11 (<https://www.sec.gov/rules/final/2010/33-9136.pdf>). The SEC, following extensive analysis and input from market participants, determined that those terms struck the proper balance of providing shareholders with viable proxy access while containing appropriate safeguards.

The proposed terms enjoy strong investor support and company acceptance. Between January 2015 and October 2016, 95 similar shareholder proposals received majority votes and at least 270 companies of various sizes across industries enacted bylaws with similar terms.

We urge shareholders to vote FOR this proposal.



STATE STREET.

Derek A. Farrell  
Asst. Vice President, Client Services

State Street Bank and Trust Company  
Public Funds Services  
1200 Crown Colony Drive 5th Floor  
Quincy, MA 02169  
Telephone: (617) 784-6378  
Facsimile: (617) 785-2211

[dfarrell@statestreet.com](mailto:dfarrell@statestreet.com)

October 25, 2016

**Re: New York City Employee's Retirement System**

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Employee's Retirement System, the below position from August 31, 2015 through today as noted below:

**Security:** Hospitality Properties Trust

**Cusip:** 44106M102

**Shares:** **183,568**

Please don't hesitate to contact me if you have any questions.

Sincerely,

Derek A. Farrell  
Assistant Vice President



STATE STREET.

Derek A. Farrell  
Asst. Vice President, Client Services

State Street Bank and Trust Company  
Public Funds Services  
1200 Crown Colony Drive 5th Floor  
Quincy, MA, 02169  
Telephone: (617) 784-6378  
Facsimile: (617) 785-2211

[dfarrell@statestreet.com](mailto:dfarrell@statestreet.com)

October 25, 2016

**Re: New York City Board of Education Retirement System**

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Board of Education Retirement System, the below position from August 31, 2015 through today as noted below:

**Security:** Hospitality Properties Trust

**Cusip:** 44106M102

**Shares:** 9,081

Please don't hesitate to contact me if you have any questions.

Sincerely,

Derek A. Farrell  
Assistant Vice President



STATE STREET.

Derek A. Farrell  
Asst. Vice President, Client Services

State Street Bank and Trust Company  
Public Funds Services  
1200 Crown Colony Drive 5th Floor  
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Facsimile: (617) 786-2211

[dfarrell@statestreet.com](mailto:dfarrell@statestreet.com)

October 25, 2016

**Re: New York City Police Pension Fund**

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Police Pension Fund, the below position from August 31, 2015 through today as noted below:

**Security:** Hospitality Properties Trust

**Cusip:** 44106M102

**Shares:** 41,529

Please don't hesitate to contact me if you have any questions.

Sincerely,

Derek A. Farrell  
Assistant Vice President

**HITCHCOCK LAW FIRM** PLLC  
5614 CONNECTICUT AVENUE, N.W. • No. 304  
WASHINGTON, D.C. 20015-2604  
(202) 489-4813 • FAX: (202) 315-3552

CORNISH F. HITCHCOCK  
E-MAIL: CONH@HITCHLAW.COM  
ALSO ADMITTED IN MARYLAND

31 January 2018

Mr. Michael Garland  
Assistant Comptroller  
The City of New York  
Office of the Comptroller  
1 Centre Street  
New York, New York 10007

Dear Mr. Garland:

Your office has asked me, as a member in good standing of the Maryland bar, to advise your office regarding assertions by Hospitality Properties Trust (“HPT” or the “Company”) that Maryland law does not permit the Company to include in its proxy materials a shareholder resolution and supporting statement (the “Resolution”) that was submitted by the Comptroller of the City of New York on behalf of the New York City Employees Retirement System, the New York City Fire Pension Fund, the New York City Teachers’ Retirement System, the New York City Police Pension Fund and the New York City Board of Education Retirement System (collectively the “Systems”).

I have reviewed the materials filed by HPT with the Securities and Exchange Commission on 16 January 2018, including the HPT declaration of trust and bylaws, the opinion letter of Maryland counsel, and the cover letter of HPT’s SEC counsel. Based on my review of those materials, it is my opinion that HPT has not established that the shareholder resolution in question raises a topic that would not be “a proper subject for action shareholders under the laws of” Maryland.

Moreover, the proposal would not, “if implemented, cause the company to violate any state, federal, or foreign law to which it is subject.” In this respect, I note that HPT’s counsel provides what is at best a qualified opinion, concluding that implementing the Resolution “may” cause a violation. Rule 14a-8 requires a conclusion that a violation “would” be caused.

Analysis.

*First*, I note that your Resolution is precatory in nature. Nothing in Maryland law or HPT's declaration of trust and bylaws prohibits the Company from presenting to shareholders a non-binding precatory proposal. Moreover, if the shareholders were to adopt a precatory proposal, there is no reason to believe that such a result would intrude on the board's legal powers in a way that would violate Maryland law. See *Martin Marietta Corp. v. Bendix Corp.*, 549 F. Supp. 623 (D. Md. 1982) (adoption of a non-binding resolution leaves a corporate board free to exercise its discretion about whether to adopt the recommended policy).

*Second*, since adoption of the Resolution (even on a precatory basis) would not involve a violation of Maryland law, HPT's argument rests on an expansive interpretation of the Company's bylaws, in particular, section 2.17, which states that "any shareholder proposal for business the subject matter or effect of which would be within the exclusive purview of the Board of Trustees . . . shall be deemed not to be a matter upon which the shareholders are entitled to vote."<sup>1</sup> This language establishes two points that are relevant here.

- First, shareholders are entitled to present a "proposal" or "business" for a vote at HPT's annual meeting.
- Second, the "subject matter of" that "proposal" or "business" must lie within the exclusive purview" of the Board of Trustees.

The nomination and election of directors is the "subject matter" of the Systems' proposal, and that subject matter does not lie with the board's "exclusive purview," as a reading of the bylaws will demonstrate.

This point is confirmed by other provisions of the HPT bylaws pertaining to the nomination and election of directors, which make it quite clear that HPT shares

---

<sup>1</sup> The full text of this bylaw states:

**"Section 2.17 Proposals of Business Which Are Not Proper Matters For Action By Shareholders.** "Notwithstanding anything in these Bylaws to the contrary, subject to applicable law, any shareholder proposal for business the subject matter or effect of which would be within the exclusive purview of the Board of Trustees or would reasonably likely, if considered by the shareholders or approved or implemented by the Trust, result in an impairment of the limited liability status for the shareholders, shall be deemed not to be a matter upon which the shareholders are entitled to vote. The Board of Trustees in its discretion shall be entitled to determine whether a shareholder proposal for business is not a matter upon which the shareholders are entitled to vote pursuant to this Section 2.17, and its decision shall be final and binding unless determined by a court of competent jurisdiction to have been made in bad faith."

have a role to play in the nomination and election process. Indeed, these provisions refer on numerous occasions to resolutions submitted under Rule 14a-8.

Section 2.14 states explicitly states: “Nothing in this Section 2.14 shall be deemed to affect any right of a shareholder to request inclusion of a non-binding precatory proposal in, or the right of the Trust to omit a proposal from, any proxy statement filed by the Trust.”

Section 2.14.1(a) specifies how HPT shareholders may propose candidates that the Nominating and Governance Committee may wish to consider nominating.

Section 2.14.1(b) sets forth the qualifications that an HPT shareholder must meet in order to nominate a candidate for consideration by shareholders at an annual meeting, *e.g.*, the nominating shareholder must hold at least one percent of HPT’s common shares for a three-year period. The criteria in this provision must be met simply to nominate a candidate; the nominating shareholder must still solicit proxies if the candidate is going to receive any votes.

Subsection 2.14.1(c) sets forth the “advance notice” requirements for “nominations for election to the Board of Trustees or other business to be properly brought before an annual meeting by one or more shareholders pursuant to this Section 2.14.1.”

Subsection 2.14.1(d) sets forth the requirements of “sworn verification of each shareholder making the nomination or proposal” that the requirements of the bylaws have been satisfied.

Other provisions of section 2.14 deal with technical or detail issues, including nominations or proposals that would cause covenant breaches or defaults (section 2.14.2) or that require governmental action (section 2.14.3), while section 2.15.4 deals with nominations and elections at special meetings, and section 2.14.5 addresses defects in nominations and ways they can be corrected.

Taken together, HPT has failed to demonstrate that including the Resolution in HPT’s proxy materials would violate Maryland law. Bylaw section 2.17 is clear that HPT has limited its board’s authority to exclude proposals only to those situations where the “subject matter” of the “proposal” lies within the board’s “exclusive purview.” That cannot be said here. The phrase appears only once in the bylaws – in section 2.17. HPT has failed to demonstrate that its declaration of trust and bylaws use the phrase “subject matter” as a term of art or in a manner inconsistent with the dictionary definition, *e.g.*,

- “a topic dealt with or the subject represented in the debate, exposition or work of art,” <https://www.merriam-webster.com/dictionary/subject%20matter>;

- “[t]he topic dealt with or the subject represented in a debate, exposition, or work of art,” [https://en.oxforddictionaries.com/definition/subject\\_matter](https://en.oxforddictionaries.com/definition/subject_matter)

- “the subject of a program, movie, book, article, etc.,”

<https://dictionary.cambridge.org/us/dictionary/english/subject-matter>.

Accordingly, it is my opinion that HPT cannot invoke SEC Rule 14a-8(i)(1) or (2). Nothing in Maryland law makes it “improper” for the HPT board to present this proposal to its shareholders, nor can it be said that doing so “would cause” the Company to violate the cited bylaw provision or any other provision of Maryland law. Indeed, I note that HPT’s counsel only argue that doing so “may” cause HPT to violate Maryland law, and this qualified assertion does not meet the standard that HPT must satisfy in order successfully to rely upon Rule 14a-8(i)(2).

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cornish F. Hitchcock", with a stylized flourish at the end.

Cornish F. Hitchcock

# SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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## FIRM/AFFILIATE OFFICES

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SYDNEY  
TOKYO  
TORONTO

January 16, 2018

Office of Chief Counsel  
Division of Corporate Finance  
U.S. Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, D.C. 20549

RE: Hospitality Properties Trust  
Securities and Exchange Act of 1934  
Omission of Shareholder Proposal Pursuant to Rule 14a-8

Ladies and Gentlemen:

I am writing on behalf of Hospitality Properties Trust (the “Company”), pursuant to Rule 14a-8(j) promulgated under the Securities and Exchange Act of 1934, as amended, to inform the Securities and Exchange Commission (the “Commission”) that, for the reasons stated below, the Company’s Board of Trustees (the “Board”) plans to exclude from the Company’s proxy materials for its 2018 annual meeting of shareholders (the “2018 Proxy Materials”) the shareholder proposal and supporting statement (collectively, the “Proposal”) of the New York City Employees’ Retirement System, the New York City Fire Pension Fund, The New York City Teachers’ Retirement System, the New York City Police Pension Fund and the New York City Board of Education Retirement System (together, the “Proponents”), submitted by letter of Michael Garland, Assistant Comptroller of the City of New York (the “Comptroller”) to the Company, dated December 5, 2017 (received by the Company on December 8, 2017). Included with the Proposal were letters of State Street Bank and Trust Company regarding its holding of common shares of the Company on behalf of each of the Proponents. The December 5, 2017 letter of the Comptroller and other materials submitted by the Comptroller to the Company on December 8, 2017 are attached hereto as Exhibit A and are referred to herein as the “Submission.”

Office of Chief Counsel  
Division of Corporate Finance  
U.S. Securities and Exchange Commission  
January 16, 2018  
Page 2

The Company respectfully requests that the Staff of the Division of Corporate Finance of the Commission (the “*Staff*”) concur with the Company’s view that the Proposal may be excluded from the 2018 Proxy Materials for the reasons stated below.

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008), this letter and its attachments are being emailed to shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), a copy of this letter and its attachments are being sent simultaneously to the Proponents. We hereby also inform the Comptroller and the Proponents that, if any of them elect to submit correspondence to the Commission or the Staff with respect to the Proposal or this letter, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company pursuant to Rule 14a-8(k) and Staff Legal Bulletin No. 14D. We request that such copy be emailed to me at margaret.cohen@skadden.com.

The Company advises that it intends to begin distribution of its definitive 2018 Proxy Materials more than 80 days after the date of this letter.

Attached to this letter as Exhibit B is an opinion of Saul Ewing Arnstein & Lehr LLP, special Maryland counsel to the Company, dated January 16, 2018 (the “*Saul Ewing Opinion*”). Please note that as to all matters of Maryland law referenced herein, we direct you to the Saul Ewing Opinion enclosed herewith. In preparing and submitting this letter on behalf of the Company, we do not express any opinion as to Maryland law.

## BACKGROUND

As explained in the Saul Ewing Opinion, the Company is a Maryland real estate investment trust (“*Maryland REIT*”) formed in accordance with Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland (the “*Maryland REIT Law*”). The Company’s governing documents are its Amended and Restated Declaration of Trust, dated May 12, 1995, as amended and supplemented as of the date hereof (the “*Company’s Declaration of Trust*”), a copy of which is attached hereto as Exhibit C, and its Amended and Restated Bylaws, adopted September 7, 2016, as amended as of the date hereof (the “*Company’s Bylaws*”), a copy of which is attached hereto as Exhibit D.

The Proposal requests that the shareholders of the Company recommend that the Board “take the steps necessary to adopt a ‘proxy access’

bylaw,” which would require the Company to include in proxy materials prepared for a shareholder meeting at which Trustees are to be elected the name, certain disclosures and a statement of any person nominated for election to the Board who meets certain criteria outlined in the Proposal.

The Company sent a letter, dated December 19, 2017, to the Comptroller pointing out certain procedural and eligibility deficiencies with the Submission (the “*Deficiency Letter*”). A copy of the Deficiency Letter is attached hereto as Exhibit E. The Deficiency Letter was received by the Comptroller on December 20, 2017, as confirmed by FedEx. The Deficiency Letter notified the Comptroller that the Submission failed to comply with Rule 14a-8(b) because it did not include documentation of the Proponents that, among other things, confirmed the Comptroller had the authority to submit the Proposal to the Company on behalf of the Proponents under Rule 14a-8. The Company also pointed out that the Submission failed to comply with Rule 14a-8(b) because it did not credibly demonstrate that the Proponents would each continue to hold at least \$2,000 in market value, or 1%, of the Company’s common shares through the date of the Company’s 2018 annual meeting of shareholders, and the Submission did not include statements by each Proponent of its intention to continue to hold such requisite amount of common shares of the Company through the date of the Company’s 2018 annual meeting of shareholders. The Company requested that the Comptroller and the Proponents correct these deficiencies and provide appropriate documentation mailed to the Company and postmarked, or transmitted to the Company electronically, no later than 14 calendar days from the date the Comptroller received the letter.

The Company received a letter, dated January 2, 2018, of the Comptroller responding to the Deficiency Letter (the “*Comptroller’s Second Letter*”). The Comptroller’s Second Letter enclosed (i) a letter dated November 21, 2017 signed by the Chair of the Board of Trustees of the New York City Fire Pension Fund, (ii) a letter dated November 15, 2017 signed by the Chair of the Board of Trustees of the New York City Employees’ Retirement System, (iii) a letter dated December 20, 2017 signed by the Co-Chairs of the Board of Trustees of the New York City Board of Education Retirement System, (iv) an undated letter signed by the Chair of the Board of Trustees of the New York City Police Pension Fund and (v) an undated letter signed by the Chair of the New York City Teachers’ Retirement System (together, the “*Proponents’ Letters*”). The Comptroller’s Second Letter, the Proponents’ Letters and other materials submitted by the Comptroller to the

Company on January 2, 2018 are attached hereto as Exhibit F and are collectively referred to herein as the “*Comptroller’s Deficiency Response*.”

### BASES FOR EXCLUSION

The Company is of the view that the Proposal may be excluded from the 2018 Proxy Materials on the following bases:

- (1.) The Company may exclude the Proposal pursuant to Rule 14a-8(b) because, despite receiving timely and proper notice of the deficiency in accordance with Rule 14a-8(f)(i), the Comptroller has not provided sufficient documentation dated and signed by the Proponents confirming the authority of the Comptroller to submit the Proposal on behalf of the Proponents.
- (2.) The Company may exclude the Proposal pursuant to Rule 14a-8(b) because, despite receiving timely and proper notice of the deficiency in accordance with Rule 14a-8(f)(i), the Proponents have not provided a credible statement of their intention to continue to hold at least \$2,000 in market value, or 1%, of the Company’s common shares through the date of the Company’s 2018 annual meeting of shareholders.
- (3.) The Company may exclude the Proposal pursuant to Rule 14a-8(b) because the Proponents do not hold securities entitled to be voted on the Proposal.
- (4.) The Company may exclude the Proposal pursuant to Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by shareholders at the Company’s 2018 annual meeting of shareholders under state law.
- (5.) The Company may exclude the Proposal pursuant to Rule 14a-8(i)(2) because requiring the Board to include the Proposal in the 2018 Proxy Materials may cause members of the Board to violate state law.

## ANALYSES

**1. The Company may exclude the Proposal pursuant to Rule 14a-8(b) because, despite receiving timely and proper notice of the deficiency in accordance with Rule 14a-8(f)(i), the Comptroller has not provided sufficient documentation dated and signed by the Proponents confirming the authority of the Comptroller to submit the Proposal on behalf of the Proponents.**

Rule 14a-8 does not address a shareholder's ability to submit proposals through a representative. The Staff is of the view that a shareholder's submission of a proposal by a representative is consistent with Rule 14a-8, but such proposal must include adequate documentation signed by the shareholder proponent itself that, among other things, confirms the shareholder proponent's delegation of authority to the representative. *See* Part D of Staff Legal Bulletin No. 14I (Nov. 1, 2017) ("*SLB 14I*"). The Submission did not include any documentation signed by the Proponents.

The Company gave the Comptroller timely and proper notice of the Comptroller's failure to provide appropriate documentation of the Proponents, signed and dated by them, to the Company that, among other things, confirms the authority of the Comptroller to submit the Proposal on behalf of the Proponents. *See* the Deficiency Letter, pages 2-3.

The Company respectfully submits that the Comptroller's Deficiency Response, which included the Proponents' Letters, does not satisfy the Rule 14a-8(b) deficiency described in the preceding two paragraphs. As stated in SLB 14I, the Staff generally expects a representative submitting a proposal to a company on behalf of a shareholder to provide documentation signed and dated by the shareholder that identifies,

- the company to which the proposal is directed,
- the specific proposal to be submitted, and
- the annual or special meeting for which the proposal is submitted.

None of the Proponents' Letters identifies the Company, the Proposal or the 2018 annual meeting of the Company. Instead, the Proponents' Letters are generic; each simply states that "further to its delegated investment authority, the Comptroller of the City of New York submits shareholder proposals on behalf of

[such Proponent].” Two of the Proponents’ Letters -- the letters of the New York City Police Pension Fund and The New York Teachers Retirement Fund -- are undated, and two other letters -- the letters of the New York City Fire Pension Fund and the New York City Employees’ Retirement System -- were dated weeks before December 5, 2017, the date of the Submission.

The Comptroller’s Second Letter makes several representations regarding the Comptroller’s appointment as the investment advisor to each of the Proponents. However, the Comptroller has not provided the Company with copies of any operative documentation or references to any laws or regulations appointing the Comptroller the investment advisor to any Proponent, and several of Comptroller’s statements appear to confuse the distinction between the Proponents, on the one hand, and the Comptroller, on the other.<sup>1</sup> Moreover, the lines of authority are further complicated, as noted below, as the investment portfolios of the Proponents are managed predominantly by external investment managers who have investment discretion over the accounts of the Proponents that they manage, including the accounts in which the Proponents hold Company common shares.

The Comptroller’s Second Letter directs the Company to the *Corporate Governance Principles and Proxy Voting Guidelines* (April 2017) (“*Guidelines*”) of four of the five Proponents, which state that,

The Office of the Comptroller executes the corporate governance policies of the [Proponents], including proxy voting, portfolio monitoring, and shareholder engagements and initiatives.

This statement suggests the Comptroller executes the governance policies adopted by the Proponents. However, the Comptroller’s Second Letter goes on to suggest that the Comptroller’s authority is broader than execution, stating that,

As an investment adviser, the Comptroller has a fiduciary responsibility to the [Proponents]. That responsibility extends to decisions to submit shareholder proposals and other steps pertaining to the governance of portfolio companies such as [the Company].

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<sup>1</sup> For example, the caption to the Comptroller’s Second Letter describes the Proposal as, “*New York City Comptroller’s Shareholder Proposal*,” not as the Proposal of the Proponents.

By these two sentences, the Comptroller suggests its authority, as the investment advisor to the Proponents, is broader than executing the Proponents' governance policies (as disclosed in the Guidelines), and that it includes the authority to decide to submit shareholder proposals on behalf of the Proponents. But these two sentences are then followed by a statement that shareholder proposals are, in fact, first approved by the Proponents:

The [Proponents] take this obligation<sup>2</sup> seriously. Each [Proponent's] board maintains a Proxy Committee that reviews and approves the annual shareholder proposal plan and proxy voting guidelines. These Committees meet twice a year, and the fall meeting reviews the prior year's initiatives and approves the proposals to be submitted to specific companies in the upcoming year, as happened this year as to the specific proposal submitted to [the Company].

In view of the lack of specific documentation and information as to the Comptroller's scope of authority with respect to shareholder proposals, the Company respectfully submits that it is entitled to receive signed and currently dated documentation from the Proponents expressly confirming the authority of the Comptroller to submit the Proposal to the Company for consideration at the Company's 2018 annual meeting on behalf of the Proponents.<sup>3</sup> The Company disagrees with the Comptroller's assertion that it is not subject to the documentation requirements contemplated by SLB 14I, and that the Company is able to, and should, satisfy itself from the website of the Comptroller and the Proponents as to the scope of the Comptroller's authority. The Company therefore respectfully submits that it may exclude the Proposal from its 2018 Proxy Materials pursuant to Rule 14a-8 because, despite receiving timely and proper notice of the deficiency in accordance with Rule 14a-8(f)(i) and the Comptroller having considered the specific requirements of SLB 14I, the Comptroller has not provided the documentation dated

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<sup>2</sup> The "obligation" referenced in this sentence is unclear. By proximity, it appears to reference the two preceding sentences stating that the Comptroller has fiduciary responsibilities which extend to decisions to submit shareholder proposals. This seems to be another instance of a statement that confuses the distinction between the Proponents, on the one hand, and the Comptroller, on the other.

<sup>3</sup> The Comptroller may not submit the Proposal on its own behalf because the Comptroller has no economic stake or investment in the Company simply by virtue of the Company common shares being owned by the Proponents. *See, e.g., Chesapeake Energy Corporation* (Apr. 13, 2010).

and signed by the Proponents regarding the authority of the Comptroller to submit the Proposal on behalf of the Proponents that is specifically required by SLB 14I.

**2. The Company may exclude the Proposal pursuant to Rule 14a-8(b) because, despite receiving timely and proper notice of the deficiency in accordance with Rule 14a-8(f)(i), the Proponents have not provided a credible statement of their intention to continue to hold at least \$2,000 in market value, or 1%, of the Company's common shares through the date of the Company's 2018 annual meeting of shareholders.**

Rule 14a-8(b)(1) requires that, to be eligible to submit a shareholder proposal for inclusion in a company's proxy materials under Rule 14a-8(b), a shareholder must continue to hold at least \$2,000, or 1%, of the company's securities entitled to be voted on the proposal through the date of the meeting. Rule 14a-8(b)(2) also requires that a shareholder proponent provide the company with a written statement that the shareholder intends to continue to own the requisite amount of company securities through the date of the meeting.

The Company gave the Comptroller timely and proper notice of the Comptroller's failure (i) to demonstrate to the Company that each of the Proponents will continue to hold at least \$2,000 in market value, or 1%, of the Company's common shares through the date of the Company's 2018 annual meeting of shareholders and (ii) to provide to the Company written statements of the Proponents that they each intend to continue to hold at least \$2,000 in market value, or 1%, of the Company's common shares through the date of the Company's 2018 annual meeting of shareholders. *See* the Deficiency Letter, pages 3-6.

Although the Comptroller has made a number of representations to the Company and included some documentation signed by the Proponents, the Rule 14a-8 deficiencies described in the preceding paragraph have not been remedied. As confirmed by the Comptroller's Second Letter, the investment portfolios of the Proponents are managed predominantly by external investment managers who have investment discretion over the accounts of the Proponents that they manage, including the accounts in which the Proponents hold Company common shares. The Comptroller asserts that the Proponents have the power to "retain the legal and contractual right to instruct managers to purchase or sell (and thus presumably hold) a particular security." However, importantly, neither the Comptroller nor any of the Proponents has represented or demonstrated that any of them have, in fact, instructed the external investment managers who have the investment power to sell the

Company's common shares in the accounts of the Proponents to continue to hold (and not sell) at least \$2,000 in market value, or 1%, of the Company's common shares through the date of the Company's 2018 annual meeting of shareholders.

Without such an instruction, in view of the fact that the Proponents' investments in the Company are managed by external managers, the Company respectfully submits that the Comptroller and the Proponents cannot credibly provide the written statement required by Rule 14a-8(b)(2) that the Proponents "intend to continue to hold the securities through the date of the meeting of shareholders."

The Comptroller's Second Letter states that the Proponents retain the legal and contractual right to instruct managers to purchase or sell (and thus presumably hold) a particular security and, to demonstrate the retention of this right, recites the text of what the Comptroller describes as "standard contracts" that the Proponents sign with their external investment managers. The text cited appears to give an external investment manager "full discretion," subject to the "Comptroller's" amendment of applicable Investment Guidelines and the "Comptroller's" written direction to a manager to sell any security or purchase any security. Based on the recited text, it appears that the Comptroller (not the Proponents) may have the contractual right to instruct managers to purchase or sell a particular security.<sup>4</sup> However, the statements in the Comptroller's Second Letter and the Proponents' Letters as to the role of the Comptroller as the investment advisor to the Proponents, including the quoted text of the Proponents' standard form contracts as to the Comptroller's role in determining investment guidelines and instructing the external managers as to the purchase and sale of securities, do not seem consistent with the public record. For example, we have not been able to locate any reports that the Comptroller has filed on Form 13F, the form that an institutional investor is required to file by Exchange Act §13(f) and Rule 13f-1 promulgated thereunder. The Comptroller has offered no explanation as to the apparent inconsistency between its representation that it is the investment advisor to the Proponents and the absence of reporting on Form 13F by the Comptroller.<sup>5</sup>

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<sup>4</sup> The Company notes that the Comptroller has not represented that each management contract pursuant to which an external investment manager has investment discretion over a Proponent's investment in common shares of the Company contains the recited text.

<sup>5</sup> In the Comptroller's Second Letter, the Comptroller expresses its view that the Proponents, as beneficial owners of shares that are managed predominantly by external investment managers, do not have filing obligations under Exchange Act §13(f), and that the Proponents, as defined benefit

For the reasons described above, the Company respectfully submits that the Proposal may be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(b) because, despite receiving timely and proper notice of the deficiency in accordance with Rule 14a-8(f)(i), the Proponents have not provided a credible statement of their intention to continue to hold at least \$2,000 in market value, or 1%, of the Company's common shares through the date of the Company's 2018 annual meeting of shareholders.

**3. The Company may exclude the Proposal from its 2018 Proxy Materials pursuant to Rule 14a-8(b) because the Proponents do not hold securities entitled to be voted on the Proposal.**

To be eligible to submit a shareholder proposal for inclusion in a company's proxy materials under Rule 14a-8(b), a shareholder must have held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date such shareholder submits her proposal. The Company believes that it may exclude the Proposal from its 2018 Proxy Materials under Rule 14a-8(b) because, as confirmed by the Saul Ewing Opinion, the Proponents do not hold securities entitled to be voted on the Proposal.

The Company is of the view, as confirmed by the Saul Ewing Opinion, that the matters contemplated by the Proposal, as well as the Proposal itself, are matters on which the shareholders of the Company are not entitled to vote

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plans that beneficially own securities, do not have investment discretion within the meaning of Exchange Act §3(a)(35) because they do not hold or manage accounts for clients. The Comptroller appears to be of the mistaken view that institutional investors, like the Proponents, are exempt from Exchange Act §13(f) simply because they beneficially own shares, and that to be subject to Exchange Act §13(f), an institutional investor must manage accounts for clients. While the Comptroller is correct that the Commission determined not to adopt a separate "beneficial owner" category of filers under Exchange Act §13(f) in 1978, the Commission did not, as seems suggested by the Comptroller, create an exemption from Exchange Act §13(f) for institutional investors simply because of their beneficial ownership of securities. Nor does the requirement for an institutional investor to file reports under Exchange Act §13(f) turn on whether the institutional investor manages accounts for some other clients. The Commission and its Division of Investment Management have been quite clear – institutional investors, such as investment companies, pension funds and other entities, that manage (*i.e.* exercise investment discretion with respect to) their own investment portfolios (*i.e.* their own accounts) are "institutional investment managers" for purposes of Exchange Act §13(f). See "Operation of the Rule," SEC Release No. 34-14852 (June 14, 1978) and Question 3, Division of Investment Management: Frequently Asked Questions About Form 13F (March 15, 2017).

pursuant to Section 2.17 of the Company's Bylaws. That Section states,

Notwithstanding anything in these Bylaws to the contrary, subject to applicable law, any shareholder proposal for business the *subject matter* or effect of which would be within the *exclusive purview of the Board of Trustees . . . shall be deemed not to be a matter upon which the shareholders are entitled to vote*. The Board of Trustees in its discretion shall be entitled to determine whether a shareholder proposal for business is not a matter upon which the shareholders are entitled to vote pursuant to this Section 2.17, and its decision shall be final and binding unless determined by a court of competent jurisdiction to have been made in bad faith.  
[Emphasis added.]

Thus, as explained by the Saul Ewing Opinion, the Company's Bylaws provide that shareholders of the Company are not entitled to vote on any shareholder proposal for business the subject matter or effect of which would be within the exclusive purview of the Board.

As explained in the Saul Ewing Opinion, the Board has full, absolute and exclusive power, control and authority over the business and affairs of the Trust and, in exercising these management rights, the Board has adopted Section 2.14.1 of the Company's Bylaws, a detailed nomination process pursuant to which shareholders of the Company may nominate individuals for election to the Board. The Saul Ewing Opinion also explains that the Company's Bylaws may only be amended by the Board.<sup>6</sup>

The Proposal is a resolution of the shareholders of the Company asking the Board to take the steps necessary to adopt a proxy access bylaw. The Company is of the view, as confirmed by the Saul Ewing Opinion, that because the procedure for nomination of individuals for election to the Board is within the exclusive purview of the Board and can be changed exclusively by the Board without any action or vote of the shareholders of the Company, the matters contemplated by

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<sup>6</sup> Section 14.1 of the Company's Bylaws states, "Except for any change for which these Bylaws require approval by more than a majority vote of the Trustees, these Bylaws may be amended or repealed or new or additional Bylaws may be adopted only by the vote or written consent of a majority of the Trustees . . . ."

the Proposal, as well as the Proposal itself, are matters on which the shareholders of the Company are not entitled to vote pursuant to Section 2.17 of the Company's Bylaws. The Saul Ewing Opinion also confirms that there is no provision of the Maryland REIT Law, the Company's Declaration of Trust or the Company's Bylaws which authorizes or requires shareholders of the Company to vote on the Proposal or the subject matter of the Proposal.

The Company therefore respectfully submits that it may properly exclude the Proposal from its 2018 Proxy Materials pursuant to Rule 14a-8(b) because, as confirmed by the Saul Ewing Opinion, the Proponent does not hold securities entitled to be voted on the Proposal at the Company's 2018 annual meeting of shareholders.

The Staff has concurred with the view that a Maryland REIT may exclude a shareholder proposal pursuant to Rule 14a-8(b) in circumstances where its governance documents do not entitle the shareholder proponent to vote on the subject of the proposal. In *RAIT Financial Trust* (March 10, 2017), the Staff accepted the position of RAIT Financial Trust, a Maryland REIT ("*RAIT*"), that its shareholders were entitled to vote only on certain enumerated matters in its declaration of trust, which did not include the proposal in question, and that, therefore, the shareholder proponent did not hold securities entitled to be voted on the proposal as required by Rule 14a-8(b).

The letters and supporting opinions submitted by RAIT and its counsel and the shareholder proponent and his counsel included extensive discussion regarding whether the shareholder proposal in question was precatory or binding. The shareholder proponent was of the view that the proposal was precatory and therefore a proper subject for action by RAIT's shareholders under Maryland law and RAIT's declaration of trust.<sup>7</sup> RAIT was of the view that the proposal was cast in binding language, and that, even if it were recast in precatory terms, the proposal would still be excludable because the Proposal was not within the enumerated matters that RAIT's declaration of trust allows shareholders to vote on. Counsel for the shareholder proponent in the RAIT matter was of the view that the proposal was precatory. The Company respectfully submits that the Staff accepted RAIT's

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<sup>7</sup> The proposal in question directed RAIT's board of trustees to "take the steps necessary" to externalize management. The Staff has previously expressed the view that it will consider a proposal precatory where it includes wording such as "take the steps necessary." Division of Corporate Finance, Staff Legal Bulletin No. 14D (Nov. 7, 2008), Section B.

position that the proposal was excludable even if precatory. Had it not, the Staff, in accordance with longstanding practice, would have afforded the shareholder proponent the opportunity to recast the proposal in terms that are more clearly precatory. *See e.g.*, Division of Corporate Finance, Staff Legal Bulletin No. 14D (Nov. 7, 2008), Section B.

The Company respectfully submits that the Staff should reach the same conclusion about the voting rights of the Company's shareholders as it reached with respect to RAIT in the no-action letter issued by the Staff to RAIT last year.

**4. The Company may exclude the Proposal pursuant to Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by shareholders under state law.**

A company may omit a proposal from its proxy materials under Rule 14a-8(i)(1) if the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of organization of the company. The Company believes that it may exclude the Proposal from its 2018 Proxy Materials under Rule 14a-8(i)(1) because, as confirmed by the Saul Ewing Opinion, the Proposal is not a proper subject for action by shareholders of the Company under the laws of the State of Maryland, the Company's jurisdiction of formation.

As explained above, the Company is of the view, as confirmed by the Saul Ewing Opinion, that the matters contemplated by the Proposal, as well as the Proposal itself, are matters on which the shareholders of the Company are not entitled to vote pursuant to Section 2.17 of the Company's Bylaws and that there is no provision of the Maryland REIT Law, the Company's Declaration of Trust or the Company's Bylaws which authorizes or requires shareholders of the Company to vote on the Proposal or the subject matter of the Proposal. Therefore, the Company respectfully submits that it may exclude the Proposal pursuant to Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by shareholders of the Company under the laws of the State of Maryland.

5. The Company may exclude the Proposal pursuant to Rule 14a-8(i)(2) because requiring the Board to include the Proposal in the 2018 Proxy Materials may cause members of the Board to violate state law.

As explained in the Saul Ewing Opinion, the Maryland REIT Law requires that members of the Board meet a standard of conduct, namely to act (i) in good faith, (ii) in a manner he or she reasonably believes to be in the best interests of the REIT and (iii) with the care that an ordinarily prudent person in a like position would use under similar circumstances. The Saul Ewing Opinion also explains that such standard requires trustees of a Maryland REIT to exercise independent judgment in the performance of their duties. Accordingly the Company is of the view, as confirmed by the Saul Ewing Opinion, that if the Board is required to include the Proposal in the 2018 Proxy Materials and to permit the shareholders of the Company to vote on the Proposal in violation of Section 2.17 of the Bylaws, without the Board having determined that such action was in the best interests of the Company, it may constitute a violation of the Board's statutory duties to the Company and, accordingly, a violation of applicable Maryland law. Therefore, the Company believes it may exclude the Proposal pursuant to Rule 14a-8(i)(2).

### **Conclusion**

For the reasons stated above, the Company requests that the Staff concur with the Company's view that the Proposal may be properly omitted from the 2018 Proxy Materials under (i) Rule 14a-8(b) because the Comptroller, despite receiving timely and proper notice of the deficiency in accordance with Rule 14a-8(f)(i), has not provided sufficient documentation dated and signed by the Proponents confirming the authority of the Comptroller to submit the Proposal on behalf of the Proponents; (ii) Rule 14a-8(b) because the Proponents, despite receiving timely and proper notice of the deficiency in accordance with Rule 14a-8(f)(i), have not demonstrated that they will continue to hold at least \$2,000 in market value, or 1%, of the Company's common shares through the date of the Company's 2018 annual meeting of shareholders, (iii) Rule 14a-8(b) because the Proponents do not hold securities entitled to be voted on the Proposal, (iv) Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by shareholders under state law and (v) Rule 14a-8(i)(2) because requiring the Board to include the Proposal in the 2018 Proxy Materials may cause members of the Board to violate state law. Should the Staff disagree with the Company's position or require additional information, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of its response.

Office of Chief Counsel  
Division of Corporate Finance  
U.S. Securities and Exchange Commission  
January 16, 2018  
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If the Staff has any questions or comments regarding the foregoing,  
please contact the undersigned at 617-573-4859.

Very truly yours,



Margaret R. Cohen

cc: Jennifer Clark, Secretary, Hospitality Properties Trust  
Michael Garland, Assistant Comptroller, The Comptroller of the City of New  
York

**Exhibit A**  
(see attached)



CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
SCOTT M. STRINGER

Michael Garland  
ASSISTANT COMPTROLLER  
CORPORATE GOVERNANCE AND  
RESPONSIBLE INVESTMENT

DEC - 8 2017  
MUNICIPAL BUILDING  
ONE CENTRE STREET, 8<sup>TH</sup> FLOOR NORTH  
NEW YORK, N.Y. 10007-2341  
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FAX: (212) 669-4072  
[MGARLAN@COMPTROLLER.NYC.GOV](mailto:MGARLAN@COMPTROLLER.NYC.GOV)

December 5, 2017

Jennifer B. Clark  
Secretary  
Hospitality Properties Trust  
Two Newton Place, 255 Washington Street, Suite 300  
Newton, MA 02458

Dear Ms. Clark:

I write to you on behalf of the Comptroller of the City of New York, Scott M. Stringer. The Comptroller is the custodian and a trustee of the New York City Employees' Retirement System, the New York City Fire Pension Fund, The New York City Teachers' Retirement System, and the New York City Police Pension Fund, and custodian of the New York City Board of Education Retirement System (the "Systems"). The Systems' boards of trustees have authorized the Comptroller to inform you of their intention to present the enclosed proposal for the consideration and vote of stockholders at the Company's next annual meeting.

Therefore, we offer the enclosed proposal for the consideration and vote of shareholders at the Company's next annual meeting. It is submitted to you in accordance with Rule 14a-8 of the Securities Exchange Act of 1934, and I ask that it be included in the Company's proxy statement.

Letters from State Street Bank and Trust Company certifying the Systems' ownership, for over a year, of shares of Hospitality Properties Trust common stock are enclosed. Each System intends to continue to hold at least \$2,000 worth of these securities through the date of the Company's next annual meeting.

We would welcome the opportunity to discuss the proposal with you. Should the Board of Directors approve a proxy access bylaw that we consider responsive to the proposal, we will withdraw the proposal from consideration at the annual meeting.

Please feel free to contact me at (212) 669-2517 if you would like to discuss this matter.

Sincerely,

Michael Garland  
Enclosures

RESOLVED: Shareholders of the Hospitality Properties Trust (the "Company") ask the board of directors (the "Board") to take the steps necessary to adopt a "proxy access" bylaw. Such a bylaw shall require the Company to include in proxy materials prepared for a shareholder meeting at which directors are to be elected the name, Disclosure and Statement (as defined herein) of any person nominated for election to the board by a shareholder or group (the "Nominator") that meets the criteria established below. The Company shall allow shareholders to vote on such nominee on the Company's proxy card.

The number of shareholder-nominated candidates appearing in proxy materials shall not exceed the larger of two or one quarter of the directors then serving. This bylaw, which shall supplement existing rights under Company bylaws, should provide that a Nominator must:

- a) have beneficially owned 3% or more of the Company's outstanding common stock continuously for at least three years before submitting the nomination;
- b) give the Company, within the time period identified in its bylaws, written notice of the information required by the bylaws and any Securities and Exchange Commission rules about (i) the nominee, including consent to being named in the proxy materials and to serving as director if elected; and (ii) the Nominator, including proof it owns the required shares (the "Disclosure"); and
- c) certify that (i) it will assume liability stemming from any legal or regulatory violation arising out of the Nominator's communications with the Company shareholders, including the Disclosure and Statement; (ii) it will comply with all applicable laws and regulations if it uses soliciting material other than the Company's proxy materials; and (iii) to the best of its knowledge, the required shares were acquired in the ordinary course of business and not to change or influence control at the Company.

The Nominator may submit with the Disclosure a statement not exceeding 500 words in support of each nominee (the "Statement"). The Board shall adopt procedures for promptly resolving disputes over whether notice of a nomination was timely, whether the Disclosure and Statement satisfy the bylaw and applicable federal regulations, and the priority to be given to multiple nominations exceeding the one-quarter limit.

#### SUPPORTING STATEMENT

We believe proxy access will make directors more accountable and enhance shareholder value. A 2014 study by the CFA Institute concluded that proxy access could raise overall US market capitalization by up to \$140.3 billion if adopted market-wide, "with little cost or disruption." (<http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2014.n9.1>)

The proposed terms are similar to those in vacated SEC Rule 14a-11 (<https://www.sec.gov/rules/final/2010/33-9136.pdf>). The SEC, following extensive analysis and input from market participants, determined that those terms struck the proper balance of providing shareholders with viable proxy access while containing appropriate safeguards.

The proposed terms enjoy strong investor support and company acceptance. A similar shareholder proposal received 84.8% of votes cast at the Company in 2017 and more than 440 companies have enacted bylaws with similar terms.

We urge shareholders to vote FOR this proposal.



**STATE STREET.**

**Derek A. Farrell**  
Asst. Vice President, Client Services

State Street Bank and Trust Company  
Public Funds Services  
1200 Crown Colony Drive 5th Floor  
Quincy, MA, 02169  
Telephone: (617) 784-6378  
Facsimile: (617) 786-2211

[dfarrell@statestreet.com](mailto:dfarrell@statestreet.com)

December 5, 2017

**Re: New York City Board of Education Retirement System**

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Board of Education Retirement System, the below position from November 30, 2016 through today as noted below:

**Security:** HOSPITALITY PROPERTY TRUST

**Cusip:** 44106M102

**Shares:** 11,667

Please don't hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink that reads "Derek A. Farrell".

Derek A. Farrell  
Assistant Vice President



STATE STREET.

Derek A. Farrell  
Asst. Vice President, Client Services

State Street Bank and Trust Company  
Public Funds Services  
1200 Crown Colony Drive 5th Floor  
Quincy, MA, 02169  
Telephone: (617) 784-6378  
Facsimile: (617) 786-2211

[dfarrell@statestreet.com](mailto:dfarrell@statestreet.com)

December 5, 2017

**Re: New York City Teachers' Retirement System**

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Teachers' Retirement System, the below position from November 30, 2016 through today as noted below:

**Security:** HOSPITALITY PROPERTIES TRUST

**Cusip:** 44106M102

**Shares:** 119,339

Please don't hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Derek A. Farrell".

Derek A. Farrell  
Assistant Vice President



**STATE STREET.**

**Derek A Farrell**  
Asst. Vice President, Client Services

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Public Funds Services  
1200 Crown Colony Drive 5th Floor  
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[dfarrell@statestreet.com](mailto:dfarrell@statestreet.com)

December 5, 2017

**Re: New York City Employee's Retirement System**

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Employee's Retirement System, the below position from November 30, 2016 through today as noted below

**Security:** HOSPITALITY PROPERTIES TRUST.

**Cusip:** 44106M102

**Shares:** 155,205

Please don't hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Derek A. Farrell".

Derek A. Farrell  
Assistant Vice President



STATE STREET.

Derek A. Farrell  
Asst. Vice President, Client Services

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Telephone: (617) 784-6378  
Facsimile: (617) 786-2211

[dfarrell@statestreet.com](mailto:dfarrell@statestreet.com)

December 5, 2017

**Re: New York City Fire Pension Fund**

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Fire Pension Fund, the below position from November 30, 2016 through today as noted below:

**Security:** HOSPITALITY PROPERTIES TRUST

**Cusip:** 44106M102

**Shares:** 9,178

Please don't hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Derek A. Farrell".

Derek A. Farrell  
Assistant Vice President



STATE STREET.

**Derek A. Farrell**  
Asst. Vice President, Client Services

State Street Bank and Trust Company  
Public Funds Services  
1200 Crown Colony Drive 5th Floor  
Quincy, MA, 02169  
Telephone: (617) 784-6378  
Facsimile: (617) 786-2211

[dfarrell@statestreet.com](mailto:dfarrell@statestreet.com)

December 5, 2017

**Re: New York City Police Pension Fund**

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Police Pension Fund, the below position from November 30, 2016 through today as noted below:

**Security:** HOSPITALITY PROPERTIES TRUST

**Cusip:** 44106M102

**Shares:** 38,030

Please don't hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Derek A. Farrell".

Derek A. Farrell  
Assistant Vice President

**Exhibit B**

(see attached)

January 16, 2018

Hospitality Properties Trust  
Two Newton Place  
225 Washington Street, Suite 300  
Newton, Massachusetts 02458

Re: Hospitality Properties Trust – Shareholder Proposal of the New York City Employees’ Retirement System, the New York City Fire Pension Fund, The New York City Teachers’ Retirement System, the New York City Police Pension Fund and the New York City Board of Education Retirement System

---

Ladies and Gentlemen:

We have acted as Maryland counsel for Hospitality Properties Trust, a Maryland real estate investment trust (the “**Company**”), in connection with certain matters of Maryland law arising out of a shareholder proposal (the “**Proposal**”) submitted, pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended (“**Rule 14a-8**”), by the New York City Employees’ Retirement System, the New York City Fire Pension Fund, The New York City Teachers’ Retirement System, the New York City Police Pension Fund and the New York City Board of Education Retirement System (collectively, the “**Proponents**”) and the related Supporting Statement (the “**Supporting Statement**”) for inclusion in the Company’s proxy statement and form of proxy for its 2018 Annual Meeting of Shareholders (collectively, the “**2018 Proxy Materials**”). We have been asked to consider (1) whether the Proposal is a proper subject for action by shareholders of the Company under Maryland law, (2) whether the Proponent holds shares entitled to be voted on the Proposals under Maryland law, and (3) whether requiring the Board to include the Proposal in the 2018 Proxy Materials may cause the Board to violate Maryland law.

In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined the originals or certified copies of the following (collectively, the “**Documents**”):

(i) a certified copy of the Articles of Amendment and Restatement of the Declaration of Trust of the Company filed with the State Department of Assessments and Taxation of Maryland (the “SDAT”) on August 21, 1995 (the “**Original Declaration of Trust**”);

(ii) certified copies of the Articles of Amendment of the Company filed with SDAT on June 2, 1997, the Articles Supplementary of the Company filed with SDAT on June 2, 1997, the Articles Supplementary of the Company filed with SDAT on April 8, 1999, the Articles Supplementary of the Company filed with SDAT on May 16, 2000, the Articles Supplementary of the Company filed with SDAT on December 9, 2002, the Articles of Amendment of the Company filed with SDAT on May 24, 2006, the Articles Supplementary of the Company filed with SDAT on February 16, 2007, the Articles of Amendment of the Company filed with SDAT on March 5, 2007, the Articles Supplementary of the Company filed with SDAT on March 5, 2007, the Articles of Amendment of the Company filed with SDAT on May 16, 2007, the Articles of Amendment of the Company filed with SDAT on April 15, 2010, the Articles of Amendment filed with SDAT on January 18, 2012, the Articles Supplementary of the Company filed with SDAT on January 18, 2012, the Articles Supplementary of the Company filed with SDAT on June 10, 2014, the Articles of Amendment of the Company filed with SDAT on June 10, 2014, and the Articles Supplementary of the Company filed with SDAT on April 20, 2017 (together with the Original Declaration of Trust, the “**Declaration of Trust**”);

(iii) a certified copy of the Amended and Restated Bylaws of the Company dated September 7, 2016 (the “**Bylaws**”);

(iv) the Proposal;

(v) the Supporting Statement; and

(vi) such other documents and matters as we have deemed necessary and appropriate to express the opinions set forth in this letter, subject to the limitations, assumptions and qualifications noted below.

In reaching the opinions set forth below, we have assumed: (a) that all signatures on the Documents and any other documents submitted to us for examination are genuine; (b) the authenticity of all documents submitted to us as originals, the conformity to originals of all documents submitted to us as certified or photographic copies, and the accuracy and completeness of all documents; (c) that all persons executing the Documents on behalf of any party are duly authorized; (d) there has been no oral or written modification of or amendment to the Documents; and (e) there has been no waiver of any provision of the Documents, by actions or omission of the parties or otherwise.

## **I. Proposal**

On December 5, 2017, the Proponent presented the following Proposal along with the Supporting Statement pursuant to Rule 14a-8 for inclusion in the Company’s 2018 Proxy Materials:

“RESOLVED: Shareholders of the Hospitality Properties Trust (the “Company”) ask the board of directors (the “Board”) to take the steps necessary to adopt a “proxy access” bylaw. Such a bylaw shall require the Company to include in proxy materials prepared for a shareholder meeting at which directors are to be elected the name, Disclosure and Statement (as defined herein) of any person nominated for election to the board by a shareholder or group (the “Nominator”) that meets the criteria established below. The Company shall allow shareholders to vote on such nominee on the Company’s proxy card.

The number of shareholder-nominated candidates appearing in proxy materials shall not exceed the larger of two or one quarter of the directors then serving. This bylaw, which shall supplement existing rights under Company bylaws, should provide that a Nominator must:

- a) have beneficially owned 3% or more of the Company’s outstanding common stock continuously for at least three years before submitting the nomination;
- b) give the Company, within the time period identified in its bylaws, written notice of the information required by the bylaws and any Securities and Exchange Commission rules about (i) the nominee, including consent to being named in the proxy materials and to serving as director if elected; and (ii) the Nominator, including proof it owns the required shares (the “Disclosure”); and
- c) certify that (i) it will assume liability stemming from any legal or regulatory violation arising out of the Nominator’s communications with the Company shareholders, including the Disclosure and Statement; (ii) it will comply with all applicable laws and regulations if it uses soliciting material other than the Company’s proxy materials; and (iii) to the best of its knowledge, the required shares were acquired in the ordinary course of business and not to change or influence control at the Company.

The Nominator may submit with the Disclosure a statement not exceeding 500 words in support of each nominee (the “Statement”). The Board shall adopt procedures for promptly resolving disputes over whether notice of a nomination was timely, whether the Disclosure and Statement satisfy the bylaw and applicable federal regulations, and the priority to be given to multiple nominations exceeding the one-quarter limit.”

## II. Applicable Law and Analysis

### A. The Proposal Is Not A Proper Subject For Action By Shareholders Under Maryland Law

The Company is a real estate investment trust (a “REIT”) formed in accordance

with the Maryland REIT Law, Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland (the “**Maryland REIT Law**”), by the filing of its declaration of trust with SDAT.<sup>1</sup> The Maryland REIT Law provides maximum flexibility to those forming and investing in a REIT to select and construct their own governance structure and to organize how their REIT will be governed, and provides broad power and discretion to trustees to determine the best way to manage the business and affairs of the REIT.<sup>2</sup> In this way, the governance of Maryland REITs differs from the governance of a Maryland corporation, the governance of which is more defined by statute. Importantly, among the enabling powers granted to a REIT is the power to “exercise the powers set forth in its declaration of trust which are not inconsistent with law.”<sup>3</sup> This broad power has been repeatedly recognized by Maryland courts and includes the ability to adopt bylaws that may be amended exclusively by the board of trustees of a REIT.<sup>4</sup>

The Declaration of Trust is unambiguous in regard to the management of the Company. Section 3.1 of the Declaration of Trust states that the trustees shall have “full, absolute and exclusive power, control and authority over the Trust Estate and over the business and affairs of the Trust.” Moreover, the Declaration of Trust provides further in Section 3.1 that “[i]n construing the provisions of this Declaration, the presumption shall be in favor of the grant of powers and authority to the Trustees,” and that “[a]ny construction of the Declaration of Trust or determination made in good faith by the Trustees as to the purposes of the Trust or the existence of any power or authority hereunder shall be conclusive.” Section 3.1 of the Bylaws also unambiguously reinforces that “[t]he business and affairs of the Trust shall be managed under the direction of its Board of Trustees.” Therefore, all authority with respect to the management of the Company is reserved to the Board of Trustees of the Company (the “**Board**”).

In accordance with the rights granted under the Maryland REIT Law, the Bylaws set forth the Board’s obligation and discretion in reviewing and approving shareholder proposals. Specifically, Section 2.17 of the Bylaws provides as follows:

“Proposals of Business Which Are Not Proper Matters For Action By Shareholders. Notwithstanding anything in these Bylaws to the contrary, subject to applicable law, any shareholder proposal for business the subject matter or effect of which would be within the **exclusive purview** of the Board of Trustees .... **shall be deemed not to be a matter upon which the shareholders are entitled to vote.** The Board of Trustees in

<sup>1</sup> MD. CODE ANN., CORPS. & ASS’NS § 8-201(a).

<sup>2</sup> See, e.g., Theodore S. Lynn, Micah W. Broomfield & David W. Lowden, *Real Estate Investment Trusts* § 2:3 (2012) (noting that advocates for Maryland formation of a REIT “point to many provisions that protect or favor management”).

<sup>3</sup> MD. CODE ANN., CORPS. & ASS’NS § 8-301(13)

<sup>4</sup> See *Corvex Management LP v. Commonwealth REIT*, 2013 WL 1915769 (Md. Cir. Ct. May 8, 2013) (noting that it was not for the Maryland “[c]ourt to question the intent of the Maryland Legislature in its decision to enact REIT law provisions that permit such action by REIT trustees” when discussing the trustees ability to unilaterally, without shareholder approval, amend or repeal bylaw provisions of a Maryland REIT); see also *Badlands Trust Co. v. First Financial Fund, Inc.*, 65 F. App’x 876, 880 (4th Cir. 2003) (noting that Maryland “does not provide a closed list of permissible subjects for bylaws.”).

its discretion shall be entitled to determine whether a shareholder proposal for business is not a matter upon which the shareholders are entitled to vote pursuant to this Section 2.17, and its decision shall be final and binding unless determined by a court of competent jurisdiction to have been made in bad faith.” (emphasis added)

In exercising the management rights granted to the Board by the Declaration of Trust and the Bylaws, the Board adopted a detailed nomination process pursuant to which shareholders may nominate individuals for election to the Board under Section 2.14.1 of the Bylaws. The Bylaws place the procedure for Trustee nominations squarely within the management purview of the Board, by establishing such a procedure in the Bylaws and providing that the Board has the exclusive power to amend the Bylaws.<sup>5</sup> It is therefore within the exclusive purview of the Board under Section 2.17 of the Bylaws to determine generally what proposals, if any, that contemplate the modification of the Bylaws, and specifically that contemplate the modification of the nomination process for trustees of the Board, can be presented at any meeting of shareholders.

Maryland law states that a REIT’s declaration of trust and bylaws are to be construed under the principles governing contract interpretation.<sup>6</sup> This would allow for the declaration of trust, bylaws and the governing statutes to form a flexible contract between the REIT and the shareholder such that shareholders who invest in a REIT assent to be bound by board-adopted bylaws when they purchase shares in that REIT. Each of the Company’s Declaration of Trust and Bylaws are documents filed publicly with the Securities and Exchange Commission and available for inspection before a person decides to buy shares in the Company. In a recent Maryland court decision, the court held that a bylaw provision unilaterally adopted by the board of trustees of a Maryland REIT, pursuant to the broad authority provided to the board under the Maryland REIT Law and its declaration of trust, was valid and a binding contractual obligation of the plaintiff shareholder.<sup>7</sup> Under Maryland law, the Declaration of Trust and Bylaws represent contractual obligations of the Proponent and the Company and govern the relationship between the two, including the matters that may be voted upon and the process under which a shareholder may or may not propose an item for shareholder action.

Because the procedure for nomination of individuals for election to the Board is within the exclusive purview of the Board, as it is a management decision regarding the governance of the Company that can be changed exclusively by the Board without any action or vote of the shareholders of the Company, the matters contemplated by the Proposal, as well as the Proposal itself, is a matter on which the shareholders of the Company are not entitled to vote pursuant to Sections 2.17 and 14.1 of the Bylaws. There is no provision of the Maryland REIT Law, the Declaration of Trust or the Bylaws which authorizes or requires shareholders to vote on the Proposal or the subject matter of the Proposal. As a result, the Proposal is not a proper subject for action by the Company’s shareholders at the Company’s 2018 Annual Meeting of

<sup>5</sup> See Section 14.1 of the Bylaws.

<sup>6</sup> See *Tackney v. U.S. Naval Acad. Alumni Ass’n, Inc.*, 408 Md. 700, 716 (2009).

<sup>7</sup> *Corvex Management I.P.*, 2013 WL 1915769. Importantly, the court noted that it was binding on all shareholders, whether the amendment was adopted prior to or after the party became a shareholder.

Shareholders under applicable Maryland law.<sup>8</sup>

B. The Shares Held By the Proponent Are Not Entitled To Vote on the Proposal Under Maryland Law

Because the Proposal is not a proper subject for action by the Company's shareholders under Section 2.17 of the Bylaws, the shares held by the Proponent are not entitled under applicable Maryland law to vote on the Proposal at the Company's 2018 Annual Meeting of Shareholders.

C. Requiring the Board to Include The Proposal In The 2018 Proxy Statement May Cause The Board To Violate Maryland Law

The Bylaws definitively state that shareholders are not entitled to vote on matters that are within the exclusive purview of the Board. The Proposal calls upon the Company's shareholders to vote upon a matter that is within the exclusive purview of the Board and can be modified by the Board without any action by the shareholders of the Company. Therefore, the Proposal is not a proper matter that could be brought before the Company's 2018 Annual Meeting of Shareholders.

If the Board is required to include the Proposal in the 2018 Proxy Materials and to bring this matter before the shareholders in violation of the terms of the Bylaws when the Board has not deemed the Proposal to be advisable and in the best interests of the Company, then the Board would be prevented from properly exercising its duties under the Maryland REIT Law.<sup>9</sup> Maryland law requires the trustees to exercise independent judgment in the performance of their duties. If the Board is required to include the Proposal in the 2018 Proxy Materials and to permit the shareholders to vote on the Proposal in violation of Section 2.17 of the Bylaws without the Board having determined that such action was in the best interests of the Company, it may constitute a violation of the Board's duties to the Company and, accordingly, a violation of applicable Maryland law.

### III. Opinion

Based upon the foregoing analysis and subject to the limitations, assumptions and qualifications set forth in this letter, it is our opinion, as of the date of this letter, that: (1) the Proposal is not a proper subject for action by the Company's shareholders under Maryland law;

---

<sup>8</sup> See generally American Bar Association, Handbook for the Conduct of Shareholders' Meetings 62 (2nd ed. 2010) (stating that shareholder proposals raised before an annual meeting may be excluded from the agenda if they are improper and further stating that subject matters within the exclusive provinces of the board are improper and may be excluded).

<sup>9</sup> Namely, to act (1) in good faith; (2) in a manner he or she reasonably believes to be in the best interests of the REIT; and (3) with the care that an ordinarily prudent person in a like position would use under similar circumstances. Section 8-601.1 of the Maryland REIT Law states that except as otherwise provided in the Maryland REIT Law or the declaration of trust, Section 2-405.1(c) of the MGCL shall apply to a Maryland REIT. The Declaration of Trust does not articulate an alternative standard of conduct and, therefore, Section 2-405.1(c) of the MGCL applies to the Company and the its trustees.

(2) the shares held by the Proponent are not entitled under applicable Maryland law to vote on the Proposal; and (3) requiring the Board to include the Proposal in the 2018 Proxy Materials may cause the Board to violate Maryland law.

The foregoing opinions are limited to the laws of the State of Maryland and we do not express any opinion herein concerning any other state or federal laws. We express no opinion as to the applicability or effect of any securities laws. Furthermore, the foregoing opinions are limited to the matters specifically set forth herein and no other opinions shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this letter if any provision of Maryland law, or any judicial interpretation of any provisions of Maryland law, changes after the date hereof.

The opinions presented in this letter are solely for your use in connection with the Proposal, the Supporting Statement and your stated intention to exclude the Proposal and the Supporting Statement from the 2018 Proxy Materials (the "**Purpose**"). Without our written consent, this letter and the opinions herein may not be (i) used by you for anything other than the Purpose, (ii) furnished to any third party or (iii) relied upon by any other person or entity. Notwithstanding the foregoing, you may furnish a copy of this letter to the Staff of the Securities and Exchange commission (the "**Staff**") in connection with the Purpose and/or Skadden, Arps, Slate, Meagher & Flom LLP ("**Skadden**"). Skadden (a) may use this letter and rely upon it, in connection with any correspondence on your behalf that relates to the Purpose and (b) furnish or quote this letter, on your behalf, to the Staff in connection with any correspondence with the Staff on your behalf that relates to the Purpose. Further, we consent to you or, on your behalf, Skadden furnishing a copy of this letter to the Staff and the Proponent in connection with a request by you or, on your behalf, Skadden for confirmation of no-action by the Staff with respect to the Purpose.

Very truly yours,

SAUL EWING ARNSTEIN & LEHR LLP

*Saul Ewing Arnstein & Lehr LLP*

**Exhibit C**

(see attached)



HOSPITALITY PROPERTIES TRUST

Amended and Restated  
Declaration of Trust

May 12, 1995  
As Amended and Restated on August 21, 1995

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AMENDED AND RESTATED  
DECLARATION OF TRUST

OF

HOSPITALITY PROPERTIES TRUST

May 12, 1995

As Amended and Restated on August 21, 1995

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The Declaration of Hospitality Properties Trust, as filed with the Maryland Department of Assessments and Taxation on May 12, 1995 is hereby amended and restated as follows:

DECLARATION OF TRUST made as of the date set forth above by the undersigned Trustees.

WITNESSETH:

WHEREAS, the Trustees desire to create a trust for the principal purpose of investing in real property and interests therein; and

WHEREAS, the Trustees desire that such trust qualify as a "qualified REIT subsidiary" as long as it shall remain wholly owned by Health and Retirement Properties Trust ("HRP") and, thereafter, as a "real estate investment trust" under the REIT Provisions of the Internal Revenue Code, and as a "real estate investment trust" under Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland; and

WHEREAS, in furtherance of such purpose the Trustees intend to acquire certain real property and interests therein and to hold, manage and dispose of all such property as Trustees in the manner hereinafter stated; and

WHEREAS, it is proposed that the beneficial interest in the Trust be divided into transferable Shares of Beneficial Interest, evidenced by certificates therefor, as hereinafter provided;

NOW, THEREFORE, it is hereby agreed and declared that the Trustees will hold any and all property of every type and description which they are acquiring or may hereafter acquire as Trustees, together with the proceeds thereof, in trust, to manage and dispose of the same for the benefit of the holders from time

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to time of the Shares of Beneficial Interest being issued and to be issued hereunder in the manner and subject to the stipulations contained herein.

## ARTICLE I

### THE TRUST; DEFINITIONS

1.1 Name. The name of the Trust created by this Declaration of Trust shall be "Hospitality Properties Trust" and so far as may be practicable the Trustees shall conduct the Trust's activities, execute all documents and sue or be sued under that name, which name (and the word "Trust" wherever used in this Declaration of Trust, except where the context otherwise requires) shall refer to the Trustees collectively but not individually or personally nor to the officers, agents, employees or Shareholders of the Trust or of such Trustees. Under circumstances under which the Trustees determine that the use of such name is not practicable or under circumstances in which the Trustees are contractually bound to change that name, they may use such other designation or they may adopt another name under which the Trust may hold property or conduct its activities.

1.2 Places of Business. The Trust shall maintain an office in Maryland at The Prentice-Hall Corporation System, Maryland, 11 East Chase Street, Baltimore City, Maryland, 21202 or such other place in Maryland as the Trustees may determine from time to time. The Resident Agent of the Trust at such office shall be The Prentice-Hall Corporation System, Maryland. The Trust may change such Resident Agent from time to time as the Trustees shall determine. The Trust may have such other offices or places of business within or without the State of Maryland as the Trustees may from time to time determine.

1.3 Nature of Trust. The Trust shall be a real estate investment trust within the meaning of Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland. It is also intended that the Trust shall carry on a business as a "qualified REIT subsidiary" as described in the REIT Provisions of the Internal Revenue Code for so long as it is wholly owned by HRP and thereafter shall qualify and carry on business as a "real estate investment trust" as described therein. The Trust is not intended to be, shall not be deemed to be, and shall not be treated as a general partnership, limited partnership, joint venture, corporation or joint stock company (but nothing herein shall preclude the Trust from being treated

for tax purposes as an association under the Internal Revenue Code); nor shall the Trustees or Shareholders or any of them for any purpose be, nor be deemed to be, nor be treated in any way whatsoever as, liable or responsible hereunder as partners or joint venturers. The relationship of the Shareholders to the Trustees shall be solely that of beneficiaries of the Trust in accordance with the rights conferred upon them by this Declaration.

1.4 Definitions. The terms defined in this Section 1.4, wherever used in this Declaration, shall, unless the context otherwise requires, have the respective meanings hereinafter specified. Whenever the singular number is used in this Declaration and when permitted by the context, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa. Where applicable, calculations to be made pursuant to any such definition shall be made in accordance with generally accepted accounting principles as in effect from time to time except as otherwise provided in such definition.

(a) Advisor. "Advisor" shall mean HRPT Advisors, Inc., a Delaware corporation, or such other Person as the Trustees shall from time to time engage to supervise the operation of the Trust and to provide the Trust with a program of investments.

(b) Affiliate. "Affiliate" shall mean, as to any Person, (i) any other Person who, at the time of determination, is directly or indirectly controlling, controlled by or under common control with such Person, (ii) any other Person who, at such time, owns beneficially, directly or indirectly, five percent (5%) or more of the outstanding capital stock, shares or equity interests of such Person, or (iii) any Person who is at the time of determination an officer, director, employee, general partner or trustee of any such Person or of any Person who, at such time, is controlling, controlled by or under common control with such Person (excluding any trustee who is not otherwise an Affiliate of such Person).

(c) Annual Meeting of Shareholders. "Annual Meeting of Shareholders" shall mean the meeting described in the first sentence of Section 5.9.

(d) Annual Report. "Annual Report" shall have the meaning set forth in Section 5.11(a).

(e) Book Value. "Book Value" of an asset or assets shall mean the value of such asset or assets of the Trust on the books of the Trust, without deduction for depreciation or other asset valuation reserves and without deduction for mortgages or other security interests to which such asset or assets are subject, except that no asset shall be valued at more than its fair market value as determined by or under procedures adopted by the Trustees, and the underlying assets of a partnership, joint venture or other form of indirect ownership, to the extent of the Trust's interest therein, shall be valued as if owned directly by the Trust.

(f) Bylaws. "Bylaws" shall have the meaning set forth in Section 3.3.

(g) Declaration. "Declaration" or "this Declaration" shall mean this Declaration of Trust, as amended, restated or modified from time to time. The use in this Declaration of "herein" and "hereunder" shall be deemed to refer to this Declaration and shall not be limited to the particular text, article or section in which such words appear.

(h) Independent Trustee: "Independent Trustee" shall mean a Trustee who is not then an officer of the Trust or an Affiliate of either HRP or the Advisor.

(i) Internal Revenue Code. "Internal Revenue Code" shall mean the Internal Revenue Code of 1986, as now enacted or hereafter amended, or successor statutes and applicable rules and regulations thereunder.

(j) Invested Assets. "Invested Assets" shall mean the Book Value of all the Real Estate Investments of the Trust.

(k) Mortgage Loans. "Mortgage Loans" shall mean notes, debentures, bonds and other evidences of indebtedness or obligations, whether negotiable or non-negotiable, which are secured or collateralized by Mortgages.

(l) Mortgages. "Mortgages" shall mean mortgages, deeds of trust or other security interests in Real Property.

(m) Person. "Person" shall mean and include individuals, corporations, limited partnerships, general partnerships, joint stock companies or associations, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business

trusts and other entities and governments and agencies and political subdivisions thereof.

(n) Real Estate Investment. "Real Estate Investment" shall mean any direct or indirect investment in any interest in Real Property or in any Mortgage Loan, or in any Person whose principal purpose is to make any such investment.

(o) Real Property. "Real Property" shall mean and include land, leasehold interests (including but not limited to interests of a lessor or lessee therein), rights and interests in land, and in any buildings, structures, improvements, furnishings and fixtures located on or used in connection with land or interests therein, but does not include investments in Mortgages, Mortgage Loans or interests therein.

(p) REIT. "REIT" shall mean a real estate investment trust as defined in the REIT Provisions of the Internal Revenue Code.

(q) REIT Provisions of the Internal Revenue Code. "REIT Provisions of the Internal Revenue Code" shall mean Parts II and III of Subchapter M of Chapter 1 of Subtitle A of the Internal Revenue Code or any successor provision.

(r) Securities. "Securities" shall mean any stock, shares, voting trust certificates, bonds, debentures, notes or other evidences of indebtedness or in general any instruments commonly known as "securities" or any certificates of interest, shares or participations in, temporary or interim certificates for, receipts for, guarantees of, or warrants, options or rights to subscribe to, purchase or acquire any of the foregoing.

(s) Shareholders. "Shareholders" shall mean as of any particular time all holders of record of outstanding Shares at such time.

(t) Shares. "Shares" or, as the context may require, "shares" shall mean the shares of beneficial interest of the Trust as described in Section 5.1 hereof.

(u) Trust. "Trust" shall mean the Trust created by this Declaration.

(v) Trustees. "Trustees" shall mean, as of any particular time, the original signatories hereto as long as they hold office hereunder and additional and successor Trustees, and shall not include the officers, employees or agents of the Trust or the

Shareholders. Nothing herein shall be deemed to preclude the Trustees from also serving as officers, employees or agents of the Trust or owning Shares.

(w) Trust Estate. "Trust Estate" shall mean as of any particular time any and all property, real, personal or otherwise, tangible or intangible, which is transferred, conveyed or paid to or purchased by the Trust or Trustees and all rents, income, profits and gains therefrom and which at such time is owned or held by or for the Trust or the Trustees.

## ARTICLE II

### TRUSTEES

#### 2.1 Number, Term of Office and Qualifications of Trustees.

(a) (i) The number of Trustees initially need not be more than one (1).

(ii) If a Person other than HRP acquires any Shares of Beneficial Interest of the Trust, the number of Trustees shall thenceforth be no fewer than three (3) and no more than seven (7). Upon acquisition by a Person other than HRP of any such Shares, the exact number of Trustees shall be five (5) until changed by a two-thirds (2/3) vote of the Trustees or by an amendment of this Declaration duly adopted by holders of two-thirds (2/3) of the outstanding Shares entitled to vote. Any vacancies in the Board of Trustees created thereby shall be filled by a majority of the Trustees then in office. The Board of Trustees thus constituted shall be classified into three groups, with two (2) Trustees in Group I, two (2) Trustees in Group II, and one (1) Trustee in Group III. The Trustee in Group III shall serve for a term ending at the next annual meeting of Shareholders after such acquisition of Shares by a Person other than HRP; each Trustee in Group II shall serve for a term ending at the following annual meeting of Shareholders; and each Trustee in Group I shall serve for a term ending at the second following annual meeting of Shareholders. After the respective terms of the groups indicated, each such group of Trustees shall be elected for successive terms ending at the annual meeting of Shareholders held during the third year after election.

A majority of the Trustees holding office subject to the foregoing provisions of this paragraph (ii) shall at all times be Independent Trustees; provided, however, that upon a failure to

comply with this requirement as a result of the creation of a vacancy which must be filled by an Independent Trustee, whether as a result of enlargement of the Board of Trustees or the resignation, removal or death of a Trustee who is an Independent Trustee, such requirement shall not be applicable for a period of ninety (90) days.

(b) The names and business addresses of the initial Trustees, who shall serve as Trustees until the first annual meeting of Shareholders (unless their terms shall be otherwise classified pursuant to Section 2.1(a)(ii)) and until their successors shall have been elected and qualified are as follows:

<u>Name</u>	<u>Address</u>
Barry M. Portnoy	Sullivan & Worcester One Post Office Square Boston, MA 02109
Gerard M. Martin	M & P Partners Limited Partnership 400 Centre Street Newton, MA 02158

The initial Trustees shall be the signatories hereto. No reduction in the number of Trustees shall have the effect of removing any Trustee from office prior to the expiration of his term. Subject to the provisions of Section 2.3, each Trustee shall hold office until the election and qualification of his successor. There shall be no cumulative voting in the election of Trustees. A Trustee shall be an individual at least twenty-one (21) years of age who is not under legal disability. Unless otherwise required by law, no Trustee shall be required to give bond, surety or security in any jurisdiction for the performance of any duties or obligations hereunder. The Trustees in their capacity as Trustees shall not be required to be Shareholders or to devote their entire time to the business and affairs of the Trust.

2.2 Compensation and Other Remuneration. The Trustees shall be entitled to receive such reasonable compensation for their services as Trustees as the Trustees may determine from time to time. The Trustees and Trust officers shall be entitled to receive remuneration for services rendered to the Trust in any other capacity. Subject to Sections 6.6 and 6.7, such services may include, without limitation, services as an officer of the Trust, legal, accounting or other professional services, or

services as a broker, transfer agent or underwriter, whether performed by a Trustee or any Person affiliated with a Trustee.

2.3 Resignation, Removal and Death of Trustees. A Trustee may resign at any time by giving written notice to the remaining Trustees at the principal office of the Trust. Such resignation shall take effect on the date specified in such notice, without need for prior accounting. A Trustee may be removed at any time with or without cause by the affirmative vote either of all the remaining Trustees or of the holders of Shares representing two-thirds of the total votes authorized to be cast by Shares then outstanding and entitled to vote thereon, voting as a single class. A Trustee judged incompetent or for whom a guardian or conservator has been appointed shall be deemed to have resigned as of the date of such adjudication or appointment. Upon the resignation or removal of any Trustee, or his otherwise ceasing to be a Trustee, he shall execute and deliver such documents as the remaining Trustees shall require for the conveyance of any Trust property held in his name, shall account to the remaining Trustees as they require for all property which he holds as Trustee and shall thereupon be discharged as Trustee. Upon the incapacity or death of any Trustee, his legal representative shall perform the acts set forth in the preceding sentence and the discharge mentioned therein shall run to such legal representative and to the incapacitated Trustee or the estate of the deceased Trustee, as the case may be.

2.4 Vacancies. If any or all the Trustees cease to be Trustees hereunder, whether by reason of resignation, removal, incapacity, death or otherwise, such event shall not terminate the Trust or affect its continuity. Until vacancies are filled, the remaining Trustee or Trustees (even though fewer than three (3)) may exercise the powers of the Trustees hereunder. Vacancies (including vacancies created by increases in number) may be filled by the remaining Trustee or by a majority of the remaining Trustees. If at any time there shall be no Trustees in office, successor Trustees shall be elected by the Shareholders as provided in Section 5.9. Any Trustee elected to fill a vacancy created by the resignation, removal or death of a former Trustee shall hold office for the unexpired term of such former Trustee.

2.5 Successor and Additional Trustees. The right, title and interest of the Trustees in and to the Trust Estate shall also vest in successor and additional Trustees upon their qualification, and they shall thereupon have all the rights and obligations of Trustees hereunder. Such right, title and interest shall vest in the Trustees whether or not conveyancing

documents have been executed and delivered pursuant to Section 2.3 or otherwise. Appropriate written evidence of the election and qualification of successor and additional Trustees shall be filed with the records of the Trust and in such other offices or places as the Trustees may deem necessary, appropriate or desirable.

2.6 Actions by Trustees. The Trustees may act with or without a meeting. A quorum for all meetings of the Trustees shall be a majority of the Trustees; provided, however, that, whenever pursuant to Section 6.7 or otherwise the vote of a majority of a particular group of Trustees is required at a meeting, a quorum for such meeting shall be a majority of the Trustees which shall include a majority of such group. Unless specifically provided otherwise in this Declaration, any action of the Trustees may be taken at a meeting by vote of a majority of the Trustees present (a quorum being present) or without a meeting by written consents of a majority of the Trustees, which consents shall be filed with the records of meetings of the Trustees. Any action or actions permitted to be taken by the Trustees in connection with the business of the Trust may be taken pursuant to authority granted by a meeting of the Trustees conducted by a telephone conference call, and the transaction of Trust business represented thereby shall be of the same authority and validity as if transacted at a meeting of the Trustees held in person or by written consent. The minutes of any Trustees' meeting held by telephone shall be prepared in the same manner as a meeting of the Trustees held in person. The acquisition or disposition of any investment (other than investments in short-term investment Securities described in Section 4.1) shall require the approval of a majority of Trustees, except as otherwise provided in Section 6.7. Any agreement, deed, mortgage, lease or other instrument or writing executed by one or more of the Trustees or by any authorized Person shall be valid and binding upon the Trustees and upon the Trust when authorized or ratified by action of the Trustees or as provided in the Bylaws.

With respect to the actions of the Trustees, Trustees who have, or are Affiliates of Persons who have, any direct or indirect interest in or connection with any matter being acted upon may be counted for all quorum purposes under this Section 2.6 and, subject to the provisions of Section 6.7, may vote on the matter as to which they or their Affiliates have such interest or connection.

2.7 Committees. The Trustees may appoint an audit committee and such other standing committees as the Trustees determine. Each standing committee shall consist of two (2) or more members; provided, however, that the Trustees may appoint a standing committee consisting of at least one Trustee and two non-Trustees. Each committee shall have such powers, duties and obligations as the Trustees may deem necessary or appropriate. The standing committees shall report their activities periodically to the Trustees.

### ARTICLE III

#### TRUSTEES' POWERS

3.1 Power and Authority of Trustees. The Trustees, subject only to the specific limitations contained in this Declaration, shall have, without further or other authorization, and free from any power or control on the part of the Shareholders, full, absolute and exclusive power, control and authority over the Trust Estate and over the business and affairs of the Trust to the same extent as if the Trustees were the sole owners thereof in their own right, and may do all such acts and things as in their sole judgment and discretion are necessary for or incidental to or desirable for carrying out or conducting the business of the Trust. Any construction of this Declaration or any determination made in good faith by the Trustees as to the purposes of the Trust or the existence of any power or authority hereunder shall be conclusive. In construing the provisions of this Declaration, the presumption shall be in favor of the grant of powers and authority to the Trustees. The enumeration of any specific power or authority herein shall not be construed as limiting the aforesaid powers or the general powers or authority or any other specified power or authority conferred herein upon the Trustees.

3.2 Specific Powers and Authority. Subject only to the express limitations contained in this Declaration and in addition to any powers and authority conferred by this Declaration or which the Trustees may have by virtue of any present or future statute or rule or law, the Trustees without any action or consent by the Shareholders shall have and may exercise at any time and from time to time the following powers and authorities which may or may not be exercised by them in their sole judgment and discretion and in such manner and upon such terms and conditions as they may from time to time deem proper:

(a) to retain, invest and reinvest the capital or other funds of the Trust in, and to acquire, purchase, or own, real or personal property of any kind, whether tangible or intangible, wherever located in the world, and make commitments for such investments, all without regard to whether any such property is authorized by law for the investment of trust funds or produces or may produce income; to possess and exercise all the rights, powers and privileges appertaining to the ownership of the Trust Estate; and to increase the capital of the Trust at any time by the issuance of any additional authorized Shares or other Securities of the Trust for such consideration as they deem advisable;

(b) without limitation of the powers set forth in subsection (a) above, to invest in, purchase or otherwise acquire for such consideration as they deem proper, in cash or other property or through the issuance of shares or through the issuance of notes, debentures, bonds or other obligations of the Trust, and to hold for investment, the entire or any participating interests in any Mortgage Loans or interest in Real Property, including ownership of, or participations in the ownership of, or rights to acquire, equity interests in Real Property or in Persons owning, developing, improving, operating or managing Real Property, which interests may be acquired independently of or in connection with other investment activities of the Trust and, in the latter case, may include rights to receive additional payments based on gross income or rental or other income from the Real Property or improvements thereon; and to invest in loans secured by the pledge or transfer of Mortgage Loans;

(c) to sell, rent, lease, hire, exchange, release, partition, assign, mortgage, pledge, hypothecate, grant security interests in, encumber, negotiate, convey, transfer or otherwise dispose of any and all the Trust Estate by deeds (including deeds in lieu of foreclosure), trust deeds, assignments, bills of sale, transfers, leases, mortgages, financing statements, security agreements and other instruments for any of such purposes executed and delivered for and on behalf of the Trust or the Trustees by one or more of the Trustees or by a duly authorized officer, employee, agent or nominee of the Trust;

(d) to issue Shares, bonds, debentures, notes or other evidences of indebtedness, which may be secured or unsecured

and may be subordinated to any indebtedness of the Trust, to such Persons for such cash, property or other consideration (including Securities issued or created by, or interests in, any Person); at such time or times and on such terms as the Trustees may deem advisable and to list any of the foregoing Securities issued by the Trust on any securities exchange and to purchase or otherwise acquire, hold, cancel, reissue, sell and transfer any of such Securities, and to cause the instruments evidencing such Securities to bear an actual or facsimile imprint of the seal of the Trust (if the Trustees shall have adopted such a seal) and to be signed by manual or facsimile signature or signatures (and to issue such Securities, whether or not any Person whose manual or facsimile signature shall be imprinted thereon shall have ceased to occupy the office with respect to which such signature was authorized), provided that, where only facsimile signatures for the Trust are used, the instrument shall be countersigned manually by a transfer agent, registrar or other authentication agent; and to issue any of such Securities of different types in combinations or units with such restrictions on the separate transferability thereof as the Trustees shall determine;

(e) to enter into leases of real and personal property as lessor or lessee and to enter into contracts, obligations and other agreements for a term, and to invest in obligations having a term, extending beyond the term of office of the Trustees and beyond the possible termination of the Trust, or having a lesser term;

(f) to borrow money and give negotiable or non-negotiable instruments therefor; or guarantee, indemnify or act as surety with respect to payment or performance of obligations of third parties; to enter into other obligations on behalf of the Trust; and to assign, convey, transfer, mortgage, subordinate, pledge, grant security interest in, encumber or hypothecate the Trust Estate to secure any indebtedness of the Trust or any other of the foregoing obligations of the Trust;

(g) to lend money, whether secured or unsecured;

(h) to create reserve funds for any purpose;

(i) to incur and pay out of the Trust Estate any charges or expenses, and to disburse any funds of the Trust, which charges, expenses or disbursements are, in the opinion

of the Trustees, necessary or incidental to or desirable for the carrying out of any of the purposes of the Trust or conducting the business of the Trust, including without limitation taxes and other governmental levies, charges and assessments, of whatever kind or nature, imposed upon or against the Trustees in connection with the Trust or the Trust Estate or upon or against the Trust Estate or any part hereof, and for any of the purposes herein;

(j) to deposit funds of the Trust in banks, trust companies, savings and loan associations and other depositories, whether or not such deposits will draw interest, the same to be subject to withdrawal on such terms and in such manner and by such Person or Persons (including any one or more Trustees or officers, employees or agents, of the Trust) as the Trustees may determine;

(k) to possess and exercise all the rights, powers and privileges pertaining to the ownership of all or any Mortgages or Securities issued or created by, or interests in, any Person, forming part of the Trust Estate, to the same extent that an individual might do so, and, without limiting the generality of the foregoing, to vote or give any consent, request or notice, or waive any notice, either in person or by proxy or power of attorney, with or without power of substitution, to one or more Persons, which proxies and powers of attorney may be for meetings or action generally or for any particular meeting or action, and may include the exercise of discretionary powers;

(l) to cause to be organized or assist in organizing any Person under the laws of any jurisdiction to acquire the Trust Estate or any part or parts thereof or to carry on any business in which the Trust shall directly or indirectly have any interest, and to sell, rent, lease, hire, convey, negotiate, assign, exchange or transfer the Trust Estate or any part or parts thereof to or with any such Person or any existing Person in exchange for the Securities thereof or otherwise, and to merge or consolidate the Trust with or into any Person or merge or consolidate any Person into the Trust, and to lend money to, subscribe for the Securities of, and enter into any contracts with, any Person in which the Trust holds or is about to acquire Securities or any other interest;

(m) to enter into joint ventures, general or limited partnerships, participation or agency arrangements and any

other lawful combinations or associations, and to act as a general or limited partner;

(n) to elect, appoint, engage or employ such officers for the Trust as the Trustees may determine, who may be removed or discharged at the discretion of the Trustees, such officers to have such powers and duties, and to serve such terms, as may be prescribed by the Trustees or by the Bylaws; to engage or employ any Persons (including, subject to the provisions of Sections 6.6 and 6.7, any Trustee or officer, agent or employee of the Trust and any Person in which any Trustee, officer or agent is directly or indirectly interested or with which he is directly or indirectly connected) as agents, representatives, employees, or independent contractors (including without limitation real estate advisors, investment advisors, transfer agents, registrars, underwriters, accountants, attorneys at law, real estate agents, managers, appraisers, brokers, architects, engineers, construction managers, general contractors or otherwise) in one or more capacities, and to pay compensation from the Trust for services in as many capacities as such Person may be so engaged or employed; and to delegate any of the powers and duties of the Trustees to any one or more Trustees, agents, representatives, officers, employees, independent contractors or other Persons;

(o) to determine or cause to be determined from time to time the value of all or any part of the Trust Estate and of any services, Securities, property or other consideration to be furnished to or acquired by the Trust, and from time to time to revalue or cause to be revalued all or any part of the Trust Estate in accordance with such appraisals or other information as are, in the Trustees' sole judgment, necessary and/or satisfactory;

(p) to collect, sue for and receive all sums of money coming due to the Trust, and to engage in, intervene in, prosecute, join, defend, compromise, abandon or adjust, by arbitration or otherwise, any actions, suits, proceedings, disputes, claims, controversies, demands or other litigation relating to the Trust, the Trust Estate or the Trust's affairs, to enter into agreements therefor, whether or not any suit is commenced or claim accrued or asserted and, in advance of any controversy, to enter into agreements regarding arbitration, adjudication or settlement thereof;

(q) to renew, modify, release, compromise, extend, consolidate or cancel, in whole or in part, any obligation to or of the Trust or participate in any reorganization of obligors to the Trust;

(r) to self-insure or to purchase and pay for out of the Trust Estate insurance contracts and policies, including contracts of indemnity, insuring the Trust Estate against any and all risks and insuring the Trust and/or all or any of the Trustees, the Shareholders, or the officers, employees or agents of the Trust or Persons who may directly or indirectly control the Trust against any and all claims and liabilities of every nature asserted by any Person arising by reason of any action alleged to have been taken or omitted by the Trust or by the Trustees, Shareholders, officers, employees agents or controlling Persons whether or not the Trust would have the power to indemnify such Person or Persons against any such claim or liability;

(s) to cause legal title to any of the Trust Estate to be held by and/or in the name of the Trustees, or, except as prohibited by law, by and/or in the name of the Trust or one or more of the Trustees or any other Person, on such terms, in such manner and with such powers in such Person as the Trustees may determine, and with or without disclosure that the Trust or Trustees are interested therein;

(t) to adopt a fiscal year for the Trust, and from time to time to change such fiscal year;

(u) to adopt and use a seal (but the use of a seal shall not be required for the execution of instruments or obligations of the Trust);

(v) to the extent permitted by law, to indemnify or enter into agreements with respect to indemnification with any Person with which the Trust has dealings, including without limitation any broker/dealer, investment bank, investment advisor or independent contractor, to such extent as the Trustees shall determine;

(w) to confess judgment against the Trust;

(x) to discontinue the operations of the Trust;

(y) to repurchase or redeem Shares and other Securities issued by the Trust;

(z) to declare and pay dividends or distributions, consisting of cash, property or Securities, to the holders of Shares of the Trust out of any funds legally available therefor; and

(aa) to do all other such acts and things as are incident to the foregoing, and to exercise all powers which are necessary or useful to carry on the business of the Trust and to carry out the provisions of this Declaration.

3.3 Bylaws. The Trustees may make or adopt and from time to time amend or repeal Bylaws (the "Bylaws") not inconsistent with law or with this Declaration, containing provisions relating to the business of the Trust and the conduct of its affairs and in such Bylaws may define the duties of the officers, employees and agents of the Trust.

#### ARTICLE IV

##### INVESTMENT POLICY AND POLICIES WITH RESPECT TO CERTAIN DISTRIBUTIONS TO SHAREHOLDERS

4.1 Statement of Policy. It shall be the general objectives of the Trust (i) to provide current income for distribution to Shareholders through investments in income-producing hotels and hospitality-related facilities and other real estate investments and (ii) to provide Shareholders with the opportunity for additional returns from a percentage of gross revenues generated by the investment properties.

The Trust may make secured borrowings to make permitted additional Real Estate Investments and secured or unsecured borrowings for normal working capital needs, including the repair and maintenance of properties in which it has invested, tenant improvements and leasing commissions. The Trust may make such borrowings from third parties or from Affiliates of the Advisor. Interest and other financing charges or fees to be paid on loans from such Affiliates will not exceed the interest and other financing charges or fees which would be charged by third party financing institutions on comparable loans for the same purpose in the same geographic area.

To the extent that the Trust Estate has assets not otherwise invested in accordance with this Section 4.1, it shall be the

policy of the Trustees to invest such assets in investments selected by the Trustees or the Advisor which are consistent with the Trust's intention to qualify as a REIT under the Internal Revenue Code.

It shall be the policy of the Trustees to make investments and to conduct the business of the Trust in such manner as to qualify as a REIT and to comply with the requirements of the Internal Revenue Code with respect to the composition of investments and the derivation of the income of a real estate investment trust as defined in the REIT Provisions of the Internal Revenue Code; provided, however, that no Trustee, officer, employee or agent of the Trust shall be liable for any act or omission resulting in the loss of tax benefits under the Internal Revenue Code, except for that arising from his own wilful misfeasance, bad faith, gross negligence or reckless disregard of duty.

4.2 Prohibited Investments and Activities. The Trustees shall not:

(a) engage in any undertaking or activity that would disqualify the Trust as a real estate investment trust under the provisions of the Internal Revenue Code as long as a real estate investment trust is accorded substantially the same treatment or benefits under the United States tax laws from time to time in effect as under Sections 856-860 of the Internal Revenue Code at the date of adoption of this Declaration; and/or

(b) use or apply land for farming, agriculture, horticulture or similar purposes in violation of Section 8-302(b) of the Corporations and Associations Article of the Annotated Code of Maryland.

4.3 Change in Investment Policies. The investment policies set out in this Article IV may be changed by a vote of a majority of the Trustees.

## ARTICLE V

### THE SHARES AND SHAREHOLDERS

5.1 Description of Shares. The interest of the Shareholders shall be divided into 200,000,000 shares of beneficial interest which shall be known collectively as "Shares", all of which shall be validly issued, fully paid and

non-assessable by the Trust upon receipt of full consideration for which they have been issued or without additional consideration if issued by way of share dividend or share split. There shall be two classes of Shares: 100,000,000 shares of one such class shall be known as "Common Shares", \$.01 par value per share, and 100,000,000 shares of the other such class shall be known as "Preferred Shares". Each holder of Shares shall as a result thereof be deemed to have agreed to and be bound by the terms of this Declaration. The Shares may be issued for such consideration as the Trustees shall deem advisable. The Trustees are hereby expressly authorized at any time, and from time to time, to provide for issuance of Shares upon such terms and conditions and pursuant to such arrangements as the Trustees may determine.

The Trustees are hereby expressly authorized at any time, and from time to time, without Shareholder approval, to set (or change if such class has previously been established) the par value, preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends, qualifications, or terms, or conditions of redemption, of the Preferred Shares, and such Preferred Shares may further be divided by the Trustees into classes or series.

Except as otherwise determined by the Trustees with respect to any class or series of Preferred Shares, the holders of Shares shall be entitled to the rights and powers hereinafter set forth in this Section 5.1: The holders of Shares shall be entitled to receive, when and as declared from time to time by the Trustees out of any funds legally available for the purpose, such dividends or distributions as may be declared from time to time by the Trustees. In the event of the termination of the Trust pursuant to Section 7.1 or otherwise, or upon the distribution of its assets, the assets of the Trust available for payment and distribution to Shareholders shall be distributed ratably among the holders of Shares at the time outstanding in accordance with Section 7.2. All Shares shall have equal non-cumulative voting rights at the rate of one vote per Share, and equal dividend, distribution, liquidation and other rights, and shall have no preference, conversion, exchange, sinking fund or redemption rights. Absent a contrary written agreement of the Trust authorized by the Trustees, and notwithstanding any other determination by the Trustees with respect to any class or series of Preferred Shares, no holder of Shares or Preferred Shares shall be entitled as a matter of right to subscribe for or purchase any part of any new or additional issue of Shares of any class whatsoever of the Trust or of securities convertible into

any shares of any class whatsoever of the Trust, whether now or hereafter authorized and whether issued for cash or other consideration or by way of dividend.

5.2 Certificates. Ownership of Shares shall be evidenced by certificates. Every Shareholder shall be entitled to receive a certificate, in such form as the Trustees shall from time to time approve, specifying the number of Shares of the applicable class held by such Shareholder. Subject to Sections 5.6 and 5.14(c) hereof, such certificates shall be treated as negotiable and title thereto and to the Shares represented thereby shall be transferred by delivery thereof to the same extent in all respects as a stock certificate, and the Shares represented thereby, of a Maryland business corporation. Unless otherwise determined by the Trustees, such certificates shall be signed by the Chairman, if any, and the President and shall be countersigned by a transfer agent, and registered by a registrar if any, and such signatures may be facsimile signatures in accordance with Section 3.2(d) hereof. There shall be filed with each transfer agent a copy of the form of certificate so approved by the Trustees, certified by the Chairman, President, or Secretary, and such form shall continue to be used unless and until the Trustees approve some other form.

In furtherance of the provisions of Sections 5.1 and 5.14(c) hereof, each Certificate evidencing Shares shall contain a legend imprinted thereon to substantially the following effect or such other legend as the Trustees may from time to time adopt:

REFERENCE IS MADE TO THE DECLARATION OF TRUST OF THE TRUST FOR A STATEMENT OF ALL THE DESIGNATIONS, PREFERENCES, LIMITATIONS, AND RELATIVE RIGHTS OF EACH CLASS OR SERIES OF SHARES THAT THE TRUST IS AUTHORIZED TO ISSUE, THE VARIATIONS IN THE RELATIVE RIGHTS AND PREFERENCES OF ANY PREFERRED OR SPECIAL CLASS OF SHARES IN SERIES, TO THE EXTENT THEY HAVE BEEN FIXED AND DETERMINED, AND THE AUTHORITY OF THE TRUSTEES TO FIX AND DETERMINE THE RELATIVE RIGHTS AND PREFERENCES OF SUBSEQUENT SERIES. ANY SUCH STATEMENT SHALL BE FURNISHED WITHOUT CHARGE ON REQUEST TO THE TRUST AT ITS PRINCIPAL PLACE OF BUSINESS OR REGISTERED OFFICE.

IF NECESSARY TO EFFECT COMPLIANCE BY THE TRUST WITH REQUIREMENTS OF THE INTERNAL REVENUE CODE RELATING TO REAL ESTATE INVESTMENT TRUSTS, THE PURPORTED TRANSFER OF THE SHARES REPRESENTED BY THIS CERTIFICATE MAY BE PROHIBITED

AND/OR INVALIDATED UPON THE TERMS AND CONDITIONS SET FORTH IN THE DECLARATION OF TRUST. THE TRUST WILL FURNISH A COPY OF SUCH TERMS AND CONDITIONS TO THE REGISTERED HOLDER OF THIS CERTIFICATE UPON REQUEST AND WITHOUT CHARGE.

5.3 Fractional Shares. In connection with any issuance of Shares, the Trustees may issue fractional Shares or may adopt provisions for the issuance of scrip including, without limitation, the time within which any such scrip must be surrendered for exchange into full Shares and the rights, if any, of holders of scrip upon the expiration of the time so fixed, the rights, if any, to receive proportional distributions, and the rights, if any, to redeem scrip for cash, or the Trustees may in their discretion, or if they see fit at the option of, each holder, provide in lieu of scrip for the adjustment of the fractions in cash. The provisions of Section 5.2 hereof relative to certificates for Shares shall apply so far as applicable to such scrip, except that such scrip may in the discretion of the Trustees be signed by a transfer agent alone.

5.4 Legal Ownership of Trust Estate. The legal ownership of the Trust Estate and the right to conduct the business of the Trust are vested exclusively in the Trustees (subject to Section 3.2(s)), and the Shareholders shall have no interest therein (other than beneficial interest in the Trust conferred by their Shares issued hereunder) and they shall have no right to compel any partition, division, dividend or distribution of the Trust or any of the Trust Estate.

5.5 Shares Deemed Personal Property. The Shares shall be personal property and shall confer upon the holders thereof only the interest and rights specifically set forth or provided for in this Declaration. The death, insolvency or incapacity of a Shareholder shall not dissolve or terminate the Trust or affect its continuity nor give his legal representative any rights whatsoever, whether against or in respect of other Shareholders, the Trustees or the Trust Estate or otherwise, except the sole right to demand and, subject to the provisions of this Declaration, the Bylaws and any requirements of law, to receive a new certificate for Shares registered in the name of such legal representative, in exchange for the certificate held by such Shareholder.

5.6 Share Record; Issuance and Transferability of Shares. Records shall be kept by or on behalf of and under the direction of the Trustees, which shall contain the names and addresses of the Shareholders, the number of Shares held by them respectively,

and the numbers of the certificates representing the Shares, and in which there shall be recorded all transfers of Shares. The Trust, the Trustees and the officers, employees and agents of the Trust shall be entitled to deem the Persons in whose names certificates are registered on the records of the Trust to be the absolute owners of the Shares represented thereby for all purposes of the Trust; but nothing herein shall be deemed to preclude the Trustees or officers, employees or agents of the Trust from inquiring as to the actual ownership of Shares. Until a transfer is duly effected on the records of the Trust, the Trustees shall not be affected by any notice of such transfer, either actual or constructive.

Shares shall be transferable on the records of the Trust only by the record holder thereof or by his agent thereunto duly authorized in writing upon delivery to the Trustees or a transfer agent of the certificate or certificates therefor, properly endorsed or accompanied by duly executed instruments of transfer and accompanied by all necessary documentary stamps together with such evidence of the genuineness of each such endorsement, execution or authorization and of other matters as may reasonably be required by the Trustees or such transfer agent. Upon such delivery, the transfer shall be recorded in the records of the Trust and a new certificate for the Shares so transferred shall be issued to the transferee and in case of a transfer of only a part of the Shares represented by any certificate, a new certificate for the balance shall be issued to the transferor. Any Person becoming entitled to any Shares in consequence of the death of a Shareholder or otherwise by operation of law shall be recorded as the holder of such Shares and shall receive a new certificate therefor but only upon delivery to the Trustees or a transfer agent of instruments and other evidence required by the Trustees or the transfer agent to demonstrate such entitlement, the existing certificate for such Shares and such releases from applicable governmental authorities as may be required by the Trustees or transfer agent. In case of the loss, mutilation or destruction of any certificate for shares, the Trustees may issue or cause to be issued a replacement certificate on such terms and subject to such rules and regulations as the Trustees may from time to time prescribe. Nothing in this Declaration shall impose upon the Trustees or a transfer agent a duty, or limit their rights, to inquire into adverse claims.

5.7 Dividends or Distributions to Shareholders. Subject to Section 5.1, the Trustees may from time to time declare and pay to Shareholders such dividends or distributions in cash, property or assets of the Trust or Securities issued by the Trust, out of

current or accumulated income, capital, capital gains, principal, interest, surplus, proceeds from the increase or financing or refinancing of Trust obligations, or from the sale of portions of the Trust Estate or from any other source as the Trustees in their discretion shall determine. Shareholders shall have no right to any dividend or distribution unless and until declared by the Trustees. The Trustees shall furnish the Shareholders with a statement in writing advising as to the source of the funds so distributed not later than ninety (90) days after the close of the fiscal year in which the distribution was made.

5.8 Transfer Agent, Dividend Disbursing Agent and Registrar. The Trustees shall have power to employ one or more transfer agents, dividend disbursing agents and registrars (including the Advisor or its Affiliates) and to authorize them on behalf of the Trust to keep records to hold and to disburse any dividends or distributions and to have and perform, in respect of all original issues and transfers of Shares, dividends and distributions and reports and communications to Shareholders, the powers and duties usually had and performed by transfer agents, dividend disbursing agents and registrars of a Maryland business corporation.

5.9 Shareholders' Meetings. There shall be an annual meeting of the Shareholders, at such time and place as shall be determined by or in the manner prescribed in the Bylaws, at which the Trustees shall be elected and any other proper business may be conducted. The Annual Meeting of Shareholders shall be held no fewer than 30 days after delivery to the Shareholders of the Annual Report and within six (6) months after the end of each fiscal year, commencing with the fiscal year ending December 31, 1995. Special meetings of Shareholders may only be called by a majority of the Trustees. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the Shareholders entitled to vote for the election of successor Trustees.

No business shall be transacted by the Shareholders at a special meeting other than business that is either (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Trustees (or any duly authorized committee thereof) or (ii) otherwise properly brought before the Shareholders by or at the direction of the Trustees.

The holders of Shares entitled to vote at the meeting representing a majority of the total number of votes authorized to be cast by Shares then outstanding and entitled to vote on any

question present in person or by proxy shall constitute a quorum at any such meeting for action on such question. Any meeting may be adjourned from time to time by a majority of the votes properly cast upon the question, without regard to class, whether or not a quorum is present, and, except as otherwise provided in the Bylaws, the meeting may be reconvened without further notice. At any reconvened session of the meeting at which there shall be a quorum, any business may be transacted at the meeting as originally noticed.

Except as otherwise clearly indicated in this Declaration or the Bylaws, whenever any action is to be taken by the Shareholders, it shall be authorized by the affirmative vote of the holders of Shares representing a majority of the total number of votes authorized to be cast by shares then outstanding and entitled to vote thereon. At all elections of Trustees, voting by Shareholders shall be conducted under the non-cumulative method and the election of Trustees shall be by the affirmative vote of the holders of Shares representing a majority of the total number of votes authorized to be cast by shares then outstanding and entitled to vote thereon.

Whenever Shareholders are required or permitted to take any action by a vote at a meeting of Shareholders, at any time any of the outstanding Shares are held by a Person other than HRP, such action shall not be taken except by such a vote at such a meeting of Shareholders and the Shareholders shall have no power or right to take any action by executing written consents in lieu thereof.

5.10 Proxies. Whenever the vote or consent of a Shareholder entitled to vote is required or permitted under this Declaration, such vote or consent may be given either directly by such Shareholder or by a proxy in the form prescribed in, and subject to the provisions of, the Bylaws. The Trustees may solicit such proxies from the Shareholders or any of them entitled to vote in any matter requiring or permitting the Shareholders' vote or consent.

5.11 Reports to Shareholders. Not later than ninety (90) days after the close of each fiscal year of the Trust following the end of fiscal year 1995, the Trustees shall mail or deliver a report of the business and operations of the Trust during such fiscal year to the Shareholders, which report shall constitute the accounting of the Trustees for such fiscal year. Subject to Section 8-401 of the Annotated Code of Maryland, the report (the "Annual Report") shall be in such form and have such content as the Trustees deem proper. The Annual Report shall include a

balance sheet, an income statement and a surplus statement, each prepared in accordance with generally accepted accounting principles. Such financial statements shall be certified by an independent public accountant based on a full examination of the books and records of the Trust conducted in accordance with generally accepted auditing procedure. Manually signed copies of the Annual Report and of the auditor's certificate will be filed with the Maryland Department of Assessments and Taxation. A manually signed copy of the accountant's report shall be filed with the Trustees.

5.12 Fixing Record Date. The Bylaws may provide for fixing or, in the absence of such provision, the Trustees may fix, in advance, a date as the record date for determining the Shareholders entitled to notice of or to vote at any meeting of Shareholders or to express consent to any proposal without a meeting or for the purpose of determining Shareholders entitled to receive payment of any dividend or distribution (whether before or after termination of the Trust) or any Annual Report or other communication from the Trustees, or for any other purpose. The record date so fixed shall be not less than ten (10) days nor more than sixty (60) days prior to the date of the meeting or event for the purposes of which it is fixed.

5.13 Notice to Shareholders. Any notice of meeting or other notice, communication or report to any Shareholder shall be deemed duly delivered to such Shareholder when such notice, communication or report is deposited, with postage thereon prepaid, in the United States mail, addressed to such Shareholder at his address as it appears on the records of the Trust or is delivered in person to such Shareholder.

5.14 Shareholders' Disclosure; Restrictions on Share Transfer; Limitation on Holdings. At such time as any Person other than HRP shall hold any Shares of Beneficial Interest and thereafter:

(a) Every Shareholder shall upon demand disclose to the Trustees in writing such information with respect to direct and indirect ownership of any Shares as the Trustees deem necessary or appropriate, in their discretion, to comply with the REIT Provisions of the Internal Revenue Code, or comply with the requirements of any taxing authority or governmental agency.

(b) Whenever in good faith the Trustees deem it reasonably necessary to protect the status of the Trust as a REIT under the Internal Revenue Code, they may require a statement or affidavit

from each Shareholder or proposed transferee of Shares setting forth the number of Shares already owned, directly or indirectly, by such Shareholder or proposed transferee and any related Person specified in the form prescribed by the Trustees for that purpose. If, in the opinion of the Trustees, which shall be binding upon any Shareholder and any proposed transferee of Shares, but subject to subsection (i) of this Section 5.14, any proposed transfer of Shares would jeopardize the status of the Trust as a REIT under the Internal Revenue Code, the Trustees shall have the right, but not the duty, to refuse to permit such transfer.

(c) As a condition to the transfer (including, without limitation, any sale, transfer, gift, assignment, devise or other disposition of Shares, whether voluntary or involuntary, whether beneficially or of record, and whether effected constructively, by operation of law or otherwise) and/or registration of transfer of any Shares ("Excess Shares") which could in the opinion of the Trustees result in

- (i) direct or indirect ownership (as hereafter defined) of Shares representing more than 9.8% in number, value or voting power of the total Shares outstanding becoming concentrated in the hands of one owner other than an Excepted Person (as such term is defined hereafter),
- (ii) the outstanding Shares of the Trust being owned by fewer than one hundred (100) persons or
- (iii) the Trust being "closely held" within the meaning of Section 856(h) of the Internal Revenue Code,

such potential owner (a "Proposed Transferee") shall file with the Trust the statement or affidavit described in subsection (b) of this Section 5.14 no later than the fifteenth (15th) day prior to any proposed transfer; registration of transfer or transaction which, if consummated, would have any of the results set forth above; provided, however, that the Trustees may waive such requirement of prior notice upon determination that such waiver is in the best interests of the Trust. Subject to the subsection (i) of this Section 5.14, the Trustees shall have the power and right (i) to refuse to transfer or issue Excess Shares or share certificates to any Proposed Transferee whose acquisition of such Excess Shares would, in the opinion of the Trustees, result in the direct or indirect beneficial ownership of any Excess Shares by a Person other than an Excepted Person and (ii) to treat such Excess Shares as having been transferred not to the Proposed

Transferee but rather to a trustee, who shall be designated by the Trustees but unaffiliated with either the Trust or the Proposed Transferee, for the benefit of one or more organizations described in Sections 170(b)(1)(a) and 170(c) of the Internal Revenue Code (each such organization being referred to herein as a "Charitable Beneficiary") that have been designated by the Trustees. Any such trust shall be deemed to have been established by the Shareholder for the benefit of the Charitable Beneficiary on the day prior to the date of the purported transfer to the Proposed Transferee, which purported transfer shall be void ab initio and the Proposed Transferee shall be deemed never to have acquired any interest in or with respect to the Excess Shares purportedly transferred.

Any dividends paid or other distributions made with respect to any Excess Shares prior to the Trust discovering that such Excess Shares have been transferred into trust for the Charitable Beneficiary as set forth above shall be repaid and disgorged by the Proposed Transferee to the Trust and any dividend or other distribution declared but still unpaid or unmade shall be rescinded as void ab initio with respect to the Proposed Transferee. Any dividends or other distributions so repaid, disgorged or rescinded shall then be paid over to the trustee and held in trust for the Charitable Beneficiary. Any vote cast by the Proposed Transferee prior to the Trust discovering that such Excess Shares had been transferred to the trustee shall be rescinded as being void ab initio and the Proposed Transferee shall be deemed to have given an irrevocable proxy to the trustee to vote the Excess Shares held for the benefit of the Charitable Beneficiary.

All Excess Shares shall be deemed to be offered by the trustee for sale to the Trust or a Person or Persons designated by the Trust for a period of ninety (90) days following the receipt by the Trust of notice of the event that has caused the Excess Shares to be transferred into trust as set forth above at a price equal to the lesser of (i) the price that was paid for the Excess Shares by the Proposed Transferee and (ii) the market price of the Excess Shares on the date that the Trust or its designee accepts the trustee's offer to sell.

At the direction of the Trust, the trustee of any such trust shall sell any Excess Shares held by the trust to a Person whose ownership of such shares will not, in the judgment of the Trustees, jeopardize the Trust's status as a REIT (a "Permitted Transferee"). If such a transfer is made, the interests of the Charitable Beneficiary with respect to the Excess Shares shall

cease and the proceeds of the sale to the Permitted Transferee shall be payable to the Proposed Transferee and to the Charitable Beneficiary as follows: The Proposed Transferee shall be entitled to receive the lesser of (i) the price paid by the Proposed Transferee for the Excess Shares or, if the Proposed Transferee did not give value for the Excess Shares, the market price of the Excess Shares on the day of the event that resulted in the Excess Shares being transferred into trust as set forth above, and (ii) the price received by the trustee from the sale of the Excess Shares. Any proceeds from the sale of Excess Shares in excess of the amount payable to the Proposed Transferee as set forth above shall be payable to the Charitable Beneficiary.

The following Persons are "Excepted Persons": (i) HRP, (ii) HRPT Advisors, Inc., a Delaware corporation ("Advisors"), (iii) Affiliates of HRP or Advisors, (iv) Persons to whom HRP's or Advisor's share ownership is attributable or whose share ownership is attributable to HRP or Advisors and (v) other Persons approved by the Trustees, at their option and in their sole discretion; provided, however, that such approval shall not be granted to any Person (and shall not extend to any Person described in clause (iii) above) whose ownership of more than 9.8% (individually or by attribution) in number or value of the total Shares outstanding would result, directly, indirectly or as a result of attribution of ownership, in termination of the status of the Trust as a REIT under the Internal Revenue Code.

If the foregoing provisions shall be determined to be void or invalid by virtue of any legal decision, statute, rule or regulation, then the Proposed Transferee of such Excess Shares shall be deemed, at the option of the Trust, to have acted as agent on behalf of the Trust in acquiring such Excess Shares and to hold such Excess Shares on behalf of the Trust.

(d) Notwithstanding any other provision of this Declaration to the contrary, but subject to subsection (i) of this Section 5.14, any purported acquisition of shares of the Trust (whether such purported acquisition results from the direct or indirect acquisition or ownership (as hereafter defined) of Shares) which would result in the disqualification of the Trust as a REIT shall be null and void. Any such shares may be treated by the Trustees in the manner prescribed for Excess Shares in subsection (c) of this Section 5.14.

(e) Subject only to subsection (i) of this Section 5.14, nothing contained in this Section 5.14 or in any other provision of this Declaration shall limit the authority of the Trustees to

take such other action as they deem necessary or advisable to protect the Trust and the interests of the Shareholders by preserving the Trust's status as a REIT.

(f) If any provision of this Section 5.14 or any application of any such provision is determined to be invalid by any federal or state court having jurisdiction over the issues, the validity of the remaining provision shall not be affected and other applications of such provision shall be affected only to the extent necessary to comply with the determination of such court. To the extent this Section 5.14 may be inconsistent with any other provision of this Declaration, this Section 5.14 shall be controlling.

(g) It shall be the policy of the Trustees to consult with the appropriate officials of any stock exchange on which the relevant Shares of the Trust are listed as far as reasonably possible in advance of the final exercise (at any time when the shares are listed on such exchange) of any powers granted by sections (b) or (c) of this Section 5.14.

(h) For purposes of this Declaration, Shares not owned directly shall be deemed to be owned indirectly by a Person if that Person or a group including that Person would be the beneficial owner of such shares, as defined as of May 1, 1995, in Rule 13d-3 under the Securities Exchange Act of 1934 and/or would be considered to own such shares by reason of the attribution rules of Section 544 or Section 856(h) of the Internal Revenue Code.

(i) Nothing in this Section 5.14 shall preclude the settlement of any transaction entered into through the facilities of the New York Stock Exchange.

5.15 Special Voting Provisions relating to Certain Business Combinations and Control Shares. The Trust elects not to be governed by the provisions of Subtitles 6 and 7 of Title 3 of the Corporations and Associations Article of the Annotated Code of Maryland.

ARTICLE VI

LIABILITY OF TRUSTEES, SHAREHOLDERS, OFFICERS,  
EMPLOYEES AND AGENTS, AND OTHER MATTERS

6.1 Limitation of Liability of Shareholders, Trustees, Officers, Employees and Agents for Obligations of the Trust. The Trustees and the officers, employees and agents (including the Advisor) of the Trust, in incurring any debts, liabilities or obligations or in taking or omitting any other actions for or in connection with the Trust, are, and shall be deemed to be, acting as trustees, officers, employees or agents of the Trust and not in their own individual capacities. Except as otherwise provided in Sections 6.3 hereof with respect to liability of Trustees or officers, agents or employees of the Trust to the Trust or to Shareholders, no Shareholder, Trustee or officer, employee or agent (including the Advisor) of the Trust shall be liable for any debt, claim, demand, judgment decree, liability or obligation of any kind (in tort, contract or otherwise) of, against or with respect to the Trust or arising out of any action taken or omitted for or on behalf of the Trust, and the Trust shall be solely liable therefor and resort shall be had solely to the Trust Estate for the payment or performance thereof, and no Shareholder, Trustee or officer, employee or agent (including the Advisor) of the Trust shall be subject to any personal liability whatsoever, in tort, contract or otherwise, to any other Person or Persons in connection with the Trust Estate or the affairs of the Trust (or any actions taken or omitted for or on behalf of the Trust), and all such other Persons shall look solely to the Trust Estate for satisfaction of claims of any nature arising in connection with the Trust Estate or the affairs of the Trust (or any action taken or omitted for or on behalf of the Trust).

6.2 Express Exculpatory Clauses and Instruments. Any written instrument creating an obligation of the Trust shall, to the extent practicable, include a reference to this Declaration and provide that neither the Shareholders nor the Trustees nor any officers, employees or agents (including the Advisor) of the Trust shall be liable thereunder and that all Persons shall look solely to the Trust Estate for the payment of any claim thereunder or for the performance thereof; however, the omission of such provision from any such instrument shall not render the Shareholders, any Trustee, or any officer, employee or agent (including the Advisor) of the Trust liable nor shall the Shareholders, any Trustee or any officer, employee or agent (including the Advisor) of the Trust be liable to any one for such omission.

6.3 Limitation of Liability of Trustees, Officers, Employees and Agents to the Trust and to Shareholders for Acts and Omissions. To the fullest extent permitted by Maryland statutory and decisional law, as amended or interpreted, no Trustee, officer, employee or agent of the Trust (a) shall be personally liable to the Trust or its Shareholders and (b) shall have any greater duties than those established by this Declaration of Trust or, in cases as to which such duties are not so established, than those to which the directors, officers, employees and agents of a Maryland business corporation are subject from time to time. No amendment of this Declaration or repeal of any of its provisions shall limit or eliminate the limitation on liability provided to Trustees, officers, employees and agents of the Trust hereunder with respect to any act or omission occurring prior to such amendment or repeal.

6.4 Indemnification and Reimbursement of Trustees, Officers, Employees, Agents and Certain Other Persons.

(a) The Trust shall indemnify (i) its Trustees and officers, whether serving the Trust or at its request any other entity, to the full extent required or permitted by the General Laws of the State of Maryland now or hereafter in force, including the advance of expenses under the procedures and to the full extent permitted by law and (ii) other employees and agents to such extent as shall be authorized by the Trustees of the Trust or the Bylaws and be permitted by law. The foregoing rights of indemnification shall not be exclusive of any other rights to which those seeking indemnification may be entitled. The Trustees may take such action as is necessary to carry out these indemnification provisions and is expressly empowered to adopt, approve and amend from time to time such Bylaws, resolutions or contracts implementing such provisions or such further indemnification arrangements as may be permitted by law. No amendment of this Declaration of Trust or repeal of any of its provisions shall limit or eliminate the right to indemnification provided hereunder with respect to acts or omissions occurring prior to such amendment or repeal.

(b) Notwithstanding anything herein to the contrary, and to the fullest extent permitted by Maryland statutory or decisional law, as amended or interpreted, no Trustee or officer of the Trust shall be personally liable to the Trust or its shareholders for money damages. No amendment of this Declaration or repeal of any of its provisions shall limit

or eliminate the limitation on liability provided to Trustees and officers hereunder with respect to any act or omission occurring prior to such amendment or repeal.

6.5 Indemnification and Reimbursement of Shareholders. Any Shareholder made a party to any action, suit or proceeding or against him a claim or liabilities asserted by reason of the fact that he, his testate or intestate was or is a Shareholder shall be indemnified and held harmless by the Trust against judgments, fines, amounts paid on account thereof (whether in settlement or otherwise) and reasonable expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense of such action, suit, proceeding, claim or alleged liability or in connection with any appeal therein, whether or not the same proceeds to judgment or is settled or otherwise brought to a conclusion; provided, however, that such Shareholder gives prompt notice thereof, executes such documents and takes such action as will permit the Trust to conduct the defense or settlement thereof and cooperates therein. In the event that the assets of the Trust Estate are insufficient to satisfy the Trust's indemnity obligations hereunder, each Shareholder shall be entitled to such indemnification pro rata from the Trust Estate.

6.6 Right of Trustees, Officers, Employees and Agents to Own Shares or Other Property and to Engage in Other Business. Any Trustee or officer, employee or agent of the Trust may acquire, own, hold and dispose of Shares in the Trust, for his individual account, and may exercise all rights of a Shareholder to the same extent and in the same manner as if he were not a Trustee or officer, employee or agent of the Trust. Any Trustee or officer, employee or agent of the Trust may, in his personal capacity or in the capacity of trustee, officer, director, stockholder, partner, member, advisor or employee of any Person or otherwise, have business interests and engage in business activities similar to or in addition to those relating to the Trust, which interests and activities may be similar to and competitive with those of the Trust and may include the acquisition, syndication, holding, management, development, operation or disposition, for his own account, or for the account of such Person or others, of interests in Mortgages, interests in Real Property, or interests in Persons engaged in the real estate business. Each Trustee, officer, employee and agent of the Trust shall be free of any obligation to present to the Trust any investment opportunity which comes to him in any capacity other than solely as Trustee, officer, employee or agent of the Trust even if such opportunity is of a character which, if presented to

the Trust, could be taken by the Trust. Subject to the provisions of Section 6.8, any Trustee or officer, employee or agent of the Trust may be interested as trustee, officer, director, stockholder, partner, member, advisor or employee of, or otherwise have a direct or indirect interest in, any Person who may be engaged to render advice or services to the Trust, and may receive compensation from such Person as well as compensation as Trustee, officer, employee or agent or otherwise hereunder. None of these activities shall be deemed to conflict with his duties and powers as Trustee or officer, employee or agent of the Trust.

6.7 Transactions Between Trustees, Officers, Employees or Agents and the Trust. Except as otherwise provided by this Declaration, and in the absence of fraud, a contract, act or other transaction between the Trust and any other Person in which the Trust is interested, shall be valid, and no Trustee or officer, employee or agent of the Trust shall have any liability as a result of entering into any such contract, act or transaction, even though (a) one or more of the Trustees or officers, employees or agents of the Trust are directly or indirectly interested in or connected with or are trustees, partners, directors, employees, officers or agents of such other Person, or (b) one or more of the Trustees or officers, employees or agents of the Trust individually or jointly with others, is a party or are parties to, or are directly or indirectly interested in or connected with, such contract, act or transaction; provided that in each such case (i) such interest or connection is disclosed or known to the Trustees and thereafter the Trustees authorize or ratify such contract, act or other transaction by affirmative vote of a majority of the Trustees who are not so interested or (ii) such interest or connection is disclosed or known to the Shareholders, and thereafter such contract, act or transaction is approved by Shareholders holding a majority of the Shares then outstanding and entitled to vote thereon.

Notwithstanding any other provision of this Declaration, the Trust may engage in a transaction with (a) any Trustee, officer, employee or agent of the Trust (acting in his individual capacity), (b) any director, trustee, partner, officer, employee or agent (acting in his individual capacity) of the Advisor or any other investment advisor of the Trust, (c) the Advisor or any other investment advisor of the Trust or (d) an Affiliate of any of the foregoing, provided that such transaction has, after disclosure of such affiliation, been approved or ratified by the affirmative vote of a majority of the Trustees not having any interest in such transaction and not Affiliates of any party to

the transaction after a determination by them that such transaction is fair and reasonable to the Trust and the Shareholders.

This Section 6.7 shall not prevent any sale of Shares issued by the Trust for the public offering thereof in accordance with a registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933. The Trustees are not restricted by this Section 6.7 from forming a corporation, partnership, trust or other business association owned by any Trustee, officer, employee or agent or by their nominees for the purpose of holding title to property of the Trust or managing property of the Trust, provided that the Trustees make a determination that the creation of such entity for such purpose is in the best interest of the Trust.

6.8 Persons Dealing with Trustees, Officers, Employees or Agents. Any act of the Trustees or of the officers, employees or agents of the Trust purporting to be done in their capacity as such, shall, as to any Persons dealing with such Trustees, officers, employees or agents, be conclusively deemed to be within the purposes of this Trust and within the powers of such Trustees or officers, employees or agents. No Person dealing with the Trustees or any of them or with the officers, employees or agents of the Trust shall be bound to see to the application of any funds or property passing into their hands or control. The receipt of the Trustees or any of them, or of authorized officers, employees or agents of the Trust, for moneys or other consideration, shall be binding upon the Trust.

6.9 Reliance. The Trustees and the officers, employees and agents of the Trust may consult with counsel (which may be a firm in which one or more of the Trustees or the officers, employees or agents of the Trust is or are members) and the advice or opinion of such counsel shall be full and complete personal protection to all the Trustees and the officers, employees and agents of the Trust in respect of any action taken or suffered by them in good faith and in reliance on or in accordance with such advice or opinion. In discharging their duties, Trustees or officers, employees or agents of the Trust, when acting in good faith, may rely upon financial statements of the Trust represented to them to fairly present the financial position or results of operations of the Trust by the chief financial officer of the Trust or the officer of the Trust having charge of its books of account, or stated in a written report by an independent certified public accountant fairly to present the financial position or results of operations of the Trust. The Trustees and

the officers, employees and agents of the Trust may rely, and shall be personally protected in acting, upon any instrument or other document believed by them to be genuine.

ARTICLE VII

DURATION, AMENDMENT AND TERMINATION OF TRUST

7.1 Duration of Trust. The duration of the Trust shall be perpetual; provided, however, the Trust may be terminated at any time by the affirmative vote at a meeting of Shareholders of the holders of Shares representing two-thirds of the total number of Shares then outstanding and entitled to vote thereon.

7.2 Termination of Trust.

(a) Upon the termination of the Trust:

- (i) the Trust shall carry on no business except for the purpose of winding up its affairs;
- (ii) the Trustees shall proceed to wind up the affairs of the Trust and all the powers of the Trustees under this Declaration shall continue until the affairs of the Trust shall have been wound up, including the power to fulfill or discharge the contracts of the Trust, collect its assets, sell, convey, assign, exchange, transfer or otherwise dispose of all or any part of the remaining Trust Estate to one or more Persons at public or private sale (for consideration which may consist in whole or in part of cash, Securities or other property of any kind), discharge or pay its liabilities, and do all other acts appropriate to liquidate its business; and
- (iii) after paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and refunding agreements, as they deem necessary for their protection, the Trustees may distribute the remaining Trust Estate (in cash or in kind or partly each) among the Shareholders according to their respective rights.

(b) After termination of the Trust and distribution of the Trust Estate to the Shareholders as herein provided, the Trustees shall execute and lodge among the records of the Trust an instrument in writing setting forth the fact of such termination and such distribution, a copy of which instrument shall be filed with the Maryland Department of Assessments and Taxation, and the Trustees shall thereupon be discharged from all further liabilities and duties hereunder and the rights and interests of all Shareholders shall thereupon cease.

7.3 Amendment Procedure. This Declaration may be amended (except that the provisions governing the personal liability of the Shareholders, Trustees and of the officers, employees and agents of the Trust and the prohibition of assessments upon Shareholders may not be amended in any respect that could increase the personal liability of such Shareholders, Trustees or officers, employees and agents of the Trust) at a meeting of Shareholders by holders of Shares representing a majority (or, with respect to amendments of Article IV, the second paragraph of Section 5.1, Section 7.1 or this Section 7.3, and amendments inconsistent with Sections 2.1 and 5.14, at least two-thirds (2/3)) of the total number of votes authorized to be cast in respect of Shares then outstanding and entitled to vote thereon. The approval of a two-thirds (2/3) majority of the Trustees shall also be required for any such amendment. A two-thirds (2/3) majority of the Trustees may, after fifteen (15) days written notice to the Shareholders, also amend this Declaration without the vote or consent of Shareholders if in good faith they deem it necessary to conform this Declaration to the requirements of the REIT Provisions of the Internal Revenue Code, but the Trustees shall not be liable for failing to do so. Actions by the Trustees pursuant to Section 5.1 or pursuant to Section 8.6(a) that result in an amendment to this Declaration shall be effected without vote or consent of Shareholders.

7.4 Amendments Effective. Any amendment pursuant to any Section of this Declaration shall not become effective until it is duly filed with the Maryland Department of Assessments and Taxation.

7.5 Transfer to Successor. The Trustees, with the affirmative vote, at a meeting approving a plan for this purpose, of the holders of Shares representing two-thirds (2/3) of all votes cast at a meeting at which a quorum is present, may (a) cause the organization of a limited partnership, partnership, corporation, association, trust or other organization to take

over the Trust Estate and carry on the affairs of the Trust, (b) merge the Trust into, or sell, convey and transfer the Trust Estate to, any such limited partnership, partnership, corporation, association, trust or organization in exchange for Securities thereof, or beneficial interests therein, and the assumption by such transferee of the liabilities of the Trust and (c) thereupon terminate this Declaration and deliver such shares, Securities or beneficial interests among the Shareholders in accordance with such plan.

#### ARTICLE VIII

##### MISCELLANEOUS

8.1 Applicable Law. This Declaration is executed and acknowledged by the Trustees with reference to the statutes and laws of the State of Maryland, and the rights of all parties and the construction and effect of every provision hereof shall be subject to and construed according to the statutes and laws of such State.

8.2 Index and Headings for Reference Only. The index and headings preceding the text, articles and sections hereof have been inserted for convenience and reference only and shall not be construed to affect the meaning, construction or effect of this Declaration.

8.3 Successors in Interest. This Declaration and the Bylaws shall be binding upon and inure to the benefit of the undersigned Trustees and their successors, assigns, heirs, distributees and legal representatives, and every Shareholder and his successors, assigns, heirs, distributees and legal representatives.

8.4 Inspection of Records. Trust records shall be available for inspection by Shareholders at the same time and in the same manner and to the extent that comparable records of a Maryland business corporation would be available for inspection by shareholders under the laws of the State of Maryland. Except as specifically provided for in this Declaration or in Title 8 of the Annotated Code of Maryland, Shareholders shall have no greater right than shareholders of a Maryland business corporation to require financial or other information from the Trust, Trustees or officers of the Trust. Any Federal or state securities administrator or the Maryland Department of Assessments and Taxation shall have the right, at reasonable

times during business hours and for proper purposes, to inspect the books and records of the Trust.

8.5 Counterparts. This Declaration may be simultaneously executed in several counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

8.6 Provisions of the Trust in Conflict with Law or Regulations; Severability.

(a) The provisions of this Declaration are severable, and if the Trustees shall determine, with the advice of counsel, that any one or more of such provisions (the "Conflicting Provisions") are in conflict with the REIT Provisions of the Internal Revenue Code, the Conflicting Provisions shall be deemed never to have constituted a part of the Declaration; provided, however, that such determination by the Trustees shall not affect or impair any of the remaining provisions of this Declaration or render invalid or improper any action taken or omitted (including but not limited to the election of Trustees) prior to such determination. An amendment in recordable form signed by a majority of the Trustees setting forth any such determination and reciting that it was duly adopted by the Trustees, or a copy of this Declaration, with the Conflicting Provisions removed pursuant to such a determination, in recordable form, signed by a majority of the Trustees, shall be conclusive evidence of such determination when filed with the Maryland Department of Assessments and Taxation. The Trustees shall not be liable for failure to make any determination under this Section 8.6(a). Nothing in this Section 8.6(a) shall in any way limit or affect the right of the Trustees to amend this Declaration as provided in Section 7.3.

(b) If any provision of this Declaration shall be held invalid or unenforceable, such invalidity or unenforceability shall attach only to such provision and shall not in any manner affect or render invalid or unenforceable any other provision of this Declaration, and this Declaration shall be carried out as if any such invalid or unenforceable provision were not contained herein.

8.7 Certifications. The following certifications shall be final and conclusive as to any Persons dealing with the Trust:

(a) a certification of a vacancy among the Trustees by reason of resignation, removal, increase in the number of Trustees, incapacity, death or otherwise, when made in writing by a majority of the remaining Trustees;

(b) a certification as to the individuals holding office as Trustees or officers at any particular time, when made in writing by the secretary of the Trust;

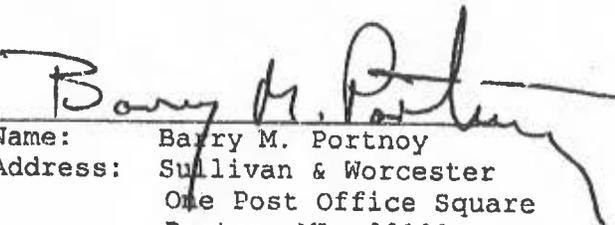
(c) a certification that a copy of this Declaration or of the Bylaws is a true and correct copy thereof as then in force, when made in writing by the secretary of the Trust;

(d) a certification as to any actions by Trustees, other than the above, when made in writing by the secretary of the Trust or by any Trustee.

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These amendments do not affect the total number of common shares of beneficial interest, \$.01 par value ("Common Shares"), authorized or issued by the Trust. The amendment and restatement of the Declaration was authorized by the Board of Trustees of the Trust acting by unanimous written consent on August 18, 1995 and by at least two-thirds of the stockholders of the Trust by means of unanimous written consent obtained on August 18, 1995.

IN WITNESS WHEREOF, the undersigned have caused this Declaration of Trust to be executed as of the day and year first written above.

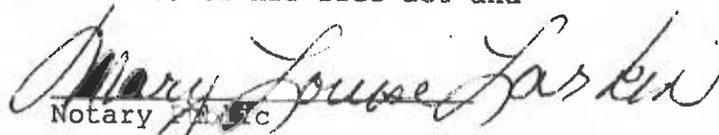
  
Name: Barry M. Portnoy  
Address: Sullivan & Worcester  
One Post Office Square  
Boston, MA 02109

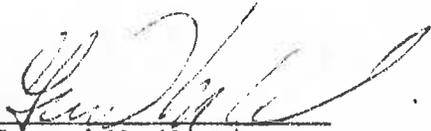
ACKNOWLEDGEMENT

Commonwealth of Massachusetts      Aug 18, 1995  
County of Suffolk      ss.

There personally appeared the above-named Barry M. Portnoy and acknowledged the foregoing instrument to be his free act and deed.

Before me,

  
Notary Public  
My commission expires: 2-10-2000



Name: Gerard M. Martin  
Address: M&P Partners Limited  
Partnership  
400 Centre Street  
Newton, MA 02158

ACKNOWLEDGEMENT

Commonwealth of Massachusetts

August 18, 1995

ss.

County of Middlesex

There personally appeared the above-named Gerard M. Martin and acknowledged the foregoing instrument to be his free act and deed.

Before me,



Notary Public

My commission expires:

Feb 1, 2002

6

STATE OF MARYLAND

I hereby certify that this is a true and complete copy of the 6  
page document on file in this office. DATED 1/10/18  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:

BY: Ella M Daniel Custodian  
This stamp replaces our previous certification system. Effective: 6/95

THE ARTICLES OF AMENDMENT AND RESTATEMENT  
OF  
HOSPITALITY PROPERTIES TRUST

APPROVED AND RECEIVED FOR RECORD BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION  
OF MARYLAND JUNE 2, 1997 AT 3:12 O'CLOCK P. M. AS IN CONFORMITY  
WITH LAW AND ORDERED RECORDED.

ORGANIZATION AND  
CAPITALIZATION FEE PAID:

\$ \_\_\_\_\_

RECORDING  
FEE PAID:

\$ 20.00

SPECIAL  
FEE PAID:

\$ \_\_\_\_\_

04141826

IT IS HEREBY CERTIFIED THAT THE WITHIN INSTRUMENT, TOGETHER WITH ALL INDORSEMENTS THEREON, HAS  
BEEN RECEIVED, APPROVED AND RECORDED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION OF MARYLAND.

PIPER & MARBURY  
S JPEZ  
1100 CHARLES CENTER SOUTH  
36 SOUTH CHARLES STREET  
BALTIMORE MD 21201

23503105716

A 563273



RECORDED IN THE RECORDS OF THE  
STATE DEPARTMENT OF ASSESSMENTS  
AND TAXATION OF MARYLAND IN LIBER. 1010.

APPROVED FOR RECORD

HOSPITALITY PROPERTIES TRUST

62-92 of 30P  
RECEIVED

AMENDMENT TO  
AMENDED AND RESTATED  
DECLARATION OF TRUST  
DATED AUGUST 21, 1995

'97 JAN -2 10:12

The undersigned, being at least a majority of the Trustees of Hospitality Properties Trust, a Maryland real estate investment trust having its principal office in Baltimore City, Maryland (hereinafter called the "Trust"), hereby certify to the Maryland State Department of Assessments and Taxation that:

FIRST: The Trust desires to amend its Amended and Restated Declaration of Trust as currently in effect (the "Declaration of Trust").

SECOND: Article D of the Declaration of Trust is hereby amended by adding the following sentence at the end of the first paragraph of Section 5.1 thereof.

The Trustees are hereby expressly authorized at any time, and from time to time, without Shareholder approval, to amend this Declaration to increase or decrease the aggregate number of Shares or the number of Shares of any class that the Trust has the authority to issue.

THIRD: The above amendment does not affect the total number of common shares of beneficial interest, \$.01 par value per share, authorized or issued by the Trust.

FOURTH: The Board of Trustees of the Trust, at a meeting duly called and held on February 5, 1997, adopted a resolution which set forth said amendment to the Declaration of Trust and directed that said amendment be submitted for approval by the shareholders of the Trust.

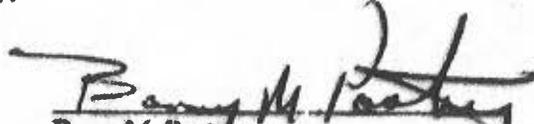
FIFTH: The shareholders of the Trust, voting at a meeting duly called and held May 20, 1997, adopted a resolution which approved said amendment by a vote of the holders of a majority of the issued and outstanding shares of beneficial interest in the Trust.

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IN WITNESS WHEREOF, Hospitality Properties Trust has caused these presents to be signed in its name and on its behalf by the undersigned, being a majority of the Trustees of the Trust who executed this instrument as of May 20, 1997.

  
Gerard M. Martin

  
Barry M. Portroy

---

  
William J. Sheehan

IN WITNESS WHEREOF, Hospitality Properties Trust has caused these presents to be signed in its name and on its behalf by the undersigned, being a majority of the Trustees of the Trust who executed this instrument as of May 20, 1997.

\_\_\_\_\_  
Gerard M. Martin

\_\_\_\_\_  
Barry M. Portnoy

  
\_\_\_\_\_  
William J. Sheehan

COMMONWEALTH OF MASSACHUSETTS )  
 )  
COUNTY OF SUFFOLK )

On May 28, 1997 before me, Doreen A. Vizzella, a Notary Public in and for said Commonwealth, personally appeared Gerard M. Martin and Barry J. Portney, known to me or proved to me on the basis of satisfactory evidence, to be the persons whose names are subscribed to the within instrument and acknowledged that each of them executed the same.

WITNESS my hand and official seal.

Signature: Doreen A. Vizzella  
Notary Public

[OFFICIAL SEAL]

STATE OF NEW YORK )  
COUNTY OF New York )

On May 21, 1997 before me, Nessa Karney Langer, a Notary Public in and for said State, personally appeared William J. Sheehan, known to me or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Signature: *Nessa Karney Langer*  
Notary Public

[OFFICIAL SEAL]

*Nessa Karney Langer*  
NESSA KARNEY Langer  
Notary Public, State of New York  
No. 24-450097  
Qualified in Kings County  
Term Expires January 2, 1998

**STATE OF MARYLAND**

I hereby certify that this is a true and complete copy of the 11 page document on file in this office. DATED: 11/06/18  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

BY: Ella McDaniel Comptroller  
This stamp replaces our previous certification system. Effective: 6/95

**ARTICLES SUPPLEMENTARY  
OF  
HOSPITALITY PROPERTIES TRUST**

APPROVED AND RECEIVED FOR RECORD BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION  
OF MARYLAND JUNE 2, 1997 AT 3:43 O'CLOCK P. M. AS IN CONFORMITY  
WITH LAW AND ORDERED RECORDED.

ORGANIZATION AND CAPITALIZATION FEE PAID: \$ \_\_\_\_\_  
RECORDING FEE PAID: \$ 20.00  
SPECIAL FEE PAID: \$ \_\_\_\_\_

**D4141826**

IT IS HEREBY CERTIFIED, THAT THE WITHIN INSTRUMENT, TOGETHER WITH ALL INDORSEMENTS THEREON, HAS  
BEEN RECEIVED, APPROVED AND RECORDED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION OF MARYLAND.

OTTER & MARGURY  
SHEELAH LOPEZ  
1100 CHARLES CENTER SOUTH  
36 SOUTH CHARLES STREET  
BALTIMORE MD 21201

23FC3105725

**A 563261**



RECORDED IN THE RECORDS OF THE  
STATE DEPARTMENT OF ASSESSMENTS  
AND TAXATION OF MARYLAND IN LIBER. FOR R.

STATE DEPARTMENT OF ASSESSMENTS  
AND TAXATION

APPROVED FOR RECORD

06-02-97 at 3:49 pm

HOSPITALITY PROPERTIES TRUST

ARTICLES SUPPLEMENTARY

ASS.

97 JM-2

RECORD

HOSPITALITY PROPERTIES TRUST, a Maryland real estate investment trust, having its principal office in Baltimore City, Maryland (hereinafter called the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

**FIRST:** Pursuant to authority expressly vested in the Board of Trustees by Article V, Section 5.1 of the Amended and Restated Declaration of Trust of the Trust, dated August 21, 1995, as amended, (the "Declaration"), the Board of Trustees has duly reclassified 1,000,000 unissued Preferred Shares, of the Trust (from among the 100,000,000 Preferred Shares, without par value, of the Trust which are authorized) into 1,000,000 Junior Participating Preferred Shares, per value \$.01 per share, of the Trust.

**SECOND:** The terms (including preferences, conversion or other rights, restrictions, limitations as to dividends, qualifications, or terms or conditions of redemption) of the Junior Participating Preferred Shares, par value \$.01 per share, are as follows:

1. Designation and Amount. The shares of such series shall be designated as "Junior Participating Preferred Shares" and the number of shares constituting such series shall be 1,000,000.

2. Dividends and Distributions.

(a) Subject to the prior and superior rights of the holders of any shares of any series of Preferred Shares ranking prior and superior to the Junior Participating Preferred Shares with respect to dividends (if any), the holders of Junior Participating Preferred Shares shall be entitled to receive, when, as and if declared by the Board out of funds legally available for the purpose, quarterly dividends payable in cash on the 15th day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a Junior Participating Preferred Share or fraction thereof, in an amount per share (rounded to the nearest cent) equal to the greater of (X) \$5 or (Y) subject to the provision for adjustment hereinafter set forth, 100 times the aggregate per share amount of all cash dividends, plus 100 times the aggregate per share amount (payable in kind) of all noncash dividends or other distributions, other than a dividend payable in common shares of beneficial interest, par value \$.01 per share, of the Trust (the "Common Shares") or a subdivision of the outstanding Common Shares (by reclassification or otherwise), declared on the Common Shares, since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any Junior Participating Preferred Share or fraction thereof. In the event the Trust shall at any time after May 20, 1997 (the "Rights Declaration Date") (i) declare any

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dividend on Common Shares payable in Common Shares, (ii) subdivide the outstanding Common Shares or (iii) combine the outstanding Common Shares into a smaller number of shares, then in each such case the amount to which holders of shares of Junior Participating Preferred Shares were entitled immediately prior to such event under clause (Y) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of Common Shares outstanding immediately after such event and the denominator of which is the number of Common Shares that were outstanding immediately prior to such event.

(b) The Board shall declare a dividend or distribution on the Junior Participating Preferred Shares as provided in paragraph (a) above immediately after it declares a dividend or distribution on the Common Shares (other than a dividend payable in Common Shares), provided that, in the event no dividend or distribution shall have been declared on the Common Shares during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of \$5 per share on the Junior Participating Preferred Shares shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(c) Dividends shall begin to accrue and be cumulative on outstanding Junior Participating Preferred Shares from the Quarterly Dividend Payment Date next preceding the date of issue of such Junior Participating Preferred Shares unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of Junior Participating Preferred Shares entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the Junior Participating Preferred Shares in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board may fix a record date for the determination of holders of Junior Participating Preferred Shares entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not less than 10 and not more than 60 days prior to the date fixed for the payment thereof.

3. Voting Rights. The holders of Junior Participating Preferred Shares shall have the following voting rights:

(a) Subject to the provision for adjustment hereinafter set forth, each Junior Participating Preferred Share shall entitle the holder thereof to 100 votes on all matters submitted to a vote of the shareholders of the Trust. In the event that the Board shall at any time after the Rights Declaration Date (i) declare any dividend on Common Shares payable in Common Shares, (ii) subdivide the outstanding Common Shares or (iii) combine the outstanding Common Shares into a smaller number of shares, then in each such case the number of votes per share to which holders of Junior Participating Preferred Shares were entitled immediately prior to such event shall be adjusted by multiplying such number by a

fraction the numerator of which is the number of Common Shares outstanding immediately after such event and the denominator of which is the number of Common Shares that were outstanding immediately prior to such event.

(b) Except as otherwise provided herein or by law, the holders of Junior Participating Preferred Shares and the holders of Common Shares shall vote together as one class on all matters submitted to a vote of shareholders of the Trust.

- (c) (i) If at any time dividends on any Junior Participating Preferred Shares shall be in arrears in an amount equal to six (6) quarterly dividends thereon, the occurrence of such contingency shall mark the beginning of a period (a "Default Period") which shall extend until such time when all accrued and unpaid dividends for all previous quarterly dividend periods and for the current quarterly dividend period on all Junior Participating Preferred Shares then outstanding shall have been declared and paid or set apart for payment. During each Default Period, all holders of Preferred Shares (including holders of the Junior Participating Preferred Shares) with dividends in arrears in an amount equal to six (6) quarterly dividends thereon, voting as a class, irrespective of series, shall have the right to elect two (2) Trustees.
- (ii) During any Default Period, such voting right of the holders of Junior Participating Preferred Shares may be exercised initially at a special meeting called pursuant to subparagraph (iii) of this Section 3(c) or at an annual meeting of shareholders, and thereafter at annual meetings of shareholders, provided that neither such voting right nor the right of the holders of any other series of Preferred Shares, if any, to increase, in certain cases, the authorized number of Trustees shall be exercised unless the holders of ten percent (10%) in number of Preferred Shares outstanding shall be present in person or by proxy. The absence of a quorum of the holders of Common Shares shall not affect the exercise by the holders of Preferred Shares of such voting right. At any meeting at which the holders of Preferred Shares shall exercise such voting right initially during an existing Default Period, they shall have the right, voting as a class, to elect Trustees to fill up to two (2) vacancies, if any, in the Board or, if such right is exercised at an annual meeting, to elect two (2) Trustees. The holders of Preferred Shares shall have the right to make such increase in the number of Trustees as shall be necessary to permit the election by them at any special meeting of two (2) Trustees. After the holders of Preferred Shares shall have exercised their right to elect Trustees in any Default Period and during the continuance of such period, the number of Trustees shall not be increased or decreased except by vote of the holders of Preferred Shares as herein provided or

pursuant to the rights of any equity securities ranking senior to or pari passu with the Junior Participating Preferred Shares, if any.

(iii) Unless the holders of Preferred Shares shall, during an existing Default Period, have previously exercised their right to elect Trustees, the Board may order, or any shareholder or shareholders owning in the aggregate not less than ten percent (10%) of the total number of Preferred Shares outstanding, irrespective of series, may request, the calling of a special meeting of the holders of Preferred Shares, which meeting shall thereupon be called by the Board or the Chief Operating Officer of the Trust. The Secretary of the Trust shall give notice of such meeting and of any annual meeting at which holders of Preferred Shares are entitled to vote pursuant to this paragraph (c)(iii) to each holder of record of Preferred Shares by mailing a copy of such notice to him at his last address as the same appears on the books of the Trust. Such meeting shall be called for a time not earlier than fifteen (15) days and not later than sixty (60) days after such order or request. If such meeting is not called within sixty (60) days after such order or request, such meeting may be called on similar notice by any shareholder or shareholders owning in the aggregate not less than ten percent (10%) of the total number of Preferred Shares outstanding. Notwithstanding the provisions of this paragraph (c)(iii), no such special meeting shall be called during the period within sixty (60) days immediately preceding the date fixed for the next annual meeting of the shareholders.

(iv) In any Default Period, the holders of Common Shares, and (if applicable) other classes of Shares of beneficial interest of the Trust (all Trust shares being referred to as "Shares"), shall continue to be entitled to elect the whole number of Trustees until the holders of Preferred Shares shall have exercised their rights to elect two (2) Trustees voting as a class, after the exercise of which right, (X) the Trustees so elected by the holders of Preferred Shares shall continue in office until their successors shall have been elected by such holders or until the expiration of the Default Period, and (Y) any vacancy in the Board shall (except as provided in paragraph (c)(ii) of this Section 3) be filled by vote of a majority of the remaining Trustees theretofore elected by the holders of the class or classes of Shares which elected the Trustee whose office shall have become vacant. References in this paragraph (c) to Trustees elected by the holders of a particular class of Shares shall include Trustees elected by such Trustees to fill vacancies as provided in clause (Y) of the foregoing sentence.

(v) Immediately upon the expiration of a Default Period, (X) the right of the holders of Preferred Shares as a class to elect Trustees shall cease, (Y) the term of any Trustees elected by the holders of Preferred Shares as a class shall terminate, and (Z) the number of Trustees shall be such number as may be provided for in the Declaration, any Article Supplementary or the By-Laws of the Trust, irrespective of any increase made pursuant to the provisions of paragraph (c)(ii) of this Section 3 such number being subject, however, to change thereafter in any manner provided by law, or in the Declaration, any Article Supplementary or the By-Laws of the Trust). Any vacancies in the Board effected by the provisions of clauses (Y) and (Z) in the preceding sentence may be filled by a majority of the remaining Trustees.

(d) Except as set forth herein, holders of Junior Participating Preferred Shares shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Shares as set forth herein) for taking any trust action.

#### 4. Certain Restrictions.

(a) Whenever quarterly dividends or other dividends or distributions payable on the Junior Participating Preferred Shares as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on Junior Participating Preferred Shares outstanding shall have been paid in full, the Trust shall not:

- (i) declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any Shares ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Junior Participating Preferred Shares;
- (ii) declare or pay dividends on or make any other distributions on any Shares ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Junior Participating Preferred Shares except dividends paid ratably on the Junior Participating Preferred Shares and all such parity Shares on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such Shares are then entitled;
- (iii) redeem or purchase or otherwise acquire for consideration Shares ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Junior Participating Preferred Shares provided that the Trust may at any time redeem, purchase or otherwise acquire any such parity Shares in exchange for any Shares ranking junior (either as to

dividends or upon dissolution, liquidation or winding up) to the Junior Participating Preferred Shares;

(iv) purchase or otherwise acquire for consideration any Junior Participating Preferred Shares, or any Shares ranking on a parity with the Junior Participating Preferred Shares, except pursuant to Section 8 or in accordance with a purchase offer made in writing or by publication (as determined by the Board) to all holders of such shares upon such terms as the Board, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(b) The Trust shall not permit any subsidiary of the Trust to purchase or otherwise acquire for consideration any Shares of the Trust unless the Trust could, under paragraph (a) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

5. **Required Shares.** Any Junior Participating Preferred Shares, purchased or otherwise acquired by the Trust in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued Preferred Shares and may be reissued as part of a new series of Preferred Shares to be created by resolution or resolutions of the Board, subject to the conditions and restrictions on issuance set forth herein.

6. **Liquidation, Dissolution or Winding Up.**

(a) Upon any liquidation (voluntary or otherwise), dissolution or winding up of the Trust, no distribution shall be made to the holders of Shares ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Junior Participating Preferred Shares, unless, prior thereto, the holders of Junior Participating Preferred Shares shall have received \$100.00 per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment (the "Liquidation Preference"). Following the payment of the full amount of the Liquidation Preference, no additional distributions shall be made to the holders of Junior Participating Preferred Shares, unless, prior thereto, the holders of Common Shares shall have received an amount per share (the "Common Adjustment") equal to the quotient obtained by dividing (i) the Liquidation Preference by (ii) 100 (as appropriately adjusted as set forth in subparagraph (c) below to reflect such events as stock splits, stock dividends and recapitalization with respect to the Common Shares) (such number in clause (ii) immediately above being referred to as the "Adjustment Number"). Subject to the rights of any other series of Preferred Shares then outstanding, if any, following the payment of the full amount of the Liquidation Preference and the Common Adjustment in respect of all outstanding shares of Junior Participating Preferred Shares and Common Shares, respectively, holders of Junior Participating Preferred Shares and holders of shares of Common Shares shall receive their ratable and proportionate share of the remaining assets to be distributed in the

ratio of the Adjustment Number to one (1) with respect to such Junior Participating Preferred Shares and Common Shares, on a per Share basis, respectively.

(b) In the event, however, that there are not sufficient assets available to permit payment in full of the Liquidation Preference and the liquidation preferences of all other series of Preferred Shares, if any, which rank on a parity with the Junior Participating Preferred Shares, then such remaining assets shall be distributed ratably to the holders of such parity Shares (including the Junior Participating Preferred Shares) in proportion to their respective liquidation preferences. In the event, however, that there are not sufficient assets available to permit payment in full of the Common Adjustment after satisfaction of the liquidation preferences of all series of Preferred Shares, if any, then such remaining assets shall be distributed ratably to the holders of Common Shares.

(c) In the event the Trust shall at any time after the Rights Declaration Date (i) declare any dividend on Common Shares payable in Common Shares, (ii) subdivide the outstanding Common Shares or (iii) combine the outstanding Common Shares into a smaller number of shares, then in each such case the Adjustment Number in effect immediately prior to such event shall be adjusted by multiplying such Adjustment Number by a fraction the numerator of which is the number of Common Shares outstanding immediately after such event and the denominator of which is the number of shares of Common Shares that were outstanding immediately prior to such event.

7. Consolidation, Merger, etc. In case the Trust shall enter into any consolidation, merger, combination or other transaction in which the Common Shares are exchanged for or changed into other stock or securities, cash or any other property, then in any such case the Junior Participating Preferred Shares shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 100 times the aggregate amount of shares, securities, cash or any other property (payable in kind), as the case may be, into which or for which each Common Share is changed or exchanged. In the event the Trust shall at any time after the Rights Declaration Date (i) declare any dividend on Common Shares payable in Common Shares, (ii) subdivide the outstanding Common Shares or (iii) combine the outstanding Common Shares into a smaller number of Shares, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of Junior Participating Preferred Shares shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of Common Shares outstanding immediately after such event and the denominator of which is the number of Common Shares that were outstanding immediately prior to such event.

8. Redemption. The Junior Participating Preferred Shares shall not be redeemable.

9. Ranking. The Junior Participating Preferred Shares shall rank junior to all other series of the Trust's Preferred Shares as to the payment of dividends and the distribution of assets, unless the terms of any such series shall provide otherwise.

10. Amendment. At such time as Junior Participating Preferred Shares are outstanding, the Declaration shall not be amended, nor shall an Article Supplementary of the Trust be filed or amended, in any manner which would materially alter or change the powers, preferences or special

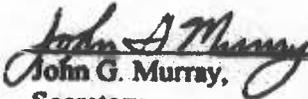
rights of the Junior Participating Preferred Shares so as to affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding Junior Participating Preferred Shares voting separately as a class.

11. **Fractional Shares.** Junior Participating Preferred Shares may be issued in fractions of a share which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and have the benefit of all other rights of a holder of Junior participating Preferred Shares.

IN WITNESS WHEREOF, HOSPITALITY PROPERTIES TRUST has caused these Articles Supplementary to be signed in its name and on its behalf by a majority of its entire Board of Trustees and witnessed by its Secretary on May 28, 1997.

WITNESS:

HOSPITALITY  
PROPERTIES TRUST

  
John G. Murray,  
Secretary

By:

  
Gerard M. Martin, Trustee

By:

  
Barry M. Poinoy, Trustee

By:

\_\_\_\_\_  
William J. Sheehan, Trustee

rights of the Junior Participating Preferred Shares so as to affect them adversely; limit the  
voting rights of the holders of a majority or more of the outstanding Junior Participating  
Preferred Shares voting separately as a class.

11. **Fractional Shares.** Junior Participating Preferred Shares may be issued in fractions  
of a share which shall entitle the holder, in proportion to such holder's fractional shares, to exercise  
voting rights, receive dividends, participate in distributions and have the benefit of all other rights  
of a holder of Junior participating Preferred Shares.

IN WITNESS WHEREOF, HOSPITALITY PROPERTIES TRUST has caused these Articles  
Supplementary to be signed in its name and on its behalf by a majority of its entire Board of Trustees  
and witnessed by its Secretary on May 21, 1997.

WITNESS:

HOSPITALITY  
PROPERTIES TRUST

  
John G. Murray,  
Secretary

By: \_\_\_\_\_  
Gerard M. Martin, Trustee

By: \_\_\_\_\_  
Barry M. Portnoy, Trustee

By:   
William J. Sheehan, Trustee

**THE UNDERSIGNED, President of HOSPITALITY PROPERTIES TRUST, with respect to the foregoing Articles Supplementary of which this Certificate is made a part, hereby acknowledges in the name and on behalf of said Trust, the foregoing Articles Supplementary to be the act of said Trust and hereby certifies that the matters and facts set forth herein with respect to the authorization and approval thereof are true in all material respects under the penalties of perjury.**

*John G. Murray*  
John G. Murray, President

**HOSPITALITY PROPERTIES TRUST**

**ARTICLES SUPPLEMENTARY**

Hospitality Properties Trust, a Maryland real estate investment trust (the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland, that:

FIRST: Under a power contained in Title 3, Subtitle 8 of the Maryland General Corporation Law (the "MGCL"), as applicable to Maryland real estate investment trusts, the Trust, by resolution of its Board of Trustees (the "Board of Trustees") duly adopted at a meeting duly called and held on May 16, 2000, amended the Bylaws of the Trust (the "Bylaws") to provide that the Trust elects to be subject to Section 3-804(b) and (c) of the MGCL.

SECOND: The Bylaws described above provide that, notwithstanding any other provision in the Declaration of Trust or the Bylaws to the contrary, the Trust elects to be subject to Section 3-804(b) and (c) of the MGCL, the repeal of which may be effected only by a subsequent amendment to the Bylaws adopted or approved by the Board of Trustees.

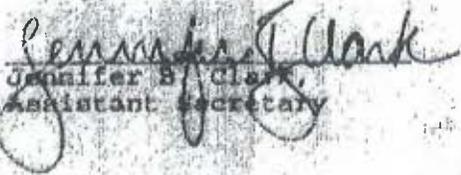
THIRD: These Articles Supplementary have been approved by the Board of Trustees in the manner and by the vote required by law.

FOURTH: The undersigned President of the Trust acknowledges these Articles Supplementary to be the trust act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned President acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties of perjury.

IN WITNESS WHEREOF, the Trust has caused these Articles Supplementary to be executed under seal in its name and on its behalf by its President and attested by its Assistant Secretary on this 16<sup>th</sup> day of May, 2000.

ATTEST:

HOSPITALITY PROPERTIES TRUST

  
Jennifer S. Clark,  
Assistant Secretary

 (SEAL)  
Tom G. Murray  
President

**STATE OF MARYLAND**

I hereby certify that this is a true and correct copy of the 3 page document on file in this office. DATE: 11/6/18

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

BY:  Custodian

This stamp replaces the previous seal application system. Effective 8/05

**\*\* FOR DEPARTMENTAL USE ONLY \*\***

DOCUMENT CODE 16 BUSINESS CODE 13 00  
# D4141826 P.A. \_\_\_\_\_ Religious \_\_\_\_\_ Close  Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

Merging (Transferor) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Surviving (Transferee) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FEE REMITTED**

Base Fee: 20  
Org. & Cap. Fee: \_\_\_\_\_  
Expeditio Fee: 50  
Penalty: \_\_\_\_\_  
State Recordation Tax: \_\_\_\_\_  
State Transfer Tax: \_\_\_\_\_  
Certified Copies: \_\_\_\_\_  
Copy Fee: 7  
Certificates: \_\_\_\_\_  
Certificate Fee: \_\_\_\_\_  
Other: \_\_\_\_\_  
**TOTAL FEES:** 77

(New Name) \_\_\_\_\_  
\_\_\_\_\_

Credit Card  
 Check  
 Cash

**CERTIFIED COPY MADE**

- Change of Name
- Change of Principal Office
- Change of Resident Agent
- Change of Resident Agent Address
- Resignation of Resident Agent
- Designation of Resident Agent and Resident Agent's Address
- Change of Business Code
- Adoption of Assumed Name
- Other Change(s)

Documents off \_\_\_\_\_ Checks \_\_\_\_\_

APPROVED BY: [Signature]  
ID # 004141826 ACK # 1000180386000000  
LIBR: 800144 FOLIO: 1531 PAGES: 0002  
HOSPITALITY PROPERTIES TRUST

CODE 193  
ATTENTION: Andrew Cohen

06/16/2000 AT 02:47 P MD # 0000314888

MAIL TO ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COMMENT: AMT. PAID \$77.00  
DATE 05-16-2000 02:47  
FORM 00000000000000000000  
COURT FILED 05/16/2000  
STATE OF MICHIGAN

STATE OF MARYLAND

I hereby certify that this is a true and complete copy of the page document on file in this office. DATED: 11/6/18

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

APPROVED FOR RECORD

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

BY: Ella M. Daniel Custodian  
HOSPITALITY PROPERTIES TRUST

04-18-99 et. 12/14/18

This stamp replaces our previous certification system.

ARTICLES SUPPLEMENTARY

9 1/2% SERIES A CUMULATIVE REDEEMABLE PREFERRED SHARES  
without par value

HOSPITALITY PROPERTIES TRUST, a Maryland real estate investment trust, having its principal office in Newton, Massachusetts (hereinafter called the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

**FIRST:** Pursuant to authority expressly vested in the Trustees by Section 1.3 of the Amended and Restated Declaration of Trust of the Trust, dated August 21, 1995, as amended (the "Declaration"), the Trust has duly reclassified and designated 3,450,000 Preferred Shares of the Trust as 9 1/2% Series A Cumulative Redeemable Preferred Shares, without par value, of the Trust ("Series A Preferred Shares").

**SECOND:** The preferences, rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms or conditions of redemption of the Series A Preferred Shares are as follows, which upon any restatement of the Declaration shall be made part of Article V of the Declaration, with any necessary or appropriate changes to the enumeration or lettering of sections or subsections hereof. Capitalized terms used in this ARTICLE SECOND which are defined in the Declaration and not otherwise defined herein are used herein as so defined in the Declaration.

9 1/2% Series A Cumulative Redeemable Preferred Shares, without par value

1. **Designation and Number.** A series of Preferred Shares, designated the 9 1/2% Series A Cumulative Redeemable Preferred Shares, without par value (the "Series A Preferred Shares"), is hereby established. The number of authorized Series A Preferred Shares is 3,450,000.

2. **Relative Seniority.** In respect of rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, the Series A Preferred Shares shall rank (i) senior to the Common Shares, the Junior Participating Preferred Shares and any other class or series of Shares of the Trust, the terms of which specifically provide that such class or series ranks, as to rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, junior to the Series A Preferred Shares (the Shares described in this clause (i) being, collectively, "Junior Shares"), (ii) on a parity with any other class or series of Shares of the Trust, the terms of which specifically provide that such class or series ranks, as to rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, on a parity with the Series A Preferred Shares, and (iii) junior to any class or series of Shares of the Trust, the terms of which specifically provide that such class or series ranks, as to rights to receive dividends and to participate in distributions or payments in the event of any

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liquidation, dissolution or winding up of the Trust, senior to the Series A Preferred Shares. For the avoidance of doubt, debt securities of the Trust which are convertible into or exchangeable for Shares of the Trust or any other debt securities of the Trust do not constitute a class or series of Shares for purposes of this Section 2.

### 3. Dividends and Distributions.

(a) Subject to the preferential rights of the holders of any class or series of Shares of the Trust ranking senior to the Series A Preferred Shares as to dividends, the holders of the then outstanding Series A Preferred Shares shall be entitled to receive, when and as authorized by the Trustees, out of any funds legally available therefor, cumulative dividends at a rate of nine and one-half percent (9 1/2%) per annum of the Twenty-Five Dollars (\$25.00) per share preference of the Series A Preferred Shares (equivalent to the annual rate of \$2.375 per share) which dividends shall accrue and be cumulative from (but excluding) April 12, 1999 (the "Original Issue Date") in the case of Series A Preferred Shares issued on or prior to May 12, 1999, and otherwise from (but excluding) the date of the original issuance thereof, and will be payable quarterly in arrears in cash on the last day of each March, June, September and December beginning on June 30, 1999 (each such day being hereinafter called a "Quarterly Dividend Date"); provided that if any Quarterly Dividend Date is not a Business Day (as hereinafter defined), then the dividend which would otherwise have been payable on such Quarterly Dividend Date may be paid on the next succeeding Business Day with the same force and effect as if paid on such Quarterly Dividend Date, and no interest or additional dividends or other sums shall accrue on the amount so payable from such Quarterly Dividend Date to such next succeeding Business Day. As used herein the term "Dividend Period" for Series A Preferred Shares means the period from but excluding the Original Issue Date or other date of the original issuance thereof, as applicable, and ending on and including the next following Quarterly Dividend Date, and each subsequent period from but excluding a Quarterly Dividend Date and ending on and including the next following Quarterly Dividend Date. The amount of any dividend payable for any full Dividend Period or portion thereof shall be computed on the basis of a 360-day year of twelve 30-day months (it being understood that the first Dividend Period is shorter than a full Dividend Period). Dividends shall be payable to holders of record as they appear in the share records of the Trust at the close of business on the applicable record date (the "Record Date"), which shall be a date designated by the Trustees for the payment of dividends that is not more than 60 nor less than 10 days prior to the applicable Quarterly Dividend Date.

(b) Dividends on the Series A Preferred Shares shall accrue and be cumulative, whether or not the Trust has earnings, there are funds legally available for the payment of such dividends or such dividends have been declared.

(c) If Series A Preferred Shares are outstanding, no full dividends shall be declared or paid or set apart for payment on any other class or series of Shares of the Trust ranking, as to dividends, on a parity with or junior to Series A Preferred Shares for any period, unless the full cumulative dividends on the Series A Preferred Shares have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Dividend Periods. When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the Series A Preferred Shares and the Shares of any other class or series

ranking on a parity as to dividends with the Series A Preferred Shares, all dividends declared upon Series A Preferred Shares and any such other class or series of Shares shall in all cases bear to each other the same ratio that accrued dividends per share on the Series A Preferred Shares and such other class or series of Shares (which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if such other class or series does not have a cumulative dividend) bear to each other.

(d) Except as provided in Section 3(c) above, unless full cumulative dividends on the Series A Preferred Shares have been or contemporaneously are declared and paid or declared and a sum sufficient for the repayment thereof set apart for payment for all past Dividend Periods and the then current Dividend Period, no dividends (other than in Common Shares or Junior Shares or options, warrants or rights to subscribe for or purchase Common Shares or Junior Shares) shall be declared or paid or set apart for payment and no other distributions declared or made upon the Common Shares or any other Shares ranking junior to the Series A Preferred Shares as to rights to receive dividends or to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, nor shall any Common Shares or any other Shares be redeemed, repurchased or otherwise acquired for any consideration for any moneys being paid to or made available for a sinking fund for the redemption of any such Shares) by the Trust except (i) by conversion into or exchange for Common Shares or other Junior Shares, (ii) pursuant to pro rata offers to purchase or a concurrent redemption of all or a pro rata portion of the outstanding Series A Preferred Shares and any other class or series of Shares ranking on a parity with Series A Preferred Shares as to rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, (iii) by redemption, purchase or other acquisition of Common Shares made for purposes of an incentive benefit or share purchase plan of the Trust or any of its subsidiaries for officers, Trustees or employees or others performing or providing similar services, (iv) by redemption, purchase or other acquisition of rights to purchase Junior Participating Preferred Shares pursuant to the Rights Agreement, dated as of May 30, 1997, between the Trust and State Street Bank and Trust Company, as rights agent, or pursuant to any replacement agreement therefor relating to such rights, each as in effect from time to time, or of any similar rights from time to time issued by the Trust in connection with a successor or supplemental shareholder rights protection plan adopted by the Trustees, and (v) for redemptions, purchases or other acquisitions by the Trust, whether pursuant to any provision of the Declaration or otherwise, for the purpose of preserving the Trust's status as a real estate investment trust (a "REIT") for Federal income tax purposes.

(e) No interest, or sum of money in lieu thereof, shall be payable in respect of any dividend payment or payments on Series A Preferred Shares which may be in arrears, and the holders of Series A Preferred Shares are not entitled to any dividends, whether payable in cash, securities or other property, in excess of the full cumulative dividends described in this Section 3. Except as otherwise expressly provided herein, the Series A Preferred Shares shall not be entitled to participate in the earnings or assets of the Trust.

(f) Any dividend payment made on the Series A Preferred Shares shall be first credited against the earliest accrued but unpaid dividend due with respect to such Shares which remains payable. Any cash dividends paid in respect of Series A Preferred Shares, including any

portion thereof which the Trust elects to designate as "capital gain dividends" (as defined in Section 857 (or any successor provision) of the Internal Revenue Code) or as a return of capital, shall be credited to two cumulative dividends on the Series A Preferred Shares.

(g) No dividends on the Series A Preferred Shares shall be authorized by the Trustees or be paid or set apart for payment by the Trust at such time as the terms and provisions of any agreement of the Trust, including any agreement relating to its indebtedness, directly or indirectly prohibit authorization, payment or setting apart for payment or provide that such authorization, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such declaration, payment or setting apart for payment shall be restricted or prohibited by law.

(h) The Trust shall remain entitled to receive and retain any interest or other earnings on any moneys set aside for the payment of dividends on Series A Preferred Shares and holders thereof shall have no claim to such interest or other earnings. Any funds for the payment of dividends on Series A Preferred Shares which have been set apart by the Trust and which have not been claimed by the holders of the Series A Preferred Shares entitled thereto on the first annual or quarterly (the applicable Quarterly Dividend Date, or other dividend payment date shall revert and be repaid to the general funds of the Trust, and hereafter the holders of the Series A Preferred Shares entitled to the funds which have reverted or been repaid to the Trust shall look only to the general funds of the Trust for payment, without interest or other earnings thereon.

(i) "Business Day" shall mean any day other than a Saturday or Sunday that is neither a legal holiday nor a day on which banking institutions in New York, New York or Boston, Massachusetts are authorized or required by law, regulation or executive order to close.

#### 4. Liquidation Rights.

(a) Upon any voluntary or involuntary liquidation, dissolution or winding up of the Trust, then, before any distribution or payment shall be made to the holders of any Common Shares or any other Shares ranking junior to the Series A Preferred Shares as to rights to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, but subject to the preferential rights of holders of any class or series of Shares ranking senior to the Series A Preferred Shares as to rights to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, the holders of Series A Preferred Shares shall be entitled to receive, out of assets of the Trust legally available for distribution to shareholders, liquidating distributions in cash or property at its fair market value as determined by the Trustees in the amount of Twenty-Five Dollars (\$25.00) per Series A Preferred Share, plus an amount equal to all dividends accrued and unpaid thereon.

(b) After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series A Preferred Shares will have no right or claim to any of the remaining assets of the Trust.

(c) In the event that upon any voluntary or involuntary liquidation, dissolution or winding up of the Trust, the available assets of the Trust are insufficient to pay the full amount of the liquidating distributions on all outstanding Series A Preferred Shares and the full amount amounts payable as liquidating distributions on all Shares of other classes or series of Shares of the Trust ranking on a parity with the Series A Preferred Shares as to rights to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, then the holders of the Series A Preferred Shares and all other such classes or series of Shares shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

(d) For purposes of this Section 4, neither the sale, lease, transfer or conveyance of all or substantially all of the property or business of the Trust, nor the merger or consolidation of the Trust into or with any other entity or the merger or consolidation of any other entity with the Trust or a statutory share exchange by the Trust, shall be deemed to be a liquidation or winding up of the Trust.

(e) In determining whether a distribution (other than upon voluntary or involuntary liquidation), dividend, redemption or other acquisition of Shares or otherwise, is permitted by Maryland law, amounts that would be needed, if the Trust were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of the holders of Series A Preferred Shares will not be added to the Trust's total liabilities.

#### 5. Redemption by the Trust.

(a) **Optional Redemption.** The Series A Preferred Shares are not redeemable prior to April 12, 2004, except as otherwise provided in Section 5(b) below. On and after April 12, 2004, the Trust may, at its option, redeem Series A Preferred Shares in whole or from time to time in part, for cash at a redemption price per share of Twenty-Five Dollars (\$25.00), together with all accrued and unpaid dividends to the date fixed for redemption, except as otherwise provided in Section 5(c)(vi) below (the "Series A Redemption Price"), and without interest. Each date fixed for redemption of Series A Preferred Shares pursuant to this Section 5(a) or to Section 5(b) below is referred to as these provisions of the Series A Preferred Shares as a "Series A Redemption Date." The Series A Preferred Shares have no stated maturity and are not subject to any sinking fund or mandatory redemption. Any redemption of Series A Preferred Shares pursuant to this Section 5(a) shall be made in accordance with the applicable provisions of Section 5(c) below.

(b) **Special Optional Redemption.** The Trust may, at its option, redeem at any time all or from time to time any Series A Preferred Shares which constitute Excess Series A Preferred Shares (as defined in Section 9 below) for cash at a redemption price per share equal to the Series A Redemption Price, subject, with respect to the portion of the Series A Redemption Price constituting accrued and unpaid dividends to the date fixed for redemption, to the provisions of the second paragraph of subsection (c) of Section 5.14 of the Declaration and to Section 5(c)(vi) below, and without interest. The Trust's right to redeem Excess Series A Preferred Shares shall be in addition to, and shall not limit, its rights with respect to such Series A Preferred Shares set forth in Section 9 below or in Section 5.14 of the Declaration. Any redemption of Series A Preferred Shares

pursuant to this Section 5(b) shall be made in accordance with the applicable provisions of Section 5(c) below.

(c) Procedures and Terms for Redemption.

(i) Notice of redemption will be mailed at least 30 days but not more than 60 days before the Series A Redemption Date to each holder of record of Series A Preferred Shares to be redeemed at the address shown on the share transfer books of the Trust; *provided* that if the Trust shall have reasonably concluded, based on advice of independent tax counsel experienced in such matters, that a redemption pursuant to Section 5(b) must be made on a date (the "Special Redemption Date") which is earlier than the date of such mailing in order to preserve the status of the Trust as a REIT for income tax purposes or to comply with Federal tax laws relating to the Trust's qualification as a REIT, then the Trust may give such shorter notice as is necessary to effect such redemption on the Special Redemption Date. Each notice of redemption shall state: (A) the applicable Series A Redemption Date; (B) the number of Series A Preferred Shares to be redeemed; (C) the applicable Series A Redemption Price; (D) the place or places where certificates for Series A Preferred Shares are to be surrendered for payment of the Series A Redemption Price; and (E) that dividends on the Series A Preferred Shares to be redeemed will cease to accrue on such Series A Redemption Date. If fewer than all the Series A Preferred Shares are to be redeemed, the notice mailed to each such holder ~~the notice~~ shall also specify the number of Series A Preferred Shares to be redeemed from each such holder or the method for calculating that number. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series A Preferred Shares except as to the holder to whom the Trust has failed to give notice or to whom notice was defective.

(ii) If notice of redemption of Series A Preferred Shares has been mailed in accordance with Section 5(c)(i) above and if the funds necessary for such redemption have been set aside by the Trust in trust for the benefit of the holders of the Series A Preferred Shares so called for redemption, subject to the provisions of Section 5(c)(v) below, then from and after the Series A Redemption Date specified in the notice dividends will cease to accumulate, and such Shares shall no longer be deemed to be outstanding and shall not have the status of Series A Preferred Shares and all rights of the holders thereof as Shareholders of the Trust (except the right to receive the Series A Redemption Price) shall terminate.

(iii) Upon surrender, in accordance with the Trust's notice of redemption, of the certificates for any Series A Preferred Shares redeemed (properly endorsed or assigned for transfer and with applicable signature guarantees, if the Trust shall so require and the notice shall so state), the Series A Preferred Shares shall be redeemed by the Trust at the Series A Redemption Price. In case fewer than all the Series A Preferred Shares evidenced by any such certificate are redeemed, a new certificate or certificates shall be issued evidencing the unredeemed Series A Preferred Shares without cost to the holder thereof.

(iv) If fewer than all of the outstanding Series A Preferred Shares are to be redeemed, the number of Series A Preferred Shares to be redeemed will be determined by the Trust and such Shares may be redeemed pro rata from the holders of record of such Shares in proportion to the number of such Shares held by such holders (with appropriate adjustments to avoid redemption of fractional Shares), by lot or by any other equitable method determined by the Trust.

(v) Any funds for the redemption of Series A Preferred Shares which have been set aside by the Trust pursuant to Section 5(c)(ii) above, shall be irrevocably set aside separate and apart from the Trust's other funds in trust for the pro rata benefit of the holders of the Series A Preferred Shares called for redemption, except that:

(A) the Trust shall be entitled to receive any interest or other earnings, if any, accrued on any money so set aside in trust, and the holders of any Shares redeemed shall have no claim to such interest or other earnings; and

(B) the balance of monies deposited by the Trust and unclaimed by the holders of the Series A Preferred Shares entitled thereto at the expiration of one year from the applicable Series A Redemption Date shall be repaid, together with any interest or other earnings earned thereon, to the general funds of the Trust, and after any such repayment, the holders of the Shares entitled to the funds which have been repaid to the Trust shall look only to the general assets of the Trust for payment without interest or other earnings thereon.

(vi) Anything to the contrary notwithstanding, the holders of record of Series A Preferred Shares on a Record Date will be entitled to receive the dividend payable with respect to such Shares on the corresponding Quarterly Dividend Date notwithstanding the redemption of such Shares after such Record Date and on or prior to such Quarterly Dividend Date, the Trust's default in the payment of the dividend due on such Quarterly Dividend Date, which case the amount payable upon redemption of such Series A Preferred Shares will include such dividend (and the full amount of the dividend payable for the applicable Dividend Period shall instead be paid on such Quarterly Dividend Date if such dividend is not paid on such Record Date as aforesaid). Except as provided in this section, the Trust will make no allowance for unpaid dividends, regardless of whether or not in arrears, on Series A Preferred Shares called for redemption.

(vii) Notwithstanding the foregoing, unless the full amount of dividends on all Series A Preferred Shares shall have been or be temporarily suspended or declared in arrears and a vote is cast for the approval thereof, no Series A Preferred Shares shall be redeemed unless all outstanding Series A Preferred Shares are redeemed, provided, however, that (1) the foregoing shall not prevent the redemption of

Preferred Shares pursuant to Section 5(b) above or the purchase or acquisition of Series A Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series A Preferred Shares, and (ii) the foregoing shall not in any respect limit the terms and provisions of Section 5.14 of the Declaration or Section 9 hereof. In addition, unless the full cumulative dividends on all outstanding Shares of Series A Preferred Shares have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Dividend Periods and the then current Dividend Period, the Trust shall not purchase or otherwise acquire directly or indirectly any Series A Preferred Shares (except by conversion into or exchange for Common Shares or other Junior Shares), provided, however, that (i) the foregoing shall not prevent the redemption of Series A Preferred Shares pursuant to Section 5(b) or the purchase or acquisition of Series A Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series A Preferred Shares, and (ii) the foregoing shall not in any respect limit the terms and provisions of Section 5.14 of the Declaration or Section 9 hereof.

(viii) For the avoidance of doubt, the provisions of this Section 5 shall not limit any direct or indirect purchase or acquisition by the Trust of all or any Series A Preferred Shares on the open market (including in privately negotiated transactions), except as otherwise expressly provided in Section 5(c)(vii) above.

6. Voting Rights. Notwithstanding anything to the contrary contained in the Declaration, except as set forth below in this Section 6, the holders of the Series A Preferred Shares shall not be entitled to vote at any meeting of the shareholders for election of Trustees or for any other purpose or otherwise to participate in any action taken by the Trust or the shareholders thereof, or to receive notice of any meeting of shareholders (except for such notices as may be expressly required by law).

(a) At any time dividends on the Series A Preferred Shares shall be in arrears for six or more quarterly periods, whether or not the quarterly periods are consecutive, the holders of Series A Preferred Shares (voting separately as a class with all other series of Preferred Shares of the Trust upon which like voting rights have been conferred and are exercisable) will be entitled to vote for the election of two additional Trustees of the Trust at the next annual meeting of shareholders and at each subsequent meeting (and the number of Trustees then constituting the Board of Trustees will automatically increase by two, if not already increased by two by reason of the election of Trustees by the holders of such Preferred Shares), until all dividends accumulated on Series A Preferred Shares for the past Dividend Periods and the then current Dividend Periods, all have been fully paid or declared and a sum sufficient for the payment thereof set apart for payment.

(i) Upon the full payment of all such dividends accumulated on Series A Preferred Shares for the past Dividend Periods and the then current Dividend Period or the declaration in full thereof and the Trust's setting aside a sum sufficient for the payment thereof, the right of the holders of Series A Preferred Shares to elect such two Trustees shall cease, and (unless there are one or more other series of Preferred Shares of the Trust upon which like voting rights have been conferred and are exercisable) the terms of other of such

Trustees previously so elected shall automatically terminate and the authorized number of Trustees of the Trust will thereupon automatically return to the number of authorized Trustees otherwise in effect, but subject always to the same provisions for the reinstatement and divestment of the right to elect two additional Trustees in the case of any such future dividend arrearage.

(ii) If at any time when the voting rights conferred upon the Series A Preferred Shares pursuant to this Section 6(a) are exercisable any vacancy in the office of a Trustee elected pursuant to this Section 6(a) shall occur, then such vacancy may be filled only by the written consent of the remaining such Trustee or by vote of the holders of record of the outstanding Series A Preferred Shares and any other series of Preferred Shares of the Trust upon which like voting rights have been conferred and are exercisable which are entitled to vote as a class with the Series A Preferred Shares in the election of Trustees pursuant to this Section 6(a).

(c) Any Trustee elected or appointed pursuant to this Section 6(a) may be removed only by the holders of the outstanding Series A Preferred Shares and any other series of Preferred Shares of the Trust upon which like voting rights have been conferred and are exercisable and which are entitled to vote as a class with the Series A Preferred Shares in the election of Trustees pursuant to this Section 6(a), and may not be removed by the holders of the Common Shares.

(iv) The term of any Trustees elected or appointed pursuant to this Section 6(a) shall be from the date of such election or appointment and their qualification until the next annual meeting of the Shareholders and until their successors are duly elected and qualify, except as otherwise provided above in this Section 6(a).

(b) So long as any Series A Preferred Shares remain outstanding, the Trust shall not, without the affirmative vote or consent of the holders of at least two-thirds of the Series A Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (the holders of Series A Preferred Shares voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of Shares ranking senior to the Series A Preferred Shares with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up of the Trust, or reclassify any authorized Shares of the Trust into any such Shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such Shares; or (ii) amend, alter or repeal the provisions of the Declaration or the terms of the Series A Preferred Shares, whether by merger, consolidation or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of the Series A Preferred Shares; *provided, however*, that any increase in the amount of authorized Preferred Shares, any issuance of or increase in the amount of Series A Preferred Shares or any creation or issuance of or increase in the amount of authorized shares of any class or series of Preferred Shares which rank on a parity with the Series A Preferred Shares with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up of the Trust or which are Junior Shares shall not be deemed to materially and adversely affect the rights, preferences, privileges or voting powers of the Series A Preferred Shares.

(c) The voting provisions set forth in clauses (a) and (b) above will not apply if, at or prior to the time when the act with respect to which a vote would otherwise be required shall be effected, all outstanding Series A Preferred Shares shall have been redeemed or called for redemption, and sufficient funds shall have been deposited in trust pursuant to the provisions of Sections 5(c)(ii) and 5(c)(v) hereof to effect the redemption.

(d) On each matter submitted to a vote of the holders of Series A Preferred Shares or on which the holders of Series A Preferred Shares are otherwise entitled to vote as provided herein, each Series A Preferred Share shall be entitled to one vote, except that when the holders of any other class or series of Preferred Shares of the Trust have the right to vote, the Series A Preferred Shares as a single class on any matter, the Series A Preferred Shares shall have one vote for each Twenty-Five Dollars (\$25.00) of such other class or series will have one vote for each Twenty-Five Dollars (\$25.00) of such other class or series. This provision shall not affect the liquidation preference.

7. Conversion The Series A Preferred Shares are not convertible into or exchangeable for any other property or securities of the Trust. This provision will not prevent the Trust from offering to convert or exchange the Series A Preferred Shares.

8. Status of Redeemed and Reacquired Series A Preferred Shares In the event any Series A Preferred Shares shall be redeemed pursuant to Section 5 hereof or otherwise reacquired by the Trust, the Shares so redeemed or reacquired shall become authorized but unissued Shares of Series A Preferred Shares, available for future issuance and reclassification by the Trust or, if so determined by the Trustees, may be retired and canceled by the Trust.

9. Restrictions on Transfer

(a) As a condition to the transfer (including, without limitation, any sale, transfer, gift, assignment, devise or other disposition of Series A Preferred Shares, whether voluntary or involuntary, whether beneficially or of record, and whether effected constructively, by operation of law or otherwise) and/or registration of transfer of any Series A Preferred Shares ("Excess Series A Preferred Shares") which could in the opinion of the Trustees result in

(i) direct or indirect ownership (as defined in Section 3.14 of the Declaration) of Series A Preferred Shares representing more than 9.8% in number, value or voting power of the total Series A Preferred Shares outstanding becoming concentrated in the hands of one owner other than an Excepted Person (as such term is defined in the Declaration),

(ii) the outstanding Series A Preferred Shares of the Trust being owned by fewer than one hundred (100) persons, or

(iii) the Trust being "closely held" within the meaning of Section 556(b) of the Internal Revenue Code,

such potential owner (a "Proposed Transferee") shall file with the Trust the statement or affidavit described in Section 5.14(b) of the Declaration no later than the fifteenth (15th) day prior to any proposed transfer, registration of transfer or transaction which, if consummated, would have any of the results set forth above; provided, however, that the Trustees may waive such requirement of prior notice upon determination that such waiver is in the best interests of the Trust. Subject to Section 5.14(i) of the Declaration, the Trustees shall have the power and right (i) to refuse to transfer or issue Excess Series A Preferred Shares or share certificates to any Proposed Transferee whose acquisition of such Excess Series A Preferred Shares would, in the opinion of the Trustees, result in the direct or indirect beneficial ownership of any Excess Series A Preferred Shares by a Person other than an Excepted Person and (ii) to treat such Excess Series A Preferred Shares as if they had been transferred not to the Proposed Transferee but rather to a trustee for the benefit of one or more Charitable Beneficiaries (as defined in the Declaration) selected and outlined as provided in Section 5.14(c) of the Declaration. Any such trust shall be deemed to have been established by the holder of such Excess Series A Preferred Shares for the benefit of the applicable Charitable Beneficiary or Charitable Beneficiaries on the day prior to the date of the purported transfer to the Proposed Transferee, which purported transfer shall be void ab initio and the Proposed Transferee shall be deemed never to have acquired any interest in or with respect to the Excess Series A Preferred Shares purportedly transferred.

(b) Any Excess Series A Preferred Shares shall automatically be deemed to constitute Excess Shares (within the meaning of the Declaration) and shall be treated in the manner prescribed for Excess Shares, including those set forth in Section 5.14(c) thereof.

(c) Notwithstanding any other provision of the Declaration or hereof to the contrary, but subject to Section 5.14(i) of the Declaration, any purported acquisition of Series A Preferred Shares (whether such purported acquisition results from the direct or indirect acquisition or ownership (as defined for purposes of the Declaration) of Series A Preferred Shares) which would result in the disqualification of the Trust as a REIT shall be null and void. Any such Shares may be treated by the Trustees in the manner prescribed for Excess Series A Preferred Shares in these provisions of the Series A Preferred Shares and for Excess Shares in Section 5.14(c) of the Declaration.

(d) The provisions of this Section 9 shall not limit the applicability of Section 5.14 of the Declaration to Series A Preferred Shares in accordance with the terms thereof, and the provisions of this Section 9 and of Section 5.14 of the Declaration shall not limit the right of the Trust to elect to redeem Excess Series A Preferred Shares pursuant to Section 5(b) hereof. Subject only to Section 5.14(i) of the Declaration, nothing contained in this Section 9 or in any other provision of the Series A Preferred Shares in these provisions of the Series A Preferred Shares shall limit the authority of the Trustees to take such other action as they deem necessary or advisable to protect the Trust and the interests of the Shareholders by preserving the Trust's status as a REIT. The provisions of subsections (f) through (i) of Section 5.14 of the Declaration shall be applicable to this Section 9 as though (i) the references therein to Section 5.14 of the Declaration referred instead to this Section 9 and (ii) the references therein to subsections of Section 5.14 of the Declaration referred to the comparable provisions of this Section 9.

10. Severability. If any preference, right, voting power, restriction, limitation as to dividends, qualification, term or condition of redemption or other term of the Series A Preferred Shares is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, then, to the extent permitted by law, all other preferences, rights, voting power, restrictions, limitations as to dividends, qualifications, terms and conditions of redemption and other terms of the Series A Preferred Shares which can be given effect without being invalid, unlawful or unenforceable preference, right, voting power, restriction, limitation as to dividends, qualification, term or condition of redemption or other term of the Series A Preferred Shares, shall remain in full force and effect and shall not be deemed dependent upon any invalid, unlawful or unenforceable preference, right, voting power, restriction, limitation as to dividends, qualification, term or condition of redemption or other term of the Series A Preferred Shares.

**THIRD:** The Series A Preferred Shares have been classified and designated by the Board of Trustees under the authority contained in the Declaration.

**FOURTH:** The Articles Supplementary have been approved by the Board of Trustees in the manner and by the authority required by law.

**FIFTH:** The undersigned President of the Trust acknowledges these Articles Supplementary to be the true act of the Trust and as to all matters or facts required to be stated under oath, the undersigned President acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and this statement is made under the penalty for perjury.

IN WITNESS WHEREOF, HOSPITALITY PROPERTIES TRUST has caused these Articles Supplementary to be signed in its name and on its behalf by its President, and witnessed by its Assistant Secretary on April 7, 1998.

WITNESS:

HOSPITALITY PROPERTIES TRUST

  
Alexander A. Nicosios, Jr.,  
Assistant Secretary

By:   
John G. Murray, President

DOCUMENT CODE

16 57110

BUSINESS CODE

# D441826

P.A.

Religious

Close

Stock

Nonstock

Merging (Transferor)

Surviving (Transferee)

FEES REMITTED

Base Fee: 20  
 Org. & Cap. Fee:  
 Expedite Fee: 130  
 Penalty:  
 State Recordation Tax:  
 State Transfer Tax:  
 5 Certified Copies:  
 Copy Fee: 70  
 Certificates:  
 Certificate Fee:  
 Other:  
 TOTAL FEES: 220

Credit Card

✓ Check

Cash

Documents on

Checks

APPROVED BY: [Signature]

NOTE

ID # 004341826 AC# 1 100 011234000000  
 LIB# BDC024 PGL# 0: 0771 PAGES: 0013  
 HOSPITALITY PROPERTIES TRUST

04/08/1999 AT 12:14 P.M. # 0000155833

COMMENT: 00.00

WORK ORDER 000155833  
 CUSTOMER ID  
 000010489  
 1999-04-21 08:26 PM  
 AMT PAID

(New Name)

Change of Name  
 Change of Principal Office  
 Change of Resident Agent  
 Change of Resident Agent Address  
 Resignation of  
 Designation of  
 and Resident Agent Address  
 Change of Business Entity

Adoption of Assumed Name

Other Change(s)

CODE 193

ATTENTION: Andrew Cohen

MAIL TO ADDRESS:

**HOSPITALITY PROPERTIES TRUST  
ARTICLES SUPPLEMENTARY  
8.875% SERIES B CUMULATIVE REDEEMABLE PREFERRED SHARES  
without par value**

HOSPITALITY PROPERTIES TRUST, a Maryland real estate investment trust (the "Trust"), having its principal office in Newton, Massachusetts, hereby certifies to the State Department of Assessments and Taxation of Maryland that:

**FIRST:** Pursuant to authority expressly vested in the Trustees by Section 5.1 of the Amended and Restated Declaration of Trust of the Trust, dated August 21, 1995, as amended and supplemented (the "Declaration"), the Trustees have duly classified and designated 3,450,000 Preferred Shares of the Trust as 8.875% Series B Cumulative Redeemable Preferred Shares, without par value, of the Trust ("Series B Preferred Shares").

**SECOND:** The preferences, rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms or conditions of redemption of the Series B Preferred Shares are as follows, which upon any restatement of the Declaration shall be made part of Article V of the Declaration, with any necessary or appropriate changes to the enumeration or lettering of sections or subsections hereof. Capitalized terms used in this ARTICLE SECOND which are defined in the Declaration and not otherwise defined herein are used herein as so defined in the Declaration.

8.875% Series B Cumulative Redeemable Preferred Shares, without par value

1. Designation and Number. A series of Preferred Shares, designated the 8.875% Series B Cumulative Redeemable Preferred Shares, without par value (the "Series B Preferred Shares"), is hereby established. The number of authorized Series B Preferred Shares is 3,450,000.

2. Relative Seniority. In respect of rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, the Series B Preferred Shares shall rank (i) senior to the Common Shares, the Junior Participating Preferred Shares and any other class or series of Shares of the Trust, the terms of which specifically provide that such class or series ranks, as to rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, junior to the Series B Preferred Shares (the Shares described in this clause (i) being, collectively, "Junior Shares"), (ii) on a parity with the 9 1/2% Series A Cumulative Redeemable Preferred Shares, without par value (the "Series A Preferred Shares"), and any other class or series of Shares of the Trust, the terms of which specifically provide that such class or series ranks, as to rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, on a parity with the Series B Preferred Shares, and (iii) junior to any class or series of Shares of the Trust, the terms of which specifically provide that such class or series ranks, as to rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up

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STATE OF MARYLAND  
I hereby certify that this is a true and complete copy of the  
page document on file in this office. DATE: 1/16/18  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:  
BY: [Signature], Custodian  
This stamp replaces our previous certification system. Effective 6/01

of the Trust, senior to the Series B Preferred Shares. For the avoidance of doubt, debt securities of the Trust which are convertible into or exchangeable for Shares of the Trust or any other debt securities of the Trust do not constitute a class or series of Shares for purposes of this Section 2.

3. Dividends and Distributions.

(a) Subject to the preferential rights of the holders of any class or series of Shares of the Trust ranking senior to the Series B Preferred Shares as to dividends, the holders of the then outstanding Series B Preferred Shares shall be entitled to receive, when and as authorized by the Trustees and declared by the Trust, out of any funds legally available therefor, cumulative dividends at a rate of eight and seven-eighths percent 8.875% per annum of the Twenty-five Dollars (\$25.00) per share liquidation preference of the Series B Preferred Shares (equivalent to the annual rate of \$2.21875 per share). Such dividends shall accrue and be cumulative from (but excluding) December 10, 2002 (the "Original Issue Date") in the case of Series B Preferred Shares issued on or prior to January 9, 2003, and otherwise from (but excluding) the date of the original issuance thereof, and will be payable quarterly in arrears in cash on the fifteenth day of each January, April, July and October beginning on April 15, 2003 (each such day being hereinafter called a "Quarterly Dividend Date"); *provided* that if any Quarterly Dividend Date is not a Business Day (as hereinafter defined), then the dividend which would otherwise have been payable on such Quarterly Dividend Date may be paid on the next succeeding Business Day with the same force and effect as if paid on such Quarterly Dividend Date, and no interest or additional dividends or other sums shall accrue on the amount so payable from such Quarterly Dividend Date to such next succeeding Business Day. As used herein the term "Dividend Period" for Series B Preferred Shares means the period from but excluding the Original Issue Date or other date of the original issuance thereof, as applicable, and ending on and including the next following Quarterly Dividend Date, and each subsequent period from but excluding a Quarterly Dividend Date and ending on and including the next following Quarterly Dividend Date. The amount of any dividend payable for any full Dividend Period or portion thereof shall be computed on the basis of a 360-day year consisting of twelve 30-day months (it being understood that the first Dividend Period is shorter than a full Dividend Period). Dividends shall be payable to holders of record as they appear in the share records of the Trust at the close of business on the applicable record date (the "Record Date"), which shall be a date designated by the Trustees for the payment of dividends that is not more than 60 nor less than 10 days prior to the applicable Quarterly Dividend Date.

(b) Dividends on the Series B Preferred Shares shall accrue and be cumulative, whether or not (i) the Trust has earnings, (ii) there are funds legally available for the payment of such dividends or (iii) such dividends have been declared.

(c) If Series B Preferred Shares are outstanding, no full dividends shall be declared or paid or set apart for payment on any other class or series of Shares of the Trust ranking, as to dividends, on a parity with the Series B Preferred Shares for any period, unless the full cumulative dividends on the Series B Preferred Shares have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Dividend Periods. When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the Series B Preferred Shares and the Shares of any other class or series ranking on a parity as to dividends with the Series B Preferred Shares, all

dividends declared upon Series B Preferred Shares and any such other class or series of Shares shall in all cases bear to each other the same ratio that accrued dividends per share on the Series B Preferred Shares and such other class or series of Shares (which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if such other class or series does not have a cumulative dividend) bear to each other.

(d) Except as provided in Section 3(c) above, unless full cumulative dividends on the Series B Preferred Shares have been or contemporaneously are declared and paid or declared and a sum sufficient for the repayment thereof set apart for payment for all past Dividend Periods and the then current Dividend Period, no dividends (other than in Common Shares or other Junior Shares or options, warrants or rights to subscribe for or purchase Common Shares or other Junior Shares) shall be declared or paid or set apart for payment and no other distribution shall be declared or made upon the Common Shares or any other Shares ranking junior to the Series B Preferred Shares as to rights to receive dividends or to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, nor shall any Common Shares or any other such Shares be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such Shares) by the Trust except (i) by conversion into or exchange for Common Shares or other Junior Shares, (ii) pursuant to pro rata offers to purchase or a concurrent redemption of all, or a pro rata portion of, the outstanding Series B Preferred Shares and any other class or series of Shares ranking on a parity with Series B Preferred Shares as to rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, (iii) by redemption, purchase or other acquisition of Common Shares made for purposes of an incentive, benefit or share purchase plan of the Trust or any of its subsidiaries for officers, Trustees or employees or others performing or providing similar services, (iv) by redemption, purchase or other acquisition of rights to purchase Junior Participating Preferred Shares pursuant to the Rights Agreement, dated as of May 30, 1997, between the Trust and State Street Bank and Trust Company, as rights agent, or pursuant to any replacement agreement therefor relating to such rights, each as in effect from time to time, or of any similar rights from time to time issued by the Trust in connection with a successor or supplemental shareholder rights protection plan adopted by the Trustees, and (v) for redemptions, purchases or other acquisitions by the Trust, whether pursuant to any provision of the Declaration or otherwise, for the purpose of preserving the Trust's status as a real estate investment trust (a "REIT") for federal income tax purposes.

(e) No interest, or sum of money in lieu thereof, shall be payable in respect of any dividend payment or payments on Series B Preferred Shares which may be in arrears, and the holders of Series B Preferred Shares are not entitled to any dividends, whether payable in cash, securities or other property, in excess of the full cumulative dividends described in this Section 3. Except as otherwise expressly provided herein, the Series B Preferred Shares shall not be entitled to participate in the earnings or assets of the Trust.

(f) Any dividend payment made on the Series B Preferred Shares shall be first credited against the earliest accrued but unpaid dividend due with respect to such Shares which remains payable. Any cash dividends paid in respect of Series B Preferred Shares, including any portion thereof which the Trust elects to designate as "capital gain dividends" (as defined in

Section 857 (or any successor provision) of the Internal Revenue Code) or as a return of capital, shall be credited to the cumulative dividends on the Series B Preferred Shares.

(g) No dividends on the Series B Preferred Shares shall be authorized by the Trustees or be paid or set apart for payment by the Trust at such time as the terms and provisions of any agreement of the Trust, including any agreement relating to its indebtedness, directly or indirectly prohibit authorization, payment or setting apart for payment or provide that such authorization, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such declaration, payment or setting apart for payment shall be restricted or prohibited by law.

(h) The Trust shall remain entitled to receive and retain any interest or other earnings on any money set aside for the payment of dividends on Series B Preferred Shares and holders thereof shall have no claim to such interest or other earnings. Any funds for the payment of dividends on Series B Preferred Shares which have been set apart by the Trust and which remain unclaimed by the holders of the Series B Preferred Shares entitled thereto on the first anniversary of the applicable Quarterly Dividend Date, or other dividend payment date, shall revert and be repaid to the general funds of the Trust, and thereafter the holders of the Series B Preferred Shares entitled to the funds which have reverted or been repaid to the Trust shall look only to the general funds of the Trust for payment, without interest or other earnings thereon.

(i) "Business Day" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York, New York or Boston, Massachusetts are authorized or required by law, regulation or executive order to close.

#### 4. Liquidation Rights.

(a) Upon any voluntary or involuntary liquidation, dissolution or winding up of the Trust, before any distribution or payment shall be made to the holders of any Common Shares or any other Shares ranking junior to the Series B Preferred Shares as to rights to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, but subject to the preferential rights of holders of any class or series of Shares ranking senior to the Series B Preferred Shares as to rights to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, the holders of Series B Preferred Shares shall be entitled to receive, out of assets of the Trust legally available for distribution to shareholders, liquidating distributions in cash or property at its fair market value as determined by the Trustees in the amount of Twenty-five Dollars (\$25.00) per Series B Preferred Share, plus an amount equal to all dividends accrued and unpaid thereon.

(b) After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series B Preferred Shares will have no right or claim to any of the remaining assets of the Trust.

(c) In the event that upon any voluntary or involuntary liquidation, dissolution or winding up of the Trust, the available assets of the Trust are insufficient to pay the full amount of the liquidating distributions on all outstanding Series B Preferred Shares and the full amounts payable as liquidating distributions on all Shares of other classes or series of Shares of the Trust

ranking on a parity with the Series B Preferred Shares as to rights to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, then the holders of the Series B Preferred Shares and all other such classes or series of Shares shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

(d) For purposes of this Section 4, neither the sale, lease, transfer or conveyance of all or substantially all of the property or business of the Trust, nor the merger or consolidation of the Trust into or with any other entity or the merger or consolidation of any other entity into or with the Trust or a statutory share exchange by the Trust, shall be deemed to be a dissolution, liquidation or winding up of the Trust.

(e) In determining whether a distribution (other than upon voluntary or involuntary liquidation), by dividend, redemption or other acquisition of Shares or otherwise, is permitted under Maryland law, amounts that would be needed, if the Trust were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of the holders of Series B Preferred Shares will not be added to the Trust's total liabilities.

5. Redemption by the Trust.

(a) Optional Redemption. The Series B Preferred Shares are not redeemable prior to December 10, 2007 except as otherwise provided in Section 5(b) below. On and after December 10, 2007, the Trust may, at its option, redeem Series B Preferred Shares in whole or from time to time in part, for cash at a redemption price per share of Twenty-five Dollars (\$25.00), together with all accrued and unpaid dividends to the date fixed for redemption, except as otherwise provided in Section 5(c)(vi) below, and without interest (the "Series B Redemption Price"). Each date fixed for redemption of Series B Preferred Shares pursuant to this Section 5(a) or to Section 5(b) below is referred to in these provisions of the Series B Preferred Shares as a "Series B Redemption Date." The Series B Preferred Shares have no stated maturity and are not subject to any sinking fund or mandatory redemption. Any redemption of Series B Preferred Shares pursuant to this Section 5(a) shall be made in accordance with the applicable provisions of Section 5(c) below.

(b) Special Optional Redemption. The Trust may, at its option, redeem at any time all or from time to time any Series B Preferred Shares which constitute Excess Series B Preferred Shares (as defined in Section 9 below) for cash at a redemption price per share equal to the Series B Redemption Price, subject, with respect to the portion of the Series B Redemption Price constituting accrued and unpaid dividends to the date fixed for redemption, to the provisions of the second paragraph of subsection (c) of Section 5.14 of the Declaration and to Section 5(c)(vi) below, and without interest. The Trust's right to redeem Excess Series B Preferred Shares shall be in addition to, and shall not limit, its rights with respect to such Series B Preferred Shares set forth in Section 9 below or in Section 5.14 of the Declaration. Any redemption of Series B Preferred Shares pursuant to this Section 5(b) shall be made in accordance with the applicable provisions of Section 5(c) below.

(c) Procedures and Terms for Redemption.

(i) Notice of redemption will be mailed at least 30 days but not more than 60 days before the Series B Redemption Date to each holder of record of Series B Preferred Shares to be redeemed at the address shown on the share transfer books of the Trust; *provided* that if the Trust shall have reasonably concluded, based on advice of independent tax counsel experienced in such matters, that a redemption pursuant to Section 5(b) must be made on a date (the "Special Redemption Date") which is earlier than 30 days after the date of such mailing in order to preserve the status of the Trust as a REIT for federal income tax purposes or to comply with federal tax laws relating to the Trust's qualification as a REIT, then the Trust may give such shorter notice as is necessary to effect such redemption on the Special Redemption Date. Each notice of redemption shall state: (A) the applicable Series B Redemption Date; (B) the number of Series B Preferred Shares to be redeemed; (C) the applicable Series B Redemption Price; (D) the place or places where certificates for such Series B Preferred Shares are to be surrendered for payment of the Series B Redemption Price; and (E) that dividends on the Series B Preferred Shares to be redeemed will cease to accrue on such Series B Redemption Date. If fewer than all the Series B Preferred Shares are to be redeemed, the notice mailed to each such holder thereof shall also specify the number of Series B Preferred Shares to be redeemed from each such holder or the method for calculating that number. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series B Preferred Shares except as to the holder to whom the Trust has failed to give notice or to whom notice was defective.

(ii) If notice of redemption of Series B Preferred Shares has been mailed in accordance with Section 5(c)(i) above and if the funds necessary for such redemption have been set aside by the Trust in trust for the benefit of the holders of the Series B Preferred Shares so called for redemption, subject to the provisions of Section 5(c)(v) below, then from and after the Series B Redemption Date specified in the notice, dividends will cease to accumulate, and such Shares shall no longer be deemed to be outstanding and shall not have the status of Series B Preferred Shares and all rights of the holders thereof as shareholders of the Trust (except the right to receive the Series B Redemption Price) shall terminate.

(iii) Upon surrender, in accordance with the Trust's notice of redemption, of the certificates for any Series B Preferred Shares redeemed (properly endorsed or assigned for transfer and with applicable signature guarantees, if the Trust shall so require and the notice shall so state), the Series B Preferred Shares shall be redeemed by the Trust at the Series B Redemption Price. In case fewer than all the Series B Preferred Shares evidenced by any such certificate are redeemed, a new certificate or certificates shall be issued evidencing the unredeemed Series B Preferred Shares without cost to the holder thereof.

(iv) If fewer than all of the outstanding Series B Preferred Shares are to be redeemed, the number of Series B Preferred Shares to be redeemed will be determined by the Trust and such Shares may be redeemed pro rata from the holders of record of such Shares in proportion to the number of such Shares held by such holders (with

adjustments to avoid redemption of fractional Shares), by lot or by any other equitable method determined by the Trust.

(v) Any funds for the redemption of Series B Preferred Shares which have been set aside by the Trust pursuant to Section 5(c)(ii) above, shall be irrevocably set aside separate and apart from the Trust's other funds in trust for the pro rata benefit of the holders of the Series B Preferred Shares called for redemption, except that:

- (A) the Trust shall be entitled to receive any interest or other earnings, if any, earned on any money so set aside in trust, and the holders of any Shares redeemed shall have no claim to such interest or other earnings; and
- (B) any balance of monies deposited by the Trust and unclaimed by the holders of the Series B Preferred Shares entitled thereto at the expiration of one year from the applicable Series B Redemption Date shall be repaid, together with any interest or other earnings earned thereon, to the general funds of the Trust, and after any such repayment, the holders of the Shares entitled to the funds which have been repaid to the Trust shall look only to the general funds of the Trust for payment without interest or other earnings thereon.

(vi) Anything in these provisions of the Series B Preferred Shares to the contrary notwithstanding, the holders of record of Series B Preferred Shares at the close of business on a Record Date will be entitled to receive the dividend payable with respect to such Shares on the corresponding Quarterly Dividend Date notwithstanding the redemption of such Shares after such Record Date and on or prior to such Quarterly Dividend Date or the Trust's default in the payment of the dividend due on such Quarterly Dividend Date, in which case the amount payable upon redemption of such Series B Preferred Shares will not include such dividend (and the full amount of the dividend payable for the applicable Dividend Period shall instead be paid on such Quarterly Dividend Date to the holders of record on such Record Date as aforesaid). Except as provided in this clause (vi) and except to the extent that accrued and unpaid dividends are payable as a part of the Series B Redemption Price pursuant to Section 5(a) or 5(b), the Trust will make no payment or allowance for unpaid dividends, regardless of whether or not in arrears, on Series B Preferred Shares called for redemption.

(vii) Notwithstanding the foregoing, unless the full cumulative dividends on all Series B Preferred Shares shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Dividend Periods and the then current Dividend Period, no Series B Preferred Shares shall be redeemed unless all outstanding Series B Preferred Shares are simultaneously redeemed; *provided, however*, that (i) the foregoing shall not prevent the redemption of Series B Preferred Shares pursuant to Section 5(b) above or the purchase or acquisition of Series B Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series B Preferred Shares, and (ii) the foregoing shall not in any respect limit the terms and provisions of Section 5.14 of the Declaration or Section 9 hereof. In addition, unless the full cumulative dividends on all

outstanding Series B Preferred Shares have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Dividend Periods and the then current Dividend Period, the Trust shall not purchase or otherwise acquire directly or indirectly any Series B Preferred Shares (except by conversion into or exchange for Common Shares or other Junior Shares); *provided, however,* that (i) the foregoing shall not prevent the redemption of Series B Preferred Shares pursuant to Section 5(b) above or the purchase or acquisition of Series B Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series B Preferred Shares, and (ii) the foregoing shall not in any respect limit the terms and provisions of Section 5.14 of the Declaration or Section 9 hereof.

(viii) For the avoidance of doubt, the provisions of this Section 5 shall not limit any direct or indirect purchase or acquisition by the Trust of all or any Series B Preferred Shares on the open market (including in privately negotiated transactions), except as otherwise expressly provided in Section 5(c)(vii) above.

6. Voting Rights. Notwithstanding anything to the contrary contained in the Declaration, except as set forth below in this Section 6, the holders of the Series B Preferred Shares shall not be entitled to vote at any meeting of the shareholders for election of Trustees or for any other purpose or otherwise to participate in any action taken by the Trust or the shareholders thereof, or to receive notice of any meeting of shareholders (except for such notices as may be expressly required by law).

(a) At any time dividends on the Series B Preferred Shares shall be in arrears for six or more quarterly periods, whether or not the quarterly periods are consecutive, the holders of Series B Preferred Shares (voting separately as a class with all other series of Preferred Shares of the Trust upon which like voting rights have been conferred and are exercisable) will be entitled to vote for the election of two additional Trustees of the Trust at the next annual meeting of shareholders and for those or other replacement Trustees at each subsequent meeting (and the number of Trustees then constituting the Board of Trustees will automatically increase by two, if not already increased by two by reason of the election of Trustees by the holders of such Preferred Shares), until all dividends accumulated on Series B Preferred Shares for the past Dividend Periods and the then current Dividend Period shall have been fully paid or declared and a sum sufficient for the payment thereof set apart for payment. For the avoidance of doubt, and by means of example, in the event dividends on the Series B Preferred Shares and the Series A Preferred Shares shall both be in arrears for six or more quarterly periods, the holders of Series B Preferred Shares and Series A Preferred Shares (and the holders of all other series of Preferred Shares of the Trust upon which like voting rights have been conferred and are exercisable) shall be entitled to vote for the election of two additional Trustees in the aggregate, not four or more additional Trustees.

(i) Upon the full payment of all such dividends accumulated on Series B Preferred Shares for the past Dividend Periods and the then current Dividend Period or the declaration in full thereof and the Trust's setting aside a sum sufficient for the payment thereof, the right of the holders of Series B Preferred Shares to elect such two Trustees shall cease, and (unless there are one or more other series of Preferred Shares of the Trust upon which like voting rights have been conferred and are exercisable) the term

of office of such Trustees previously so elected shall automatically terminate and the authorized number of Trustees of the Trust will thereupon automatically return to the number of authorized Trustees otherwise in effect, but subject always to the same provisions for the reinstatement and divestment of the right to elect two additional Trustees in the case of any such future dividend arrearage.

(ii) If at any time when the voting rights conferred upon the Series B Preferred Shares pursuant to this Section 6(a) are exercisable any vacancy in the office of a Trustee elected pursuant to this Section 6(a) shall occur, then such vacancy may be filled only by the written consent of the remaining such Trustee or by vote of the holders of record of the outstanding Series B Preferred Shares and any other series of Preferred Shares of the Trust upon which like voting rights have been conferred and are exercisable and which are entitled to vote as a class with the Series B Preferred Shares in the election of Trustees pursuant to this Section 6(a).

(iii) Any Trustee elected or appointed pursuant to this Section 6(a) may be removed only by the holders of the outstanding Series B Preferred Shares and any other series of Preferred Shares of the Trust upon which like voting rights have been conferred and are exercisable and which are entitled to vote as a class with the Series B Preferred Shares in the election of Trustees pursuant to this Section 6(a), and may not be removed by the holders of the Common Shares.

(iv) The term of any Trustees elected or appointed pursuant to this Section 6(a) shall be from the date of such election or appointment and their qualification until the next annual meeting of the shareholders and until their successors are duly elected and qualify, except as otherwise provided above in this Section 6(a).

(b) So long as any Series B Preferred Shares remain outstanding, the Trust shall not, without the affirmative vote or consent of the holders of at least two-thirds of the Series B Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (the holders of Series B Preferred Shares voting separately as a class), (i) authorize or create, or increase the authorized or issued amount of, any class or series of Shares ranking senior to the Series B Preferred Shares with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up of the Trust, or reclassify any authorized Shares of the Trust into any such Shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such Shares; or (ii) amend, alter or repeal the provisions of the Declaration or the terms of the Series B Preferred Shares, whether by merger, consolidation or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of the Series B Preferred Shares; *provided, however*, that any increase in the amount of authorized Preferred Shares, any issuance of or increase in the amount of Series B Preferred Shares or any creation or issuance of or increase in the amount of authorized shares of any class or series of Preferred Shares which rank on a parity with the Series B Preferred Shares with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up of the Trust or which are Junior Shares shall not be deemed to materially and adversely affect the rights, preferences, privileges or voting powers of the Series B Preferred Shares.

(c) The voting provisions set forth in clauses (a) and (b) above will not apply if, at or prior to the time when the act with respect to which a vote would otherwise be required shall be effected, all outstanding Series B Preferred Shares shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust pursuant to the provisions of Sections 5(c)(ii) and 5(c)(v) hereof to effect the redemption.

(d) On each matter submitted to a vote of the holders of Series B Preferred Shares or on which the holders of Series B Preferred Shares are otherwise entitled to vote as provided herein, each Series B Preferred Share shall be entitled to one vote, except that when Shares of any other class or series of Preferred Shares of the Trust have the right to vote with the Series B Preferred Shares as a single class on any matter, the Series B Preferred Shares and the Shares of each such other class or series will have one vote for each Twenty-five Dollars (\$25.00) of liquidation preference.

7. Conversion. The Series B Preferred Shares are not convertible into or exchangeable for any other property or securities of the Trust. This provision will not prevent the Trust from offering to convert or exchange the Series B Preferred Shares.

8. Status of Redeemed and Reacquired Series B Preferred Shares. In the event any Series B Preferred Shares shall be redeemed pursuant to Section 5 hereof or otherwise reacquired by the Trust, the Shares so redeemed or reacquired shall become authorized but unissued Series B Preferred Shares, available for future issuance and reclassification by the Trust or, if so determined by the Trustees, may be retired and canceled by the Trust.

9. Restrictions on Transfer.

(a) As a condition to the transfer (including, without limitation, any sale, transfer, gift, assignment, devise or other disposition of Series B Preferred Shares, whether voluntary or involuntary, whether beneficially or of record, and whether effected constructively, by operation of law or otherwise) and/or registration of transfer of any Series B Preferred Shares ("Excess Series B Preferred Shares") which could in the opinion of the Trustees result in

(i) direct or indirect ownership (as defined in Section 5.14 of the Declaration) of Series B Preferred Shares representing more than 9.8% in number, value or voting power of the total Series B Preferred Shares outstanding becoming concentrated in the hands of one owner other than an Excepted Person (as such term is defined in the Declaration),

(ii) the outstanding Series B Preferred Shares of the Trust being owned by fewer than one hundred twenty (120) persons, or

(iii) the Trust being "closely held" within the meaning of Section 856(h) of the Internal Revenue Code,

such potential owner (a "Proposed Transferee") shall file with the Trust the statement or affidavit described in Section 5.14(b) of the Declaration no later than the fifteenth (15<sup>th</sup>) day prior to any proposed transfer, registration of transfer or transaction which, if consummated, would have any of the results set forth above; provided, however, that the Trustees may waive such requirement

of prior notice upon determination that such waiver is in the best interests of the Trust. Subject to Section 5.14(i) of the Declaration, the Trustees shall have the power and right (i) to refuse to transfer or issue Excess Series B Preferred Shares or share certificates to any Proposed Transferee whose acquisition of such Excess Series B Preferred Shares would, in the opinion of the Trustees, result in the direct or indirect beneficial ownership of any Excess Series B Preferred Shares by a Person other than an Excepted Person and (ii) to treat such Excess Series B Preferred Shares as having been transferred not to the Proposed Transferee but rather to a trustee for the benefit of one or more Charitable Beneficiaries (as defined in the Declaration) selected and otherwise as described in Section 5.14(c) of the Declaration. Any such trust shall be deemed to have been established by the holder of such Excess Series B Preferred Shares for the benefit of the applicable Charitable Beneficiary or Charitable Beneficiaries on the day prior to the date of the purported transfer to the Proposed Transferee, which purported transfer shall be void ab initio and the Proposed Transferee shall be deemed never to have acquired any interest in or with respect to the Excess Series B Preferred Shares purportedly transferred.

(b) Any Excess Series B Preferred Shares shall automatically be deemed to constitute Excess Shares (within the meaning of the Declaration) and shall be treated in the manner prescribed for Excess Shares, including, without limitation, the provisions set forth in Section 5.14(c) thereof.

(c) Notwithstanding any other provision of the Declaration or hereof to the contrary, but subject to Section 5.14(i) of the Declaration, any purported acquisition of Series B Preferred Shares (whether such purported acquisition results from the direct or indirect acquisition or ownership (as defined for purposes of the Declaration) of Series B Preferred Shares) which would result in the disqualification of the Trust as a REIT for federal income tax purposes shall be null and void. Any such Series B Preferred Shares may be treated by the Trustees in the manner prescribed for Excess Series B Preferred Shares in these provisions of the Series B Preferred Shares and for Excess Shares in Section 5.14(c) of the Declaration.

(d) The provisions of this Section 9 shall not limit the applicability of Section 5.14 of the Declaration to Series B Preferred Shares in accordance with the terms thereof, and the provisions of this Section 9 and of Section 5.14 of the Declaration shall not limit the right of the Trust to elect to redeem Excess Series B Preferred Shares pursuant to Section 5(b) hereof. Subject only to Section 5.14(i) of the Declaration, nothing contained in this Section 9 or in any other provision of the Series B Preferred Shares shall limit the authority of the Trustees to take such other action as they deem necessary or advisable to protect the Trust and the interests of the shareholders by preservation of the Trust's status as a REIT for federal income tax purposes. The provisions of subsections (f) through (i) of Section 5.14 of the Declaration shall be applicable to this Section 9 as though (i) the references therein to Section 5.14 of the Declaration referred instead to this Section 9 and (ii) the references therein to subsections of Section 5.14 of the Declaration referred to the comparable provisions of this Section 9.

10. Severability. If any preference, right, voting power, restriction, limitation as to dividends or other distributions, qualification, term or condition of redemption or other term of the Series B Preferred Shares is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, then, to the extent permitted by law, all other preferences, rights,

voting powers, restrictions, limitations as to dividends or other distributions, qualifications, terms and conditions of redemption and other terms of the Series B Preferred Shares which can be given effect without the invalid, unlawful or unenforceable preference, right, voting power, restriction, limitation as to dividends or other distributions, qualification, term or condition of redemption or other term of the Series B Preferred Shares shall remain in full force and effect and shall not be deemed dependent upon any invalid, unlawful or unenforceable preference, right, voting power, restriction, limitation as to dividends or other distributions, qualification, term or condition of redemption or other term of the Series B Preferred Shares.

**THIRD:** The Series B Preferred Shares have been classified and designated by the Board of Trustees under the authority contained in the Declaration.

**FOURTH:** These Articles Supplementary have been approved by the Board of Trustees in the manner and by the vote required by law.

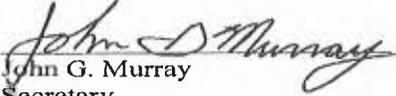
**FIFTH:** The undersigned Executive Vice President of the Trust acknowledges these Articles Supplementary to be the trust act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned Executive Vice President acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and this statement is made under the penalties for perjury.

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CUST ID:0001015210  
WORK ORDER:0000673184  
DATE:12-09-2002 02:48 PM  
AMT. PAID:\$145.00

IN WITNESS WHEREOF, HOSPITALITY PROPERTIES TRUST has caused these Articles Supplementary to be signed in its name and on its behalf by its Executive Vice President and witnessed by its Secretary on December 9, 2002.

WITNESS:

  
John G. Murray  
Secretary

HOSPITALITY PROPERTIES TRUST

By:   
Thomas M. O'Brien  
Executive Vice President

# CORPORATE CHARTER APPROVAL SHEET

\*\* EXPEDITED SERVICE \*\*

\*\* KEEP WITH DOCUMENT \*\*

DOCUMENT CODE 16 BUSINESS CODE \_\_\_\_\_

# D04141826



Close \_\_\_\_\_ Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

P.A. \_\_\_\_\_ Religious \_\_\_\_\_

Merging (Transferor) \_\_\_\_\_

Surviving (Transferee) \_\_\_\_\_

ID # D04141826 ACK # 1000361987761198  
LIBER: B00453 FOLIO: 0828 PAGES: 0014  
HOSPITALITY PROPERTIES TRUST

12/09/2002 AT 02:48 P WO # 0000673184

New Name \_\_\_\_\_

### FEES REMITTED

Base Fee: 20

Org. & Cap. Fee: \_\_\_\_\_

Expedite Fee: 70

Penalty: \_\_\_\_\_

State Recordation Tax: \_\_\_\_\_

State Transfer Tax: \_\_\_\_\_

2 Certified Copies

Copy Fee: 35

Certificates \_\_\_\_\_

Certificate of Status Fee: \_\_\_\_\_

Personal Property Filings: \_\_\_\_\_

Other: \_\_\_\_\_

TOTAL FEES: 145

\_\_\_\_\_ Change of Name

\_\_\_\_\_ Change of Principal Office

\_\_\_\_\_ Change of Resident Agent

\_\_\_\_\_ Change of Resident Agent Address

\_\_\_\_\_ Resignation of Resident Agent

\_\_\_\_\_ Designation of Resident Agent

\_\_\_\_\_ and Resident Agent's Address

\_\_\_\_\_ Change of Business Code

\_\_\_\_\_ Adoption of Assumed Name

\_\_\_\_\_ Other Change(s)

Credit Card \_\_\_\_\_ Check X Cash \_\_\_\_\_

Code 193

Attention: \_\_\_\_\_

Mail to Address: \_\_\_\_\_

\_\_\_\_\_ Documents on \_\_\_\_\_ Checks

Approved By: A-01

Keyed By: \_\_\_\_\_

COMMENT(S):

CUST ID: 0001015210  
WORK ORDER: 0000673184  
DATE: 12-09-2002 02:48 PM  
AMT. PRID: \$145.00

HOSPITALITY PROPERTIES TRUST  
ARTICLES OF AMENDMENT

Hospitality Properties Trust, a Maryland real estate investment trust (hereinafter called the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

FIRST: The Trust desires to amend its Amended and Restated Declaration of Trust as currently in effect (the "Declaration of Trust") as follows:

1. Section 1.4(h) of the Declaration of Trust is hereby deleted in its entirety and replaced with the following:

1.4(h) Independent Trustee: "Independent Trustee" shall mean a Trustee who is not then an officer of the Trust or an Affiliate of the Advisor.

2. Section 5.2 of the Declaration of Trust is hereby deleted in its entirety and replaced with the following:

5.2. Certificates. At the election of the Trust, ownership of Shares may be evidenced by certificates in such form as the Trustees shall from time to time approve, specifying the number of Shares of the applicable class held by such Shareholder. Subject to Sections 5.6 and 5.14(c) hereof, such certificates shall be treated as negotiable and title thereto and to the Shares represented thereby shall be transferred by delivery thereof to the same extent in all respects as a stock certificate, and the Shares represented thereby, of a Maryland business corporation. Unless otherwise determined by the Trustees, such certificates shall be signed by the Chairman, if any, and the President and shall be countersigned by a transfer agent, and registered by a registrar if any, and such signatures may be facsimile signatures in accordance with Section 3.2(d) hereof. There shall be filed with each transfer agent a copy of the form of certificate so approved by the Trustees, certified by the Chairman, President, or Secretary, and such form shall continue to be used unless and until the Trustees approve some other form.

In furtherance of the provisions of Sections 5.1 and 5.14(c) hereof, each certificate evidencing Shares shall contain a legend imprinted thereon to substantially the following effect or such other legend as the Trustees may from time to time adopt:

REFERENCE IS MADE TO THE DECLARATION OF TRUST OF THE TRUST FOR A STATEMENT OF ALL THE DESIGNATIONS, PREFERENCES, LIMITATIONS, AND RELATIVE RIGHTS OF EACH CLASS OR SERIES OF SHARES THAT THE TRUST IS AUTHORIZED TO ISSUE, THE VARIATIONS IN THE RELATIVE RIGHTS AND

(H0520022; 2)

STATE OF MARYLAND  
I hereby certify that this is a true and complete copy of the  
page document on file in this office. DATED: 1/16/08  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:  
BY: [Signature] Custodian  
This stamp replaces our previous certification system. Effective 5/05

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PREFERENCES OF ANY PREFERRED OR SPECIAL CLASS OF SHARES IN SERIES, TO THE EXTENT THEY HAVE BEEN FIXED AND DETERMINED, AND THE AUTHORITY OF THE TRUSTEES TO FIX AND DETERMINE THE RELATIVE RIGHTS AND PREFERENCES OF SUBSEQUENT SERIES. ANY SUCH STATEMENT SHALL BE FURNISHED WITHOUT CHARGE ON REQUEST TO THE TRUST AT ITS PRINCIPAL PLACE OF BUSINESS OR REGISTERED OFFICE.

IF NECESSARY TO EFFECT COMPLIANCE BY THE TRUST WITH REQUIREMENTS OF THE INTERNAL REVENUE CODE RELATING TO REAL ESTATE INVESTMENT TRUSTS, THE PURPORTED TRANSFER OF THE SHARES EVIDENCED BY THIS CERTIFICATE MAY BE PROHIBITED AND OR INVALIDATED UPON THE TERMS AND CONDITIONS SET FORTH IN THE DECLARATION OF TRUST. THE TRUST WILL FURNISH A COPY OF SUCH TERMS AND CONDITIONS TO THE REGISTERED HOLDER OF THIS CERTIFICATE UPON REQUEST AND WITHOUT CHARGE.

3. Section 5.11 of the Declaration of Trust is hereby deleted in its entirety and replaced with the following:

5.11 [*Reserved.*]

SECOND: The foregoing amendments to the Declaration of Trust were duly advised by the Board of Trustees of the Trust and approved by the shareholders of the Trust as required by law.

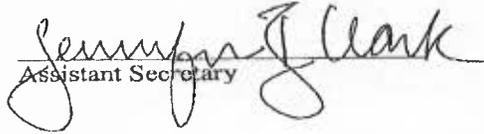
THIRD: The undersigned President of the Trust acknowledges these Articles of Amendment to be the trust act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned President acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

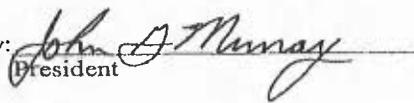
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IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment to be executed in its name and on its behalf by its President and attested by its Assistant Secretary this 23rd day of May, 2006.

ATTEST:

HOSPITALITY PROPERTIES TRUST

  
Assistant Secretary

By:   
President

# CORPORATE CHARTER APPROVAL SHEET

**\*\*EXPEDITED SERVICE\*\***

**\*\* KEEP WITH DOCUMENT \*\***

DOCUMENT CODE

09

BUSINESS CODE

# 04141826

Affix Barcode Label Here



1000361993048499

Close \_\_\_\_\_ Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

P.A. \_\_\_\_\_ Religious \_\_\_\_\_

Merging (Transferor) \_\_\_\_\_

ID # D04141826 ACK # 1000361993048499  
LIBER: B00962 FOLIO: 0213 PAGES: 0004  
HOSPITALITY PROPERTIES TRUST

Surviving (Transferee) \_\_\_\_\_

05/24/2006 AT 02:01 P WO # 0001232783

New Name \_\_\_\_\_

### FEES REMITTED

Base Fee: 100

Org. & Cap. Fee: \_\_\_\_\_

Expedite Fee: 70

Penalty: \_\_\_\_\_

State Recordation Tax: \_\_\_\_\_

State Transfer Tax: \_\_\_\_\_

1 Certified Copies

Copy Fee: 23

Certificates

Certificate of Status Fee: \_\_\_\_\_

Personal Property Filings: \_\_\_\_\_

Mail Processing Fee: \_\_\_\_\_

Other: \_\_\_\_\_

TOTAL FEES: 193

Change of Name

Change of Principal Office

Change of Resident Agent

Change of Resident Agent Address

Resignation of Resident Agent

Designation of Resident Agent

and Resident Agent's Address

Change of Business Code

Adoption of Assumed Name

Other Change(s)

Credit Card \_\_\_\_\_ Check \_\_\_\_\_ Cash \_\_\_\_\_

Code 063

Documents on Checks

Attention: ABCover

Approved By: 9

Mail: Name and Address

Keyed By: \_\_\_\_\_

COMMENT(S):

Stamp Work Order and Customer Number HERE

CUST ID: 0001789745  
WORK ORDER: 0001232783  
DATE: 05-24-2006 02:02 PM  
AMT. PAID: \$390.00

**HOSPITALITY PROPERTIES TRUST  
ARTICLES SUPPLEMENTARY  
7% SERIES C CUMULATIVE REDEEMABLE PREFERRED SHARES  
without par value**

HOSPITALITY PROPERTIES TRUST, a Maryland real estate investment trust (the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

**FIRST:** Pursuant to authority expressly vested in the Trustees by Section 5.1 of the Amended and Restated Declaration of Trust of the Trust, dated August 21, 1995, as amended and supplemented (the "Declaration"), the Trustees have duly classified and designated 13,800,000 Preferred Shares of the Trust as 7% Series C Cumulative Redeemable Preferred Shares, without par value, of the Trust ("Series C Preferred Shares").

**SECOND:** The preferences, rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms or conditions of redemption of the Series C Preferred Shares are as follows, which upon any restatement of the Declaration shall be made part of Article V of the Declaration, with any necessary or appropriate changes to the enumeration or lettering of sections or subsections hereof. Capitalized terms used in this ARTICLE SECOND which are defined in the Declaration and not otherwise defined herein are used herein as so defined in the Declaration.

7% Series C Cumulative Redeemable Preferred Shares, without par value

1. **Designation and Number.** A series of Preferred Shares, designated the 7% Series C Cumulative Redeemable Preferred Shares, without par value (the "Series C Preferred Shares"), is hereby established. The number of authorized Series C Preferred Shares is 13,800,000.

2. **Relative Seniority.** In respect of rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, the Series C Preferred Shares shall rank (i) senior to the Common Shares, the Junior Participating Preferred Shares and any other class or series of Shares of the Trust, the terms of which specifically provide that such class or series ranks, as to rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, junior to the Series C Preferred Shares (the Shares described in this clause (i) being, collectively, "Junior Shares"), (ii) on a parity basis with the Trust's 8.875% Series B Cumulative Redeemable Preferred Shares, without par value (the "Series B Preferred Shares"), and any other class or series of Shares of the Trust, the terms of which specifically provide that such class or series ranks, as to rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, on a parity with the Series C Preferred Shares, and (iii) junior to any class or series of Shares of the Trust, the terms of which specifically provide that such class or series ranks, as to rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, senior to the Series C Preferred Shares. For the avoidance of doubt, debt securities of the Trust which are convertible into or exchangeable for Shares of the Trust or any other debt securities of the Trust do not constitute a class or series of Shares for purposes of this Section 2.

3. **Dividends and Distributions.**

(a) Subject to the preferential rights of the holders of any class or series of Shares of the Trust ranking senior to the Series C Preferred Shares as to dividends, the holders of the then

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STATE OF MARYLAND

I hereby certify that this is a true and complete copy of the <sup>12</sup> page document on file in this office. DATED: 1/16/18  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:

BY: [Signature], Custodian

This stamp replaces our previous certification system. Effective: 6/05

outstanding Series C Preferred Shares shall be entitled to receive, when and as authorized by the Trustees and declared by the Trust, out of any funds legally available therefor, cumulative cash dividends at a rate of seven percent 7% per annum of the Twenty-five Dollars (\$25.00) per share liquidation preference of the Series C Preferred Shares (equivalent to the annual rate of \$1.75 per share). Such dividends shall accrue and be cumulative from the applicable Original Issue Date (as hereinafter defined) and shall be payable quarterly in arrears in cash on the fifteenth day of each February, May, August and November beginning on May 15, 2007 (each such day being hereinafter called a "Quarterly Dividend Date"); provided that if any Quarterly Dividend Date is not a Business Day (as hereinafter defined), then the dividend which would otherwise have been payable on such Quarterly Dividend Date may be paid on the next succeeding Business Day with the same force and effect as if paid on such Quarterly Dividend Date, and no interest or additional dividends or other sums shall accrue on the amount so payable from such Quarterly Dividend Date to such next succeeding Business Day. As used herein, the term "Dividend Period" for Series C Preferred Shares means the period from the applicable Original Issue Date and ending on but excluding the next following Quarterly Dividend Date, and each subsequent period from a Quarterly Dividend Date and ending on but excluding the next following Quarterly Dividend Date; and the term "Original Issue Date" means (i) February 21, 2007, in the case of Series C Preferred Shares issued on or prior to March 23, 2007, and (ii) in any other case, the latest Quarterly Dividend Date which precedes the date of issuance of such Series C Preferred Shares and which succeeds the last Dividend Period for which full cumulative dividends have been paid on the then outstanding Series C Preferred Shares; provided that, in the case of any Series C Preferred Share which is part of a subsequent issuance, the date of issuance of which falls between (i) the Record Date (as hereinafter defined) for dividends payable on the first succeeding Quarterly Dividend Date and (ii) such Quarterly Dividend Date, the "Original Issue Date" of such Series C Preferred Share means the date of the Quarterly Dividend Date that immediately follows the date of issuance. The amount of any dividend payable for any full Dividend Period or portion thereof shall be computed on the basis of a 360-day year consisting of twelve 30-day months (it being understood that the first Dividend Period is shorter than a full Dividend Period). Dividends shall be payable to holders of record as they appear in the share records of the Trust at the close of business on the applicable record date (the "Record Date"), which shall be a date designated by the Trustees for the payment of dividends that is not more than 60 nor less than 10 days prior to the applicable Quarterly Dividend Date.

(b) Dividends on the Series C Preferred Shares shall accrue and be cumulative, whether or not (i) the Trust has earnings, (ii) there are funds legally available for the payment of such dividends or (iii) such dividends have been declared.

(c) If Series C Preferred Shares are outstanding, no full dividends shall be declared or paid or set apart for payment on any other class or series of Shares of the Trust ranking, as to dividends, on a parity with the Series C Preferred Shares for any period, unless the full cumulative dividends on the Series C Preferred Shares have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Dividend Periods. When dividends are not paid in full (or a sum sufficient for such full payment is not so set apart) upon the Series C Preferred Shares and the Shares of any other class or series ranking on a parity as to dividends with the Series C Preferred Shares, all dividends declared upon Series C Preferred Shares and any such other class or series of Shares shall in all cases bear to each other the same ratio that accrued dividends per share on the Series C Preferred Shares and such other class or series of Shares (which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if such other class or series does not have a cumulative dividend) bear to each other.

(d) Unless full cumulative dividends on the Series C Preferred Shares have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Dividend Periods, no dividends (other than in Common Shares or other

Junior Shares or options, warrants or rights to subscribe for or purchase Common Shares or other Junior Shares) shall be declared and paid or declared and set apart for payment and no other distribution shall be declared or made upon the Common Shares or any other Shares ranking junior to the Series C Preferred Shares as to rights to receive dividends or to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, nor shall any Common Shares or any other such Shares be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such Shares) by the Trust except (i) by conversion into or exchange for Common Shares or other Junior Shares, (ii) pursuant to pro rata offers to purchase or a concurrent redemption of all, or a pro rata portion of, the outstanding Series C Preferred Shares and any other class or series of Shares ranking on a parity with Series C Preferred Shares as to rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, (iii) by redemption, purchase or other acquisition of Common Shares made for purposes of an incentive, benefit or share purchase plan of the Trust or any of its subsidiaries for officers, Trustees or employees or others performing or providing similar services, (iv) by redemption, purchase or other acquisition of rights to purchase Junior Participating Preferred Shares pursuant to the Rights Agreement, dated as of May 20, 1997, between the Trust and Wells Fargo National Association, as successor to State Street Bank and Trust Company as rights agent, or pursuant to any replacement agreement therefor relating to such rights, or of any similar rights from time to time issued by the Trust in connection with a successor or supplemental shareholder rights protection plan adopted by the Trustees, each as in effect from time to time, and (v) for redemptions, purchases or other acquisitions by the Trust, whether pursuant to any provision of the Declaration or otherwise, for the purpose of preserving the Trust's status as a real estate investment trust (a "REIT") for federal income tax purposes.

(e) No interest, or sum of money in lieu thereof, shall be payable in respect of any dividend payment or payments on Series C Preferred Shares which may be in arrears, and the holders of Series C Preferred Shares are not entitled to any dividends, whether payable in cash, securities or other property, in excess of the full cumulative dividends described in this Section 3. Except as otherwise expressly provided herein, the Series C Preferred Shares shall not be entitled to participate in the earnings or assets of the Trust.

(f) Any dividend payment made on the Series C Preferred Shares shall be first credited against the earliest accrued but unpaid dividend due with respect to such Shares which remains payable. Any cash dividends paid in respect of Series C Preferred Shares, including any portion thereof which the Trust elects to designate as "capital gain dividends" (as defined in Section 857 (or any successor provision) of the Internal Revenue Code) or as a return of capital, shall be credited to the cumulative dividends on the Series C Preferred Shares.

(g) No dividends on the Series C Preferred Shares shall be authorized by the Trustees or be paid or set apart for payment by the Trust at such time as the terms and provisions of any agreement of the Trust, including any agreement relating to its indebtedness or any other series of preferred shares, directly or indirectly prohibit authorization, payment or setting apart for payment or provide that such authorization, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such authorization, payment or setting apart for payment shall be restricted or prohibited by law.

(h) The Trust shall remain entitled to receive and retain any interest or other earnings on any money set aside for the payment of dividends on Series C Preferred Shares and holders thereof shall have no claim to such interest or other earnings. Any funds for the payment of dividends on Series C Preferred Shares which have been set apart by the Trust and which remain unclaimed by the holders of the Series C Preferred Shares entitled thereto on the first anniversary of the applicable Quarterly Dividend Date, or other dividend payment date, shall revert and be repaid to the general funds

of the Trust, and thereafter the holders of the Series C Preferred Shares entitled to the funds which have reverted or been repaid to the Trust shall look only to the general funds of the Trust for payment, without interest or other earnings thereon.

(i) "*Business Day*" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York, New York or Boston, Massachusetts are authorized or required by law, regulation or executive order to close.

4. Liquidation Rights.

(a) Upon any voluntary or involuntary liquidation, dissolution or winding up of the Trust, before any distribution or payment shall be made to the holders of any Common Shares or any other Shares ranking junior to the Series C Preferred Shares as to rights to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, but subject to the preferential rights of holders of any class or series of Shares ranking senior to the Series C Preferred Shares as to rights to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, the holders of Series C Preferred Shares shall be entitled to receive, out of assets of the Trust legally available for distribution to shareholders, liquidating distributions in cash or property at its fair market value as determined by the Trustees in the amount of Twenty-five Dollars (\$25.00) per Series C Preferred Share, plus an amount equal to all dividends accrued and unpaid thereon (whether or not declared).

(b) After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series C Preferred Shares will have no right or claim to any of the remaining assets of the Trust.

(c) In the event that upon any voluntary or involuntary liquidation, dissolution or winding up of the Trust, the available assets of the Trust are insufficient to pay the full amount of the liquidating distributions on all outstanding Series C Preferred Shares and the full amounts payable as liquidating distributions on all Shares of other classes or series of Shares of the Trust ranking on a parity with the Series C Preferred Shares as to rights to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, then the holders of the Series C Preferred Shares and all other such classes or series of Shares shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

(d) For purposes of this Section 4, neither the sale, lease, transfer or conveyance of all or substantially all of the property or business of the Trust, nor the merger or consolidation of the Trust into or with any other entity or the merger or consolidation of any other entity into or with the Trust or a statutory share exchange by the Trust, shall be deemed to be a dissolution, liquidation or winding up of the Trust.

(e) In determining whether a distribution (other than upon voluntary or involuntary liquidation), by dividend, redemption or other acquisition of Shares or otherwise, is permitted under Maryland law, amounts that would be needed, if the Trust were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of the holders of Series C Preferred Shares will not be added to the Trust's total liabilities.

5. Redemption by the Trust.

(a) Optional Redemption. The Series C Preferred Shares are not redeemable prior to February 15, 2012, except as otherwise provided in Section 5(b) below. On and after February 15, 2012,

the Trust may, at its option, redeem Series C Preferred Shares in whole or from time to time in part, for cash at a redemption price per share of Twenty-five Dollars (\$25.00), together with all accrued and unpaid dividends to but excluding the date fixed for redemption, except as otherwise provided in Section 5(c)(vi) below, and without interest (the "Series C Redemption Price"). Each date fixed for redemption of Series C Preferred Shares pursuant to this Section 5(a) or to Section 5(b) below is referred to in these provisions of the Series C Preferred Shares as a "Series C Redemption Date." The Series C Preferred Shares have no stated maturity and are not subject to any sinking fund or mandatory redemption. Any redemption of Series C Preferred Shares pursuant to this Section 5(a) shall be made in accordance with the applicable provisions of Section 5(c) below.

(b) Special Optional Redemption. The Trust may, at its option, redeem at any time all or from time to time any Series C Preferred Shares which constitute Excess Series C Preferred Shares (as defined in Section 9 below) for cash at a redemption price per share equal to the Series C Redemption Price, subject, with respect to the portion of the Series C Redemption Price constituting accrued and unpaid dividends to but excluding the date fixed for redemption, to the provisions of the second paragraph of subsection (c) of Section 5.14 of the Declaration and to Section 5(c)(vi) below, and without interest. The Trust's right to redeem Excess Series C Preferred Shares shall be in addition to, and shall not limit, its rights with respect to such Series C Preferred Shares set forth in Section 9 below or in Section 5.14 of the Declaration. Any redemption of Series C Preferred Shares pursuant to this Section 5(b) shall be made in accordance with the applicable provisions of Section 5(c) below.

(c) Procedures and Terms for Redemption.

(i) Notice of redemption will be mailed at least 30 days but not more than 60 days before the Series C Redemption Date to each holder of record of Series C Preferred Shares to be redeemed at the address shown on the share transfer books of the Trust; *provided* that if the Trust shall have reasonably concluded, based on advice of independent tax counsel experienced in such matters, that a redemption pursuant to Section 5(b) must be made on a date (the "Special Redemption Date") which is earlier than 30 days after the date of such mailing in order to preserve the status of the Trust as a REIT for federal income tax purposes or to comply with federal tax laws relating to the Trust's qualification as a REIT, then the Trust may give such shorter notice as is necessary to effect such redemption on the Special Redemption Date. Each notice of redemption shall state: (A) the applicable Series C Redemption Date; (B) the number of Series C Preferred Shares to be redeemed; (C) the applicable Series C Redemption Price; (D) the place or places where certificates for such Series C Preferred Shares are to be surrendered for payment of the Series C Redemption Price; and (E) that dividends on the Series C Preferred Shares to be redeemed will cease to accrue on such Series C Redemption Date. If fewer than all the Series C Preferred Shares are to be redeemed, the notice mailed to each such holder thereof shall also specify the number of Series C Preferred Shares to be redeemed from each such holder or the method for calculating that number. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series C Preferred Shares except as to the holder to whom the Trust has failed to give notice or to whom notice was defective.

(ii) If notice of redemption of Series C Preferred Shares has been mailed in accordance with Section 5(c)(i) above and if the funds necessary for such redemption have been set aside by the Trust in trust for the benefit of the holders of the Series C Preferred Shares so called for redemption, subject to the provisions of Section 5(c)(v) below, then from and after the Series C Redemption Date specified in the notice, dividends will cease to accumulate, and such Shares shall no longer be deemed to be outstanding and shall not have the status of Series C

Preferred Shares and all rights of the holders thereof as shareholders of the Trust (except the right to receive the Series C Redemption Price) shall terminate.

(iii) Upon surrender, in accordance with the Trust's notice of redemption, of the certificates for any Series C Preferred Shares redeemed (properly endorsed or assigned for transfer and with applicable signature guarantees, if the Trust shall so require and the notice shall so state), the Series C Preferred Shares shall be redeemed by the Trust at the Series C Redemption Price. In case fewer than all the Series C Preferred Shares evidenced by any such certificate are redeemed, a new certificate or certificates shall be issued evidencing the unredeemed Series C Preferred Shares without cost to the holder thereof.

(iv) If fewer than all of the outstanding Series C Preferred Shares are to be redeemed, the number of Series C Preferred Shares to be redeemed will be determined by the Trust and such Shares may be redeemed pro rata from the holders of record of such Shares in proportion to the number of such Shares held by such holders (with adjustments to avoid redemption of fractional Shares), by lot or by any other equitable method determined by the Trust.

(v) Any funds for the redemption of Series C Preferred Shares which have been set aside by the Trust pursuant to Section 5(c)(ii) above, shall be irrevocably set aside separate and apart from the Trust's other funds in trust for the pro rata benefit of the holders of the Series C Preferred Shares called for redemption, except that:

- (A) the Trust shall be entitled to receive any interest or other earnings, if any, earned on any money so set aside in trust, and the holders of any Shares redeemed shall have no claim to such interest or other earnings; and
- (B) any balance of monies deposited by the Trust and unclaimed by the holders of the Series C Preferred Shares entitled thereto at the expiration of one year from the applicable Series C Redemption Date shall be repaid, together with any interest or other earnings earned thereon, to the general funds of the Trust, and after any such repayment, the holders of the Shares entitled to the funds which have been repaid to the Trust shall look only to the general funds of the Trust for payment without interest or other earnings thereon.

(vi) Anything in these provisions of the Series C Preferred Shares to the contrary notwithstanding, the holders of record of Series C Preferred Shares at the close of business on a Record Date will be entitled to receive the dividend payable with respect to such Shares on the corresponding Quarterly Dividend Date notwithstanding the redemption of such Shares after such Record Date and on or prior to such Quarterly Dividend Date or the Trust's default in the payment of the dividend due on such Quarterly Dividend Date, in which case the amount payable upon redemption of such Series C Preferred Shares will not include such dividend (and the full amount of the dividend payable for the applicable Dividend Period shall instead be paid on such Quarterly Dividend Date to the holders of record on such Record Date as aforesaid). Except as provided in this clause (vi) and except to the extent that accrued and unpaid dividends are payable as a part of the Series C Redemption Price pursuant to Section 5(a) or 5(b), the Trust will make no payment or allowance for unpaid dividends, regardless of whether or not in arrears, on Series C Preferred Shares called for redemption.

(vii) Notwithstanding the foregoing, unless the full cumulative dividends on all Series C Preferred Shares shall have been or contemporaneously are declared and paid or

declared and a sum sufficient for the payment thereof set apart for payment for all past Dividend Periods, no Series C Preferred Shares shall be redeemed unless all outstanding Series C Preferred Shares are simultaneously redeemed; *provided, however*, that (i) the foregoing shall not prevent the redemption of Series C Preferred Shares pursuant to Section 5(b) above or the purchase or acquisition of Series C Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series C Preferred Shares, and (ii) the foregoing shall not in any respect limit the terms and provisions of Section 5.14 of the Declaration or Section 9 hereof. In addition, unless the full cumulative dividends on all outstanding Series C Preferred Shares have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set apart for payment for all past Dividend Periods, the Trust shall not purchase or otherwise acquire directly or indirectly any Series C Preferred Shares (except by conversion into or exchange for Common Shares or other Junior Shares); *provided, however*, that (i) the foregoing shall not prevent the redemption of Series C Preferred Shares pursuant to Section 5(b) above or the purchase or acquisition of Series C Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series C Preferred Shares, and (ii) the foregoing shall not in any respect limit the terms and provisions of Section 5.14 of the Declaration or Section 9 hereof.

(viii) For the avoidance of doubt, the provisions of this Section 5 shall not limit any direct or indirect purchase or acquisition by the Trust of all or any Series C Preferred Shares on the open market (including in privately negotiated transactions), except as otherwise expressly provided in Section 5(c)(vii) above.

6. Voting Rights. Notwithstanding anything to the contrary contained in the Declaration, except as set forth below in this Section 6, the holders of the Series C Preferred Shares shall not be entitled to vote at any meeting of the shareholders for election of Trustees or for any other purpose or otherwise to participate in any action taken by the Trust or the shareholders thereof, or to receive notice of any meeting of shareholders (except for such notices as may be expressly required by law).

(a) At any time dividends on the Series C Preferred Shares shall be in arrears for six or more quarterly periods, whether or not the quarterly periods are consecutive, the holders of Series C Preferred Shares (voting separately as a class with all other series of Preferred Shares of the Trust upon which like voting rights have been conferred and are exercisable) will be entitled to vote for the election of two additional Trustees of the Trust at the next annual meeting of shareholders and for those or other replacement Trustees at each subsequent meeting (and the number of Trustees then constituting the Board of Trustees will automatically increase by two, if not already increased by two by reason of the election of Trustees by the holders of such Preferred Shares), until all dividends accumulated on Series C Preferred Shares for the past Dividend Periods shall have been fully paid or declared and a sum sufficient for the payment thereof set apart for payment. For the avoidance of doubt, and by means of example, in the event dividends on the Series C Preferred Shares and the Series B Preferred Shares shall both be in arrears for six or more quarterly periods, the holders of Series C Preferred Shares and Series B Preferred Shares (and the holders of all other series of Preferred Shares of the Trust upon which like voting rights have been conferred and are exercisable) shall be entitled to vote for the election of two additional Trustees in the aggregate, not four or more additional Trustees.

(i) Upon the full payment of all such dividends accumulated on Series C Preferred Shares for the past Dividend Periods or the declaration in full thereof and the Trust's setting aside a sum sufficient for the payment thereof, the right of the holders of Series C Preferred Shares to elect such two Trustees shall cease, and (unless there are one or more other series of Preferred Shares of the Trust upon which like voting rights have been conferred and are exercisable) the term of office of such Trustees previously so elected shall automatically

terminate and the authorized number of Trustees of the Trust will thereupon automatically return to the number of authorized Trustees otherwise in effect, but subject always to the same provisions for the reinstatement and divestment of the right to elect two additional Trustees in the case of any such future dividend arrearage.

(ii) If at any time when the voting rights conferred upon the Series C Preferred Shares pursuant to this Section 6(a) are exercisable any vacancy in the office of a Trustee elected pursuant to this Section 6(a) shall occur, then such vacancy may be filled only by the written consent of the remaining such Trustee or by vote of the holders of record of the outstanding Series C Preferred Shares and any other series of Preferred Shares of the Trust upon which like voting rights have been conferred and are exercisable and which are entitled to vote as a class with the Series C Preferred Shares in the election of Trustees pursuant to this Section 6(a).

(iii) Any Trustee elected or appointed pursuant to this Section 6(a) may be removed only by the holders of the outstanding Series C Preferred Shares and any other series of Preferred Shares of the Trust upon which like voting rights have been conferred and are exercisable and which are entitled to vote as a class with the Series C Preferred Shares in the election of Trustees pursuant to this Section 6(a), and may not be removed by the holders of the Common Shares.

(iv) The term of any Trustees elected or appointed pursuant to this Section 6(a) shall be from the date of such election or appointment and their qualification until the next annual meeting of the shareholders and until their successors are duly elected and qualify, except as otherwise provided above in this Section 6(a).

(b) So long as any Series C Preferred Shares remain outstanding, the Trust shall not, without the affirmative vote or consent of the holders of at least two-thirds of the Series C Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (the holders of Series C Preferred Shares voting separately as a class), (i) authorize or create, or increase the number of authorized or issued shares of, any class or series of Shares ranking senior to the Series C Preferred Shares with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up of the Trust, or reclassify any authorized Shares of the Trust into any such Shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such Shares; or (ii) amend, alter or repeal the provisions of the Declaration or the terms of the Series C Preferred Shares, whether by merger, consolidation or otherwise, so as to materially and adversely affect any right, preference, privilege or voting power of the Series C Preferred Shares; *provided, however*, that any increase in the number of authorized Preferred Shares, any issuance of or increase in the number of Series C Preferred Shares or any creation or issuance of or increase in the number of authorized shares of any class or series of Preferred Shares which rank on a parity with the Series C Preferred Shares with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up of the Trust or which are Junior Shares shall not be deemed to materially and adversely affect the rights, preferences, privileges or voting powers of the Series C Preferred Shares.

(c) The voting provisions set forth in clauses (a) and (b) above will not apply if, at or prior to the time when the act with respect to which a vote would otherwise be required shall be effected, all outstanding Series C Preferred Shares shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust pursuant to the provisions of Sections 5(c)(ii) and 5(c)(v) hereof to effect the redemption.

(d) On each matter submitted to a vote of the holders of Series C Preferred Shares or on which the holders of Series C Preferred Shares are otherwise entitled to vote as provided herein, each

Series C Preferred Share shall be entitled to one vote, except that when Shares of any other class or series of Preferred Shares of the Trust have the right to vote with the Series C Preferred Shares as a single class on any matter, the Series C Preferred Shares and the Shares of each such other class or series will have one vote for each Twenty-five Dollars (\$25.00) of liquidation preference.

7. Conversion. The Series C Preferred Shares are not convertible into or exchangeable for any other property or securities of the Trust. This provision will not prevent the Trust from offering to convert or exchange the Series C Preferred Shares.

8. Status of Redeemed and Reacquired Series C Preferred Shares. In the event any Series C Preferred Shares shall be redeemed pursuant to Section 5 hereof or otherwise reacquired by the Trust, the Shares so redeemed or reacquired shall become authorized but unissued Series C Preferred Shares, available for future issuance and reclassification by the Trust or, if so determined by the Trustees, may be retired and canceled by the Trust.

9. Restrictions on Transfer.

(a) As a condition to the transfer (including, without limitation, any sale, transfer, gift, assignment, devise or other disposition of Series C Preferred Shares, whether voluntary or involuntary, whether beneficially or of record, and whether effected constructively, by operation of law or otherwise) and/or registration of transfer of any Series C Preferred Shares ("*Excess Series C Preferred Shares*") which could in the opinion of the Trustees result in

(i) direct or indirect ownership (as defined in Section 5.14 of the Declaration) of Series C Preferred Shares representing more than 9.8% in number, value or voting power of the total Series C Preferred Shares outstanding becoming concentrated in the hands of one owner other than an Excepted Person (as such term is defined in the Declaration), or

(ii) the Trust being "closely held" within the meaning of Section 856(h) of the Internal Revenue Code,

such potential owner (a "*Proposed Transferee*") shall file with the Trust the statement or affidavit described in Section 5.14(b) of the Declaration no later than the fifteenth (15<sup>th</sup>) day prior to any proposed transfer, registration of transfer or transaction which, if consummated, would have any of the results set forth above; provided, however, that the Trustees may waive such requirement of prior notice upon determination that such waiver is in the best interests of the Trust. Subject to Section 5.14(i) of the Declaration, the Trustees shall have the power and right (i) to refuse to transfer or issue Excess Series C Preferred Shares or share certificates to any Proposed Transferee whose acquisition of such Excess Series C Preferred Shares would, in the opinion of the Trustees, result in the direct or indirect beneficial ownership of any Excess Series C Preferred Shares by a Person other than an Excepted Person and (ii) to treat such Excess Series C Preferred Shares as having been transferred not to the Proposed Transferee but rather to a trustee for the benefit of one or more Charitable Beneficiaries (as defined in the Declaration) selected and otherwise as described in Section 5.14(c) of the Declaration. Any such trust shall be deemed to have been established by the holder of such Excess Series C Preferred Shares for the benefit of the applicable Charitable Beneficiary or Charitable Beneficiaries on the day prior to the date of the purported transfer to the Proposed Transferee, which purported transfer shall be void ab initio and the Proposed Transferee shall be deemed never to have acquired any interest in or with respect to the Excess Series C Preferred Shares purportedly transferred.

(b) Any Excess Series C Preferred Shares shall automatically be deemed to constitute Excess Shares (within the meaning of the Declaration) and shall be treated in the manner

prescribed for Excess Shares, including, without limitation, the provisions set forth in Section 5.14(c) thereof.

(c) Notwithstanding any other provision of the Declaration or hereof to the contrary, but subject to Section 5.14(i) of the Declaration, any purported acquisition of Series C Preferred Shares (whether such purported acquisition results from the direct or indirect acquisition or ownership (as defined for purposes of the Declaration) of Series C Preferred Shares) which would result in the disqualification of the Trust as a REIT for federal income tax purposes shall be null and void. Any such Series C Preferred Shares may be treated by the Trustees in the manner prescribed for Excess Series C Preferred Shares in these provisions of the Series C Preferred Shares and for Excess Shares in Section 5.14(c) of the Declaration.

(d) The provisions of this Section 9 shall not limit the applicability of Section 5.14 of the Declaration to Series C Preferred Shares in accordance with the terms thereof, and the provisions of this Section 9 and of Section 5.14 of the Declaration shall not limit the right of the Trust to elect to redeem Excess Series C Preferred Shares pursuant to Section 5(b) hereof. Subject only to Section 5.14(i) of the Declaration, nothing contained in this Section 9 or in any other provision of the Series C Preferred Shares shall limit the authority of the Trustees to take such other action as they deem necessary or advisable to protect the Trust and the interests of the shareholders by preservation of the Trust's status as a REIT for federal income tax purposes. The provisions of subsections (f) through (i) of Section 5.14 of the Declaration shall be applicable to this Section 9 as though (i) the references therein to Section 5.14 of the Declaration referred instead to this Section 9 and (ii) the references therein to subsections of Section 5.14 of the Declaration referred to the comparable provisions of this Section 9.

10. **Severability.** If any preference, right, voting power, restriction, limitation as to dividends or other distributions, qualification, term or condition of redemption or other term of the Series C Preferred Shares is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, then, to the extent permitted by law, all other preferences, rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, terms and conditions of redemption and other terms of the Series C Preferred Shares which can be given effect without the invalid, unlawful or unenforceable preference, right, voting power, restriction, limitation as to dividends or other distributions, qualification, term or condition of redemption or other term of the Series C Preferred Shares shall remain in full force and effect and shall not be deemed dependent upon any invalid, unlawful or unenforceable preference, right, voting power, restriction, limitation as to dividends or other distributions, qualification, term or condition of redemption or other term of the Series C Preferred Shares.

**THIRD:** The Series C Preferred Shares have been classified and designated by the Board of Trustees under the authority contained in the Declaration.

**FOURTH:** These Articles Supplementary have been approved by the Board of Trustees in the manner and by the vote required by law.

**FIFTH:** The undersigned President of the Trust acknowledges these Articles Supplementary to be the true act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned President of the Trust acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and this statement is made under the penalties for perjury.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, HOSPITALITY PROPERTIES TRUST has caused these Articles Supplementary to be signed in its name and on its behalf by its President and witnessed by an Assistant Secretary on February 15, 2007.

WITNESS:

  
Jennifer B. Clark  
Assistant Secretary

HOSPITALITY PROPERTIES TRUST

By:   
John G. Murny  
President

CUST ID: 0001918731  
WORK ORDER: 0001361769  
DATE: 02-16-2007 10:27 AM  
AMT. PAID: \$201.00

HA0603087: 21

**CORPORATE CHARTER APPROVAL SHEET**  
**\*\*EXPEDITED SERVICE\*\*      \*\* KEEP WITH DOCUMENT \*\***

DOCUMENT CODE 16 BUSINESS CODE \_\_\_\_\_

# D04141826



Close \_\_\_\_\_ Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

P.A. \_\_\_\_\_ Religious \_\_\_\_\_

Merging (Transferor) \_\_\_\_\_

ID # D04141826 ACK # 1000361994335903  
 LIBER: B01073 FOLIO: 1577 PAGES: 0012  
 HOSPITALITY PROPERTIES TRUST

Surviving (Transferee) \_\_\_\_\_

02/16/2007 AT 10:27 A WO # 0001361769

New Name \_\_\_\_\_

**FEES REMITTED**

Base Fee: 100  
 Org. & Cap. Fee: \_\_\_\_\_  
 Expedite Fee: 70  
 Penalty: \_\_\_\_\_  
 State Recordation Tax: \_\_\_\_\_  
 State Transfer Tax: \_\_\_\_\_  
1 Certified Copies  
 \_\_\_\_\_ Certificates  
 Copy Fee: 31  
 Certificate of Status Fee: \_\_\_\_\_  
 Personal Property Filings: \_\_\_\_\_  
 Mail Processing Fee: \_\_\_\_\_  
 Other: \_\_\_\_\_  
**TOTAL FEES: 201**

Change of Name  
 Change of Principal Office  
 Change of Resident Agent  
 Change of Resident Agent Address  
 Resignation of Resident Agent  
 Designation of Resident Agent  
 and Resident Agent's Address  
 Change of Business Code  
 Adoption of Assumed Name  
 \_\_\_\_\_  
 Other Change(s)  
 \_\_\_\_\_

Credit Card \_\_\_\_\_ Check \_\_\_\_\_ Cash \_\_\_\_\_

Code 053  
 Attention: ABCohen

\_\_\_\_\_ Documents on \_\_\_\_\_ Checks

Mail: Name and Address \_\_\_\_\_

Approved By: 9

Keyed By: \_\_\_\_\_

**VENABLE LLP**  
 1800 MERCANTILE BANK & TRUST BLDG  
 2 HOPKINS PLAZA  
 BALTIMORE MD 21201-2930

COMMENT(S):

**Stamp Work Order and Customer Number HERE**

CUST ID: 0001918731  
 WORK ORDER: 0001361769  
 DATE: 02-16-2007 10:27 AM  
 AMT. PAID: \$201.00

M

**HOSPITALITY PROPERTIES TRUST**

**ARTICLES OF AMENDMENT**

Hospitality Properties Trust, a Maryland real estate investment trust (the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

**FIRST:** Section 5.1 of Article V of the Amended and Restated Declaration of Trust of the Trust, as amended and supplemented (the "Declaration of Trust"), is hereby amended to increase the number of Shares (as defined therein) that the Trust has authority to issue to 250,000,000 and the number of Common Shares (as defined therein) that the Trust has authority to issue to 150,000,000.

**SECOND:** The amendment to the Declaration of Trust as set forth above has been duly approved by the Board of Trustees of the Trust as required by law. Pursuant to Section 8-203(a)(7) of the Maryland REIT Law and Article V, Section 5.1 of the Declaration of Trust, no shareholder approval was required.

**THIRD:** The total number of shares of beneficial interest which the Trust had authority to issue immediately prior to this amendment was 200,000,000, consisting of 100,000,000 Common Shares, \$.01 par value per share, and 100,000,000 Preferred Shares, without par value except for the 1,000,000 of such Preferred Shares that have been classified as Junior Participating Preferred Shares, \$.01 par value per share, having an aggregate par value of \$1,010,000.

**FOURTH:** The total number of shares of beneficial interest which the Trust has authority to issue pursuant to this amendment is 250,000,000, consisting of 150,000,000 Common Shares, \$.01 par value per share, and 100,000,000 Preferred Shares, without par value except for the 1,000,000 of such Preferred Shares that have been classified as Junior Participating Preferred Shares, \$.01 par value per share, having an aggregate par value of \$1,510,000.

**FIFTH:** The undersigned President of the Trust acknowledges these Articles of Amendment to be the trust act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned President acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

*[SIGNATURE PAGE FOLLOWS]*

CUST ID: 0001926943  
WORK ORDER: 0001369981  
DATE: 03-05-2007 04:21 PM  
AMT. PAID: \$434.00

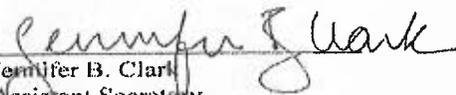
000612993 11

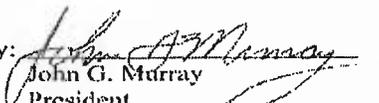
**STATE OF MARYLAND**  
I hereby certify that this is a true and complete copy of the  
page document on file in this office. DATE: 4/10/10  
**STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**  
BY: [Signature], Custodian  
This stamp replaces our previous certification system. Effective: 6/95

IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment to be signed in its name and on its behalf by its President and attested to by its Assistant Secretary on this 5th day of March, 2007.

ATTEST:

HOSPITALITY PROPERTIES TRUST

By:   
Jennifer B. Clark  
Assistant Secretary

By:   
John G. Murray  
President

# CORPORATE CHARTER APPROVAL SHEET

**\*\*EXPEDITED SERVICE\*\***

**\*\* KEEP WITH DOCUMENT \*\***

DOCUMENT CODE 71 BUSINESS CODE 13

# W04141826



1000361994411910

Close \_\_\_\_\_ Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

P.A. \_\_\_\_\_ Religious \_\_\_\_\_

Merging (Transferor) \_\_\_\_\_

ID # D04141826 ACK # 1000361994411910  
LIBER: B01081 FOLIO: 0082 PAGES: 0003  
HOSPITALITY PROPERTIES TRUST

Surviving (Transferee) \_\_\_\_\_

03/05/2007 AT 04:21 P WO # 0001369981

New Name \_\_\_\_\_

### FEES REMITTED

Base Fee: 100  
Org. & Cap. Fee: 50  
Expedite Fee: 70

Penalty: \_\_\_\_\_  
State Recordation Tax: \_\_\_\_\_  
State Transfer Tax: \_\_\_\_\_

1 Certified Copies

Copy Fee: 22

\_\_\_\_\_ Certificates

Certificate of Status Fee: \_\_\_\_\_  
Personal Property Filings: \_\_\_\_\_  
Mail Processing Fee: \_\_\_\_\_  
Other: \_\_\_\_\_

TOTAL FEES: 242

Change of Name  
Change of Principal Office  
Change of Resident Agent  
Change of Resident Agent Address  
Resignation of Resident Agent  
Designation of Resident Agent  
and Resident Agent's Address  
Change of Business Code

Adoption of Assumed Name

Other Change(s)

Credit Card \_\_\_\_\_ Check  Cash \_\_\_\_\_

Code 063

\_\_\_\_\_ Documents on \_\_\_\_\_ Checks

Attention: ABCohen

Approved By: [Signature]

VENABLE LLP  
AB COHEN  
1800 MERCANTILE BANK & TRUST BLDG  
2 HOPKINS PLZ  
BALTIMORE MD 21201-2930

Keyed By: \_\_\_\_\_

COMMENT(S):

*102  
file list*

CUST ID: 0001926943  
WORK ORDER: 0001369981  
DATE: 03-05-2007 04:21 PM  
AMT. PAID: \$434.00

**HOSPITALITY PROPERTIES TRUST**

**ARTICLES SUPPLEMENTARY**

Hospitality Properties Trust, a Maryland real estate investment trust (the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

**FIRST:** Under a power contained in Section 5.1 of the Amended and Restated Declaration of Trust of the Trust, as amended and supplemented (the "Declaration of Trust"), the Board of Trustees of the Trust (the "Board of Trustees"), by resolution duly adopted, classified and designated 500,000 authorized but unissued Preferred Shares (as defined in the Declaration of Trust) as additional Junior Participating Preferred Shares (as defined in the Declaration of Trust) having a par value of \$.01 per share with the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms and conditions of redemption of the Junior Participating Preferred Shares set forth in the Declaration of Trust, as a result of which the total number of authorized Junior Participating Preferred Shares is 1,500,000.

**SECOND:** The additional Junior Participating Preferred Shares have been classified and designated by the Board of Trustees under the authority contained in the Declaration of Trust.

**THIRD:** These Articles Supplementary have been approved by the Board of Trustees in the manner and by the vote required by law.

**FOURTH:** The undersigned President acknowledges these Articles Supplementary to be the true act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned President acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

[SIGNATURE PAGE FOLLOWS]

CUST ID:0001928943  
WORK ORDER:0001369981  
DATE:03-05-2007 04:21 PM  
AMT. PAID:\$434.00

1106(3.0).31

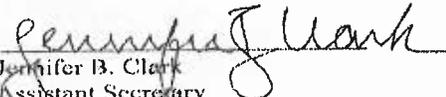
**STATE OF MARYLAND**  
I hereby certify that this is a true and complete copy of the  
page document on file in this office. DATE: 4/16/18  
**STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**  
BY: [Signature], Custodian  
This stamp replaces our previous certification system. Effective: 6/95

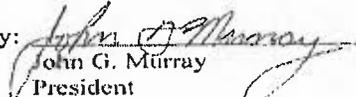
---

IN WITNESS WHEREOF, the Trust has caused these Articles Supplementary to be signed in its name and on its behalf by its President and attested to by its Assistant Secretary on this 5<sup>th</sup> day of March, 2007.

ATTEST:

HOSPITALITY PROPERTIES TRUST

By:   
Jennifer B. Clark  
Assistant Secretary

By:   
John G. Murray  
President

# CORPORATE CHARTER APPROVAL SHEET

**\*\*EXPEDITED SERVICE\*\***

**\*\* KEEP WITH DOCUMENT \*\***

DOCUMENT CODE 16 BUSINESS CODE 13

# W 04141826

Close \_\_\_\_\_ Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

P.A. \_\_\_\_\_ Religious \_\_\_\_\_

Merging (Transferor) \_\_\_\_\_

Surviving (Transferee) \_\_\_\_\_



1000361994411936

ID # D04141826 ACK # 1000361994411936  
LIBER: B01081 FOLIO: 0085 PAGES: 0003  
HOSPITALITY PROPERTIES TRUST

03/05/2007 AT 04:22 P WO # 0001369981

New Name \_\_\_\_\_

### FEES REMITTED

Base Fee:	<u>100</u>	Change of Name
Org. & Cap. Fee:	_____	Change of Principal Office
Expedite Fee:	<u>70</u>	Change of Resident Agent
Penalty:	_____	Change of Resident Agent Address
State Recordation Tax:	_____	Resignation of Resident Agent
State Transfer Tax:	_____	Designation of Resident Agent
<u>1</u> Certified Copies	_____	and Resident Agent's Address
Certificates	_____	Change of Business Code
Copy Fee:	<u>22</u>	Adoption of Assumed Name
Certificate of Status Fee:	_____	_____
Personal Property Filings:	_____	_____
Mail Processing Fee:	_____	Other Change(s)
Other:	_____	_____
TOTAL FEES:	<u>192</u>	_____

Credit Card \_\_\_\_\_ Check  Cash \_\_\_\_\_

Documents on \_\_\_\_\_ Checks \_\_\_\_\_

Approved By: [Signature]

Keyed By: \_\_\_\_\_

COMMENT(S):

Code 063  
Attention: AB Cohen

VENABLE LLP  
AB COHEN  
1800 MERCANTILE BANK & TRUST BLDG  
2 HOPKINS PLZ  
BALTIMORE MD 21201-2930

CUST ID: 0001926943  
WORK ORDER: 0001369981  
DATE: 03-05-2007 04:21 PM  
AMT. PAID: \$434.00

**HOSPITALITY PROPERTIES TRUST**

**ARTICLES OF AMENDMENT**

Hospitality Properties Trust, a Maryland real estate investment trust (the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

**FIRST:** The Amended and Restated Declaration of Trust, as amended and supplemented, of the Trust as currently in effect (the "Declaration of Trust") is hereby amended as follows:

1. The following text is hereby added to the Declaration of Trust as new Section 8.8 immediately following Section 8.7:

8.8. *Indemnification of the Trust.* Each shareholder will indemnify and hold harmless the Trust from and against all costs, expenses, penalties, fines and other amounts, including, without limitation, attorneys' and other professional fees, whether third party or internal, arising from such shareholder's violation of any provision of this Declaration or the Bylaws, including, without limitation, Section 5.14, and shall pay such sums to the Trust upon demand, together with interest on such amounts, which interest will accrue at the lesser of 15% per annum and the maximum amount permitted by law, from the date such costs or the like are incurred until the receipt of repayment by the Trust. Nothing in this Section shall create or increase the liability of any shareholders, trustees, officers, employees or agents of the Trust for actions taken on behalf of the Trust.

**SECOND:** The amendment to the Declaration of Trust as set forth above has been duly advised by the Board of Trustees of the Trust and approved by the shareholders of the Trust as required by law.

**THIRD:** The undersigned President of the Trust acknowledges these Articles of Amendment to be the true act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned President acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

[Remainder of Page Left Intentionally Blank]

CUST ID:0001965000  
WORK ORDER:0001408038  
DATE:05-16-2007 11:12 AM  
AMT. PAID:\$193.00

{B0640268; 5}

**STATE OF MARYLAND**

I hereby certify that this is a true and complete copy of the  
page document on file in his office. DATED: 5/16/07  
STATE DEPARTMENT OF ASSESSMENT'S AND TAXATION:

BY: [Signature], Custodian

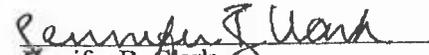
This stamp replaces our previous certification system. Effective: 6/04

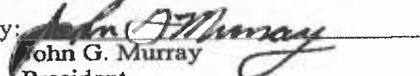
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IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment to be signed in its name and on its behalf by its President and attested by its Assistant Secretary this 15th day of May, 2007.

ATTEST:

HOSPITALITY PROPERTIES TRUST

  
Jennifer B. Clark  
Assistant Secretary

By:   
John G. Murray  
President

# CORPORATE CHARTER APPROVAL SHEET

\*\*EXPEDITED SERVICE\*\*

\*\* KEEP WITH DOCUMENT \*\*

DOCUMENT CODE 71 BUSINESS CODE \_\_\_\_\_

# D04141826

Close \_\_\_\_\_ Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

P.A. \_\_\_\_\_ Religious \_\_\_\_\_

Merging (Transferor) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Surviving (Transferee) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



Affix Barcode Label Here

ID # D04141826 ACK # 1000361994766644  
LIBER: B01114 FOLIO: 0666 PAGES: 0003  
HOSPITALITY PROPERTIES TRUST

05/16/2007 AT 11:12 A WO # 0001408038

New Name \_\_\_\_\_

### FEES REMITTED

Base Fee: <u>100</u>	Change of Name
Org. & Cap. Fee: _____	Change of Principal Office
Expedite Fee: <u>90</u>	Change of Resident Agent
Penalty: _____	Change of Resident Agent Address
State Recordation Tax: _____	Resignation of Resident Agent
State Transfer Tax: _____	Designation of Resident Agent
<u>1</u> Certified Copies	and Resident Agent's Address
Copy Fee: <u>23</u>	Change of Business Code
Certificates	Adoption of Assumed Name
Certificate of Status Fee: _____	Other Change(s) <input checked="" type="checkbox"/>
Personal Property Filings: _____	<u>Adding new Sec 9.8 (Indem)</u>
Mail Processing Fee: _____	
Other: _____	
TOTAL FEES: <u>193</u>	

Credit Card \_\_\_\_\_ Check  Cash \_\_\_\_\_

1 Documents on \_\_\_\_\_ Checks

Approved By: 10

Keyed By: \_\_\_\_\_

COMMENT(S):

Code 063  
Attention: ABCohen

Mail Name and Address  
VENABLE LLP  
- ABCOHN  
1800 MERCANTILE BANK & TRUST BLDG  
- 2 HOPKINS PLZ  
- BALTIMORE MD 21201-2930

CERTIFIED  
COPY MADE

Stamp Work Order and Customer Number HERE

CUST ID: 0001965000  
WORK ORDER: 0001408038  
DATE: 05-16-2007 11:12 AM  
AMT. PAID: \$193.00

**HOSPITALITY PROPERTIES TRUST**

**ARTICLES OF AMENDMENT**

Hospitality Properties Trust, a Maryland real estate investment trust (the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

**FIRST:** The Declaration of Trust of the Trust (the "Declaration of Trust") is hereby amended by adding the following at the end of the last sentence of the fourth paragraph of Section 5.9:

"; provided, however, the election of a Managing Trustee or an Independent Trustee in an uncontested election, which is an election in which the number of nominees for election equals (or is less than) the number to be elected at the meeting, shall be by the affirmative vote of Shares representing a majority of the total number of Share votes cast."

**SECOND:** The foregoing amendment to the Declaration of Trust was advised by the Board of Trustees of the Trust and approved by the shareholders of the Trust as required by law.

**THIRD:** The undersigned President acknowledges these Articles of Amendment to be the trust act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned President acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

[SIGNATURE PAGE FOLLOWS]

CUST ID: 0002414436  
WORK ORDER: 0001857474  
DATE: 04-15-2010 10:36 AM  
AMT. PAID: \$191.00

STATE OF MARYLAND  
I hereby certify that this is a true and complete copy of the  
said document on file in this office. DATED: 1/16/18  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

BY: Rosina Laurent, Custodian  
This stamp replaces our previous certification system. Effective: 6/05

IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment to be signed in its name and on its behalf by its President and attested by its Secretary on this 15<sup>th</sup> day of April, 2010.

ATTEST:

Jennifer B. Clark  
Secretary

HOSPITALITY PROPERTIES TRUST

John G. Murray  
President

# CORPORATE CHARTER APPROVAL SHEET

\*\*EXPEDITED SERVICE\*\*

\*\* KEEP WITH DOCUMENT \*\*

DOCUMENT CODE 09 BUSINESS CODE \_\_\_\_\_

# 0041118226

Close \_\_\_\_\_ Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

P.A. \_\_\_\_\_ Religious \_\_\_\_\_

Merging (Transferor) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Surviving (Transferee) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



ID # D04141826 ACK # 1000361999635646  
PAGES: 0003  
HOSPITALITY PROPERTIES TRUST

04/15/2010 AT 10:36 A MO # 0001857474

New Name \_\_\_\_\_

### FEES REMITTED

Base Fee: 100  
Org. & Cap. Fee: \_\_\_\_\_  
Expedite Fee: 10  
Penalty: \_\_\_\_\_  
State Recordation Tax: \_\_\_\_\_  
State Transfer Tax: \_\_\_\_\_  
Certified Copies \_\_\_\_\_  
Copy Fee: 21  
Certificates \_\_\_\_\_  
Certificate of Status Fee: \_\_\_\_\_  
Personal Property Filings: \_\_\_\_\_  
Mail Processing Fee: \_\_\_\_\_  
Other: \_\_\_\_\_

TOTAL FEES: 191

\_\_\_\_\_ Change of Name  
\_\_\_\_\_ Change of Principal Office  
\_\_\_\_\_ Change of Resident Agent  
\_\_\_\_\_ Change of Resident Agent Address  
\_\_\_\_\_ Resignation of Resident Agent  
\_\_\_\_\_ Designation of Resident Agent  
and Resident Agent's Address  
\_\_\_\_\_ Change of Business Code  
\_\_\_\_\_ Adoption of Assumed Name  
\_\_\_\_\_ Other Change(s)

Credit Card \_\_\_\_\_ Check  Cash \_\_\_\_\_

Documents on \_\_\_\_\_ Checks

Approved By: h

Keyed By: \_\_\_\_\_

COMMENT(S):

Code 063  
Attention: Andrea Cohen

Mail: Name and Address

VENABLE LLP  
SUITE 900  
750 E. PRATT STREET  
BALTIMORE MD 21202

Stamp Work Order and Customer Number HERE

CUST ID: 0002414436  
WORK ORDER: 0001857474  
DATE: 04-15-2010 10:36 AM  
AMT. PAID: \$191.00

**HOSPITALITY PROPERTIES TRUST**

**ARTICLES OF AMENDMENT**

Hospitality Properties Trust, a Maryland real estate investment trust (the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

**FIRST:** The Declaration of Trust of the Trust (the "Declaration of Trust") is hereby amended by deleting the following sentence from Section 5.12:

"The record date so fixed shall be not less than ten (10) days nor more than sixty (60) days prior to the date of the meeting or event for the purposes of which it is fixed."

**SECOND:** The foregoing amendment to the Declaration of Trust was advised by the Board of Trustees of the Trust and approved by the shareholders of the Trust as required by law.

**THIRD:** The undersigned President acknowledges these Articles of Amendment to be the trust act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned President acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

[SIGNATURE PAGE FOLLOWS]

CUST ID:0002414887  
WORK ORDER:0001857925  
DATE:04-15-2010 04:34 PM  
AMT. PAID:\$193.00

**STATE OF MARYLAND**

I hereby certify that this is a true and complete copy of the 3 page document on file in this office. DATED: 1/16/10  
**STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**

BY: Russina Garrett, Custodian

This stamp replaces our previous certification system. Effective: 6/05

IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment to be signed in its name and on its behalf by its President and attested by its Secretary on this 15<sup>th</sup> day of April, 2010.

ATTEST:

  
Jennifer B. Clark  
Secretary

HOSPITALITY PROPERTIES TRUST

  
John G. Murray  
President

# CORPORATE CHARTER APPROVAL SHEET

**\*\*EXPEDITED SERVICE\*\***

**\*\* KEEP WITH DOCUMENT \*\***

DOCUMENT CODE 21 BUSINESS CODE \_\_\_\_\_

# 004141826

Close \_\_\_\_\_ Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

P.A. \_\_\_\_\_ Religious \_\_\_\_\_

Merging (Transferor) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Surviving (Transferee) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### FEES REMITTED

Base Fee: 100  
Org. & Cap. Fee: \_\_\_\_\_  
Expedite Fee: 70  
Penalty: \_\_\_\_\_  
State Recordation Tax: \_\_\_\_\_  
State Transfer Tax: \_\_\_\_\_  
Certified Copies: \_\_\_\_\_  
Copy Fee: 23  
Certificates: \_\_\_\_\_  
Certificate of Status Fee: \_\_\_\_\_  
Personal Property Filings: \_\_\_\_\_  
Mail Processing Fee: \_\_\_\_\_  
Other: \_\_\_\_\_

TOTAL FEES: 193

Credit Card \_\_\_\_\_ Check X Cash \_\_\_\_\_

Documents on 6 Checks

Approved By: [Signature]

Keyed By: \_\_\_\_\_

COMMENT(S):

Affix Barcode Label Here



1000361999639911

ID # D04141826 ACK # 1000361999639911  
PAGES: 0003  
HOSPITALITY PROPERTIES TRUST

04/15/2010 AT 04:34 P M O # 0001857925

New Name \_\_\_\_\_

- \_\_\_\_\_ Change of Name
- \_\_\_\_\_ Change of Principal Office
- \_\_\_\_\_ Change of Resident Agent
- \_\_\_\_\_ Change of Resident Agent Address
- \_\_\_\_\_ Resignation of Resident Agent
- \_\_\_\_\_ Designation of Resident Agent and Resident Agent's Address
- \_\_\_\_\_ Change of Business Code
- \_\_\_\_\_ Adoption of Assumed Name
- \_\_\_\_\_ Other Change(s)

Code 063  
Attention: Andrea Cohen

VENABLE LLP  
ANDREA COHEN  
SUITE 900  
750 E PRATT ST  
BALTIMORE MD 21202-3142

CUST ID: 0002414887  
WORK ORDER: 0001857925  
DATE: 04-15-2010 04:34 PM  
AMT. PAID: \$193.00

**HOSPITALITY PROPERTIES TRUST**

**ARTICLES OF AMENDMENT**

Hospitality Properties Trust, a Maryland real estate investment trust (the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

**FIRST:** Section 5.1 of Article V of the Declaration of Trust of the Trust (the "Declaration") is hereby amended to increase the number of Shares (as defined therein) that the Trust has authority to issue to 300,000,000 and the number of Common Shares (as defined therein) that the Trust has authority to issue to 200,000,000.

**SECOND:** The amendment to the Declaration as set forth above has been duly approved by the Board of Trustees of the Trust as required by law. Pursuant to Section 8-203(a)(8) of the Maryland REIT Law and Article V, Section 5.1 of the Declaration, no shareholder approval was required.

**THIRD:** The total number of shares of beneficial interest which the Trust had authority to issue immediately prior to this amendment was 250,000,000, consisting of 150,000,000 Common Shares, \$.01 par value per share, and 100,000,000 preferred shares of beneficial interest, without par value (the "Preferred Shares") except for the 1,500,000 of such Preferred Shares that have been classified as Junior Participating Preferred Shares, \$.01 par value per share, having an aggregate par value of \$1,515,000.

**FOURTH:** The total number of shares of beneficial interest which the Trust has authority to issue pursuant to this amendment is 300,000,000, consisting of 200,000,000 Common Shares, \$.01 par value per share, and 100,000,000 Preferred Shares, without par value except for the 1,500,000 of such Preferred Shares that have been classified as Junior Participating Preferred Shares, \$.01 par value per share, having an aggregate par value of \$2,015,000.

**FIFTH:** The undersigned Treasurer and Chief Financial Officer of the Trust acknowledges these Articles of Amendment to be the trust act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned Treasurer and Chief Financial Officer acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

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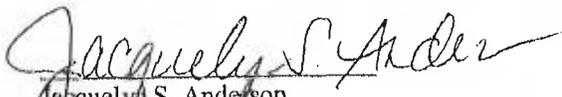
CUST ID: 0002695904  
WORK ORDER: 0003912484  
DATE: 01-18-2018 01:54 PM  
AMT. PAID: \$421.00

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION  
I hereby certify that this is a true and complete copy of the  
page document on file in this office. DATED: 1/16/18  
BY: *[Signature]*, Custodian  
This form replaces our previous certification system. Effective 6/05

IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment to be executed in its name and on its behalf by its Treasurer and Chief Financial Officer, and attested to by its Assistant Secretary, on this 13<sup>th</sup> day of January, 2012.

ATTEST:

HOSPITALITY PROPERTIES TRUST

  
Jacquelyn S. Anderson  
Assistant Secretary

By:  (SEAL)  
Mark L. Kleifges  
Treasurer and Chief Financial Officer

# CORPORATE CHARTER APPROVAL SHEET

\*\* EXPEDITED SERVICE \*\*

\*\* KEEP WITH DOCUMENT \*\*

DOCUMENT CODE 071 BUSINESS CODE 13

# W04141826



Close \_\_\_\_\_ Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

P.A. \_\_\_\_\_ Religious \_\_\_\_\_

Merging (Transferor) \_\_\_\_\_

Surviving (Transferee) \_\_\_\_\_

ID # D04141826 ACK # 1000362002753665  
PAGES: 0003  
HOSPITALITY PROPERTIES TRUST

01/18/2012 AT 01:54 P WO # 0003912484

New Name \_\_\_\_\_

### FEES REMITTED

Base Fee: \_\_\_\_\_  
Org. & Cap. Fee: \_\_\_\_\_  
Expedite Fee: \_\_\_\_\_  
Penalty: \_\_\_\_\_  
State Recordation Tax: \_\_\_\_\_  
State Transfer Tax: \_\_\_\_\_  
Certified Copies: 1 \_\_\_\_\_  
Copy Fee: \_\_\_\_\_  
Certificates: \_\_\_\_\_  
Certificate of Status Fee: \_\_\_\_\_  
Personal Property Filings: \_\_\_\_\_  
Mail Processing Fee: \_\_\_\_\_  
Other: \_\_\_\_\_

100  
30  
30  
23  
213

TOTAL FEES: \_\_\_\_\_

Credit Card \_\_\_\_\_ Check \_\_\_\_\_ Cash \_\_\_\_\_

2 Documents on 1 Checks

Approved By: 9

Keyed By: \_\_\_\_\_

COMMENT(S): \_\_\_\_\_

- \_\_\_\_\_ Change of Name
- \_\_\_\_\_ Change of Principal Office
- \_\_\_\_\_ Change of Resident Agent
- \_\_\_\_\_ Change of Resident Agent Address
- \_\_\_\_\_ Resignation of Resident Agent
- \_\_\_\_\_ Designation of Resident Agent and Resident Agent's Address
- \_\_\_\_\_ Change of Business Code
- \_\_\_\_\_ Adoption of Assumed Name
- \_\_\_\_\_ Other Change(s)

Code 063  
Attention: Andrea Cohen

Mail: Name and Address

VENABLE LLP  
ANDREA COHEN  
SUITE 900  
750 E. PRATT STREET  
BALTIMORE MD 21202

File 1st

1002  
File 1st

### Stamp Work Order and Customer Number HERE

CUST ID: 0002695904  
WORK ORDER: 0003912484  
DATE: 01-18-2012 01:54 PM  
AMT. PAID: \$421.00

**HOSPITALITY PROPERTIES TRUST  
ARTICLES SUPPLEMENTARY  
7.125% SERIES D CUMULATIVE REDEEMABLE PREFERRED SHARES  
without par value**

HOSPITALITY PROPERTIES TRUST, a Maryland real estate investment trust (the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

**FIRST:** Pursuant to authority expressly vested in the Board of Trustees of the Trust (the "Board") by Section 5.1 of the Amended and Restated Declaration of Trust of the Trust, dated August 21, 1995, as amended and supplemented (the "Declaration"), the Board has duly classified and designated 12,650,000 Preferred Shares of the Trust as 7.125% Series D Cumulative Redeemable Preferred Shares, without par value, of the Trust ("*Series D Preferred Shares*").

**SECOND:** The preferences, rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms or conditions of redemption of the Series D Preferred Shares are as follows, which upon any restatement of the Declaration shall be made part of Article V of the Declaration, with any necessary or appropriate changes to the enumeration or lettering of sections or subsections hereof. Capitalized terms used in this ARTICLE SECOND that are defined in the Declaration and not otherwise defined herein are used herein as so defined in the Declaration.

7.125% Series D Cumulative Redeemable Preferred Shares, without par value

1. Designation and Number. A series of Preferred Shares, designated the 7.125% Series D Cumulative Redeemable Preferred Shares, without par value (the "*Series D Preferred Shares*"), is hereby established. The number of authorized Series D Preferred Shares is 12,650,000.

2. Relative Seniority. In respect of rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, the Series D Preferred Shares shall rank (i) senior to the Common Shares, the Junior Participating Preferred Shares and any other class or series of Shares of the Trust, the terms of which specifically provide that such class or series ranks, as to rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, junior to the Series D Preferred Shares (the Shares described in this clause (i) being, collectively, "*Junior Shares*"), (ii) on a parity with the 8.875% Series B Cumulative Redeemable Preferred Shares, without par value (the "*Series B Preferred Shares*"), the 7% Series C Cumulative Redeemable Preferred Shares, without par value (the "*Series C Preferred Shares*"), and any other class or series of Shares of the Trust, the terms of which specifically provide that such class or series ranks, as to rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, on a parity with the Series D Preferred Shares, and (iii) junior to any class or series of Shares of the Trust, the terms of which specifically provide that such class or series ranks, as to rights to receive

(B)1375653; 6)

STATE OF MARYLAND  
I hereby certify that this is a true and complete copy of the \_\_\_\_\_  
page document on file in this office. DATED: 1/16/18  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:  
BY: Rising James Custodian  
This stamp replaces our previous certification system. Effective: 6/95

dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, senior to the Series D Preferred Shares. For the avoidance of doubt, debt securities of the Trust which are convertible into or exchangeable for Shares of the Trust or any other debt securities of the Trust do not constitute a class or series of Shares for purposes of this Section 2.

3. Dividends and Distributions.

(a) Subject to the preferential rights of the holders of any class or series of Shares of the Trust ranking senior to the Series D Preferred Shares as to dividends, the holders of the then outstanding Series D Preferred Shares shall be entitled to receive, when and as authorized by the Board and declared by the Trust, out of any funds legally available therefor, cumulative dividends at a rate of seven and one hundred twenty five thousandths percent (7.125%) per annum of the twenty-five dollars (\$25.00) per share liquidation preference of the Series D Preferred Shares (equivalent to the annual rate of \$1.78125 per share). Such dividends shall accrue and be cumulative from the first date on which any Series D Preferred Shares are issued (the "*Original Issue Date*"), and will be payable quarterly in arrears in cash on the fifteenth day of each January, April, July and October, beginning on April 15, 2012 (each such day being hereinafter called a "*Quarterly Dividend Date*"); provided that if any Quarterly Dividend Date is not a Business Day (as hereinafter defined), then the dividend which would otherwise have been payable on such Quarterly Dividend Date may be paid on the next succeeding Business Day with the same force and effect as if paid on such Quarterly Dividend Date, and no interest or additional dividends or other sums shall accrue on the amount so payable from such Quarterly Dividend Date to such next succeeding Business Day. As used herein, the term "*Dividend Period*" for Series D Preferred Shares means the period from the Original Issue Date and ending on and excluding the next following Quarterly Dividend Date, and each subsequent period from a Quarterly Dividend Date and ending on and excluding the next following Quarterly Dividend Date. The amount of any dividend payable for any full Dividend Period or portion thereof shall be computed on the basis of a 360-day year consisting of twelve 30-day months (it being understood that the first Dividend Period is shorter than a full Dividend Period). Dividends shall be payable to holders of record as they appear in the share records of the Trust at the close of business on the applicable record date (the "*Record Date*"), which shall be a date designated by the Board for the payment of dividends that is not more than 60 nor less than 10 days prior to the applicable Quarterly Dividend Date.

(b) Dividends on the Series D Preferred Shares shall accrue and be cumulative, whether or not (i) the Trust has earnings, (ii) there are funds legally available for the payment of such dividends or (iii) such dividends have been declared.

(c) If Series D Preferred Shares are outstanding, no full dividends (other than in Common Shares or other Junior Shares or options, warrants or rights to subscribe for or purchase Common Shares or other Junior Shares) shall be declared or paid or set aside for payment on any other class or series of Shares of the Trust ranking, as to dividends, on a parity with the Series D Preferred Shares for any period, unless the full cumulative dividends on the Series D Preferred Shares have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set aside for payment for all past Dividend Periods. When dividends are not paid in full (or a sum sufficient for such full payment is not so set aside)

upon the Series D Preferred Shares and the Shares of any other class or series ranking on a parity as to dividends with the Series D Preferred Shares, all dividends declared upon Series D Preferred Shares and any such other class or series of Shares shall be allocated pro rata so that the amount of dividends declared per share on the Series D Preferred Shares and such other class or series of Shares shall in all cases bear to each other the same ratio that the accrued dividends per share on the Series D Preferred Shares and such other class or series of Shares (which shall not include any accumulation in respect of unpaid dividends for prior dividend periods if such other class or series does not have a cumulative dividend) bear to each other.

(d) Unless full cumulative dividends on the Series D Preferred Shares have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set aside for payment for all past Dividend Periods, no dividends (other than in Common Shares or other Junior Shares or options, warrants or rights to subscribe for or purchase Common Shares or other Junior Shares) shall be declared or paid or set aside for payment and no other distribution shall be declared or made upon the Common Shares or any other Shares ranking junior to the Series D Preferred Shares as to rights to receive dividends or to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, nor shall any Common Shares or any other such Shares be redeemed, purchased or otherwise acquired for any consideration (or any moneys be paid to or made available for a sinking fund for the redemption of any such Shares) by the Trust except (i) by conversion into or exchange for Common Shares or other Junior Shares, (ii) pursuant to pro rata offers to purchase or a concurrent redemption of all, or a pro rata portion of, the outstanding Series D Preferred Shares and any other class or series of Shares ranking on a parity with Series D Preferred Shares as to rights to receive dividends and to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, (iii) by redemption, purchase or other acquisition of Common Shares made for purposes of an incentive, benefit or share purchase plan of the Trust or any of its subsidiaries for officers, Trustees or employees or others performing or providing similar services, (iv) by redemption, purchase or other acquisition of rights to purchase Junior Participating Preferred Shares pursuant to the Renewed Rights Agreement, dated as of May 15, 2007, between the Trust and Wells Fargo Bank, National Association, as rights agent, or pursuant to any replacement agreement therefor relating to such rights, each as in effect from time to time, or of any similar rights from time to time issued by the Trust in connection with a successor or supplemental shareholder rights protection plan adopted by the Board, and (v) for redemptions, purchases or other acquisitions by the Trust, whether pursuant to any provision of the Declaration, the bylaws of the Trust (the "Bylaws") or otherwise, for the purpose of preserving the Trust's status as a real estate investment trust (a "REIT") for federal income tax purposes.

(e) No interest, or sum of money in lieu thereof, shall be payable in respect of any dividend payment or payments on Series D Preferred Shares which may be in arrears, and the holders of Series D Preferred Shares are not entitled to any dividends, whether payable in cash, securities or other property, in excess of the full cumulative dividends described in this Section 3. Except as otherwise expressly provided herein, the Series D Preferred Shares shall not be entitled to participate in the earnings or assets of the Trust.

(f) Any dividend payment made on the Series D Preferred Shares shall be first credited against the earliest accrued but unpaid dividend due with respect to such Shares

which remains payable. Any cash dividends paid in respect of Series D Preferred Shares, including any portion thereof which the Trust elects to designate as "capital gain dividends" (as defined in Section 857 (or any successor provision) of the Internal Revenue Code) or as a return of capital, shall be credited to the cumulative dividends on the Series D Preferred Shares.

(g) No dividends on the Series D Preferred Shares shall be authorized by the Board or be paid or set aside for payment by the Trust at such time as the terms and provisions of any agreement of the Trust, including any agreement relating to its indebtedness or any other series of preferred shares, directly or indirectly prohibit authorization, payment or setting aside for payment or provide that such authorization, payment or setting aside for payment would constitute a breach thereof or a default thereunder, or if such declaration, payment or setting aside for payment shall be restricted or prohibited by law.

(h) The Trust shall remain entitled to receive and retain any interest or other earnings on any money set aside for the payment of dividends on Series D Preferred Shares and holders thereof shall have no claim to such interest or other earnings. Any funds for the payment of dividends on Series D Preferred Shares which have been set apart by the Trust and which remain unclaimed by the holders of the Series D Preferred Shares entitled thereto on the first anniversary of the applicable Quarterly Dividend Date, or other dividend payment date, shall revert and be repaid to the general funds of the Trust, and thereafter the holders of the Series D Preferred Shares entitled to the funds which have reverted or been repaid to the Trust shall look only to the general funds of the Trust for payment, without interest or other earnings thereon.

(i) "*Business Day*" shall mean any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which banking institutions in New York, New York or Boston, Massachusetts are authorized or required by law, regulation or executive order to close.

#### 4. Liquidation Rights.

(a) Upon any voluntary or involuntary liquidation, dissolution or winding up of the Trust, before any distribution or payment shall be made to the holders of any Common Shares or any other Shares ranking junior to the Series D Preferred Shares as to rights to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, but subject to the preferential rights of holders of any class or series of Shares ranking senior to the Series D Preferred Shares as to rights to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, the holders of Series D Preferred Shares shall be entitled to receive, out of assets of the Trust legally available for distribution to shareholders, liquidating distributions in cash or property at its fair market value as determined by the Board in the amount of twenty-five dollars (\$25.00) per Series D Preferred Share, plus an amount equal to all dividends accrued and unpaid thereon (whether or not declared).

(b) After payment of the full amount of the liquidating distributions to which they are entitled, the holders of Series D Preferred Shares will have no right or claim to any of the remaining assets of the Trust.

(c) In the event that upon any voluntary or involuntary liquidation, dissolution or winding up of the Trust, the available assets of the Trust are insufficient to pay the full amount of the liquidating distributions on all outstanding Series D Preferred Shares and the full amounts payable as liquidating distributions on all Shares of other classes or series of Shares of the Trust ranking on a parity with the Series D Preferred Shares as to rights to participate in distributions or payments in the event of any liquidation, dissolution or winding up of the Trust, then the holders of the Series D Preferred Shares and all other such classes or series of Shares shall share ratably in any such distribution of assets in proportion to the full liquidating distributions to which they would otherwise be respectively entitled.

(d) For purposes of this Section 4, neither the sale, lease, transfer or conveyance of all or substantially all of the property or business of the Trust, nor the merger or consolidation of the Trust into or with any other entity or the merger or consolidation of any other entity into or with the Trust or a statutory share exchange by the Trust, shall be deemed to be a dissolution, liquidation or winding up of the Trust.

(e) In determining whether a distribution (other than upon voluntary or involuntary dissolution), by dividend, redemption or other acquisition of Shares or otherwise, is permitted under Maryland law, amounts that would be needed, if the Trust were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of the holders of Series D Preferred Shares will not be added to the Trust's total liabilities.

#### 5. Redemption by the Trust.

(a) Optional Redemption. The Series D Preferred Shares are not redeemable prior to January 15, 2017, except as otherwise provided in Section 5(b) or Section 5(c) below. On and after January 15, 2017, the Trust may, at its option, redeem Series D Preferred Shares in whole or from time to time in part, for cash at a redemption price per share of twenty-five dollars (\$25.00), together with all accrued and unpaid dividends to (but excluding) the date fixed for redemption, except as otherwise provided in Section 5(d)(vi) below, and without interest (the "*Series D Redemption Price*"). Each date fixed for redemption of Series D Preferred Shares pursuant to this Section 5(a) or to Section 5(b) or 5(c) below is referred to in these provisions of the Series D Preferred Shares as a "*Series D Redemption Date.*" The Series D Preferred Shares have no stated maturity and are not subject to any sinking fund or mandatory redemption. Any redemption of Series D Preferred Shares pursuant to this Section 5(a) shall be made in accordance with the applicable provisions of Section 5(d) below.

(b) Excess Series D Preferred Share Optional Redemption. The Trust may, at its option, redeem at any time all or from time to time any Series D Preferred Shares which constitute Excess Series D Preferred Shares (as defined in Section 9 below) for cash at a redemption price per share equal to the lesser of (i) Series D Redemption Price or (ii) the purchase price therefor specified in Section 5.14(c) of the Declaration (giving effect to the provisions of Section 9(b) below), subject, with respect to the portion of the Series D Redemption Price constituting accrued and unpaid dividends to (but excluding) the date fixed for redemption, to the provisions of the second paragraph of subsection (c) of Section 5.14 of the Declaration and to Section 5(d)(vi) below, and without interest. The Trust's right to redeem Excess Series D Preferred Shares shall be in addition to, and shall not limit, its rights with

respect to such Series D Preferred Shares set forth in Section 9 below, in Section 5.14 of the Declaration or in the Bylaws. Any redemption of Series D Preferred Shares pursuant to this Section 5(b) shall be made in accordance with the applicable provisions of Section 5(d) below.

(c) Special Optional Redemption by the Trust. Upon the occurrence of a Change of Control (as defined below), the Trust will have the option to redeem the Series D Preferred Shares, in whole or in part within 120 days after the first date on which such Change of Control occurred, for cash at twenty-five dollars (\$25.00) per share, plus accrued and unpaid distributions, if any, to but excluding the redemption date ("*Special Optional Redemption Right*"). If, prior to the Change of Control Conversion Date (as defined in Section 7(a) below), the Trust has provided or provides notice of redemption with respect to the Series D Preferred Shares (whether pursuant to the Special Optional Redemption Right or other redemption rights pursuant to this Section 5), the holders of Series D Preferred Shares will not have the conversion right described below in Section 7. Any redemption of Series D Preferred Shares pursuant to this Section 5(c) shall be made in accordance with the applicable provisions of Section 5(d) below.

A "*Change of Control*" is when, after the original issuance of the Series D Preferred Shares, the following have occurred and are continuing:

(i) the acquisition by any person, including any syndicate or group deemed to be a "person" under Section 13(d)(3) of the Securities Exchange Act of 1934, as amended, of beneficial ownership, directly or indirectly, through a purchase, merger or other acquisition transaction or series of purchases, mergers or other acquisition transactions of shares of the Trust entitling that person to exercise more than 50% of the total voting power of all shares of the Trust entitled to vote generally in elections of Trustees (except that such person will be deemed to have beneficial ownership of all securities that such person has the right to acquire, whether such right is currently exercisable or is exercisable only upon the occurrence of a subsequent condition), and

(ii) following the closing of any transaction referred to in (i) above, neither the Trust nor the acquiring or surviving entity has a class of common securities (or American Depositary Receipts representing such securities) listed on the New York Stock Exchange (the "*NYSE*"), the NYSE Amex Equities (the "*NYSE Amex*"), or the NASDAQ Stock Market ("*NASDAQ*"), or listed or quoted on an exchange or quotation system that is a successor to the NYSE, the NYSE Amex or NASDAQ.

(d) Procedures and Terms for Redemption.

(i) Notice of redemption will be mailed at least 30 days but not more than 60 days before the Series D Redemption Date to each holder of record of Series D Preferred Shares to be redeemed at the address shown on the share transfer books of the Trust; *provided* that if the Trust shall have reasonably concluded, based on advice of independent tax counsel experienced in such matters, that a redemption pursuant to Section 5(b) must be made on a date (the "*Excess Series D Preferred Share Redemption Date*") which is earlier than 30 days after the date of such mailing in order to preserve the status of the Trust as a REIT for federal income tax purposes or to comply with federal

tax laws relating to the Trust's qualification as a REIT, then the Trust may give such shorter notice as is necessary to effect such redemption on the Excess Series D Preferred Share Redemption Date. Each notice of redemption shall state: (A) the applicable Series D Redemption Date; (B) the number of Series D Preferred Shares to be redeemed; (C) the applicable Series D Redemption Price; (D) the place or places where certificates for such Series D Preferred Shares, to the extent Series D Preferred Shares are certificated, are to be surrendered for payment of the Series D Redemption Price; and (E) that dividends on the Series D Preferred Shares to be redeemed will cease to accrue on such Series D Redemption Date. In the case of an exercise of the Special Optional Redemption Right, such notice of redemption shall also state: (1) that the Series D Preferred Shares are being redeemed pursuant to the Special Optional Redemption Right in connection with the occurrence of a Change of Control and a brief description of the transaction or transactions constituting such Change of Control; and (2) that holders of the Series D Preferred Shares to which the notice relates will not be able to tender such Series D Preferred Shares for conversion in connection with the Change of Control and each Series D Preferred Share tendered for conversion that is selected, prior to the Change of Control Conversion Date, for redemption will be redeemed on the related redemption date instead of converted on the Change of Control Conversion Date. If fewer than all the Series D Preferred Shares are to be redeemed, the notice mailed to each such holder thereof shall also specify the number of Series D Preferred Shares to be redeemed from each such holder or the method for calculating that number. No failure to give such notice or any defect therein or in the mailing thereof shall affect the validity of the proceedings for the redemption of any Series D Preferred Shares except as to the holder to whom the Trust has failed to give notice or to whom notice was defective.

(ii) If notice of redemption of Series D Preferred Shares has been mailed in accordance with Section 5(d)(i) above and if the funds necessary for such redemption have been set aside by the Trust in trust for the benefit of the holders of the Series D Preferred Shares so called for redemption, subject to the provisions of Section 5(d)(v) below, then from and after the Series D Redemption Date specified in the notice, dividends will cease to accumulate, and such Shares shall no longer be deemed to be outstanding and shall not have the status of Series D Preferred Shares and all rights of the holders thereof as shareholders of the Trust (except the right to receive the Series D Redemption Price) shall terminate.

(iii) To the extent Series D Preferred Shares are certificated, upon surrender, in accordance with the Trust's notice of redemption, of the certificates for any Series D Preferred Shares redeemed (properly endorsed or assigned for transfer and with applicable signature guarantees, if the Trust shall so require and the notice shall so state), such Series D Preferred Shares shall be redeemed by the Trust at the Series D Redemption Price. In case fewer than all the Series D Preferred Shares evidenced by any such certificate are redeemed, a new certificate or certificates shall be issued evidencing the unredeemed Series D Preferred Shares without cost to the holder thereof. In the event that Series D Preferred Shares to be redeemed are uncertificated, such shares shall be redeemed in accordance with the notice and the applicable procedures of any depository and no further action on the part of the holders of such shares shall be required.

(iv) If fewer than all of the outstanding Series D Preferred Shares are to be redeemed, the number of Series D Preferred Shares to be redeemed will be determined by the Trust and such Shares may be redeemed pro rata from the holders of record of such Shares in proportion to the number of such Shares held by such holders (with adjustments to avoid redemption of fractional Shares), by lot or by any other equitable method determined by the Trust.

(v) Any funds for the redemption of Series D Preferred Shares which have been set aside by the Trust pursuant to Section 5(d)(ii) above, shall be irrevocably set aside separate and apart from the Trust's other funds in trust for the pro rata benefit of the holders of the Series D Preferred Shares called for redemption, except that:

- (A) the Trust shall be entitled to receive any interest or other earnings, if any, earned on any money so set aside in trust, and the holders of any Shares redeemed shall have no claim to such interest or other earnings; and
- (B) any balance of monies deposited by the Trust and unclaimed by the holders of the Series D Preferred Shares entitled thereto at the expiration of one year from the applicable Series D Redemption Date shall be repaid, together with any interest or other earnings earned thereon, to the general funds of the Trust, and after any such repayment, the holders of the Shares entitled to the funds which have been repaid to the Trust shall look only to the general funds of the Trust for payment without interest or other earnings thereon.

(vi) Anything in these provisions of the Series D Preferred Shares to the contrary notwithstanding, the holders of record of Series D Preferred Shares at the close of business on a Record Date will be entitled to receive the dividend payable with respect to such Shares on the corresponding Quarterly Dividend Date notwithstanding the redemption of such Shares after such Record Date and on or prior to such Quarterly Dividend Date or the Trust's default in the payment of the dividend due on such Quarterly Dividend Date, in which case the amount payable upon redemption of such Series D Preferred Shares will not include such dividend (and the full amount of the dividend payable for the applicable Dividend Period shall instead be paid on such Quarterly Dividend Date to the holders of record on such Record Date as aforesaid). Except as provided in this clause (vi) and except to the extent that accrued and unpaid dividends are payable as a part of the Series D Redemption Price pursuant to Section 5(a), 5(b) or 5(c), the Trust will make no payment or allowance for unpaid dividends, regardless of whether or not in arrears, on Series D Preferred Shares called for redemption.

(vii) Notwithstanding the foregoing, unless the full cumulative dividends on all Series D Preferred Shares shall have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set aside for payment for all past Dividend Periods, no Series D Preferred Shares shall be redeemed unless all outstanding Series D Preferred Shares are simultaneously redeemed; *provided, however,* that (i) the foregoing shall not prevent the redemption of Series D Preferred

Shares pursuant to Section 5(b) above or the purchase or acquisition of Series D Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series D Preferred Shares, and (ii) the foregoing shall not in any respect limit the terms and provisions of Section 5.14 of the Declaration or Section 9 hereof or any provisions of the Bylaws providing for redemptions, purchases or other acquisitions of shares by the Trust for the purpose of preserving the Trust's status as a REIT for federal income tax purposes. In addition, unless the full cumulative dividends on all outstanding Series D Preferred Shares have been or contemporaneously are declared and paid or declared and a sum sufficient for the payment thereof set aside for payment for all past Dividend Periods, the Trust shall not purchase or otherwise acquire directly or indirectly any Series D Preferred Shares (except by conversion into or exchange for Common Shares or other Junior Shares); *provided, however*, that (i) the foregoing shall not prevent the redemption of Series D Preferred Shares pursuant to Section 5(b) above or the purchase or acquisition of Series D Preferred Shares pursuant to a purchase or exchange offer made on the same terms to holders of all outstanding Series D Preferred Shares, and (ii) the foregoing shall not in any respect limit the terms and provisions of Section 5.14 of the Declaration or Section 9 hereof or any provisions of the Bylaws providing for redemptions, purchases or other acquisitions of shares by the Trust for the purpose of preserving the Trust's status as a REIT for federal income tax purposes.

(viii) For the avoidance of doubt, the provisions of this Section 5 shall not limit any direct or indirect purchase or acquisition by the Trust of all or any Series D Preferred Shares on the open market (including in privately negotiated transactions), except as otherwise expressly provided in Section 5(d)(vii) above.

6. Voting Rights. Notwithstanding anything to the contrary contained in the Declaration, except as set forth below in this Section 6, the holders of the Series D Preferred Shares shall not be entitled to vote at any meeting of the shareholders for election of Trustees or for any other purpose or otherwise to participate in any action taken by the Trust or the shareholders thereof, or to receive notice of any meeting of shareholders (except for such notices as may be expressly required by law).

(a) At any time dividends on the Series D Preferred Shares shall be in arrears for six or more quarterly periods, whether or not the quarterly periods are consecutive, the holders of Series D Preferred Shares (voting separately as a class with all other series of Preferred Shares of the Trust upon which like voting rights have been conferred and are exercisable) will be entitled to vote for the election of two additional Trustees of the Trust at the next annual meeting of shareholders and for those or other replacement Trustees at each subsequent meeting (and the number of Trustees then constituting the Board will automatically increase by two, if not already increased by two by reason of the election of Trustees by the holders of such Preferred Shares), until all dividends accumulated on Series D Preferred Shares for the past Dividend Periods shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment. For the avoidance of doubt, and by means of example, in the event dividends on the Series B Preferred Shares, the Series C Preferred Shares and the Series D Preferred Shares shall each be in arrears for six or more quarterly periods, the holders of Series B Preferred Shares, Series C Preferred Shares and Series D Preferred Shares (and the holders of all other series of Preferred Shares of the Trust upon which like voting rights have

been conferred and are exercisable) shall be entitled to vote for the election of two additional Trustees in the aggregate, not six or more additional Trustees.

(i) Upon the full payment of all such dividends accumulated on Series D Preferred Shares for the past Dividend Periods or the declaration in full thereof and the Trust's setting aside a sum sufficient for the payment thereof, the right of the holders of Series D Preferred Shares to elect such two Trustees shall cease, and (unless there are one or more other series of Preferred Shares of the Trust upon which like voting rights have been conferred and are exercisable) the term of office of such Trustees previously so elected shall automatically terminate and the authorized number of Trustees of the Trust will thereupon automatically return to the number of authorized Trustees otherwise in effect, but subject always to the same provisions for the reinstatement and divestment of the right to elect two additional Trustees in the case of any such future dividend arrearage.

(ii) If at any time when the voting rights conferred upon the Series D Preferred Shares pursuant to this Section 6(a) are exercisable any vacancy in the office of a Trustee elected pursuant to this Section 6(a) shall occur, then such vacancy may be filled only by the written consent of the remaining such Trustee or by vote of the holders of record of the outstanding Series D Preferred Shares and any other series of Preferred Shares of the Trust upon which like voting rights have been conferred and are exercisable and which are entitled to vote as a class with the Series D Preferred Shares in the election of Trustees pursuant to this Section 6(a).

(iii) Any Trustee elected or appointed pursuant to this Section 6(a) may be removed only by the holders of the outstanding Series D Preferred Shares and any other series of Preferred Shares of the Trust upon which like voting rights have been conferred and are exercisable and which are entitled to vote as a class with the Series D Preferred Shares in the election of Trustees pursuant to this Section 6(a), and may not be removed by the holders of the Common Shares.

(iv) The term of any Trustees elected or appointed pursuant to this Section 6(a) shall be from the date of such election or appointment and their qualification until the next annual meeting of the shareholders and until their successors are duly elected and qualify, except as otherwise provided above in this Section 6(a).

(b) So long as any Series D Preferred Shares remain outstanding, the Trust shall not, without the affirmative vote or consent of the holders of at least two-thirds of the Series D Preferred Shares outstanding at the time, given in person or by proxy, either in writing or at a meeting (the holders of Series D Preferred Shares voting separately as a class), (i) authorize or create, or increase the number of authorized or issued shares of, any class or series of Shares ranking senior to the Series D Preferred Shares with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up of the Trust, or reclassify any authorized Shares of the Trust into any such Shares, or create, authorize or issue any obligation or security convertible into or evidencing the right to purchase any such Shares; or (ii) amend, alter or repeal the provisions of the Declaration or the terms of the Series D Preferred Shares, whether by merger, consolidation or otherwise, so as to materially and adversely affect any right,

preference, privilege or voting power of the Series D Preferred Shares; *provided, however*, for the avoidance of doubt that any increase in the number of authorized Preferred Shares, any issuance of or increase in the number of Series D Preferred Shares or any creation or issuance of or increase in the number of authorized shares of any class or series of Preferred Shares which rank on a parity with the Series D Preferred Shares with respect to payment of dividends or the distribution of assets upon liquidation, dissolution or winding up of the Trust or which are Junior Shares shall not be deemed to materially and adversely affect the rights, preferences, privileges or voting powers of the Series D Preferred Shares; and *provided further, however*, for the avoidance of doubt that, with respect to any merger, consolidation or similar event, so long as the Series D Preferred Shares remain outstanding with the terms thereof materially unchanged or the holders of shares of Series D Preferred Shares receive shares of the successor with substantially identical rights, taking into account that, upon the occurrence of such event, the Trust may not be the surviving entity, the occurrence of such event shall not be deemed to materially and adversely affect the rights, preferences, privileges or voting powers of the Series D Preferred Shares.

(c) The voting provisions set forth in clauses (a) and (b) above will not apply if, at or prior to the time when the act with respect to which a vote would otherwise be required shall be effected, all outstanding Series D Preferred Shares shall have been redeemed or called for redemption and sufficient funds shall have been deposited in trust pursuant to the provisions of Sections 5(d)(ii) and 5(d)(v) hereof to effect the redemption.

(d) On each matter submitted to a vote of the holders of Series D Preferred Shares or on which the holders of Series D Preferred Shares are otherwise entitled to vote as provided herein, each Series D Preferred Share shall be entitled to one vote, except that when Shares of any other class or series of Preferred Shares of the Trust have the right to vote with the Series D Preferred Shares as a single class on any matter, the Series D Preferred Shares and the Shares of each such other class or series will have one vote for each twenty-five dollars (\$25.00) of liquidation preference.

7. Conversion. The Series D Preferred Shares are not convertible into or exchangeable for any other property or securities of the Trust, except as provided in this Section 7. This provision will not prevent the Trust from offering to convert or exchange the Series D Preferred Shares other than pursuant to this Section 7.

(a) Upon the occurrence of a Change of Control, each holder of Series D Preferred Shares shall have the right, unless, prior to the Change of Control Conversion Date, the Trust has provided or provides notice of its election to redeem the Series D Preferred Shares pursuant to Section 5 above to convert some or all of the Series D Preferred Shares held by such holder (the "*Change of Control Conversion Right*") on the Change of Control Conversion Date into a number Common Shares per Series D Preferred Share to be converted (the "*Common Share Conversion Consideration*") equal to the lesser of (A) the quotient obtained by dividing (i) the sum of (x) the twenty-five dollar (\$25.00) liquidation preference plus (y) the amount of any accrued and unpaid distributions to but excluding the Change of Control Conversion Date (unless the Change of Control Conversion Date is after a Record Date and prior to the corresponding Quarterly Dividend Date, in which case no additional amount for such accrued

and unpaid distribution will be included in such sum) by (ii) the Common Share Price (as defined below) and (B) 2.0500 (the "*Share Cap*"), subject to the immediately succeeding paragraph.

The Share Cap is subject to pro rata adjustments for any share splits (including those effected pursuant to a Common Share distribution), subdivisions or combinations (in each case, a "*Share Split*") with respect to Common Shares as follows: the adjusted Share Cap as the result of a Share Split shall be the number of Common Shares that is equivalent to the product obtained by multiplying (i) the Share Cap in effect immediately prior to such Share Split by (ii) a fraction, the numerator of which is the number of Common Shares outstanding after giving effect to such Share Split and the denominator of which is the number of Common Shares outstanding immediately prior to such Share Split.

For the avoidance of doubt, subject to the immediately succeeding sentence, the aggregate number of Common Shares (or equivalent Alternative Conversion Consideration (as defined below), as applicable) issuable in connection with the exercise of the Change of Control Conversion Right shall not exceed 22,550,000 Common Shares (or equivalent Alternative Conversion Consideration, as applicable), subject to increase to the extent the underwriters' over-allotment option to purchase additional Series D Preferred Stock in the initial public offering of Series D Preferred Stock is exercised, not to exceed 25,932,500 Common Shares in total (or equivalent Alternative Conversion Consideration, as applicable) (the "*Exchange Cap*"). The applicable Exchange Cap is subject to pro rata adjustments for any Share Splits on the same basis as the corresponding adjustment to the Share Cap.

In the case of a Change of Control pursuant to which Common Shares shall be converted into cash, securities or other property or assets (including any combination thereof) (the "*Alternative Form Consideration*"), a holder of Series D Preferred Shares shall receive upon conversion of such Series D Preferred Shares the kind and amount of Alternative Form Consideration which such holder of Series D Preferred Shares would have owned or been entitled to receive upon the Change of Control had such holder of Series D Preferred Shares held a number of Common Shares equal to the Common Share Conversion Consideration immediately prior to the effective time of the Change of Control (the "*Alternative Conversion Consideration*"; and the Common Share Conversion Consideration or the Alternative Conversion Consideration, as may be applicable to a Change of Control, shall be referred to herein as the "*Conversion Consideration*").

In the event that holders of Common Shares have the opportunity to elect the form of consideration to be received in the Change of Control, the consideration that the holders of Series D Preferred Shares shall receive shall be the form of consideration elected by the holders of the Common Shares who participate in the determination (based on the weighted average of elections) and shall be subject to any limitations to which all holders of Common Shares are subject, including, without limitation, pro rata reductions applicable to any portion of the consideration payable in the Change of Control.

The "*Change of Control Conversion Date*" shall be a Business Day set forth in the notice of Change of Control provided in accordance with Section 7(c) below that is no less than 20 days nor more than 35 days after the date on which the Trust provides such notice pursuant to Section 7(c).

The "*Common Share Price*" shall be (i) the amount of cash consideration per Common Share, if the consideration to be received in the Change of Control by holders of Common Shares is solely cash, and (ii) the average of the closing prices per Common Share on the NYSE for the ten consecutive trading days immediately preceding but excluding the effective date of the Change of Control, if the consideration to be received in the Change of Control by holders of Common Shares is other than solely cash.

(b) At the election of the Trust, fractional Common Shares may be issued upon the conversion of Series D Preferred Shares. If such election is not made, in lieu of fractional shares, holders shall be entitled to receive the cash value of such fractional shares based on the Common Share Price.

(c) Within 15 days following the occurrence of a Change of Control, a notice of occurrence of the Change of Control, describing the resulting Change of Control Conversion Right, shall be delivered to the holders of record of the Series D Preferred Shares at their addresses as they appear on the Trust's share transfer records and notice shall be provided to the Trust's transfer agent. No failure to give such notice or any defect thereto or in the mailing thereof shall affect the validity of the proceedings for the conversion of any Series D Preferred Shares except as to the holder to whom notice was defective or not given. Each notice shall state: (i) the events constituting the Change of Control; (ii) the date of the Change of Control; (iii) the last date on which the holders of Series D Preferred Shares may exercise their Change of Control Conversion Right; (iv) the method and period for calculating the Common Share Price; (v) the Change of Control Conversion Date, which shall be a Business Day occurring within 20 to 35 days following the date of such notice; (vi) that if, prior to the Change of Control Conversion Date, the Trust has provided or provides notice of its election to redeem all or any portion of the Series D Preferred Shares, the holder will not be able to convert Series D Preferred Shares and such Series D Preferred Shares shall be redeemed on the related redemption date, even if they have already been tendered for conversion pursuant to the Change of Control Conversion Right; (vii) if applicable, the type and amount of Alternative Conversion Consideration entitled to be received per Series D Preferred Share; (viii) the name and address of the paying agent and the conversion agent; and (ix) the procedures that the holders of Series D Preferred Shares must follow to exercise the Change of Control Conversion Right.

(d) The Trust shall issue a press release for publication on the Dow Jones & Company, Inc., Business Wire, PR Newswire or Bloomberg Business News (or, if such organizations are not in existence at the time of issuance of such press release, such other news or press organization as is reasonably calculated to broadly disseminate the relevant information to the public), or post notice on the Trust's website, in any event prior to the opening of business on the first Business Day following any date on which the Trust provides notice pursuant to Section 7(c) above to the holders of Series D Preferred Shares.

(e) In order to exercise the Change of Control Conversion Right, a holder of Series D Preferred Shares shall be required to deliver, on or before the close of business on the Change of Control Conversion Date, the certificates evidencing the Series D Preferred Shares, to the extent such shares are certificated, to be converted, duly endorsed for transfer, together with a written conversion notice completed, to the Trust's transfer agent. Such notice shall state: (i) the relevant Change of Control Conversion Date; (ii) the number of Series D Preferred Shares to be

converted; and (iii) that the Series D Preferred Shares are to be converted pursuant to the applicable terms of the Series D Preferred Shares. Notwithstanding the foregoing, if the Series D Preferred Shares are held in global form, such notice shall comply with applicable procedures of The Depository Trust Company ("DTC").

(f) Holders of Series D Preferred Shares may withdraw any notice of exercise of a Change of Control Conversion Right (in whole or in part) by a written notice of withdrawal delivered to the Trust's transfer agent prior to the close of business on the Business Day prior to the Change of Control Conversion Date. The notice of withdrawal must state: (i) the number of withdrawn Series D Preferred Shares; (ii) if certificated Series D Preferred Shares have been issued, the certificate numbers of the withdrawn Series D Preferred Shares; and (iii) the number of Series D Preferred Shares, if any, which remain subject to the conversion notice. Notwithstanding the foregoing, if the Series D Preferred Shares are held in global form, the notice of withdrawal shall comply with applicable procedures of DTC.

(g) Series D Preferred Shares as to which the Change of Control Conversion Right has been properly exercised and for which the conversion notice has not been properly withdrawn shall be converted into the applicable Conversion Consideration in accordance with the Change of Control Conversion Right on the Change of Control Conversion Date, unless, prior to the Change of Control Conversion Date, the Trust has provided or provides notice of its election to redeem such Series D Preferred Shares, whether pursuant to Section 5(a), 5(b) or 5(c) above. If the Trust elects to redeem Series D Preferred Shares that would otherwise be converted into the applicable Conversion Consideration on a Change of Control Conversion Date, such Series D Preferred Shares shall not be so converted, and the holders of such shares shall be entitled to receive on the applicable redemption date the applicable redemption price in accordance with the applicable provisions of Section 5 above.

(h) The Trust shall deliver the applicable Conversion Consideration no later than the third Business Day following the Change of Control Conversion Date.

(i) Notwithstanding anything to the contrary contained herein, no holder of Series D Preferred Shares will be entitled to convert such Series D Preferred Shares into Common Shares to the extent that receipt of such Common Shares would cause the holder of such Common Shares (or any other person) to beneficially own or constructively own, within the meaning of the Declaration or the Bylaws, Common Shares in excess of any applicable share ownership limitation contained in the Declaration (including without limitation Section 5.14 thereof) or the Bylaws, each as in effect from time to time.

8. Status of Redeemed and Reacquired Series D Preferred Shares. In the event any Series D Preferred Shares shall be redeemed pursuant to Section 5 hereof or otherwise reacquired by the Trust, the Shares so redeemed or reacquired shall become authorized but unissued Series D Preferred Shares, available for future issuance and reclassification by the Trust or, if so determined by the Board, may be retired and canceled by the Trust.

9. Restrictions on Transfer.

(a) As a condition to the transfer (including, without limitation, any sale, transfer, gift, assignment, devise or other disposition of Series D Preferred Shares, whether voluntary or involuntary, whether beneficially or of record, and whether effected constructively, by operation of law or otherwise) and/or registration of transfer of any Series D Preferred Shares ("*Excess Series D Preferred Shares*") which could in the opinion of the Board result in

(i) direct or indirect ownership (as contemplated by Section 5.14 of the Declaration) of Series D Preferred Shares representing more than 9.8% in number, value or voting power of the total Series D Preferred Shares outstanding becoming concentrated in the hands of one owner other than an Excepted Person (as such term is defined in Section 5.14(c) the Declaration), or

(ii) the Trust being "closely held" within the meaning of Section 856(h) of the Internal Revenue Code,

such potential owner (a "*Proposed Transferee*") shall file with the Trust the statement or affidavit described in Section 5.14(b) of the Declaration no later than the fifteenth (15<sup>th</sup>) day prior to any proposed transfer, registration of transfer or transaction which, if consummated, would have any of the results set forth above; provided, however, that the Board may waive such requirement of prior notice upon determination that such waiver is in the best interests of the Trust. Subject to Section 5.14(i) of the Declaration, the Board shall have the power and right (i) to refuse to transfer or issue Excess Series D Preferred Shares or share certificates to any Proposed Transferee whose acquisition of such Excess Series D Preferred Shares would, in the opinion of the Board, result in the direct or indirect beneficial ownership of any Excess Series D Preferred Shares by a Person other than an Excepted Person and (ii) to treat such Excess Series D Preferred Shares as having been transferred not to the Proposed Transferee but rather to a trustee for the benefit of one or more Charitable Beneficiaries (as defined in the Declaration) selected and otherwise as described in Section 5.14(c) of the Declaration. Any such trust shall be deemed to have been established by the holder of such Excess Series D Preferred Shares for the benefit of the applicable Charitable Beneficiary or Charitable Beneficiaries on the day prior to the date of the purported transfer to the Proposed Transferee, which purported transfer shall be void ab initio and the Proposed Transferee shall be deemed never to have acquired any interest in or with respect to the Excess Series D Preferred Shares purportedly transferred.

(b) Any Excess Series D Preferred Shares shall automatically be deemed to constitute Excess Shares (as such term is defined in Section 5.14(c) of the Declaration) and shall be treated in the manner prescribed for Excess Shares, including, without limitation, the provisions set forth in Section 5.14(c) of the Declaration.

(c) Notwithstanding any other provision of the Declaration or hereof to the contrary, but subject to Section 5.14(i) of the Declaration, any purported acquisition of Series D Preferred Shares (whether such purported acquisition results from the direct or indirect acquisition or ownership (as contemplated by the Declaration) of Series D Preferred Shares) which would result in the disqualification of the Trust as a REIT for federal income tax purposes shall be null and void. Any such Series D Preferred Shares may be treated by the Board in the

manner prescribed for Excess Series D Preferred Shares in these provisions of the Series D Preferred Shares and for Excess Shares in Section 5.14(c) of the Declaration.

(d) The provisions of this Section 9 shall not limit the applicability of Section 5.14 of the Declaration to Series D Preferred Shares in accordance with the terms thereof, and the provisions of this Section 9 and of Section 5.14 of the Declaration shall not limit the right of the Trust to elect to redeem Excess Series D Preferred Shares pursuant to Section 5(b) hereof. Subject only to Section 5.14(i) of the Declaration, nothing contained in this Section 9 or in any other provision of the Series D Preferred Shares shall limit the authority of the Board to take such other action as they deem necessary or advisable to protect the interests of the Trust by preservation of the Trust's status as a REIT for federal income tax purposes. The provisions of subsections (f) through (i) of Section 5.14 of the Declaration shall be applicable to this Section 9 as though (i) the references therein to Section 5.14 of the Declaration referred instead to this Section 9 and (ii) the references therein to subsections of Section 5.14 of the Declaration referred to the comparable provisions of this Section 9.

10. Severability. If any preference, right, voting power, restriction, limitation as to dividends or other distributions, qualification, term or condition of redemption or other term of the Series D Preferred Shares is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, then, to the extent permitted by law, all other preferences, rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications, terms and conditions of redemption and other terms of the Series D Preferred Shares which can be given effect without the invalid, unlawful or unenforceable preference, right, voting power, restriction, limitation as to dividends or other distributions, qualification, term or condition of redemption or other term of the Series D Preferred Shares shall remain in full force and effect and shall not be deemed dependent upon any invalid, unlawful or unenforceable preference, right, voting power, restriction, limitation as to dividends or other distributions, qualification, term or condition of redemption or other term of the Series D Preferred Shares.

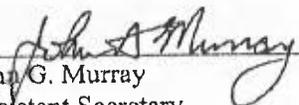
**THIRD:** The Series D Preferred Shares have been classified and designated by the Board under the authority contained in the Declaration.

**FOURTH:** These Articles Supplementary have been approved by the Board in the manner and by the vote required by law.

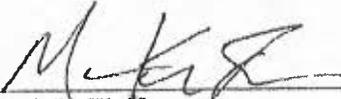
**FIFTH:** The undersigned Treasurer and Chief Financial Officer of the Trust acknowledges these Articles Supplementary to be the true act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned Treasurer and Chief Financial Officer of the Trust acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and this statement is made under the penalties for perjury.

IN WITNESS WHEREOF, HOSPITALITY PROPERTIES TRUST has caused these Articles Supplementary to be signed in its name and on its behalf by its Treasurer and Chief Financial Officer and witnessed by its Assistant Secretary on January 13, 2012.

WITNESS:

  
John G. Murray  
Assistant Secretary

HOSPITALITY PROPERTIES TRUST

By:   
Mark L. Kleffges  
Treasurer and Chief Financial Officer

CUST ID:0002695904  
WORK ORDER:0003912484  
DATE:01-18-2012 01:54 PM  
AMT. PAID:\$421.00

# CORPORATE CHARTER APPROVAL SHEET

\*\* EXPEDITED SERVICE \*\*

\*\* KEEP WITH DOCUMENT \*\*

DOCUMENT CODE 116 BUSINESS CODE \_\_\_\_\_

# W 04141826

Close \_\_\_\_\_ Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

P.A. \_\_\_\_\_ Religious \_\_\_\_\_

Merging (Transferor) \_\_\_\_\_

Surviving (Transferee) \_\_\_\_\_



ID # D04141826 ACK # 1000362002753681  
PAGES: 0018  
HOSPITALITY PROPERTIES TRUST

01/18/2012 AT 01:55 P WO # 0003912484

New Name \_\_\_\_\_

### FEES REMITTED

Base Fee: 100  
Org. & Cap. Fee: \_\_\_\_\_  
Expedite Fee: 70  
Penalty: \_\_\_\_\_  
State Recordation Tax: \_\_\_\_\_  
State Transfer Tax: \_\_\_\_\_  
Certified Copies: 38  
Copy Fee: \_\_\_\_\_  
Certificates: \_\_\_\_\_  
Certificate of Status Fee: \_\_\_\_\_  
Personal Property Filings: \_\_\_\_\_  
Mail Processing Fee: \_\_\_\_\_  
Other: \_\_\_\_\_

TOTAL FEES: 208

Credit Card \_\_\_\_\_ Check \_\_\_\_\_ Cash \_\_\_\_\_

2 Documents on 1 Checks

Approved By: 9

Keyed By: \_\_\_\_\_

COMMENT(S):

Change of Name  
Change of Principal Office  
Change of Resident Agent  
Change of Resident Agent Address  
Resignation of Resident Agent  
Designation of Resident Agent  
and Resident Agent's Address  
Change of Business Code  
Adoption of Assumed Name  
Other Change(s)

Code 063

Attention: Andrea Cohen

Mail: Name and Address

VENABLE LLP  
ANDREA COHEN  
SUITE 900  
750 E. PRATT STREET  
BALTIMORE MD 21202

File 2nd

2 of 2  
File 2nd

Stamp Work Order and Customer Number HERE

CUST ID: 0002695904  
WORK ORDER: 0003912484  
DATE: 01-18-2012 01:54 PM  
AMT. PAID: \$421.00

**HOSPITALITY PROPERTIES TRUST**

**ARTICLES SUPPLEMENTARY**

Hospitality Properties Trust, a Maryland real estate investment trust (the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

FIRST: Under a power contained in Article V of the declaration of trust of the Trust (the "Declaration"), the Board of Trustees, by duly adopted resolutions, reclassified and designated all 1,500,000 authorized but unissued Junior Participating Preferred Shares of the Trust, par value \$0.01 per share (the "Junior Participating Shares"), as preferred shares of beneficial interest, without par value (the "Preferred Shares"), without further classification or designation, with the preferences, conversion and other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications, and terms and conditions of redemption of undesignated Preferred Shares as set forth in the Declaration.

SECOND: The foregoing Junior Participating Shares have been reclassified and designated by the Board of Trustees under the authority contained in the Declaration.

THIRD: These Articles Supplementary have been approved by the Board of Trustees in the manner and by the vote required by law.

FOURTH: The undersigned officer of the Trust acknowledges these Articles Supplementary to be the corporate act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned officer acknowledges that, to the best of his or her knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

[SIGNATURE PAGE FOLLOWS]

**STATE OF MARYLAND**

I hereby certify that this is a true and complete copy of the  
page \_\_\_\_\_ of \_\_\_\_\_, a member of the \_\_\_\_\_, dated: 1/10/18

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:

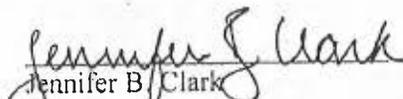
BY: [Signature], Custodian

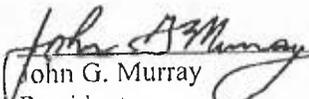
This stamp replaces our previous certification system. Effective: 6/95

IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment to be executed in its name and on its behalf by its President, and attested to by its Secretary, on this 10<sup>th</sup> day of June, 2014.

ATTEST:

HOSPITALITY PROPERTIES TRUST

  
Jennifer B. Clark  
Secretary

By:  (SEAL)  
John G. Murray  
President

CUST ID: 0003099284  
WORK ORDER: 0004315864  
DATE: 06-10-2014 04:00 PM  
AMT. PAID: \$193.00

# CORPORATE CHARTER APPROVAL SHEET

\*\* EXPEDITED SERVICE \*\*

\*\* KEEP WITH DOCUMENT \*\*

DOCUMENT CODE 16 BUSINESS CODE \_\_\_\_\_

# D04141826



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ID # D04141826 ACK # 1000362006555553  
PAGES: 0003  
HOSPITALITY PROPERTIES TRUST

06/10/2014 AT 04:00 P WO # 0004315864

Close \_\_\_\_\_ Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

P.A. \_\_\_\_\_ Religious \_\_\_\_\_

Merging (Transferor) \_\_\_\_\_

Surviving (Transferee) \_\_\_\_\_

New Name \_\_\_\_\_

### FEES REMITTED

Base Fee: 100  
Org. & Cap. Fee: \_\_\_\_\_  
Expedite Fee: 70  
Penalty: \_\_\_\_\_  
State Recordation Tax: \_\_\_\_\_  
State Transfer Tax: \_\_\_\_\_  
1 Certified Copies  
Copy Fee: 23  
Certificates \_\_\_\_\_  
Certificate of Status Fee: \_\_\_\_\_  
Personal Property Filings: \_\_\_\_\_  
Mail Processing Fee: \_\_\_\_\_  
Other: \_\_\_\_\_

Change of Name  
Change of Principal Office  
Change of Resident Agent  
Change of Resident Agent Address  
Resignation of Resident Agent  
Designation of Resident Agent  
and Resident Agent's Address  
Change of Business Code  
Adoption of Assumed Name  
Other Change(s)

TOTAL FEES: 193

Credit Card \_\_\_\_\_ Check X Cash \_\_\_\_\_

Code 063  
Attention: Andrea Cohen

Documents on \_\_\_\_\_ Checks \_\_\_\_\_

Mail: Names and Address

Approved By: A.O.C.

VENABLE LLP  
ANDREA COHEN  
SUITE 900  
750 E PRATT ST  
BALTIMORE MD 21202-3142

Keyed By: \_\_\_\_\_

COMMENT(S):

CUST ID: 0003099284  
WORK ORDER: 0004315864  
DATE: 06-10-2014 04:00 PM  
AMT. PAID: \$193.00

HOSPITALITY PROPERTIES TRUST

ARTICLES OF AMENDMENT

Hospitality Properties Trust, a Maryland real estate investment trust (the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

**FIRST:** The Amended and Restated Declaration of Trust of the Trust, as amended (the "Declaration of Trust"), is hereby amended by deleting the first sentence, the second sentence through the phrase "any such Shares," and the fourth, fifth and sixth sentences of Section 2.1(a)(i) of Article II and adding the following at the end of Section 2.1(a)(i) of Article II:

The terms of the Trustees shall be determined as follows: (i) at the annual meeting of shareholders of the Trust that is held in calendar year 2014 (the "2014 Annual Meeting"), the Trustees whose terms expire at the 2014 Annual Meeting (or such Trustees' successors) shall be elected to hold office for a three-year term expiring at the annual meeting of shareholders of the Trust that is held in calendar year 2017 (the "2017 Annual Meeting"); (ii) at the annual meeting of shareholders of the Trust that is held in calendar year 2015 (the "2015 Annual Meeting"), the Trustees whose terms expire at the 2015 Annual Meeting (or such Trustees' successors) shall be elected to hold office for a one-year term expiring at the annual meeting of shareholders of the Trust that is held in calendar year 2016 (the "2016 Annual Meeting"); (iii) at the 2016 Annual Meeting, the Trustees whose terms expire at the 2016 Annual Meeting (or such Trustees' successors) shall be elected to hold office for a one-year term expiring at the 2017 Annual Meeting; and (iv) at the 2017 Annual Meeting, and at each annual meeting of shareholders of the Trust thereafter, all Trustees shall be elected to hold office for a one-year term expiring at the next annual meeting of shareholders following his or her election. For the avoidance of doubt, each Trustee elected or appointed to the Board of Trustees to serve a term that commenced before the 2015 Annual Meeting (an "Existing Trustee"), and each Trustee elected or appointed to the Board of Trustees to fill a vacancy resulting from the death, incapacity, resignation or removal of an Existing Trustee, shall serve for the full term to which the Existing Trustee was elected or appointed.

**SECOND:** The foregoing amendment to the Declaration of Trust was advised by the Board of Trustees of the Trust and approved by the shareholders of Trust as required by law.

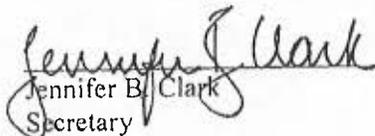
**THIRD:** The undersigned President and Chief Operating Officer acknowledges these Articles of Amendment to be the trust act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned President and Chief Operating Officer acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

STATE OF MARYLAND  
I hereby certify that this is a true and complete copy of the  
page(s) submitted for file in this office. DATED: 1/16/18  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:  
BY: Rosmee Jarrett Custodian

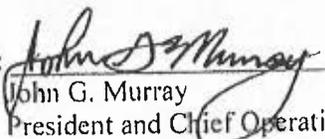
This stamp replaces our previous certification system. Effective: 6/95

IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment to be signed in its name and on its behalf by its President and Chief Operating Officer and attested by its Secretary on this 10th day of June, 2014.

ATTEST:

  
Jennifer B. Clark  
Secretary

HOSPITALITY PROPERTIES TRUST

By:  (SEAL)  
John G. Murray  
President and Chief Operating Officer

CUST ID:0003099285  
WORK ORDER:0004315865  
DATE:06-10-2014 04:02 PM  
AMT. PAID:\$193.00

# CORPORATE CHARTER APPROVAL SHEET

**\*\* EXPEDITED SERVICE \*\***

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DOCUMENT CODE 09 BUSINESS CODE \_\_\_\_\_

# D04141826



Close \_\_\_\_\_ Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

P.A. \_\_\_\_\_ Religious \_\_\_\_\_

Merging (Transferor) \_\_\_\_\_

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PAGES: 0003  
HOSPITALITY PROPERTIES TRUST

Surviving (Transferee) \_\_\_\_\_

06/10/2014 AT 04:02 P WO H 0004315865

New Name \_\_\_\_\_

### FEES REMITTED

Base Fee: 100  
Org. & Cap. Fee: \_\_\_\_\_  
Expedite Fee: 70  
Penalty: \_\_\_\_\_  
State Recordation Tax: \_\_\_\_\_  
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1 Certified Copies  
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Certificate of Status Fee: \_\_\_\_\_  
Personal Property Filings: \_\_\_\_\_  
Mail Processing Fee: \_\_\_\_\_  
Other: \_\_\_\_\_

TOTAL FEES: 193

Change of Name \_\_\_\_\_  
Change of Principal Office \_\_\_\_\_  
Change of Resident Agent \_\_\_\_\_  
Change of Resident Agent Address \_\_\_\_\_  
Resignation of Resident Agent \_\_\_\_\_  
Designation of Resident Agent and Resident Agent's Address \_\_\_\_\_  
Change of Business Code \_\_\_\_\_  
Adoption of Assumed Name \_\_\_\_\_  
Other Change(s) \_\_\_\_\_

Credit Card \_\_\_\_\_ Check X Cash \_\_\_\_\_

Code 063  
Attention: Andrea Cohen

Documents on \_\_\_\_\_ Checks \_\_\_\_\_

Mail: Names and Address \_\_\_\_\_

Approved By: A-01

Keyed By: \_\_\_\_\_

COMMENT(S): \_\_\_\_\_

VENABLE LLP  
ANDREA COHEN  
SUITE 900  
750 E PRATT ST  
BALTIMORE MD 21202-3142

CUST ID: 0003099285  
WORK ORDER: 0004315865  
DATE: 06-10-2014 04:02 PM  
AMT. PAID: \$193.00

APPROVED

**HOSPITALITY PROPERTIES TRUST**  
**ARTICLES SUPPLEMENTARY**

Hospitality Properties Trust, a Maryland real estate investment trust (the "Trust"), hereby certifies to the State Department of Assessments and Taxation of Maryland that:

FIRST: Under a power contained in Title 3, Subtitle 8 of the Maryland General Corporation Law (the "MGCL"), by resolutions duly adopted by the Board of Trustees of the Trust (the "Board") and notwithstanding any other provision in the declaration of trust (the "Declaration") or bylaws of the Trust to the contrary, the Trust elects to be subject to Section 3-803 of the MGCL, the repeal of which may be effected only by the means authorized by Section 3-802(b)(3) of the MGCL. Notwithstanding any other provision of the Declaration, a Trustee may not be removed without cause.

SECOND: The Trust's election to be subject to Section 3-803 of the MGCL has been approved by the Board in the manner and by the vote required by law.

THIRD: The undersigned acknowledges these Articles Supplementary to be the trust act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned acknowledges that, to the best of his knowledge, information and belief, these matters and facts are true in all material respects and that this statement is made under the penalties for perjury.

[SIGNATURE PAGE FOLLOWS]

**STATE OF MARYLAND**

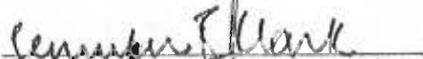
I hereby certify that this is a true and complete copy of the 3 page document on file in this office. DATED: 1/16/18  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:

BY: [Signature], Custodian

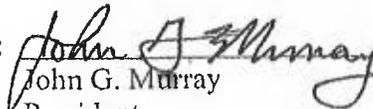
This stamp replaces our previous certification system. Effective: 6/01

IN WITNESS WHEREOF, the Trust has caused these Articles Supplementary to be executed in its name and on its behalf by its President, and attested to by its Secretary, on this 20th day of April, 2017.

ATTEST:

  
Jennifer E. Clark  
Secretary

HOSPITALITY PROPERTIES TRUST

By:  (SEAL)  
John G. Murray  
President

CUST ID: 0003544473  
WORK ORDER: 0004761050  
DATE: 04-20-2017 02:17 PM  
AMT. PAID: \$193.00

# CORPORATE CHARTER APPROVAL SHEET

**\*\* EXPEDITED SERVICE \*\***

**\*\* KEEP WITH DOCUMENT \*\***

DOCUMENT CODE 16 BUSINESS CODE \_\_\_\_\_

# 09141826

Close \_\_\_\_\_ Stock \_\_\_\_\_ Nonstock \_\_\_\_\_

P A \_\_\_\_\_ Religious \_\_\_\_\_

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Approved By \_\_\_\_\_

Keyed By \_\_\_\_\_

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HOSPITALITY PROPERTIES TRUST

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New Name \_\_\_\_\_

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Code 063

Attention \_\_\_\_\_

Mail Names and Address \_\_\_\_\_

\_\_\_\_\_

VENABLE LLP

SUITE 900

750 E. PRATT STREET

BALTIMORE MD 21202

### FEES REMITTED

Base Fee	_____	<u>100</u>
Org & Cap Fee	_____	
Expedite Fee	_____	<u>70</u>
Penalty	_____	
State Recordation Tax	_____	
State Transfer Tax	_____	
Certified Copies	_____	<u>23</u>
Copy Fee	_____	
Certificates	_____	
Certificate of Status Fee	_____	
Personal Property Filings	_____	
Mail Processing Fee	_____	
Other	_____	

TOTAL FEES 193

Credit Card \_\_\_\_\_ Check \_\_\_\_\_ Cash \_\_\_\_\_

Documents on \_\_\_\_\_ Check 9

CERTIFIED COPY MADE

### Stamp Work Order and Customer Number HERE

CUST ID: 0003544473  
WORK ORDER: 0004761050  
DATE: 04-20-2017 02:17 PM  
AMT. PAID: \$193.00

**Exhibit D**  
(see attached)

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HOSPITALITY PROPERTIES TRUST

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AMENDED AND RESTATED BYLAWS

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As Amended and Restated September 7, 2016

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## **HOSPITALITY PROPERTIES TRUST**

### **AMENDED AND RESTATED BYLAWS**

These AMENDED AND RESTATED BYLAWS (these "Bylaws") are made as of the date set forth above by the Board of Trustees.

#### **ARTICLE I**

##### **OFFICES**

Section 1.1 Principal Office. The principal office of the Trust shall be located at such place or places as the Board of Trustees may designate.

Section 1.2 Additional Offices. The Trust may have additional offices at such places as the Board of Trustees may from time to time determine or the business of the Trust may require.

#### **ARTICLE II**

##### **MEETINGS OF SHAREHOLDERS**

Section 2.1 Place. All meetings of shareholders shall be held at the principal office of the Trust or at such other place as is designated by the Board of Trustees, a Managing Trustee or the president.

Section 2.2 Annual Meeting. An annual meeting of the shareholders for the election of Trustees and the transaction of any business within the powers of the Trust shall be held at such times as the Trustees may designate. Failure to hold an annual meeting does not invalidate the Trust's existence or affect any otherwise valid acts of the Trust.

Section 2.3 Special Meetings. Special meetings of shareholders may be called only by a majority of the Trustees then in office. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the shareholders entitled to vote for the election of successor Trustees for the purpose of electing Trustees.

Section 2.4 Notice of Regular or Special Meetings. Notice given in writing or by electronic transmission specifying the place, day and hour of any regular or special meeting, the purposes of the meeting, to the extent required by law to be provided, and all other matters required by law shall be given to each shareholder of record entitled to vote, sent to his or her address appearing on the books of the Trust or theretofore given by him or her to the Trust for the purpose of notice, by presenting it to such shareholder personally, by leaving it at the shareholder's residence or usual place of business or by any other means permitted by Maryland law. If mailed, such notice shall be deemed to be given once deposited in the U.S. mail addressed to the shareholder at his or her post office address as it appears on the records of the Trust, with postage thereon prepaid. If transmitted electronically, such notice shall be deemed to be given when transmitted to the shareholder by an electronic transmission to any address or

number of the shareholder at which the shareholder receives electronic transmissions. It shall be the duty of the secretary to give notice of each meeting of the shareholders. The Trust may give a single notice to all shareholders who share an address, which single notice shall be effective to any shareholder at such address, unless a shareholder objects to receiving such single notice or revokes a prior consent to receiving such single notice. Failure to give notice of any meeting to one or more shareholders, or any irregularity in such notice, shall not affect the validity of any meeting fixed in accordance with this ARTICLE II or the validity of any proceedings at any such meeting.

Section 2.5 Notice of Adjourned Meetings. It shall not be necessary to give notice of the time and place of any adjourned meeting or of the business to be transacted thereat other than by announcement at the meeting at which such adjournment is taken.

Section 2.6 Meeting Business. Except as otherwise expressly set forth elsewhere in these Bylaws, no business shall be transacted at an annual or special meeting of shareholders except as specifically designated in the notice or otherwise properly brought before the meeting of shareholders by or at the direction of the Board of Trustees.

Section 2.7 Organization of Shareholder Meetings. Every meeting of shareholders shall be conducted by an individual appointed by the Board of Trustees to be chairperson of the meeting or, in the absence of such appointment or the absence of the appointed individual, by one of the following officers present at the meeting in the following order: the chairman of the board, if there be one, a Managing Trustee (in their order of seniority), the president, the vice presidents (in their order of seniority), the secretary, or, in the absence of such officers, a chairperson chosen by the shareholders by the vote of holders of shares of beneficial interest representing a majority of the votes cast on such appointment by shareholders present in person or represented by proxy. The secretary, an assistant secretary or a person appointed by the Trustees or, in the absence of such appointment, a person appointed by the chairperson of the meeting shall act as secretary of the meeting and record the minutes of the meeting. If the secretary presides as chairperson at a meeting of the shareholders, then the secretary shall not also act as secretary of the meeting and record the minutes of the meeting. The order of business and all other matters of procedure at any meeting of shareholders shall be determined by the chairperson of the meeting. The chairperson of the meeting may prescribe such rules, regulations and procedures and take such action as, in the discretion of such chairperson, are appropriate for the proper conduct of the meeting, including, without limitation: (a) restricting admission to the time set for the commencement of the meeting; (b) limiting attendance at the meeting to shareholders of record of the Trust, their duly authorized proxies or other such persons as the chairperson of the meeting may determine; (c) limiting participation at the meeting on any matter to shareholders of record of the Trust entitled to vote on such matter, their duly authorized proxies or other such persons as the chairperson of the meeting may determine; (d) limiting the time allotted to questions or comments by participants; (e) determining when and for how long the polls should be opened and when the polls should be closed; (f) maintaining order and security at the meeting; (g) removing any shareholder or other person who refuses to comply with meeting procedures, rules or guidelines as set forth by the chairperson of the meeting; (h) concluding a meeting or recessing or adjourning the meeting to a later date and time and at a place announced at the meeting; and (i) complying with any state and local laws and regulations concerning safety and security. Without limiting the generality of the

powers of the chairperson of the meeting pursuant to the foregoing provisions, the chairperson may adjourn any meeting of shareholders for any reason deemed necessary by the chairperson, including, without limitation, if (i) no quorum is present for the transaction of the business, (ii) the Board of Trustees or the chairperson of the meeting determines that adjournment is necessary or appropriate to enable the shareholders to consider fully information that the Board of Trustees or the chairperson of the meeting determines has not been made sufficiently or timely available to shareholders or (iii) the Board of Trustees or the chairperson of the meeting determines that adjournment is otherwise in the best interests of the Trust. Unless otherwise determined by the chairperson of the meeting, meetings of shareholders shall not be required to be held in accordance with the general rules of parliamentary procedure or any otherwise established rules of order.

Section 2.8 Quorum. At any meeting of shareholders, the presence in person or by proxy of shareholders entitled to cast a majority of all the votes entitled to be cast at such meeting shall constitute a quorum; but this section shall not affect any requirement under any statute or the Declaration of Trust for the vote necessary for the adoption of any measure. If, however, such quorum shall not be present at any meeting of the shareholders, the chairperson of the meeting shall have the power to adjourn the meeting from time to time without the Trust having to set a new record date or provide any additional notice of such meeting, subject to any obligation of the Trust to give notice pursuant to Section 2.5. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified. The shareholders present, either in person or by proxy, at a meeting of shareholders which has been duly called and convened and at which a quorum was established may continue to transact business until adjournment, notwithstanding the withdrawal of enough votes to leave less than a quorum then being present at the meeting.

Section 2.9 Voting.

(a) With regard to the election of a Trustee, voting by shareholders shall be conducted under the non-cumulative method and shall be by the affirmative vote of holders of the Trust's shares of beneficial interest representing a majority of the total number of votes authorized to be cast by shares then outstanding and entitled to vote thereon; provided, however, the election of a Managing Trustee or an Independent Trustee (each as defined in Section 3.2) in an uncontested election, which is an election in which the number of nominees for election equals (or is less than) the number to be elected at the meeting, shall be by the affirmative vote of the Trust's shares of beneficial interest representing a majority of the total number of votes cast.

(b) With regard to any other matter which may properly come before a meeting of shareholders duly called and at which a quorum is present, and except as may be mandated by applicable law, by the listing requirements of the principal exchange on which the Trust's common shares of beneficial interest are listed or by a specific provision of the Declaration of Trust, the vote required for approval shall be the affirmative vote of a majority of the total number of votes cast.

Section 2.10 Proxies. A shareholder may cast the votes entitled to be cast by him or her either in person or by proxy executed by the shareholder or by his or her duly authorized agent in any manner permitted by law. Such proxy shall be filed with such officer of

the Trust or third party agent as the Board of Trustees shall have designated for such purpose for verification at or prior to such meeting. Any proxy relating to the Trust's shares of beneficial interest shall be valid until the expiration date therein or, if no expiration is so indicated, for such period as is permitted pursuant to Maryland law. At a meeting of shareholders, all questions concerning the qualification of voters, the validity of proxies, and the acceptance or rejection of votes, shall be decided by or on behalf of the chairperson of the meeting, subject to Section 2.13.

Section 2.11 Record Date. The Board of Trustees may fix the date for determination of shareholders entitled to notice of and to vote at a meeting of shareholders. If no date is fixed for the determination of the shareholders entitled to vote at any meeting of shareholders, only persons in whose names shares entitled to vote are recorded on the share records of the Trust on the later of: (i) the close of business on the day on which notice of such meeting of shareholders is first mailed by the Trust or (ii) the thirtieth (30th) day before the date of such meeting shall be entitled to vote at such meeting.

Section 2.12 Voting of Shares by Certain Holders. Shares of beneficial interest of the Trust registered in the name of a corporation, partnership, trust or other entity, if entitled to be voted, may be voted by the president or a vice president, a general partner, managing member or trustee thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such shares pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or pursuant to an agreement of the partners of the partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such shares. Any trustee or other fiduciary may vote shares registered in his or her name as such fiduciary, either in person or by proxy. Notwithstanding the apparent authority created by the prior two sentences of this Section 2.12, the Board of Trustees or the chairperson of the meeting may require that such person acting for a corporation, partnership, trust or other entity provide documentary evidence of his or her authority to vote such shares and of the fact that the beneficial owner of such shares has been properly solicited and authorized such person to vote as voted, and in the absence of such satisfactory evidence, the Board of Trustees or the chairperson may determine such votes have not been validly cast.

Section 2.13 Inspectors.

(a) Before or at any meeting of shareholders, the chairperson of the meeting may appoint one or more persons as inspectors for such meeting. Such inspectors, if any, shall (i) ascertain and report the number of shares of beneficial interest represented at the meeting, in person or by proxy, and the validity and effect of proxies, (ii) receive and tabulate all votes, ballots or consents, (iii) report such tabulation to the chairperson of the meeting and (iv) perform such other acts as are proper to conduct the election or voting at the meeting. In the absence of such a special appointment, the secretary may act as the inspector.

(b) Each report of an inspector shall be in writing and signed by him or her. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be *prima facie* evidence thereof.

Section 2.14 Nominations and Other Proposals to be Considered at Meetings of Shareholders. Nominations of individuals for election to the Board of Trustees and the proposal of other business to be considered by the shareholders at meetings of shareholders may be properly brought before the meeting only as set forth in this Section 2.14. Nothing in this Section 2.14 shall be deemed to affect any right of a shareholder to request inclusion of a non-binding precatory proposal in, or the right of the Trust to omit a proposal from, any proxy statement filed by the Trust with the U.S. Securities and Exchange Commission (the "SEC") pursuant to Rule 14a-8 (or any successor provision) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). All judgments and determinations made by the Board of Trustees or the chairperson of the meeting, as applicable, under this Section 2.14 (including, without limitation, judgments and determinations as to the propriety of a proposed nomination or a proposal of other business for consideration by shareholders) shall be final and binding unless determined to have been made in bad faith.

Section 2.14.1 Annual Meetings of Shareholders.

(a) Any shareholder may recommend to the Nominating and Governance Committee of the Board of Trustees an individual as a nominee for election to the Board of Trustees. Such recommendation shall be made by written notice to the Chair of such committee and the secretary, which notice should contain or be accompanied by the information and documents with respect to such recommended nominee and shareholder that such shareholder believes to be relevant or helpful to the Nominating and Governance Committee's deliberations. In considering such recommendation, the Nominating and Governance Committee may request additional information concerning the recommended nominee or the shareholder(s) making the recommendation. The Nominating and Governance Committee of the Board of Trustees will consider any such recommendation in its discretion. Any shareholder seeking to make a nomination of an individual for election to the Board of Trustees at an annual meeting of shareholders must make such nomination in accordance with Section 2.14.1(b)(ii).

(b) Nominations of individuals for election to the Board of Trustees and the proposal of other business to be considered by the shareholders at an annual meeting of shareholders may be properly brought before the meeting (i) pursuant to the Trust's notice of meeting or otherwise properly brought before the meeting by or at the direction of the Board of Trustees or (ii) by any one or more shareholders who (A) have each continuously owned (as defined below) shares of beneficial interest of the Trust entitled to vote in the election of Trustees or on a proposal of other business, for at least three (3) years as of the date of the giving of the notice provided for in Section 2.14.1(c), the record date for determining the shareholders entitled to vote at the meeting and the time of the annual meeting (including any adjournment or postponement thereof), with the aggregate shares owned by such shareholder(s) as of each of such dates and during such three (3) year period representing at least one percent (1%) of the Trust's shares of beneficial interest, (B) holds, or hold, a certificate or certificates evidencing the aggregate number of shares of beneficial interest of the Trust referenced in subclause (A) of this Section 2.14.1(b)(ii) as of the time of giving the notice provided for in Section 2.14.1(c), the record date for determining the shareholders entitled to vote at the meeting and the time of the annual meeting (including any adjournment or postponement thereof), (C) is, or are, entitled to make such nomination or propose such other business and to vote at the meeting on such election or proposal of other business, and (D) complies, or comply, with the notice procedures set forth

in this Section 2.14 as to such nomination or proposal of other business. For purposes of this Section 2.14, a shareholder shall be deemed to "own" or have "owned" only those outstanding shares of the Trust's shares of beneficial interest to which the shareholder possesses both the full voting and investment rights pertaining to such shares and 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 the foregoing 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 or (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. Without limiting the foregoing, to the extent not excluded by the immediately preceding sentence, a 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 or the proposal of other business and possesses the full economic interest in the shares. For purposes of this Section 2.14, the term "affiliate" or "affiliates" shall have the meaning ascribed thereto under the General Rules and Regulations under the Exchange Act. For purposes of this Section 2.14, the period of continuous ownership of shares must be evidenced by documentation accompanying the nomination or proposal. Whether shares are "owned" for purposes of this Section 2.14 shall be determined by the Board of Trustees.

(c) For nominations for election to the Board of Trustees or other business to be properly brought before an annual meeting by one or more shareholders pursuant to this Section 2.14.1, such shareholder(s) shall have given timely notice thereof in writing to the secretary in accordance with this Section 2.14 and such other business shall otherwise be a proper matter for action by shareholders. To be timely, the notice of such shareholder(s) shall include all documentation and set forth all information required under this Section 2.14 and shall be delivered to the secretary at the principal executive offices of the Trust not later than 5:00 p.m. (Eastern Time) on the one-hundred twentieth (120th) day nor earlier than the one-hundred fiftieth (150th) day prior to the first (1st) anniversary of the date of the proxy statement for the preceding year's annual meeting; provided, however, that if the annual meeting is called for a date that is more than thirty (30) days earlier or later than the first (1st) anniversary of the date of the preceding year's annual meeting, notice by such shareholder(s) to be timely shall be so delivered not later than 5:00 p.m. (Eastern Time) on the tenth (10th) day following the earlier of the day on which (i) notice of the date of the annual meeting is mailed or otherwise made available or (ii) public announcement of the date of the annual meeting is first made by the Trust. Neither the postponement or adjournment of an annual meeting, nor the public announcement of such postponement or adjournment, shall commence a new time period (or extend any time period) for the giving of a notice of one or more shareholders as described above.

A notice of one or more shareholders pursuant to this Section 2.14.1(c) shall set forth:

(i) separately as to each individual whom such shareholder(s) propose to nominate for election or reelection as a Trustee (a "Proposed Nominee"), (1) the name, age, business address, residence address and educational background of such Proposed Nominee, (2) a statement of whether such Proposed Nominee is proposed for nomination as an Independent

Trustee or a Managing Trustee and a description of such Proposed Nominee's qualifications to be an Independent Trustee or Managing Trustee, as the case may be, and such Proposed Nominee's qualifications to be a Trustee pursuant to the criteria set forth in Section 3.1, (3) the class, series and number of any shares of beneficial interest of the Trust that are, directly or indirectly, beneficially owned or owned of record by such Proposed Nominee, (4) a description of the material terms of each Derivative Transaction that such Proposed Nominee directly or indirectly, has an interest in, including, without limitation, the counterparties to each Derivative Transaction, the class or series and number or amount of securities of the Trust to which each Derivative Transaction relates or provides exposure, and whether or not (x) such Derivative Transaction conveys any voting rights directly or indirectly, to such Proposed Nominee, (y) such Derivative Transaction is required to be, or is capable of being, settled through delivery of securities of the Trust and (z) such Proposed Nominee and/or, to their knowledge, the counterparty to such Derivative Transaction has entered into other transactions that hedge or mitigate the economic effect of such Derivative Transaction, (5) a description of all direct and indirect compensation and other agreements, arrangements and understandings or any other relationships, between or among any shareholder making the nomination, or any of its respective affiliates and associates, or others acting in concert therewith, on the one hand, and such Proposed Nominee, or his or her respective affiliates and associates, on the other hand, and (6) all other information relating to such Proposed Nominee that would be required to be disclosed in connection with a solicitation of proxies for election of the Proposed Nominee as a Trustee in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Section 14 (or any successor provision) of the Exchange Act, and the rules and regulations promulgated thereunder, or that would otherwise be required to be disclosed pursuant to the rules of any national securities exchange on which any securities of the Trust are listed or traded;

(ii) as to any other business that such shareholder(s) propose to bring before the meeting, (1) a description of such business, (2) the reasons for proposing such business at the meeting and any material interest in such business of such shareholder(s) or any Shareholder Associated Person (as defined in Section 2.14.1(g)), including any anticipated benefit to such shareholder(s) or any Shareholder Associated Person therefrom, (3) a description of all agreements, arrangements and understandings between such shareholder(s) and Shareholder Associated Person amongst themselves or with any other person or persons (including their names) in connection with the proposal of such business by such shareholder(s) and (4) a representation that such shareholder(s) intend to appear in person or by proxy at the meeting to bring the business before the meeting;

(iii) separately as to each shareholder giving the notice and any Shareholder Associated Person, (1) the class, series and number of all shares of beneficial interest of the Trust that are owned of record by such shareholder or by such Shareholder Associated Person, if any, and (2) the class, series and number of, and the nominee holder for, any shares of beneficial interests of the Trust that are, directly or indirectly, beneficially owned but not owned of record by such shareholder or by such Shareholder Associated Person, if any;

(iv) separately as to each shareholder giving the notice and any Shareholder Associated Person, (1) a description of all purchases and sales of securities of the Trust by such shareholder or Shareholder Associated Person during the period of continuous

ownership required by Section 2.14.1(b)(ii), including the date of the transactions, the class, series and number of securities involved in the transactions and the consideration involved, (2) a description of the material terms of each Derivative Transaction that such shareholder or Shareholder Associated Person, directly or indirectly, has, or during the period of continuous ownership required by Section 2.14.1(b)(ii) had, an interest in, including, without limitation, the counterparties to each Derivative Transaction, the class or series and number or amount of securities of the Trust to which each Derivative Transaction relates or provides exposure, and whether or not (x) such Derivative Transaction conveys or conveyed any voting rights, directly or indirectly, to such shareholder or Shareholder Associated Person, (y) such Derivative Transaction is or was required to be, or is or was capable of being, settled through delivery of securities of the Trust and (z) such shareholder or Shareholder Associated Person and/or, to their knowledge, the counterparty to such Derivative Transaction has or had entered into other transactions that hedge or mitigate the economic effect of such Derivative Transaction, (3) a description of the material terms of any performance related fees (other than an asset based fee) to which such shareholder or Shareholder Associated Person is entitled based on any increase or decrease in the value of shares of beneficial interest of the Trust or instrument or arrangement of the type contemplated within the definition of Derivative Transaction, and (4) any rights to dividends or other distributions on the shares of beneficial interest of the Trust that are beneficially owned by such shareholder or Shareholder Associated Person that are separated or separable from the underlying shares of beneficial interest of the Trust;

(v) separately as to each shareholder giving the notice and any Shareholder Associated Person with a material interest described in clause (ii)(2) above, an ownership interest described in clause (iii) above or a transaction or right described in clause (iv) above, (1) the name and address of such shareholder and Shareholder Associated Person, and (2) all information relating to such shareholder and Shareholder Associated Person that would be required to be disclosed in connection with a solicitation of proxies for election of Trustees in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Section 14 (or any successor provision) of the Exchange Act and the rules and regulations promulgated thereunder or that would otherwise be required to be disclosed pursuant to the rules of any national securities exchange on which any securities of the Trust are listed or traded; and

(vi) to the extent known by the shareholder(s) giving the notice, the name and address of any other person who beneficially owns or owns of record any shares of beneficial interest of the Trust and who supports the nominee for election or reelection as a Trustee or the proposal of other business.

(d) A notice of one or more shareholders making a nomination or proposing other business pursuant to Section 2.14.1(c) shall be accompanied by a sworn verification of each shareholder making the nomination or proposal as to such shareholder's continuous ownership of the shares referenced in subclause (A) of Section 2.14.1(b)(ii) throughout the period referenced in such subclause, together with (i) a copy of the share certificate(s) referenced in subclause (B) of Section 2.14.1(b)(ii) above; (ii) if any such shareholder was not a shareholder of record of the shares referenced in subclause (A) of Section 2.14.1(b)(ii) above continuously for the three (3) year period referenced therein, reasonable evidence of such shareholder's continuous beneficial ownership of such shares during such three

(3) year period, such reasonable evidence may include, but shall not be limited to, (A) a copy of a report of the shareholder on Schedule 13D or Schedule 13G under the Exchange Act filed on or prior to the beginning of the three (3) year period and all amendments thereto, (B) a copy of a statement required to be filed pursuant to Section 16 of the Exchange Act (or any successor provisions) by a person who is a Trustee or who is directly or indirectly the beneficial owner of more than ten percent (10%) of the shares of beneficial interest of the Trust filed on or prior to the beginning of the three (3) year period and all amendments thereto, or (C) written evidence that each shareholder making the nomination or proposal maintained throughout the chain of record and non-record ownership continuous ownership of such shares (i.e. possession of full voting and investment rights pertaining to, and full economic interest in, such shares) throughout the required period, including written verification of such ownership from each person who was the "record" holder of such shares during such period (including, if applicable, the Depository Trust Company) and each participant of the Depository Trust Company, financial institution, broker-dealer or custodian through which the shares were owned; and (iii) with respect to nominations, (A) a completed and executed questionnaire (in the form available from the secretary) of each Proposed Nominee with respect to his or her background and qualification to serve as a Trustee, the background of any other person or entity on whose behalf the nomination is being made and the information relating to such Proposed Nominee and such other person or entity that would be required to be disclosed in connection with a solicitation of proxies for election of the Proposed Nominee as a Trustee in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Section 14 (or any successor provision) of the Exchange Act, and the rules and regulations promulgated thereunder, or that would otherwise be required to be disclosed pursuant to the rules of any national securities exchange on which any securities of the Trust are listed or traded, and (B) a representation and agreement (in the form available from the secretary) executed by each Proposed Nominee pursuant to which such Proposed Nominee (1) represents and agrees that he or she is not and will not become a party to any agreement, arrangement or understanding with, and does not have any commitment and has not given any assurance to, any person or entity, in each case that has not been previously disclosed to the Trust, (x) as to how he or she, if elected as a Trustee, will act or vote on any issue or question, or (y) that could limit or interfere with his or her ability to comply, if elected as a Trustee, with his or her duties to the Trust, (2) represents and agrees that he or she is not and will not become a party to any agreement, arrangement or understanding with any person or entity, other than the Trust, with respect to any direct or indirect compensation, reimbursement or indemnification in connection with or related to his or her service as, or any action or omission in his or her capacity as, a Trustee that has not been previously disclosed to the Trust, (3) represents and agrees that if elected as a Trustee, he or she will be in compliance with and will comply with, applicable law and all applicable publicly disclosed corporate governance, conflict of interest, corporate opportunity, confidentiality and share ownership and trading policies and guidelines of the Trust and (4) consents to being named as a nominee and to serving as a Trustee if elected.

(e) Any shareholder(s) providing notice of a proposed nomination or other business to be considered at an annual meeting of shareholders shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.14 is true and correct as of the record date for such annual meeting and as of a date that is ten (10) business days prior to such annual meeting, and any such update shall be delivered to the secretary at the principal executive offices of the Trust

not later than the close of business on the fifth (5th) business day after the record date (in the case of an update or supplement required to be made as of the record date), and not later than the close of business on the eighth (8th) business day prior to the date of the annual meeting (in the case of an update or supplement required to be made as of ten (10) business days prior to the meeting).

(f) A shareholder making a nomination or proposal of other business for consideration at an annual meeting may withdraw the nomination or proposal at any time before the annual meeting. After the period specified in the second sentence of Section 2.14.1(c), a shareholder nomination or proposal of other business for consideration at an annual meeting may only be amended with the permission of the Board of Trustees. Notwithstanding anything in the second sentence of Section 2.14.1(c) to the contrary, if the number of Trustees to be elected to the Board of Trustees is increased and there is no public announcement of such action at least one-hundred thirty (130) days prior to the first (1st) anniversary of the date of the proxy statement for the preceding year's annual meeting, the notice required by this Section 2.14.1 also shall be considered timely, but only with respect to nominees for any new positions created by such increase, if such notice is delivered to the secretary at the principal executive offices of the Trust not later than 5:00 p.m. (Eastern Time) on the tenth (10th) day immediately following the day on which such public announcement is first made by the Trust. If the number of the Trustees to be elected to the Board of Trustees is decreased, there shall be no change or expansion in the time period for shareholders to make a nomination from the time period specified in the second sentence of Section 2.14.1(c). Any change in time period for shareholders to make a nomination shall not change the time period to make any other proposal from the time period specified in the second sentence of Section 2.14.1(c).

(g) For purposes of this Section 2.14, (i) "Shareholder Associated Person" of any shareholder shall mean (A) any person acting in concert with, such shareholder, (B) any direct or indirect beneficial owner of shares of beneficial interest of the Trust beneficially owned or owned of record by such shareholder and (C) any person controlling, controlled by or under common control with such shareholder or a Shareholder Associated Person; and (ii) "Derivative Transaction" by a person shall mean any (A) transaction in, or arrangement, agreement or understanding with respect to, any option, warrant, convertible security, stock appreciation right or similar right with an exercise, conversion or exchange privilege, or settlement payment or mechanism related to, any security of the Trust, or similar instrument with a value derived in whole or in part from the value of a security of the Trust, in any such case whether or not it is subject to settlement in a security of the Trust or otherwise or (B) any transaction, arrangement, agreement or understanding which included or includes an opportunity for such person, directly or indirectly, to profit or share in any profit derived from any increase or decrease in the value of any security of the Trust, to mitigate any loss or manage any risk associated with any increase or decrease in the value of any security of the Trust or to increase or decrease the number of securities of the Trust which such person was, is or will be entitled to vote, in any such case whether or not it is subject to settlement in a security of the Trust or otherwise.

Section 2.14.2 Shareholder Nominations or Other Proposals Causing Covenant Breaches or Defaults. At the same time as the submission of any shareholder nomination or proposal of other business to be considered at a shareholders meeting that, if approved and implemented by the Trust, would cause the Trust or any subsidiary (as defined in

Section 2.14.5(c)) of the Trust to be in breach of any covenant or otherwise cause a default (in any case, with or without notice or lapse of time) in any existing debt instrument or agreement of the Trust or any subsidiary of the Trust or other material contract or agreement of the Trust or any subsidiary of the Trust, the notice provided pursuant to Section 2.14.1(c) shall disclose: (a) whether the lender or contracting party has agreed to waive the breach of covenant or default, and, if so, shall include reasonable evidence thereof, or (b) in reasonable detail, the plan of the proponent shareholder(s) for the repayment of the indebtedness to the lender or curing the contractual breach or default and satisfying any resulting damage claim, specifically identifying the actions to be taken and the source of funds for any such repayment, and such notice shall be accompanied by a copy of any commitment letter(s) or agreement(s) for the financing of such plan.

Section 2.14.3 Shareholder Nominations or Other Proposals Requiring Governmental Action. If (a) any shareholder nomination or proposal of other business to be considered at a shareholders meeting could not be considered or, if approved, implemented by the Trust without the Trust, any subsidiary of the Trust, any proponent shareholder, any Proposed Nominee of such shareholder, any Shareholder Associated Person of such shareholder, the holder of proxies or their respective affiliates or associates filing with or otherwise notifying or obtaining the consent, approval or other action of any federal, state, municipal or other governmental or regulatory body (a "Governmental Action") or (b) any proponent shareholder's ownership of shares of beneficial interest of the Trust or any solicitation of proxies or votes or holding or exercising proxies by such shareholder, any Proposed Nominee of such shareholder, any Shareholder Associated Person of such shareholder, or their respective affiliates or associates would require Governmental Action, then, in the notice provided pursuant to Section 2.14.1(c) the proponent shareholder(s) shall disclose (x) whether such Governmental Action has been given or obtained, and, if so, such notice shall be accompanied by reasonable evidence thereof, or (y) in reasonable detail, the plan of such shareholder(s) for making or obtaining the Governmental Action. As an example and not as a limitation, at the time these Bylaws are being amended and restated, the Trust has a controlling ownership interest in gaming businesses located in Louisiana. Applicable Louisiana law requires that a Trustee be approved by the Louisiana Gaming Control Board. Such approval process requires that any Proposed Nominee submit detailed personal history and financial disclosures. Accordingly, a shareholder nomination shall be accompanied by evidence that the Proposed Nominee has been approved by the Louisiana Gaming Control Board to be a Trustee, or if the Louisiana Gaming Control Board have not approved such an application, then the shareholder nomination shall be accompanied by a plan for obtaining such approval, including completed and executed personal history and financial disclosure forms of the Proposed Nominee required to be submitted to the Louisiana Gaming Control Board. A copy of the forms required to be submitted to the Louisiana Gaming Control Board may be obtained by request directed to the secretary.

Section 2.14.4 Special Meetings of Shareholders. As set forth in Section 2.6, only business brought before the meeting pursuant to the Trust's notice of meeting or otherwise properly brought before the meeting by or at the direction of the Board of Trustees may be considered at a special meeting of shareholders. Nominations of individuals for election to the Board of Trustees only may be made at a special meeting of shareholders at which Trustees are to be elected: (a) pursuant to the Trust's notice of meeting; (b) if the Board of Trustees has determined that Trustees shall be elected at such special meeting; or (c) if there are no Trustees

and the special meeting is called by the officers of the Trust for the election of successor Trustees; provided, however, that nominations of individuals to serve as Trustees at a special meeting called in the manner set forth in subclauses (a)-(c) above may only be made by (1) the applicable Trustees or officers of the Trust who call the special meeting of shareholders for the purpose of electing one or more Trustees or (2) any one or more shareholder(s) of the Trust who (A) satisfy the ownership amount, holding period and certificate requirements set forth in Section 2.14.1(b)(ii), (B) have given timely notice thereof in writing to the secretary at the principal executive offices of the Trust, which notice contains or is accompanied by the information and documents required by Section 2.14.1(c) and Section 2.14.1(d), (C) satisfy the requirements of Section 2.14.2 and Section 2.14.3 and (D) further update and supplement such notice in accordance with Section 2.14; provided further, that, for purposes of this Section 2.14.4, all references in Section 2.14.1, Section 2.14.2 and Section 2.14.3 to the annual meeting and to the notice given under Section 2.14.1 shall be deemed, for purposes of this Section 2.14.4, to be references to the special meeting and the notice given under this Section 2.14.4. To be timely, a shareholder's notice under this Section 2.14.4 shall be delivered to the secretary at the principal executive offices of the Trust not earlier than the one-hundred fiftieth (150th) day prior to such special meeting and not later than 5:00 p.m. (Eastern Time) on the later of (i) the one-hundred twentieth (120th) day prior to such special meeting or (ii) the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting. Neither the postponement or adjournment of a special meeting, nor the public announcement of such postponement or adjournment, shall commence a new time period (or extend any time period) for the giving of a shareholder(s)' notice as described above.

#### Section 2.14.5 General.

(a) If information submitted pursuant to this Section 2.14 by any shareholder proposing a nominee for election as a Trustee or any proposal for other business at a meeting of shareholders shall be deemed by the Board of Trustees incomplete or inaccurate, any authorized officer or the Board of Trustees or any committee thereof may treat such information as not having been provided in accordance with this Section 2.14. Any notice submitted by a shareholder pursuant to this Section 2.14 that is deemed by the Board of Trustees inaccurate, incomplete or otherwise fails to satisfy completely any provision of this Section 2.14 shall be deemed defective and shall thereby render all proposals and nominations set forth in such notice defective. Upon written request by the secretary or the Board of Trustees or any committee thereof (which may be made from time to time), any shareholder proposing a nominee for election as a Trustee or any proposal for other business at a meeting of shareholders shall provide, within three (3) business days after such request (or such other period as may be specified in such request), (i) written verification, satisfactory to the secretary or any other authorized officer or the Board of Trustees or any committee thereof, in his, her or its discretion, to demonstrate the accuracy of any information submitted by the shareholder pursuant to this Section 2.14, (ii) written responses to information reasonably requested by the secretary, the Board of Trustees or any committee thereof and (iii) a written update, to a current date, of any information submitted by the shareholder pursuant to this Section 2.14 as of an earlier date. If a shareholder fails to provide such written verification, information or update within such period, the secretary or any other authorized officer or the Board of Trustees may treat the information which was previously provided and to which the verification, request or update relates as not having been provided in accordance with this Section 2.14. It is the responsibility of a

shareholder who wishes to make a nomination or other proposal to comply with the requirements of Section 2.14; nothing in this Section 2.14.5(a) or otherwise shall create any duty of the Trust, the Board of Trustees or any committee thereof nor any officer of the Trust to inform a shareholder that the information submitted pursuant to this Section 2.14 by or on behalf of such shareholder is incomplete or inaccurate or not otherwise in accordance with this Section 2.14 nor require the Trust, the Board of Trustees, any committee of the Board of Trustees or any officer of the Trust to request clarification or updating of information provided by any shareholder, but the Board of Trustees, a committee thereof or the secretary acting on behalf of the Board of Trustees or a committee, may do so in its, his or her discretion.

(b) Only such individuals who are nominated in accordance with this Section 2.14 shall be eligible for election by shareholders as Trustees and only such business shall be conducted at a meeting of shareholders as shall have been properly brought before the meeting in accordance with this Section 2.14. The chairperson of the meeting and the Board of Trustees shall each have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with this Section 2.14 and, if any proposed nomination or other business is determined not to be in compliance with this Section 2.14, to declare that such defective nomination or proposal be disregarded.

(c) For purposes of this Section 2.14: (i) "public announcement" shall mean disclosure in (A) a press release reported by the Dow Jones News Service, Associated Press, Business Wire, PR Newswire or any other widely circulated news or wire service or (B) a document publicly filed by the Trust with the SEC; (ii) "subsidiary" shall include, with respect to a person, any corporation, partnership, joint venture or other entity of which such person (A) owns, directly or indirectly, ten percent (10%) or more of the outstanding voting securities or other interests or (B) has a person designated by such person serving on, or a right, contractual or otherwise, to designate a person, so to serve on, the board of directors (or analogous governing body); and (iii) a person shall be deemed to "beneficially own" or "have beneficially owned" any shares of beneficial interest of the Trust not owned directly by such person if that person or a group of which such person is a member would be the beneficial owner of such shares under Rule 13d-3 and Rule 13d-5 of the Exchange Act.

(d) Notwithstanding the foregoing provisions of this Section 2.14, a shareholder shall also comply with all applicable legal requirements, including, without limitation, applicable requirements of state law and the Exchange Act and the rules and regulations thereunder, with respect to the matters set forth in this Section 2.14. Nothing in this Section 2.14 shall be deemed to require that a shareholder nomination of an individual for election to the Board of Trustees or a shareholder proposal relating to other business be included in the Trust's proxy statement, except as may be required by law.

(e) The Board of Trustees may from time to time require any individual nominated to serve as a Trustee to agree in writing with regard to matters of business ethics and confidentiality while such nominee serves as a Trustee, such agreement to be on the terms and in a form determined satisfactory by the Board of Trustees, as amended and supplemented from time to time in the discretion of the Board of Trustees. The terms of any such agreement may be

substantially similar to the Code of Business Conduct and Ethics of the Trust or any similar code promulgated by the Trust or may differ from or supplement such Code.

(f) Determinations required or permitted to be made under this Section 2.14 by the Board of Trustees may be delegated by the Board of Trustees to a committee of the Board of Trustees, subject to applicable law.

Section 2.15 No Shareholder Actions by Written Consent. Shareholders shall not be authorized or permitted to take any action required or permitted to be taken at a meeting of shareholders by written consent, and may take such action only at a shareholders meeting of the Trust.

Section 2.16 Voting by Ballot. Voting on any question or in any election may be by voice vote unless the chairperson of the meeting or any shareholder shall demand that voting be by ballot.

Section 2.17 Proposals of Business Which Are Not Proper Matters For Action By Shareholders. Notwithstanding anything in these Bylaws to the contrary, subject to applicable law, any shareholder proposal for business the subject matter or effect of which would be within the exclusive purview of the Board of Trustees or would reasonably likely, if considered by the shareholders or approved or implemented by the Trust, result in an impairment of the limited liability status for the shareholders, shall be deemed not to be a matter upon which the shareholders are entitled to vote. The Board of Trustees in its discretion shall be entitled to determine whether a shareholder proposal for business is not a matter upon which the shareholders are entitled to vote pursuant to this Section 2.17, and its decision shall be final and binding unless determined by a court of competent jurisdiction to have been made in bad faith.

### ARTICLE III

#### TRUSTEES

Section 3.1 General Powers; Qualifications; Trustees Holding Over. The business and affairs of the Trust shall be managed under the direction of its Board of Trustees. A Trustee shall be an individual at least twenty-one (21) years of age who is not under legal disability. To qualify for nomination or election as a Trustee, an individual, at the time of nomination and election, shall, without limitation, (a) have substantial expertise or experience relevant to the business of the Trust and its subsidiaries (as determined by the Board of Trustees), (b) not have been convicted of a felony, (c) meet the qualifications of an Independent Trustee or a Managing Trustee, as the case may be, depending upon the position for which such individual may be nominated and elected, and (d) have been nominated for election to the Board of Trustees in accordance with Section 2.14. In case of failure to elect Trustees at an annual meeting of the shareholders, the incumbent Trustees shall hold over and continue to direct the management of the business and affairs of the Trust until they may resign or until their successors are elected and qualify. The failure of shareholders to elect Trustees at an annual meeting of shareholders shall not cause vacancies on the Board of Trustees requiring the officers of the Trust to call a special meeting of shareholders to elect Trustees unless all Trustees, including holdover Trustees, are unwilling or unable to continue to serve.

Section 3.2 Independent Trustees and Managing Trustees. A majority of the Trustees holding office shall at all times be Independent Trustees; provided, however, that upon a failure to comply with this requirement as a result of the creation of a temporary vacancy which shall be filled by an Independent Trustee, whether as a result of enlargement of the Board of Trustees or the resignation, removal or death of a Trustee who is an Independent Trustee, such requirement shall not be applicable. An "Independent Trustee" is one who is not an employee of the Advisor (as defined in the Declaration of Trust), who is not involved in the Trust's day to day activities, who meets the qualifications of an independent trustee under the Declaration of Trust and who meets the qualifications of an independent director (not including the specific independence requirements applicable only to members of the Audit Committee of the Board of Trustees) under the applicable rules of each securities exchange upon which shares of beneficial interest of the Trust are listed for trading and the SEC, as those requirements may be amended from time to time. If the number of Trustees, at any time, is set at less than five (5), at least one (1) Trustee shall be a Managing Trustee. So long as the number of Trustees shall be five (5) or greater, at least two (2) Trustees shall be Managing Trustees. "Managing Trustees" shall mean Trustees who have been employees, officers or directors of the Advisor or involved in the day to day activities of the Trust for at least one (1) year prior to their election. If at any time the Board of Trustees shall not be comprised of a majority of Independent Trustees, the Board of Trustees shall take such actions as will cure such condition; provided that the fact that the Board of Trustees does not have a majority of Independent Trustees or has not taken such action at any time or from time to time shall not affect the validity of any action taken by the Board of Trustees. If at any time the Board of Trustees shall not be comprised of a number of Managing Trustees as is required under this Section 3.2, the Board of Trustees shall take such actions as will cure such condition; provided that the fact that the Board of Trustees does not have the requisite number of Managing Trustees or has not taken such action at any time or from time to time shall not affect the validity of any action taken by the Board of Trustees.

Section 3.3 Number and Tenure. Pursuant to the Articles Supplementary accepted for record by the State Department of Assessments and Taxation (the "SDAT") as of May 16, 2000, the number of Trustees constituting the entire Board of Trustees may be increased or decreased from time to time only by a vote of the Trustees; provided however that the tenure of office of a Trustee shall not be affected by any decrease in the number of Trustees. The number of Trustees shall be five (5) until increased or decreased by the Board of Trustees.

Section 3.4 Annual and Regular Meetings. An annual meeting of the Trustees shall be held immediately after the annual meeting of shareholders, no notice other than this Bylaw being necessary. The time and place of the annual meeting of the Trustees may be changed by the Board of Trustees. The Trustees may provide, by resolution, the time and place, either within or without the State of Maryland, for the holding of regular meetings of the Trustees without other notice than such resolution. If any such regular meeting is not so provided for, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Trustees.

Section 3.5 Special Meetings. Special meetings of the Trustees may be called at any time by any Managing Trustee, the president or pursuant to the request of any two (2) Trustees then in office. The person or persons authorized to call special meetings of the Trustees

may fix any place, either within or without the State of Maryland, as the place for holding any special meeting of the Trustees called by them.

Section 3.6 Notice. Notice of any special meeting shall be given by written notice delivered personally or by electronic mail, telephoned, facsimile transmitted, overnight couriered (with proof of delivery) or mailed to each Trustee at his or her business or residence address. Personally delivered, telephoned, facsimile transmitted or electronically mailed notices shall be given at least twenty-four (24) hours prior to the meeting. Notice by mail shall be deposited in the U.S. mail at least seventy-two (72) hours prior to the meeting. If mailed, such notice shall be deemed to be given when deposited in the U.S. mail properly addressed, with postage thereon prepaid. Electronic mail notice shall be deemed to be given upon transmission of the message to the electronic mail address given to the Trust by the Trustee. Telephone notice shall be deemed given when the Trustee is personally given such notice in a telephone call to which he is a party. Facsimile transmission notice shall be deemed given upon completion of the transmission of the message to the number given to the Trust by the Trustee and receipt of a completed answer back indicating receipt. If sent by overnight courier, such notice shall be deemed given when delivered to the courier. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Trustees need be stated in the notice, unless specifically required by statute or these Bylaws.

Section 3.7 Quorum. A majority of the Trustees shall constitute a quorum for transaction of business at any meeting of the Trustees, provided that, if less than a majority of such Trustees are present at a meeting, a majority of the Trustees present may adjourn the meeting from time to time without further notice, and provided further that if, pursuant to the Declaration of Trust or these Bylaws, the vote of a majority of a particular group of Trustees is required for action, a quorum for that action shall also include a majority of such group. The Trustees present at a meeting of the Board of Trustees which has been duly called and convened and at which a quorum was established may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of such number of Trustees as would otherwise result in less than a quorum then being present at the meeting.

Section 3.8 Voting. The action of the majority of the Trustees present at a meeting at which a quorum is or was present shall be the action of the Trustees, unless the concurrence of a greater proportion is required for such action by specific provision of an applicable statute, the Declaration of Trust or these Bylaws. If enough Trustees have withdrawn from a meeting to leave fewer than are required to establish a quorum, but the meeting is not adjourned, the action of the majority of that number of Trustees necessary to constitute a quorum at such meeting shall be the action of the Board of Trustees, unless the concurrence of a greater proportion is required for such action by applicable law, the Declaration of Trust or these Bylaws.

Section 3.9 Telephone Meetings. Trustees may participate in a meeting by means of a conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting. Such meeting shall be deemed to have been held at a place designated by the Trustees at the meeting.

Section 3.10 Action by Written Consent of Trustees. Unless specifically otherwise provided in the Declaration of Trust, any action required or permitted to be taken at any meeting of the Trustees may be taken without a meeting, if a majority of the Trustees shall individually or collectively consent in writing or by electronic transmission to such action. Such written or electronic consent or consents shall be filed with the records of the Trust and shall have the same force and effect as the affirmative vote of such Trustees at a duly held meeting of the Trustees at which a quorum was present.

Section 3.11 Waiver of Notice. The actions taken at any meeting of the Trustees, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the Trustees not present waives notice, consents to the holding of such meeting or approves the minutes thereof.

Section 3.12 Vacancies. Pursuant to the Articles Supplementary accepted for record by the SDAT as of May 16, 2000, if for any reason any or all the Trustees cease to be Trustees, such event shall not terminate the Trust or affect these Bylaws or the powers of the remaining Trustees hereunder (even if fewer than three Trustees remain). Any vacancy on the Board of Trustees may be filled only by a majority of the remaining Trustees, even if the remaining Trustees do not constitute a quorum. Any Trustee elected to fill a vacancy, whether occurring due to an increase in size of the Board of Trustees or by the death, resignation or removal of any Trustee, shall hold office for the remainder of the full term of the class of Trustees in which the vacancy occurred or was created and until a successor is elected and qualifies.

Section 3.13 Compensation. The Trustees shall be entitled to receive such reasonable compensation for their services as Trustees as the Trustees may determine from time to time. Trustees may be reimbursed for expenses of attendance, if any, at each annual, regular or special meeting of the Trustees or of any committee thereof; and for their expenses, if any, in connection with each property visit and any other service or activity performed or engaged in as Trustees. The Trustees shall be entitled to receive remuneration for services rendered to the Trust in any other capacity, and such services may include, without limitation, services as an officer of the Trust, services as an employee of the Advisor, legal, accounting or other professional services, or services as a broker, transfer agent or underwriter, whether performed by a Trustee or any person affiliated with a Trustee.

Section 3.14 Removal of Trustees. A Trustee may be removed by the affirmative vote either of all the remaining Trustees or if and only to the extent permitted by applicable law, at a meeting of the shareholders if a proposal for such action is properly brought before such meeting for that purpose, by the affirmative vote of the holders of not less than two-thirds (2/3) of the shares of beneficial interest of the Trust then outstanding and entitled to vote generally in the election of Trustees. For a proposal to remove one or more Trustees to be properly brought before such meeting by one or more shareholders, such shareholder(s) shall meet and comply with all requirements in these Bylaws for a nomination of an individual for election to the Board of Trustees at an annual meeting of shareholders or a proposal of other business to be properly brought by such shareholder(s) at a meeting of the shareholders as set forth in Section 2.14.1, including the timely written notice, ownership amount, holding period,

certificate, information and documentation requirements of Section 2.14.1(b), Section 2.14.1(c), Section 2.14.1(d), Section 2.14.2 and Section 2.14.3.

Section 3.15 Surety Bonds. Unless specifically required by law, no Trustee shall be obligated to give any bond or surety or other security for the performance of any of his or her duties.

Section 3.16 Reliance. Each Trustee, officer, employee and agent of the Trust shall, in the performance of his or her duties with respect to the Trust, be entitled to rely on any information, opinion, report or statement, including any financial statement or other financial data, prepared or presented by an officer or employee of the Trust or by the Advisor, accountants, appraisers or other experts or consultants selected by the Board of Trustees or officers of the Trust, regardless of whether the Advisor or any such accountant, appraiser or other expert or consultant may also be a Trustee.

Section 3.17 Interested Trustee Transactions. Section 2-419 of the Maryland General Corporation Law (the "MGCL") (or any successor statute) shall be available for and apply to any contract or other transaction between the Trust and any of its Trustees or between the Trust and any other trust, corporation, firm or other entity in which any of its Trustees is a trustee or director or has a material financial interest.

Section 3.18 Certain Rights of Trustees, Officers, Employees and Agents. A Trustee shall have no responsibility to devote his or her full time to the affairs of the Trust. Any Trustee or officer, employee or agent of the Trust, in his or her personal capacity or in a capacity as an affiliate, employee or agent of any other person, or otherwise, may have business interests and engage in business activities similar or in addition to those of or relating to the Trust.

Section 3.19 Emergency Provisions. Notwithstanding any other provision in the Declaration of Trust or these Bylaws, this Section 3.19 shall apply during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the Board of Trustees under ARTICLE III cannot readily be obtained (an "Emergency"). During any Emergency, unless otherwise provided by the Board of Trustees, (a) a meeting of the Board of Trustees may be called by any Managing Trustee or officer of the Trust by any means feasible under the circumstances and (b) notice of any meeting of the Board of Trustees during such an Emergency may be given less than twenty-four (24) hours prior to the meeting to as many Trustees and by such means as it may be feasible at the time, including publication, television or radio.

## ARTICLE IV

### COMMITTEES

Section 4.1 Number; Tenure and Qualifications. The Board of Trustees shall appoint an Audit Committee, a Compensation Committee and a Nominating and Governance Committee. Each of these committees shall be composed of three or more Trustees, to serve at the pleasure of the Board of Trustees. The Board of Trustees may also appoint other committees from time to time composed of one or more members, at least one of which shall be a Trustee, to

serve at the pleasure of the Board of Trustees. The Board of Trustees shall adopt a charter with respect to the Audit Committee, the Compensation Committee and the Nominating and Governance Committee, which charter shall specify the purposes, the criteria for membership and the responsibility and duties and may specify other matters with respect to each committee. The Board of Trustees may also adopt a charter with respect to other committees.

Section 4.2 Powers. The Trustees may delegate any of the powers of the Trustees to committees appointed under Section 4.1 and composed solely of Trustees, except as prohibited by law. If a charter has been adopted with respect to a committee composed solely of Trustees, the charter shall constitute a delegation by the Trustees of the powers of the Board of Trustees necessary to carry out the purposes, responsibilities and duties of a committee provided in the charter or reasonably related to those purposes, responsibilities and duties, to the extent permitted by law.

Section 4.3 Meetings. Notice of committee meetings shall be given in the same manner as notice for special meetings of the Board of Trustees. One-third (1/3), but not less than one, of the members of any committee shall be present in person at any meeting of a committee in order to constitute a quorum for the transaction of business at a meeting, and the act of a majority present at a meeting at the time of a vote if a quorum is then present shall be the act of a committee. The Board of Trustees or, if authorized by the Board in a committee charter or otherwise, the committee members may designate a chairman of any committee, and the chairman or, in the absence of a chairman, a majority of any committee may fix the time and place of its meetings unless the Board shall otherwise provide. In the absence or disqualification of any member of any committee, the members thereof present at any meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another Trustee to act at the meeting in the place of absent or disqualified members.

Section 4.4 Telephone Meetings. Members of a committee may participate in a meeting by means of a conference telephone or similar communications equipment and participation in a meeting by these means shall constitute presence in person at the meeting.

Section 4.5 Action by Written Consent of Committees. Any action required or permitted to be taken at any meeting of a committee of the Trustees may be taken without a meeting, if a consent in writing or by electronic transmission to such action is signed by a majority of the committee and such written or electronic consent is filed with the minutes of proceedings of such committee.

Section 4.6 Vacancies. Subject to the provisions hereof, the Board of Trustees shall have the power at any time to change the membership of any committee, to fill all vacancies, to designate alternate members to replace any absent or disqualified member or to dissolve any such committee.

## ARTICLE V

### OFFICERS

Section 5.1 General Provisions. The officers of the Trust shall include a president, a secretary and a treasurer. In addition, the Board of Trustees may from time to time elect such other officers with such titles, powers and duties as set forth herein or as the Board of Trustees shall deem necessary or desirable, including a chairman of the board, a vice chairman of the board, a chief executive officer, a chief operating officer, a chief financial officer, one or more vice presidents, one or more assistant secretaries and one or more assistant treasurers. The officers of the Trust shall be elected annually by the Board of Trustees. Each officer shall hold office until his or her successor is elected and qualifies or until his or her death, resignation or removal in the manner hereinafter provided. Any two (2) or more offices, except that of president and vice president, may be held by the same person. In their discretion, the Trustees may leave unfilled any office except that of president, treasurer and secretary. Election of an officer or agent shall not of itself create contract rights between the Trust and such officer or agent.

Section 5.2 Removal and Resignation. Any officer or agent of the Trust may be removed, with or without cause, by the Board of Trustees if in its judgment the best interests of the Trust would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer of the Trust may resign at any time by delivering his or her resignation to the Board of Trustees, the president or the secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation. Such resignation shall be without prejudice to the contract rights, if any, of the Trust.

Section 5.3 Vacancies. A vacancy in any office may be filled by the Board of Trustees for the balance of the term.

Section 5.4 President. Except as the Board of Trustees may otherwise provide, the president shall have the duties usually vested in a president. The president shall have such other duties as may be assigned to the president by the Board of Trustees from time to time. The president may execute any deed, mortgage, bond, lease, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board of Trustees or by these Bylaws to some other officer or agent of the Trust or shall be required by law to be otherwise executed.

Section 5.5 Chief Operating Officer. If elected, except as the Board of Trustees may otherwise provide, the chief operating officer shall have the duties usually vested in a chief operating officer. The chief operating officer shall have such other duties as may be assigned to the chief operating officer by the president or the Board of Trustees from time to time.

Section 5.6 Chief Financial Officer. If elected, except as the Board of Trustees may otherwise provide, the chief financial officer shall have the duties usually vested in a chief

financial officer. The chief financial officer shall have such other duties as may be assigned to the chief financial officer by the president or the Board of Trustees from time to time.

Section 5.7 Vice Presidents. In the absence or disability of the president, the vice president, if any (or if there is more than one, the vice presidents in the order designated or, in the absence of any designation, then in the order of their election), shall perform the duties and exercise the powers of the president. The vice president(s) shall have such other duties as may be assigned to such vice president by the president or the Board of Trustees from time to time. The Board of Trustees may designate one or more vice presidents as executive vice president, senior vice president or vice presidents for particular areas of responsibility.

Section 5.8 Secretary. Except as the Board of Trustees may otherwise provide, the secretary (or his or her designee) shall (a) keep the minutes of the proceedings of the shareholders, the Board of Trustees and committees of the Board of Trustees in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the Trust records and of the seal of the Trust, if any; and (d) maintain a share register, showing the ownership and transfers of ownership of all shares of beneficial interest of the Trust, unless a transfer agent is employed to maintain and does maintain such a share register. The secretary shall have such other duties as may be assigned to the secretary by the president or the Board of Trustees from time to time.

Section 5.9 Treasurer. Except as the Board of Trustees may otherwise provide, the treasurer shall (a) have general charge of the financial affairs of the Trust; (b) have or oversee in accordance with Section 6.3 the custody of the funds, securities and other valuable documents of the Trust; (c) maintain or oversee the maintenance of proper financial books and records of the Trust; and (d) have the duties usually vested in a treasurer. The treasurer shall have such other duties as may be assigned to the treasurer by the president or the Board of Trustees from time to time.

Section 5.10 Assistant Secretaries and Assistant Treasurers. The assistant secretaries and assistant treasurers, in general, shall perform such duties as shall be assigned to them by the secretary or treasurer, respectively, or by the president or the Board of Trustees from time to time.

## ARTICLE VI

### CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 6.1 Contracts. The Board of Trustees may authorize any Trustee, officer or agent (including the Advisor or any officer of the Advisor) to execute and deliver any instrument in the name of and on behalf of the Trust and such authority may be general or confined to specific instances. Any agreement, deed, mortgage, lease or other document shall be valid and binding upon the Trust when duly authorized or ratified by action of the Board of Trustees and executed by an authorized person.

Section 6.2 Checks and Drafts. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Trust shall

be signed by such officer or agent of the Trust in such manner as the Board of Trustees, the president, the treasurer or any other officer designated by the Board of Trustees may determine.

Section 6.3 Deposits. All funds of the Trust not otherwise employed shall be deposited or invested from time to time to the credit of the Trust as the Board of Trustees, the president, the treasurer or any other officer designated by the Board of Trustees may determine.

## ARTICLE VII

### SHARES

Section 7.1 Certificates. Ownership of shares of any class of shares of beneficial interest of the Trust shall be evidenced by certificates, or at the election of a shareholder in book entry form. Unless otherwise determined by the Board of Trustees, any such certificates shall be signed by the president or a vice president and countersigned by the secretary or an assistant secretary or the treasurer or an assistant treasurer and may be sealed with the seal, if any, of the Trust. The signatures may be either manual or facsimile. Certificates shall be consecutively numbered and if the Trust shall from time to time issue several classes of shares, each class may have its own number series. A certificate is valid and may be issued whether or not an officer who signed it is still an officer when it is issued.

Section 7.2 Transfers.

(a) Shares of beneficial interest of the Trust shall be transferable in the manner provided by applicable law, the Declaration of Trust and these Bylaws. Certificates shall be treated as negotiable and title thereto and to the shares they represent shall be transferred, as described in Sections 5.2 and 5.6 of the Declaration of Trust.

(b) The Trust shall be entitled to treat the holder of record of any share or shares as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided in these Bylaws or by the laws of the State of Maryland.

Section 7.3 Lost Certificates. For shares evidenced by certificates, any officer designated by the Trustees may direct a new certificate to be issued in place of any certificate previously issued by the Trust alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen or destroyed. When authorizing the issuance of a new certificate, an officer designated by the Trustees may, in such officer's discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or the owner's legal representative to advertise the same in such manner as he shall require and/or to give bond, with sufficient surety, to the Trust to indemnify it against any loss or claim which may arise as a result of the issuance of a new certificate.

Section 7.4 Closing of Transfer Books or Fixing of Record Date.

(a) The Trustees may set, in advance, a record date for the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or determining shareholders entitled to receive payment of any dividend or the allotment of any other rights, or in order to make a determination of shareholders for any other proper purpose.

(b) In lieu of fixing a record date, the Trustees may provide that the share transfer books shall be closed for a stated period but not longer than twenty (20) days. If the share transfer books are closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten (10) days before the date of such meeting.

(c) If no record date is fixed and the share transfer books are not closed for the determination of shareholders, (i) the record date for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day on which the notice of meeting is mailed or the thirtieth (30th) day before the meeting, whichever is the closer date to the meeting; and (ii) the record date for the determination of shareholders entitled to receive payment of a dividend or an allotment of any other rights shall be the close of business on the day on which the resolution of the Trustees, declaring the dividend or allotment of rights, is adopted.

(d) When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof unless the Board of Trustees shall set a new record date with respect thereto.

Section 7.5 Share Ledger. The Trust shall maintain at its principal office or at the office of its counsel, accountants or transfer agent a share ledger containing the name and address of each shareholder and the number of shares of each class of shares of beneficial interest of the Trust held by such shareholder.

Section 7.6 Fractional Shares; Issuance of Units. The Trustees may issue fractional shares or provide for the issuance of scrip, as described in Section 5.3 of the Declaration of Trust. Notwithstanding any other provision of the Declaration of Trust or these Bylaws, the Trustees may issue units consisting of different securities of the Trust. Any security issued in a unit shall have the same characteristics as any identical securities issued by the Trust, except that the Trustees may provide that for a specified period securities of the Trust issued in such unit may be transferred on the books of the Trust only in such unit.

## ARTICLE VIII

### RESTRICTIONS ON TRANSFER AND OWNERSHIP OF SHARES

Section 8.1 Definitions. For the purpose of this ARTICLE VIII, the following terms shall have the following meanings:

"Beneficial Ownership" shall mean ownership of Shares by a Person, whether the interest in Shares is held directly or indirectly (including by a nominee), and shall include, but not be limited to, interests that would be treated as owned through the application of Section 544 of the

Code, as modified by Section 856(h)(1)(B) of the Code. The terms "Beneficial Owner", "Beneficially Owns" and "Beneficially Owned" shall have the correlative meanings.

"Charitable Beneficiary" shall mean one or more beneficiaries of the Charitable Trust as determined pursuant to Section 8.3(g), provided that each such organization shall be described in Sections 501(c)(3), 170(b)(1)(A) (other than clause (vii) or (viii) thereof) and 170(c)(2) of the Code and contributions to each such organization shall be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code.

"Charitable Trust" shall mean any trust provided for in Section 8.2(a)(ii) and Section 8.3(a).

"Charitable Trustee" shall mean each Person, unaffiliated with the Trust and a Prohibited Owner, that is appointed by the Trust from time to time to serve as a trustee of a Charitable Trust as provided by Section 8.3(a).

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Common Shares" shall mean the common shares of beneficial interest designated as such in the Declaration of Trust.

"Constructive Ownership" shall mean ownership of Shares by a Person, whether the interest in Shares is held directly or indirectly (including by a nominee), and shall include any interests that would be treated as owned through the application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code or treated as beneficially owned under Rule 13d-3 under the Exchange Act. The terms "Constructive Owner", "Constructively Owns" and "Constructively Owned" shall have the correlative meanings.

"Excepted Holder" shall mean a shareholder for whom an Excepted Holder Limit is created by the Board of Trustees pursuant to Section 8.2(e)(i) and shall include the Excepted Persons (as defined in the Declaration of Trust).

"Excepted Holder Limit" shall mean, provided that and only so long as the affected Excepted Holder complies with all of the requirements established by the Board of Trustees pursuant to Section 8.2(e), the percentage limit established by the Board of Trustees.

"Market Price" with respect to Shares on any date shall mean the last sale price for such Shares, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such Shares, in either case as reported on the principal consolidated transaction reporting system with respect to such Shares, or if such Shares are not listed or admitted to trading on any National Securities Exchange, the last sale price in the over the counter market, or if no trading price is available for such Shares, the fair market value of such Shares as determined in good faith by the Board of Trustees.

"National Securities Exchange" means an exchange registered with the SEC under Section 6(a) of the Exchange Act, as amended, supplemented or restated from time to time, and any successor to such statute.

"Ownership Limit" shall mean (a) with respect to Common Shares, nine and eight-tenths percent (9.8%) (in value or number of shares, whichever is more restrictive) of the Common Shares outstanding at the time of determination and (b) with respect to any other class or series of Shares, nine and eight-tenths percent (9.8%) (in value or number of shares, whichever is more restrictive) of the Shares of such class or series outstanding at the time of determination.

"Person" shall mean and include individuals, corporations, limited partnerships, general partnerships, joint stock companies or associations, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts and other entities and governments and agencies and political subdivisions thereof.

"Prohibited Owner" shall mean any Person who, but for the provisions of Section 8.2(a), would Beneficially Own or Constructively Own Shares in excess of the Ownership Limit, and if appropriate in the context, shall also mean any Person who would have been the holder of record in the books of the Trust or the Trust's transfer agent of Shares that the Prohibited Owner would have so owned.

"REIT" shall mean a "real estate investment trust" within the meaning of Section 856 of the Code.

"Shares" shall mean the shares of beneficial interest of the Trust.

"Transfer" shall mean any issuance, sale, transfer, gift, assignment, devise or other disposition, as well as any other event (or any agreement to take any such actions or cause any such events) that causes any Person to acquire Beneficial Ownership or Constructive Ownership of Shares or the right to vote or receive distributions on Shares, including, without limitation, (a) any change in the capital structure of the Trust which has the effect of increasing the total equity interest of any Person in the Trust, (b) a change in the relationship between two or more Persons which causes a change in ownership of Shares by application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code, (c) the grant or exercise of any option or warrant (or any disposition of any option or warrant, or any event that causes any option or warrant not theretofore exercisable to become exercisable), pledge, security interest or similar right to acquire Shares, (d) any disposition of any securities or rights convertible into or exchangeable for Shares or any interest in Shares or any exercise of any such conversion or exchange right, and (e) transfers of interests in other entities that result in changes in Beneficial Ownership or Constructive Ownership of Shares, in each case, whether voluntary or involuntary, whether owned of record or Beneficially Owned or Constructively Owned, and whether by operation of law or otherwise. The terms "Transferring" and "Transferred" shall have the correlative meanings.

## Section 8.2 Restrictions on Ownership.

### (a) Ownership Limitations.

(i) Basic Restrictions. (A) No Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own Shares in excess of the Ownership Limit, (B) no Excepted Holder shall Beneficially Own or Constructively Own Shares in excess of the Excepted Holder Limit for such Excepted Holder, (C) no Person shall Beneficially Own or Constructively

Own Shares to the extent that such Beneficial Ownership or Constructive Ownership of Shares would result in the Trust being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year), or otherwise failing to qualify as a REIT (including, without limitation, Beneficial Ownership or Constructive Ownership) that would result in the Trust owning (actually or Constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income derived by the Trust from such tenant would cause the Trust to fail to satisfy any of the gross income requirements of Section 856(c) of the Code or (D) subject to Section 8.5, notwithstanding any other provisions contained herein, any Transfer of Shares (whether or not such Transfer is the result of a transaction entered into through the facilities of a National Securities Exchange or automated inter-dealer quotation system) that, if effective, would result in Shares being beneficially owned by less than one-hundred (100) Persons (determined under the principles of Section 856(a)(5) of the Code) shall be void ab initio, and the intended transferee shall acquire no rights in such Shares.

(ii) Transfer in Trust or Voided Transfer. If any Transfer of Shares occurs (whether or not such Transfer is the result of a transaction entered into through the facilities of a National Securities Exchange or automated inter-dealer quotation system) which, if effective, would result in any Person Beneficially Owning or Constructively Owning Shares in violation of Section 8.2(a)(i)(A), Section 8.2(a)(i)(B) or Section 8.2(a)(i)(C), as applicable, then the Board of Trustees shall be authorized and empowered to deem (and if so deemed, such action and result shall be deemed to occur and the officers of the Trust shall be authorized to take such actions in the name and on behalf of the Trust authorized by the Board of Trustees to effectuate the same): (A) that number of Shares the Beneficial Ownership or Constructive Ownership of which otherwise would cause such Person to violate Section 8.2(a)(i)(A), Section 8.2(a)(i)(B) or Section 8.2(a)(i)(C) (rounded upward to the nearest whole share, and such excess shares, including as so rounded, the "Excess Shares") to be automatically transferred to a Charitable Trust or Charitable Trusts for the benefit of a Charitable Beneficiary, as described in Section 8.3, effective as of the close of business on the business day prior to the date of such determination of such Transfer or at such other time determined by the Board of Trustees, and such Person shall acquire no rights in the Excess Shares; or (B) to the fullest extent permitted by law, the Transfer of Excess Shares to be void ab initio, in which case, the intended transferee shall acquire no rights in the Excess Shares.

(iii) Cooperation. The shareholder that would otherwise qualify as a Prohibited Owner absent the application of the provisions of Section 8.2(a)(ii) shall use best efforts and take all actions necessary or requested by the Trust to cooperate with effecting the actions taken by the Board of Trustees pursuant to Section 8.2(a)(ii), including, without limitation, informing the Trust where any Excess Shares may be held and instructing its agents to cooperate in the prompt implementation and effectuation of the actions so taken by the Board of Trustees.

(b) Remedies for Breach. If the Board of Trustees or any duly authorized committee thereof shall at any time determine that a Transfer or other event has taken place that results in a violation of Section 8.2(a)(i) or that a Person intends to acquire or has attempted to acquire Beneficial Ownership or Constructive Ownership of any Shares in violation of Section 8.2(a)(i) (whether or not such violation is intended), the Board of Trustees or a committee

thereof may take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or other event, including, without limitation, causing the Trust to redeem Shares, refusing to give effect to such Transfer on the books of the Trust or the Trust's transfer agent or instituting proceedings to enjoin such Transfer or other event and such Person shall be liable, without limitation, for all costs incurred in connection therewith and pursuant to Section 15.2, including the costs and expenses of the Charitable Trustee. This Section 8.2(b) shall not in any way limit the provisions of Section 8.2(a)(ii).

(c) Notice of Restricted Transfer. Any Person who acquires or attempts or intends to acquire Beneficial Ownership or Constructive Ownership of Shares that will or may violate Section 8.2(a)(i), or any Person who would have owned Excess Shares, shall immediately give written notice to the Trust of such event, or in the case of such a proposed or attempted transaction, give at least fifteen (15) days prior written notice, and shall provide to the Trust such other information as the Trust may request.

(d) Owners Required to Provide Information. Every shareholder of five percent (5%) or more of the Shares of any series or class outstanding at the time of determination, within thirty (30) days after the end of each taxable year and also within three (3) business days after a request from the Trust, shall give written notice to the Trust stating the name and address of such owner, the number of Shares Beneficially Owned, and a description of the manner in which such Shares are held; provided that a shareholder who holds Shares as nominee for another Person, which other Person is required to include in gross income the distributions received on such Shares (an "Actual Owner"), shall give written notice to the Trust stating the name and address of such Actual Owner and the number of Shares of such Actual Owner with respect to which the shareholder is nominee. Each such shareholder and each Actual Owner shall provide to the Trust such additional information as the Trust may request in order to determine the Trust's status as a REIT, to determine the Trust's compliance with other applicable laws or requirements of any governmental authority or to ensure compliance with the Ownership Limit. Each Person who is a Beneficial Owner or Constructive Owner of Shares and each Person (including the shareholder) who is holding Shares for a Beneficial Owner or Constructive Owner shall provide to the Trust such information as the Trust may request, in good faith, in order to determine the Trust's status as a REIT, to determine the Trust's compliance with other applicable laws or requirements of any governmental authority and to comply with requirements of any taxing authority or other governmental authority or to determine such compliance.

(e) Exceptions:

(i) The Board of Trustees, in its sole discretion, may grant to any Person who makes a request therefor (a "Requesting Person") an exception to the Ownership Limit (or one or more elements thereof) with respect to the ownership of any series or class of Shares, subject to the following conditions and limitations: (A) the Board of Trustees shall have determined, in its discretion, that: (1) the Beneficial Ownership or Constructive Ownership of Shares by such shareholder in excess of the Ownership Limit would not violate Section 8.2(a)(i)(C), (2) the Requesting Person does not and will not own, actually or Constructively, an interest in a tenant of the Trust (or a tenant of any entity owned or controlled by the Trust) that would cause the Trust to own, actually or Constructively, more than a nine and eight-tenths percent (9.8%) interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant, (3) the

Requesting Person's ownership of Shares in excess of the Ownership Limit pursuant to the exception requested hereunder (together with the ownership of Shares by all other Persons as permitted under this ARTICLE VIII, taking into account any previously granted exceptions pursuant hereto) would not cause a default under the terms of any contract to which the Trust or any of its subsidiaries is a party or reasonably expects to become a party and (4) the Requesting Person's ownership of Shares in excess of the Ownership Limit pursuant to the exception requested hereunder (together with the ownership of Shares by all other Persons as permitted under this ARTICLE VIII, taking into account any previously granted exceptions pursuant hereto) is in the best interests of the Trust; and (B)(1) prior to granting any exception pursuant to this Section 8.2(e)(i), the Board of Trustees may require a ruling from the Internal Revenue Service, or an opinion of counsel, in either case in form and substance satisfactory to the Board of Trustees in their sole discretion, as they may deem necessary or advisable in order to determine or ensure the Trust's status as a REIT and (2) such Requesting Person provides to the Board of Trustees, for the benefit of the Trust, such representations and undertakings, if any, as the Board of Trustees may, in its discretion, determine to be necessary in order for it to make the determination that the conditions set forth in Section 8.2(e)(i)(A) have been and/or will continue to be satisfied (including, without limitation, an agreement as to a reduced Ownership Limit or Excepted Holder Limit for such Requesting Person with respect to the Constructive Ownership of one or more other classes or series of Shares not subject to the exception), and such Requesting Person agrees that any violation of such representations and undertakings or any attempted violation thereof will give rise to the application of the remedies set forth in Section 8.2(a)(ii) and Section 8.2(b) with respect to Shares held in excess of the Ownership Limit or the Excepted Holder Limit (as may be applicable) with respect to such Requesting Person (determined without regard to the exception granted such Requesting Person under this Section 8.2(e)(i)). If a member of the Board of Trustees requests that the Board of Trustees grant an exception pursuant to this Section 8.2(e) with respect to such member, or with respect to any other Person if such member of the Board of Trustees would be considered to be the Beneficial Owner or Constructive Owner of Shares owned by such other Person, such member of the Board of Trustees shall not participate in the decision of the Board of Trustees as to whether to grant any such exception.

(ii) In determining whether to grant any exemption pursuant to Section 8.2(e)(i), the Board of Trustees may, but need not, consider, among other factors, (A) the general reputation and moral character of the Requesting Person, (B) whether ownership of Shares would be direct or through ownership attribution, (C) whether the Requesting Person's ownership of Shares would interfere with the conduct of the Trust's business, including, without limitation, the Trust's ability to acquire additional properties or additional investments in issuers currently invested in by the Trust or other issuers, (D) whether granting an exemption for the Requesting Person would adversely affect any of the Trust's existing contractual arrangements, (E) whether the Requesting Person to whom the exception would apply has been approved as an owner of the Trust by all regulatory or other governmental authorities (including Louisiana or other state gaming regulatory authorities) who have jurisdiction over the Trust and (F) whether the Requesting Person to whom the exemption would apply is attempting to change control of the Trust or affect its policies in a way which the Board of Trustees, in its discretion, considers adverse to the best interest of the Trust or the shareholders. Nothing in this Section 8.2(e)(ii) shall be interpreted to mean that the Board of Trustees may not act in its discretion in making any determination under Section 8.2(e)(i).

(iii) An underwriter or initial purchaser that participates in a public offering or a private placement of Shares (or securities convertible into or exchangeable for Shares) may Beneficially Own or Constructively Own Shares (or securities convertible into or exchangeable for Shares) in excess of the Ownership Limit, but only to the extent necessary to facilitate such public offering or private placement as determined by the Board of Trustees.

Section 8.3 Transfer of Shares.

(a) Ownership in Trust. Upon any purported Transfer or other event described in Section 8.2(a)(ii) that results in a transfer of Shares to a Charitable Trust, such Shares shall be deemed to have been transferred to the Charitable Trustee as trustee or trustees, as applicable, of a Charitable Trust for the exclusive benefit of one or more Charitable Beneficiaries (except to the extent otherwise provided in Section 8.3(e)). Such transfer to the Charitable Trustee shall be deemed to be effective as of the time provided in Section 8.2(a)(ii). Any Charitable Trustee shall be appointed by the Trust and shall be a Person unaffiliated with the Trust and any Prohibited Owner. Each Charitable Beneficiary shall be designated by the Trust as provided in Section 8.3(g).

(b) Status of Shares Held by a Charitable Trustee. Shares held by a Charitable Trustee shall be issued and outstanding Shares of the Trust. The Prohibited Owner shall:

- (i) have no rights in the Shares held by the Charitable Trustee;
- (ii) not benefit economically from ownership of any Shares held in trust by the Charitable Trustee (except to the extent otherwise provided in Section 8.3(e));
- (iii) have no rights to dividends or other distributions;
- (iv) not possess any rights to vote or other rights attributable to the Shares held in the Charitable Trust; and
- (v) have no claim, cause of action or other recourse whatsoever against the purported transferor of such Shares.

(c) Dividend and Voting Rights. The Charitable Trustee shall have all voting rights and rights to dividends or other distributions with respect to Shares held in the Charitable Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary (except to the extent otherwise provided in Section 8.3(e)). Any dividend or other distribution paid with respect to any Shares which constituted Excess Shares at such time and prior to Shares having been transferred to the Charitable Trustee shall be paid to the Charitable Trustee by the Prohibited Owner upon demand and any dividend or other distribution authorized but unpaid with respect to such Shares shall be paid when due to the Charitable Trustee. Any dividends or distributions so paid to the Charitable Trustee shall be held in trust for the Charitable Beneficiary. The Prohibited Owner shall have no voting rights with respect to Shares held in the Charitable Trust and, effective as of the date that Shares have been transferred to the Charitable Trustee, the Charitable Trustee shall have the authority (at the Charitable Trustee's discretion) (i) to rescind as void any vote cast by a Prohibited Owner with respect to such Shares

at any time such Shares constituted Excess Shares with respect to such Prohibited Owner and (ii) to recast such vote in accordance with the desires of the Charitable Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Trust has already taken irreversible action, then the Charitable Trustee shall not have the power to rescind and recast such vote. Notwithstanding the provisions of this ARTICLE VIII, until the Shares have been transferred into a Charitable Trust, the Trust shall be entitled to rely on its stock transfer and other shareholder records for purposes of preparing lists of shareholders entitled to vote at meetings, determining the validity and authority of proxies, and otherwise conducting votes of shareholders.

(d) Rights upon Liquidation. Upon any voluntary or involuntary liquidation, dissolution or winding up of or any distribution of the assets of the Trust, the Charitable Trustee shall be entitled to receive, ratably with each other holder of Shares of the class or series of Shares that is held in the Charitable Trust, that portion of the assets of the Trust available for distribution to the holders of such class or series (determined based upon the ratio that the number of Shares of such class or series of Shares held by the Charitable Trustee bears to the total number of Shares of such class or series of Shares then outstanding). The Charitable Trustee shall distribute any such assets received in respect of the Shares held in the Charitable Trust in any liquidation, dissolution or winding up or distribution of the assets of the Trust, in accordance with Section 8.3(e).

(e) Sale of Shares by Charitable Trustee. Unless otherwise directed by the Board of Trustees, within twenty (20) days of receiving notice from the Trust that Shares have been transferred to the Charitable Trust, or soon thereafter as practicable, the Charitable Trustee shall sell the Shares held in the Charitable Trust (together with the right to receive dividends or other distributions with respect to such Shares as to any Shares transferred to the Charitable Trustee as a result of the operation of Section 8.2(a)(ii)) to a Person, designated by the Charitable Trustee, whose ownership of the Shares will not violate the ownership limitations set forth in Section 8.2(a)(i). Upon such sale, the interest of the Charitable Beneficiary in the Shares sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and to the Charitable Beneficiary as provided in this Section 8.3(e).

A Prohibited Owner shall receive the lesser of (A) the net price paid by the Prohibited Owner for the Shares or, if the Prohibited Owner did not give value for the Shares in connection with the event causing the Shares to be held in the Charitable Trust (for example, in the case of a gift, devise or other such transaction), the Market Price of the Shares on the day of the event causing the Shares to be held in the Charitable Trust, less the costs, expenses and compensation of the Charitable Trustee and the Trust as provided in Section 8.4 and (B) the net sales proceeds received by the Charitable Trustee from the sale or other disposition of the Shares held in the Charitable Trust. Any net sales proceeds in excess of the amount payable to the Prohibited Owner shall be paid to the Charitable Beneficiary, less the costs, expenses and compensation of the Charitable Trustee and the Trust as provided in Section 8.4. If such Shares are sold by a Prohibited Owner, then (A) such Shares shall be deemed to have been sold on behalf of the Charitable Trust and (B) to the extent that the Prohibited Owner received an amount for such Shares that exceeds the amount that such Prohibited Owner was entitled to receive pursuant to this Section 8.3(e), such excess shall be paid promptly to the Charitable Trustee upon demand.

(f) Trust's Purchase Right in Excess Shares. Notwithstanding any transfer of Excess Shares to a Charitable Trust pursuant to this ARTICLE VIII, Excess Shares shall be deemed to have been offered for sale to the Trust, or its designee, at a price per Share equal to the lesser of (i) the price per Share in the transaction that resulted in such Shares becoming Excess Shares (or, if the Prohibited Owner did not give value for such Shares, such as in the case of a devise, gift or other such transaction, the Market Price per such Share on the day of the event causing the Shares to become Excess Shares) and (ii) the Market Price per such Share on the date the Trust, or its designee, accepts such offer, in each case of clauses (i) and (ii) of this sentence, less the costs, expenses and compensation of the Charitable Trustee, if any, and the Trust as provided in Section 8.4. The Trust shall have the right to accept such offer until the Charitable Trustee, if any, has sold the Shares held in the Charitable Trust, if any, pursuant to Section 8.3(e). Upon such a sale to the Trust, if a Charitable Trust has been established pursuant to this ARTICLE VIII, the interest of the Charitable Beneficiary in the Shares sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and the Charitable Beneficiary as provided in Section 8.3(e).

(g) Designation of Charitable Beneficiaries. By written notice to the Charitable Trustee, the Trust shall designate from time to time one or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Charitable Trust such that (i) Shares held in the Charitable Trust would not violate the restrictions set forth in Section 8.2(a)(i) in the hands of such Charitable Beneficiary and (ii) contributions to each such organization shall be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code. The Charitable Beneficiary shall not obtain any enforceable right to the Charitable Trust or any of its trust corpus until so designated and thereafter any such rights remain subject to the provisions of this ARTICLE VIII, including, without limitation, Section 8.3(h).

(h) Retroactive Changes. Notwithstanding any other provisions of this ARTICLE VIII, the Board of Trustees is authorized and empowered to retroactively amend, alter or repeal any rights which the Charitable Trust, the Charitable Trustee or the Charitable Beneficiary may have under this ARTICLE VIII, including, without limitation, granting retroactive Excepted Holder status to any otherwise Prohibited Owner, with the effect of any transfer of Excess Shares to a Charitable Trust being fully and retroactively revoked; provided, however, that the Board of Trustees shall not have the authority or power to retroactively amend, alter or repeal any obligations to pay amounts incurred prior to such time and owed or payable to the Charitable Trustee pursuant to Section 8.4.

Section 8.4 Costs, Expenses and Compensation of Charitable Trustee and the Trust.

(a) The Charitable Trustee shall be indemnified by the Trust or from the proceeds from the sale of Shares held in the Charitable Trust, as further provided in this ARTICLE VIII, for its costs and expenses reasonably incurred in connection with conducting its duties and satisfying its obligations pursuant to this ARTICLE VIII.

(b) The Charitable Trustee shall be entitled to receive reasonable compensation for services provided by the Charitable Trustee in connection with serving as a

Charitable Trustee, the amount and form of which shall be determined by agreement of the Board of Trustees and the Charitable Trustee.

(c) Costs, expenses and compensation payable to the Charitable Trustee pursuant to Section 8.4(a) and Section 8.4(b) may be funded from the Charitable Trust or by the Trust. The Trust shall be entitled to reimbursement on a first priority basis (after payment in full of amounts payable to the Charitable Trustee pursuant to Section 8.4(a) and Section 8.4(b)) from the Charitable Trust for any such amounts funded by the Trust.

(d) Costs and expenses incurred by the Trust in the process of enforcing the ownership limitation set forth in Section 8.2(a)(i), in addition to reimbursement of costs, expenses and compensation of the Charitable Trustee which have been funded by the Trust, may be collected from the Charitable Trust; provided, however, that the ability of the Trust to fund its costs from the Charitable Trust shall not relieve the Prohibited Owner from his or her obligation to reimburse the Trust for costs under Section 15.2 of these Bylaws, except to the extent the Trust has in fact been previously paid from the Charitable Trust; nor will the possibility of the Trust receiving payment from the Charitable Trust create a marshaling obligation which would require the Trust to reimburse itself from the Charitable Trust before enforcing the Trust's claims under Section 15.2 or otherwise.

Section 8.5 Transactions on a National Securities Exchange. Nothing in this ARTICLE VIII shall preclude the settlement of any transaction entered into through the facilities of a National Securities Exchange or any automated inter-dealer quotation system. The fact that the settlement of any transaction takes place shall not negate the effect of any other provision of this ARTICLE VIII and any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this ARTICLE VIII.

Section 8.6 Enforcement. The Trust is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this ARTICLE VIII.

Section 8.7 Non-Waiver. No delay or failure on the part of the Trust or the Board of Trustees in exercising any right hereunder shall operate as a waiver of any right of the Trust or the Board of Trustees, as the case may be, except to the extent specifically waived in writing.

Section 8.8 Enforceability. If any of the restrictions on transfer of Shares contained in this ARTICLE VIII are determined to be void, invalid or unenforceable by any court of competent jurisdiction, then, to the fullest extent permitted by law, the Prohibited Owner may be deemed, at the option of the Trust, to have acted as an agent of the Trust in acquiring such Shares and to hold such Shares on behalf of the Trust.

## ARTICLE IX

### REGULATORY COMPLIANCE AND DISCLOSURE

Section 9.1 Actions Requiring Regulatory Compliance Implicating the Trust. If any shareholder (whether individually or constituting a group, as determined by the Board of Trustees), by virtue of such shareholder's ownership interest in the Trust or actions taken by the

shareholder affecting the Trust, triggers the application of any requirement or regulation of any federal, state, municipal or other governmental or regulatory body on the Trust or any subsidiary (for purposes of this ARTICLE IX, as defined in Section 2.14.5(c)) of the Trust or any of their respective businesses, assets or operations, including, without limitation, any obligations to make or obtain a Governmental Action (as defined in Section 2.14.3), such shareholder shall promptly take all actions necessary and fully cooperate with the Trust to ensure that such requirements or regulations are satisfied without restricting, imposing additional obligations on or in any way limiting the business, assets, operations or prospects of the Trust or any subsidiary of the Trust. If the shareholder fails or is otherwise unable to promptly take such actions so to cause satisfaction of such requirements or regulations, the shareholder shall promptly divest a sufficient number of shares of beneficial interest of the Trust necessary to cause the application of such requirement or regulation to not apply to the Trust or any subsidiary of the Trust. If the shareholder fails to cause such satisfaction or divest itself of such sufficient number of shares of beneficial interest of the Trust by not later than the tenth (10th) day after triggering such requirement or regulation referred to in this Section 9.1, then any shares of beneficial interest of the Trust beneficially owned by such shareholder at and in excess of the level triggering the application of such requirement or regulation shall, to the fullest extent permitted by law, be deemed to constitute shares held in violation of the ownership limitations set forth in ARTICLE VIII and be subject to the provisions of ARTICLE VIII and any actions triggering the application of such a requirement or regulation may be deemed by the Trust to be of no force or effect. Moreover, if the shareholder who triggers the application of any regulation or requirement fails to satisfy the requirements or regulations or to take curative actions within such ten (10) day period, the Trust may take all other actions which the Board of Trustees deems appropriate to require compliance or to preserve the value of the Trust's assets; and the Trust may charge the offending shareholder for the Trust's costs and expenses as well as any damages which may result to the Trust.

As an example and not as a limitation, at the time these Bylaws are being amended and restated, the Trust holds a controlling interest in gaming businesses in Louisiana. Louisiana law provides that any person who owns five percent (5%) or more of gaming businesses in Louisiana shall provide detailed personal history and financial information and be approved by the Louisiana Gaming Control Board. Accordingly, if a shareholder acquires five percent (5%) or more of the Trust and refuses to provide the Trust with information required to be submitted to the Louisiana Gaming Control Board or if the Louisiana Gaming Control Board decline to approve such a shareholder's ownership of the Trust, then, in either event, shares of beneficial interest of the Trust owned by such a shareholder necessary to reduce its ownership to less than five percent (5%) of the Trust may be deemed shares held in violation of the ownership limitation in ARTICLE VIII and shall be subject to the provisions of ARTICLE VIII.

As a further example and not as a limitation, at the time these Bylaws are being amended and restated, the Trust holds a controlling ownership position in a company formed and licensed as an insurance company in the State of Indiana. The laws of the State of Indiana have certain regulatory requirements for any person who seeks to control (as defined under Indiana law) a company which itself controls an insurance company domiciled in the State of Indiana, including by exercising proxies representing ten percent (10%) or more of the Trust's voting securities. Accordingly, if a shareholder seeks to exercise proxies for a matter to be voted upon at a meeting of the shareholders without having obtained any applicable approvals from the Indiana insurance

regulatory authorities, such proxies representing ten percent (10%) or more of the Trust's voting securities will, subject to Section 9.3, be void and of no further force or effect.

Section 9.2 Compliance With Law. Shareholders shall comply with all applicable requirements of federal and state laws, including all rules and regulations promulgated thereunder, in connection with such shareholder's ownership interest in the Trust and all other laws which apply to the Trust or any subsidiary of the Trust or their respective businesses, assets or operations and which require action or inaction on the part of the shareholder.

Section 9.3 Limitation on Voting Shares or Proxies. Without limiting the provisions of Section 9.1, if a shareholder (whether individually or constituting a group, as determined by the Board of Trustees), by virtue of such shareholder's ownership interest in the Trust or its receipt or exercise of proxies to vote shares owned by other shareholders, would not be permitted to vote such shares or proxies for such shares in excess of a certain amount pursuant to applicable law (including by way of example, applicable state insurance regulations) but the Board of Trustees determines that the excess shares or shares represented by the excess proxies are necessary to obtain a quorum, then such shareholder shall not be entitled to vote any such excess shares or proxies, and instead such excess shares or proxies may, to the fullest extent permitted by law, be voted by the Advisor (or by another person designated by the Trustees) in proportion to the total shares otherwise voted on such matter.

Section 9.4 Representations, Warranties and Covenants Made to Governmental or Regulatory Bodies. To the fullest extent permitted by law, any representation, warranty or covenant made by a shareholder with any governmental or regulatory body in connection with such shareholder's interest in the Trust or any subsidiary of the Trust shall be deemed to be simultaneously made to, for the benefit of and enforceable by, the Trust and any applicable subsidiary of the Trust.

Section 9.5 Board of Trustees' Determinations. The Board of Trustees shall be empowered to make all determinations regarding the interpretation, application, enforcement and compliance with any matters referred to or contemplated by these Bylaws.

## **ARTICLE X**

### **FISCAL YEAR**

Section 10.1 Fiscal Year. The fiscal year of the Trust shall be the calendar year.

## **ARTICLE XI**

### **DIVIDENDS AND OTHER DISTRIBUTIONS**

Section 11.1 Dividends and Other Distributions. Dividends and other distributions upon the shares of beneficial interest of the Trust may be authorized and declared by the Trustees. Dividends and other distributions may be paid in cash, property or shares of beneficial interest of the Trust.

## ARTICLE XII

### SEAL

Section 12.1 Seal. The Trustees may authorize the adoption of a seal by the Trust. The Trustees may authorize one or more duplicate seals.

Section 12.2 Affixing Seal. Whenever the Trust is permitted or required to affix its seal to a document, it shall be sufficient to meet the requirements of any law, rule or regulation relating to a seal to place the word "(SEAL)" adjacent to the signature of the person authorized to execute the document on behalf of the Trust.

## ARTICLE XIII

### WAIVER OF NOTICE

Section 13.1 Waiver of Notice. Whenever any notice is required to be given pursuant to the Declaration of Trust, these Bylaws or applicable law, a waiver thereof in writing, signed by the person or persons entitled to such notice, or a waiver by electronic transmission by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice or waiver by electronic transmission, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

## ARTICLE XIV

### AMENDMENT OF BYLAWS

Section 14.1 Amendment of Bylaws. Except for any change for which these Bylaws require approval by more than a majority vote of the Trustees, these Bylaws may be amended or repealed or new or additional Bylaws may be adopted only by the vote or written consent of a majority of the Trustees as specified in Section 3.10.

## ARTICLE XV

### MISCELLANEOUS

Section 15.1 References to Declaration of Trust. All references to the Declaration of Trust shall include any amendments and supplements thereto.

Section 15.2 Costs and Expenses. In addition to, and as further clarification of each shareholder's obligation to indemnify and hold the Trust harmless pursuant to these Bylaws or Section 8.8 of the Declaration of Trust, to the fullest extent permitted by law, each shareholder will be liable to the Trust (and any subsidiaries or affiliates thereof) for, and indemnify and hold harmless the Trust (and any subsidiaries or affiliates thereof) from and against, all costs,

expenses, penalties, fines or other amounts, including, without limitation, reasonable attorneys' and other professional fees, whether third party or internal, arising from such shareholder's breach of or failure to fully comply with any covenant, condition or provision of these Bylaws or the Declaration of Trust (including Section 2.14 of these Bylaws) or any action by or against the Trust (or any subsidiaries or affiliates thereof) in which such shareholder is not the prevailing party, and shall pay such amounts to such indemnitee on demand, together with interest on such amounts, which interest will accrue at the lesser of fifteen percent (15%) per annum and the maximum amount permitted by law, from the date such costs or the like are incurred until the receipt of payment.

Section 15.3 Ratification. The Board of Trustees or the shareholders may ratify and make binding on the Trust any action or inaction by the Trust or its officers to the extent that the Board of Trustees or the shareholders could have originally authorized the matter. Moreover, any action or inaction questioned in any shareholder's derivative proceeding or any other proceeding on the ground of lack of authority, defective or irregular execution, adverse interest of a Trustee, officer or shareholder, non-disclosure, miscomputation, the application of improper principles or practices of accounting, or otherwise, may be ratified, before or after judgment, by the Board of Trustees or by the shareholders and, if so ratified, shall have the same force and effect as if the questioned action or inaction had been originally duly authorized, and such ratification shall be binding upon the Trust and its shareholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned action or inaction.

Section 15.4 Ambiguity. In the case of an ambiguity in the application of any provision of these Bylaws or any definition contained in these Bylaws, the Board of Trustees shall have the sole power to determine the application of such provisions with respect to any situation based on the facts known to it and such determination shall be final and binding unless determined by a court of competent jurisdiction to have been made in bad faith.

Section 15.5 Inspection of Bylaws. The Trustees shall keep at the principal office for the transaction of business of the Trust the original or a copy of these Bylaws, as amended or otherwise altered to date, certified by the secretary, which shall be open to inspection by the shareholders at all reasonable times during office hours.

Section 15.6 Election to be Subject to Part of Title 3, Subtitle 8. Notwithstanding any other provision contained in the Declaration of Trust or these Bylaws, the Trust hereby elects to be subject to Section 3-804(b) and (c) of Title 3, Subtitle 8 of the MGCL. This Section 15.6 only may be repealed, in whole or in part, by a subsequent amendment to these Bylaws.

## ARTICLE XVI

### ARBITRATION PROCEDURES FOR DISPUTES

Section 16.1 Procedures for Arbitration of Disputes. Any disputes, claims or controversies brought by or on behalf of any shareholder (which, for purposes of this ARTICLE XVI, shall mean any shareholder of record or any beneficial owner of shares of beneficial interest of the Trust, or any former shareholder of record or beneficial owner of shares of

beneficial interest of the Trust), either on his, her or its own behalf, on behalf of the Trust or on behalf of any series or class of shares of beneficial interest of the Trust or shareholders against the Trust or any Trustee, officer, manager (including The RMR Group LLC or its successor), agent or employee of the Trust, including any disputes, claims or controversies relating to the application or enforcement of the Declaration of Trust or these Bylaws (all of which are referred to as "Disputes") or relating in any way to such a Dispute or Disputes shall, on the demand of any party to such Dispute or Disputes, be resolved through binding and final arbitration in accordance with the Commercial Arbitration Rules (the "Rules") of the American Arbitration Association ("AAA") then in effect, except as those Rules may be modified in this ARTICLE XVI. For the avoidance of doubt, and not as a limitation, Disputes are intended to include derivative actions against Trustees, officers or managers of the Trust and class actions by shareholders against those individuals or entities and the Trust. For the avoidance of doubt, a Dispute shall include a Dispute made derivatively on behalf of one party against another party. Notwithstanding the foregoing, (a) the provisions of this ARTICLE XVI shall not apply to any request for a declaratory judgment or similar action regarding the meaning, interpretation or validity of any provision of the Declaration of Trust or these Bylaws, but such request shall be heard and determined in the exclusive forum provided for in ARTICLE XVII; and (b) in the event a Dispute involves both a question of the meaning, interpretation or validity of any provision of the Declaration of Trust or these Bylaws and any other matter in dispute, the arbitration of such other matter in dispute, if dependent upon a determination of the meaning, interpretation or validity of any provision of the Declaration of Trust or these Bylaws, shall be stayed until a final, non-appealable judgement regarding such meaning, interpretation or validity has been rendered by the exclusive forum provided for in ARTICLE XVII.

Section 16.2 Arbitrators. There shall be three (3) arbitrators. If there are only two (2) parties to the Dispute, each party shall select one (1) arbitrator within fifteen (15) days after receipt by respondent of a copy of the demand for arbitration. The arbitrators may be affiliated or interested persons of the parties. If there are more than two (2) parties to the Dispute, all claimants, on the one hand, and all respondents, on the other hand, shall each select, by the vote of a majority of the claimants or the respondents, as the case may be, one (1) arbitrator within fifteen (15) days after receipt of the demand for arbitration. The arbitrators may be affiliated or interested persons of the claimants or the respondents, as the case may be. If either a claimant (or all claimants) or a respondent (or all respondents) fail(s) to timely select an arbitrator then the party (or parties) who has selected an arbitrator may request AAA to provide a list of three (3) proposed arbitrators in accordance with the Rules (each of whom shall be neutral, impartial and unaffiliated with any party) and the party (or parties) that failed to timely appoint an arbitrator shall have ten (10) days from the date AAA provides the list to select one (1) of the three (3) arbitrators proposed by AAA. If the party (or parties) fail(s) to select the second (2nd) arbitrator by that time, the party (or parties) who have appointed the first (1st) arbitrator shall then have ten (10) days to select one (1) of the three (3) arbitrators proposed by AAA to be the second (2nd) arbitrator; and, if he/they should fail to select the second (2nd) arbitrator by such time, AAA shall select, within fifteen (15) days thereafter, one (1) of the three (3) arbitrators it had proposed as the second (2nd) arbitrator. The two (2) arbitrators so appointed shall jointly appoint the third (3rd) and presiding arbitrator (who shall be neutral, impartial and unaffiliated with any party) within fifteen (15) days of the appointment of the second (2nd) arbitrator. If the third (3rd) arbitrator has not been appointed within the time limit specified herein, then AAA shall provide a list of proposed arbitrators in accordance with the Rules, and the arbitrator shall

be appointed by AAA in accordance with a listing, striking and ranking procedure, with each party having a limited number of strikes, excluding strikes for cause.

Section 16.3 Place of Arbitration. The place of arbitration shall be Boston, Massachusetts unless otherwise agreed by the parties.

Section 16.4 Discovery. There shall be only limited documentary discovery of documents directly related to the issues in dispute, as may be ordered by the arbitrators. For the avoidance of doubt, it is intended that there shall be no depositions and no other discovery other than limited documentary discovery as described in the preceding sentence.

Section 16.5 Awards. In rendering an award or decision (an "Award"), the arbitrators shall be required to follow the laws of the State of Maryland. Any arbitration proceedings or Award shall be governed by the Federal Arbitration Act, 9 U.S.C. §1 et seq. An Award shall be in writing and shall state the findings of fact and conclusions of law on which it is based. Any monetary Award shall be made and payable in U.S. dollars free of any tax, deduction or offset. Subject to Section 16.7, each party against which an Award assesses a monetary obligation shall pay that obligation on or before the thirtieth (30th) day following the date of such Award or such other date as such Award may provide.

Section 16.6 Costs and Expenses. Except as otherwise set forth in the Declaration of Trust or these Bylaws, including Section 15.2 of these Bylaws, or as otherwise agreed by the parties thereto, each party involved in a Dispute shall bear its own costs and expenses (including attorneys' fees), and the arbitrators shall not render an Award that would include shifting of any such costs or expenses (including attorneys' fees) or, in a derivative case or class action, award any portion of the Trust's Award to the claimant or the claimant's attorneys. Each party (or, if there are more than two (2) parties to the Dispute, all claimants, on the one hand, and all respondents, on the other hand, respectively) shall bear the costs and expenses of its (or their) selected arbitrator and the parties (or, if there are more than two (2) parties to the Dispute, all claimants, on the one hand, and all respondents, on the other hand) shall equally bear the costs and expenses of the third (3rd) appointed arbitrator.

Section 16.7 Appeals. Any Award, including but not limited to any interim Award, may be appealed pursuant to the AAA's Optional Appellate Arbitration Rules ("Appellate Rules"). An Award shall not be considered final until after the time for filing the notice of appeal pursuant to the Appellate Rules has expired. Appeals must be initiated within thirty (30) days of receipt of an Award by filing a notice of appeal with any AAA office. Following the appeal process, the decision rendered by the appeal tribunal may be entered in any court having jurisdiction thereof. For the avoidance of doubt, and despite any contrary provision of the Appellate Rules, Section 16.6 shall apply to any appeal pursuant to this Section 16.7 and the appeal tribunal shall not render an Award that would include shifting of any costs or expenses (including attorneys' fees) of any party.

Section 16.8 Final and Binding. Following the expiration of the time for filing the notice of appeal, or the conclusion of the appeal process set forth in Section 16.7, an Award shall be final and binding upon the parties thereto and shall be the sole and exclusive remedy between those parties relating to the Dispute, including any claims, counterclaims, issues or

accounting presented to the arbitrators. Judgment upon an Award may be entered in any court having jurisdiction. To the fullest extent permitted by law, no application or appeal to any court of competent jurisdiction may be made in connection with any question of law arising in the course of arbitration or with respect to any Award, except for actions seeking interim or other provisional relief in aid of arbitration proceedings in any court of competent jurisdiction.

Section 16.9 Beneficiaries. This ARTICLE XVI is intended to benefit and be enforceable by the shareholders, Trustees, officers, managers (including The RMR Group Inc. or its successor and The RMR Group LLC or its successor), agents or employees of the Trust and the Trust and shall be binding on the shareholders and the Trust, as applicable, and be in addition to, and not in substitution for, any other rights to indemnification or contribution that such individuals or entities may have by contract or otherwise.

## ARTICLE XVII

### EXCLUSIVE FORUM FOR CERTAIN DISPUTES

Section 17.1 Exclusive Forum. The Circuit Court for Baltimore City, Maryland shall be the sole and exclusive forum for (1) any derivative action or proceeding brought on behalf of the Trust, (2) any action asserting a claim of breach of a fiduciary duty owed by any Trustee, officer, manager, agent or employee of the Trust to the Trust or the shareholders, (3) any action asserting a claim against the Trust or any Trustee, officer, manager, agent or employee of the Trust arising pursuant to Maryland law or the Declaration of Trust or these Bylaws, including any disputes, claims or controversies brought by or on behalf of any shareholder (which, for purposes of this ARTICLE XVII, shall mean any shareholder of record or any beneficial owner of any class or series of shares of beneficial interest of the Trust, or any former holder of record or beneficial owner of any class or series of shares of beneficial interest of the Trust), either on his, her or its own behalf, on behalf of the Trust or on behalf of any series or class of shares of beneficial interest of the Trust or shareholders against the Trust or any Trustee, officer, manager, agent or employee of the Trust, including any disputes, claims or controversies relating to the meaning, interpretation, effect, validity, performance or enforcement of the Declaration of Trust or these Bylaws, including this ARTICLE XVII, or (4) any action asserting a claim against the Trust or any Trustee, officer, manager, agent or employee of the Trust governed by the internal affairs doctrine of the State of Maryland. Failure to enforce the foregoing provisions would cause the Trust irreparable harm and the Trust shall be entitled to equitable relief, including injunctive relief and specific performance, to enforce the foregoing provisions. Any person or entity purchasing or otherwise acquiring any interest in shares of beneficial interest of the Trust shall be deemed to have notice of and consented to the provisions of this ARTICLE XVII. This ARTICLE XVII shall not abrogate or supersede any other provision of these Bylaws which may require the resolution of such disputes by arbitration.

**Exhibit E**

(see attached)



## Hospitality Properties Trust

Two Newton Place, 255 Washington Street, Newton, Massachusetts 02458-1634  
(617) 964-8389 tel (617) 969-5730 fax www.hptreit.com

VIA FEDEX

December 19, 2017

City of New York  
Office of the Comptroller  
One Centre Street, 8th Floor North  
New York, NY 10007-2341

Attn: Michael Garland  
Assistant Comptroller

Re: Shareholder Proposal Submitted to  
Hospitality Properties Trust  
(the "Company")

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Dear Mr. Garland:

The Company acknowledges receipt of the letter of the Comptroller of the City of New York (the "Comptroller"), dated December 5, 2017 (that was received by the Company on December 8, 2017), requesting the inclusion of a shareholders' proposal (the "Proposal") in the Company's proxy statement for its 2018 annual meeting of shareholders (the "2018 Proxy Materials"). In this letter, the Comptroller states that it is authorized by the board of trustees of each of the New York City Employees' Retirement System, the New York City Fire Pension Fund, The New York City Teacher's Retirement System, the New York City Police Pension Fund and the New York City Board of Education Retirement System (together, the "Proponents") to inform the Company of the Proponents' intention to present the Proposal at the Company's 2018 annual shareholders meeting. The letter encloses the text of the Proposal and a supporting statement, together with letters of State Street Bank and Trust Company ("SSB") regarding SSB's holding of common shares of the Company on behalf of each of the Proponents. The December 5, 2017 letter of the Comptroller, together with the enclosures with it, are referred to herein as the "Submission".

Rule 14a-8 of the Securities and Exchange Commission (the "Commission") promulgated under the Securities Exchange Act of 1934, as amended, governs the requirements for the submission of the Proposal to the Company for inclusion in the 2018 Proxy Materials. This letter is to notify you of certain procedural and eligibility deficiencies with the Submission under Rule 14a-8, which are explained below.

1. First Deficiency. The Submission fails to comply with Rule 14a-8(b) because it does not include documentation of the Proponents that, among other things, confirms the Comptroller has the authority to submit the Proposal to the Company on behalf of the Proponents under Rule 14a-8.

Rule 14a-8 does not address a shareholder's ability to submit proposals through a representative. The Staff of the Division of Corporate Finance of the Commission is of the view that a shareholder's submission of a proposal by a representative is consistent with Rule 14a-8, but such proposal must include adequate documentation signed by the shareholder proponent itself that, among other things, confirms the shareholder proponent's delegation of authority to the representative. See Part D of Staff Legal Bulletin No. 14I (Nov. 1, 2017).

In order to correct this deficiency, pursuant to Rule 14a-8(f)(1), (a) the Comptroller and the Proponents must provide appropriate documentation of the Proponents, signed and dated by them, to the Company that, among other things, confirms the authority of the Comptroller to submit the Proposal on behalf of the Proponents and (b) this documentation must be mailed to the Company and postmarked, or transmitted to the Company electronically, no later than 14 calendar days from the date you receive this letter. If the Company has not received appropriate

documentation of the Proponents within this 14 calendar day time period, this deficiency may form the basis for the Company's exclusion of the Proposal from the Company's 2018 Proxy Materials.

2. Second Deficiency. The Submission fails to comply with Rule 14a-8(b) because it does not demonstrate that the Proponents will continue to hold at least \$2,000 in market value, or 1%, of the Company's common shares through the date of the Company's 2018 annual meeting of shareholders, and does not include a statement by the Proponents of their intention to continue to hold such requisite amount of common shares of the Company through the date of the Company's 2018 annual meeting of shareholders.

Rule 14a-8(b)(1) requires that, to be eligible to submit a proposal thereunder, a shareholder proponent "must continue to hold [the requisite] securities [of the company] through the date of the meeting." Rule 14a-8(b)(2) further requires that a shareholder proponent provide to the company the proponent's own written statement that it intends to continue to hold the requisite securities through the date of the meeting of shareholders.

The Company understands that the investment portfolios of the Proponents "are managed predominantly by external investment managers, and are largely invested in publicly traded securities, with additional allocations to private equity, real estate, infrastructure, hedge funds, and opportunistic fixed income investments."<sup>1</sup> Moreover, it appears to the Company that none of the Proponents or the

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<sup>1</sup> See <https://comptroller.nyc.gov/services/financial-matters/pension/overview/>.

Comptroller has the power "to determine what securities or other property shall be purchased or sold by or for" the Proponents, because none of the Proponents or the Comptroller file the reports on Form 13F that Section 13(f) of the Exchange Act and Rule 13f-1 promulgated thereunder require an institutional investment manager, such as a pension fund or an advisor to a pension fund, to file if it has such power.<sup>2</sup> Accordingly, available public records indicate that none of Proponents or the Comptroller has the ability to determine whether or not the common shares of the Company cited as held by the Proponents in the Submission will in fact be held through the date of the Company's 2018 annual meeting (or sold before then), which renders the Submission deficient under Rule 14(b)(1). These

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<sup>2</sup> Institutional investment managers that use the United States mail (or other means or instrumentality of interstate commerce) in the course of their business and that exercise "investment discretion" over \$100 million or more in Section 13(f) securities must file Form 13F. See Question 2 of the Staff of the Division of Investment Management, Securities and Exchange Commission, Frequently Asked Questions about Form 13F ("Form 13F FAQs"). A pension fund that manages its own investment portfolio is an "institutional investment manager" for purposes of Section 13(f), as is a natural person or an entity that exercises investment discretion over the account of any other natural person or entity, such as pension plan assets. See Question 3 of the Form 13F FAQs.

Section 3(a)(35) of the Exchange Act, provides that, "A person exercises 'investment discretion' with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person may have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, by rule, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this title and rules and regulations thereunder." See 15 U.S.C. § 78c(a)(35).

available public records, or more precisely the lack of any required public filings, also calls into question the credibility of the statement of the Comptroller in the December 5, 2017 letter that, "Each System intends to continue to hold at least \$2,000 worth of these securities through the date of the Company's next annual meeting." Not only was this statement not made by each Proponent itself as required by Rule 14a-8(b)(2), but based upon the available public information it also appears that none of the Proponents or the Comptroller can credibly make this statement because the Proponents appear to have ceded investment discretion, including the power to determine whether to continue to hold or sell the Company's common shares, to one or more external investment managers.

The Company is of the view that in order for the Proponents to be eligible to submit the Proposal to the Company under Rule 14a-8(b), each Proponent must have, on December 5, 2017 (the date of the Submission), the unceded power to determine that at least \$2,000 worth of the Company's common shares then held by it would continue to be held (and not sold) through the date of the Company's 2018 annual meeting. The Company is also of the view that a Proponent's failure to have this power is a deficiency which, under Rule 14a-8, the Proponent cannot remedy after December 25, 2017 (the deadline under Rule 14a-8 for submitting proposals for the Company's 2018 annual meeting of shareholders).

In order to correct the second deficiency, pursuant to Rule 14a-8(f)(1), (a) the Comptroller and the Proponents must provide to the Company (i) appropriate documentation demonstrating that each Proponent had the power on December 5, 2017 (the date of the Submission) to determine that at least \$2,000 worth of the common shares of the Company then held by it would continue to be held

by it through the date of the Company's 2018 annual meeting of shareholders and (ii) appropriate documentation of each Proponent, signed and dated by such Proponent, confirming that the Proponent intends to continue to hold such shares of the Company through the date of the Company's 2018 annual meeting of shareholders, and (b) this documentation must be mailed to the Company and postmarked, or transmitted to the Company electronically, no later than 14 calendar days from the date you receive this letter. If the Company has not received appropriate documentation of the Proponents within this 14 calendar day time period, this deficiency may form the basis for the Company's exclusion of the Proposal from the Company's 2018 Proxy Materials.

The Company also requests that, in light of the fact that the investment portfolios of the Proponents are managed predominantly by external investment managers, the documentation submitted by each Proponent to address the deficiencies referenced above include a written statement signed by each Proponent confirming that the Proponent itself has the authority to vote the shares of the Company referenced in the Submission as held by such Proponent on the Proposal at the Company's 2018 annual meeting of shareholders, assuming the Proposal comes before such meeting as a proper matter for shareholder action. In this regard, we note that, under Rule 14(a)-8, it is not enough that a proponent hold shares of the Company that may be voted by someone. Rather, the voting rights must be exercisable by the proponent itself. See Adoption of Amendments Relating to Proposals by Security Holders, Exchange Act Release No. 12999 (Nov. 22, 1976) ("[U]nder this provision a proponent could not submit a proposal that goes beyond the scope of his voting rights. For example, a proponent who owned a security that could be voted on the election of some of the issuer's directors but on no other matters could not submit a proposal relating to the issuer's business activities, since he would not be able to vote on it personally.")

The Comptroller of the City of New York  
December 19, 2017  
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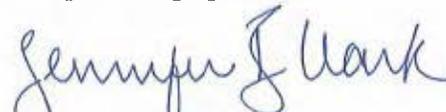
Reserving all of its rights with respect to the exclusion of the Proposal from the Company's 2018 Proxy Materials, the Company welcomes such additional information and documentation as the Comptroller or Proponents wish to provide in a timely fashion for the Company's consideration of these issues.

Please note that this letter addresses only certain procedural and eligibility aspects of the requirements for submitting a proposal under Rule 14a-8 and does not address or waive any of the Company's rights or concerns regarding the Proposal or the Proponents' eligibility to have the Proposal included in the 2018 Proxy Materials. The Company reserves all rights to omit the Proposal from the 2018 Proxy Materials on any grounds.

Please address any response to this request and any future correspondence relating to the proposal to my attention. Please note that any correspondence sent to me via fax should be sent to 617-796-8349.

For your reference, I enclose a copy of Rule 14a-8.

Very truly yours,



Jennifer B. Clark  
Secretary

Enclosures

## Federal Securities Laws and Regulations, Regulation, Reg. §240.14a-8., Securities and Exchange Commission, (Rule 14a-8) Shareholder proposals.

[Click to open document in a browser](#)

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to "you" are to a shareholder seeking to submit the proposal.

**(a) Question 1: What is a proposal?**

A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word "proposal" as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

**(b) Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?**

**(1)** In order to be eligible to submit a proposal, you must have continuously held at least \$2,000 in market value, or 1%, of the company's securities entitled to be voted on the proposal at the meeting for at least one year by the date you submit the proposal. You must continue to hold those securities through the date of the meeting.

**(2)** If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the securities through the date of the meeting of shareholders. However, if like many shareholders you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

**(i)** The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held the securities for at least one year. You must also include your own written statement that you intend to continue to hold the securities through the date of the meeting of shareholders; or

**(ii)** The second way to prove ownership applies only if you have filed a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter) and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, reflecting your ownership of the shares as of or before the date on which the one-year eligibility period begins. If you have filed one of these documents with the SEC, you may demonstrate your eligibility by submitting to the company:

- (A) A copy of the schedule and/or form, and any subsequent amendments reporting a change in your ownership level;
- (B) Your written statement that you continuously held the required number of shares for the one-year period as of the date of the statement; and
- (C) Your written statement that you intend to continue ownership of the shares through the date of the company's annual or special meeting.

(c) *Question 3: How many proposals may I submit?*

Each shareholder may submit no more than one proposal to a company for a particular shareholders' meeting.

(d) *Question 4: How long can my proposal be?*

The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5: What is the deadline for submitting a proposal?*

(1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q ([§249.308a](#) of this chapter), or in shareholder reports of investment companies under [§270.30d-1](#) of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6: What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section?*

(1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under [§240.14a-8](#) and provide you with a copy under Question 10 below, [§240.14a-8\(j\)](#).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7: Who has the burden of persuading the Commission or its staff that my proposal can be excluded?*

Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8: Must I appear personally at the shareholders' meeting to present the proposal?*

(1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9: If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal?*

(1) *Improper under state law:* If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

NOTE TO PARAGRAPH (i)(1): Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law:* If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules:* If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest:* If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance:* If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net

earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

**(6) Absence of power/authority:** If the company would lack the power or authority to implement the proposal;

**(7) Management functions:** If the proposal deals with a matter relating to the company's ordinary business operations;

**(8) Director elections:** If the proposal:

- (i)** Would disqualify a nominee who is standing for election;
- (ii)** Would remove a director from office before his or her term expired;
- (iii)** Questions the competence, business judgment, or character of one or more nominees or directors;
- (iv)** Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or
- (v)** Otherwise could affect the outcome of the upcoming election of directors.

**(9) Conflicts with company's proposal:** If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

**(10) Substantially implemented:** If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a "say-on-pay vote") or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (i.e., one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

**(11) Duplication:** If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

**(12) Resubmissions:** If the proposal deals with substantially the same subject matter as another proposal or proposals that has or have been previously included in the company's proxy materials within the preceding 5 calendar years, a company may exclude it from its proxy materials for any meeting held within 3 calendar years of the last time it was included if the proposal received:

- (i)** Less than 3% of the vote if proposed once within the preceding 5 calendar years;
- (ii)** Less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding 5 calendar years; or

(iii) Less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding 5 calendar years; and

(13) *Specific amount of dividends:* If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10: What procedures must the company follow if it intends to exclude my proposal?*

(1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11: May I submit my own statement to the Commission responding to the company's arguments?*

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12: If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?*

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13: What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?*

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, [§240.14a-9](#), you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific

factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

- (i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or
- (ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.

[Adopted in Release No. 34-3347, December 18, 1942, 7 F.R. 10659; amended in Release No. 34-1823, August 11, 1938; Release No. 34-4775, December 11, 1952, 17 F. R. 11431; [Release No. 34-4979](#), February 6, 1954, 19 F. R. 247; [Release No. 34-8206](#) (§177,507), effective with respect to solicitations, consents or authorizations commenced after February 15, 1968, 32 F. R. 20964; [Release No. 34-9784](#) (§178,997), applicable to all proxy solicitations commenced on or after January 1, 1973, 37 F. R. 23179; [Release No. 34-12999](#), (§180,812), November 22, 1976, effective February 1, 1977, 41 F. R. 53000; amended in [Release No. 34-15384](#) (§181,766), effective for fiscal years ending on or after December 25, 1978 for initial filings on or after January 15, 1979, 43 F. R. 58530; [Release No. 34-16356](#) (§182,358), effective December 31, 1979, 44 F. R. 68764; [Release No. 34-16357](#), effective December 31, 1979, 44 F. R. 68456; [Release No. 34-20091](#) (§183,417>, effective January 1, 1984 and July 1, 1984, 48 F. R. 38218; [Release No. 34-22625](#) (§183,937>, effective November 22, 1985, 50 F. R. 48180; [Release No. 34-23789](#) (§184,044), effective January 20, 1987, 51 F. R. 42048; [Release No. 34-25217](#) (§184,211), effective February 1, 1988, 52 F. R. 48977; and [Release No. 34-40018](#) (§186,018), effective June 29, 1998, 63 F.R. 29106; [Release No. 34-55146](#) (§187,745), effective March 30, 2007, 72 F.R. 4147; [Release No. 34-56914](#) (§188,023), effective January 10, 2008, 72 F.R. 70450; [Release No. 33-8876](#) (§188,029), effective February 4, 2008, 73 F.R. 934; [Release No. 33-9136](#) (§189,091), effective November 15, 2010, 75 F.R. 56668; [Release No. 33-9178](#) (§189,291), effective April 4, 2011, 76 F.R. 6010.]

[Compilation reference: [§24.012](#).]

**Exhibit F**

(see attached)



Michael Garland  
ASSISTANT COMPTROLLER  
CORPORATE GOVERNANCE AND  
RESPONSIBLE INVESTMENT

CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
SCOTT M. STRINGER

MUNICIPAL BUILDING  
ONE CENTRE STREET, 8<sup>TH</sup> FLOOR NORTH  
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January 2, 2018

By Overnight Delivery and Facsimile (617) 796-8349

Ms. Jennifer B. Clark, Secretary  
Hospitality Properties Trust  
Two Newton Place  
256 Washington Street  
Newton, MA 02458-1634

Re: New York City Comptroller's Shareholder Proposal

Dear Ms. Clark:

This responds to your letter dated December 19, 2017 ("HPT letter"), which we received on December 20, regarding the shareholder proposal submitted by the Comptroller of the City of New York (the "Comptroller") on behalf of the New York City Employees' Retirement Fund, the New York City Fire Pension Fund, The New York City Teachers Retirement Fund, the New York City Police Pension Fund the New York City Board of Education Retirement Fund (collectively the "Funds" or the "Proponents").

1. Authorization of the Comptroller to act on behalf of the Funds.

Your letter alleges (at p. 2) that the Funds did not "include documentation of the Proponents that, among other things confirms the Comptroller has the authority to submit the proposal to the Company on behalf of the Proponents." You go on to request detailed information signed by the Funds to establish that the Funds have met the criteria expressed by the SEC Division of Corporation Finance in its recently issued *Staff Legal Bulletin 14I* (November 1, 2017).

The Funds have been long-term HPT shareholders since at least 2004. There can be no doubt that the Funds meet the \$2,000 minimum holding requirement set forth in SEC Rule 14a-8, given that the ownership confirmation letters from State Street Bank and Trust Company attest to ownership of 226,019 shares of Company stock, worth approximately \$6.78 million. To put the size of this holding in perspective, a recent Morningstar survey showed that the Proponents own more shares of HPT stock than all but one of the mutual funds that include HPT stock in funds that they offer to public investors (Ex. 1 - Morningstar report).

As for the request that the Funds authorized the Comptroller to submit this proposal, I would draw your attention to the Comptroller's web page, which notes that the "Comptroller is the investment advisor to and custodian of assets of the City's five public pension funds, which

provide retirement security for more than 700,000 current and former City employees.” That web page further states: “In order to improve the long-term financial performance of public corporations in which the City’s Pension Funds invest, the Comptroller’s Office also addresses corporate governance policies and practices.” See <https://comptroller.nyc.gov/about/duties-of-the-comptroller/>. You are presumably familiar with this document because you quote it in your letter, at p. 3, n.1.

The Comptroller’s responsibilities are also set forth (at p. 6) of the April 2017 *Corporate Governance Principles and Proxy Voting Guidelines* for four of the five funds, which are publicly available at <https://comptroller.nyc.gov/wp-content/uploads/documents/NYCRS-Corporate-Governance-Principles-and-Proxy-Voting-Guidelines-April-2016-Revised-April-2017.pdf>.<sup>1</sup> Page 9 of the document states that “The Office of the Comptroller executes the corporate governance policies of the Systems, including proxy voting, portfolio monitoring, *and shareowner engagements and initiatives*. The Bureau of Asset Management at the Office of the Comptroller, through its Corporate Governance and Responsible Investment division, is responsible for casting the Systems’ proxy votes, consistent with the policies adopted by each System, *engaging portfolio companies and regulators, and submitting shareowner proposals that have been approved by each System.*” (Emphasis added.)

As an investment adviser, the Comptroller has a fiduciary responsibility to the Funds.<sup>2</sup> That responsibility extends to decisions to submit shareholder proposals and other steps pertaining to the governance of portfolio companies such as HPT. The Funds take this obligation seriously. Each Fund’s board maintains a Proxy Committee that reviews and approves the annual shareholder proposal plan and proxy voting guidelines. These Committees meet twice a year, and the fall meeting reviews the prior year’s initiatives and approves proposals to be submitted to specific companies in the upcoming year, as happened this year as to the specific proposal submitted to HPT. As confirmation, we attach five letters, one from each Fund, attesting to the authority of the Comptroller to act on behalf of each Fund in submitting shareholders proposals, including the one to HPT (Ex. 2 - authority letters).

These documents should be more than adequate to establish that the Comptroller has authority to act on behalf of five Funds that collectively are among your largest shareholders. Your request for more detailed information, including signed authorization for this specific proposal, presumably by each trustee of each Fund, is based on an overly broad reading of *Staff Legal Bulletin 14I*, upon which you rely. Let me explain.

Section D of Staff Legal Bulletin 14I re-affirmed the Division’s “view that a shareholder’s

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<sup>1</sup> The guidelines for the fifth fund are substantially similar. See <https://www.trsnyc.org/memberportal/WebContent/publications/CorporateGovernanceandProxyVotingGuidelines>.

<sup>2</sup> The Comptroller is in addition a trustee of four of the five Fund Funds, all of which have fiduciary responsibilities to their participants and beneficiaries.

submission by proxy is consistent with Rule 14a-8.” That said, the Division identified two concerns — neither of which is present here — namely, an inability to determine whether the \$2,000/one-year eligibility requirements have been satisfied, as well as a concern that “shareholders may not know that proposals are being submitted on their behalf.” To address those concerns, the Division stated that “in general” it would be appropriate to identify the proponent and the proxy, the company to which the proposal is directed and the meeting for which a proposal is being submitted, all of which should be signed and dated by the shareholder.

The qualifier just quoted — “in general” — is significant because it demonstrates that the Division did not intend this to be a hard-and-fast rule in every case. Whatever the validity of this approach when an individual submits a proposal claiming to be the agent of an individual shareholder, the situation is different when, as here, the proponent has fiduciary responsibilities and is acting through an investment adviser who also is a fiduciary.

Nothing in the *Staff Legal Bulletin* remotely suggests that an investment adviser and fiduciary such as the Comptroller needs to be subject to the type of detailed signed filing obligations for each resolution. A more specific showing may be appropriate when someone who is *not* (or not obviously) a fiduciary or an investment advisor files a proposal and claims to be representing a proponent. Here, however, both the proponents and their agent are fiduciaries who have demonstrated that the proponents hold considerably more than the \$2,000 minimum required by Rule 14a-8. In addition, the proponents’ responsibilities and procedures for engaging with portfolio companies are publicly available. Under the circumstances there can be no question as to the eligibility of the Funds or of the Comptroller to file this resolution.

## 2. The Funds’ Intent to Continue Holding at Least \$2000 Worth of HPT Shares.

We turn next to your assertion that the Funds and the Comptroller have failed to demonstrate that they intend to hold at least \$2,000 of HPT stock through the date of the Company’s 2018 annual meeting. Here again, your argument rests on a misunderstanding of how the Funds and the Comptroller as investment advisor operate.

Your letter (at p.3) quotes a statement from the Comptroller’s website to the effect that the Funds’ portfolios “are managed predominantly by external investment managers, and are largely invested in publicly traded securities.” However, your letter continues (at pp. 3-4), it appears that “none of the Proponents or the Comptroller has the power ‘to determine what securities or other property shall be purchased or sold by or for’ the Proponents,” given that neither the Funds nor the Comptroller have filed Form 13F, which is required of “institutional investment managers” within the meaning of § 13(f)(6)(A) of the Exchange Act who exercise “investment discretion” over \$100 million or more in § 13(f) securities, as defined in § 3(a)(35) of the Exchange Act.

Relying on these provisions, you argue (at p. 5) that the Funds can be eligible to state an intent to continue ownership only if they have “the unceded power to determine that at least \$2,000 worth

of the Company's common shares then held by it would continue to be held (and not sold) through the date of the Company's 2018 annual meeting. Your letter requests (1) documentation of each Fund's ability to determine continued holding of HPT stock and (2) documentation from each Fund confirming that intent. You further seek confirmation that, because each Fund is "predominantly managed by external investment managers, each Fund has the authority to vote the shares for the 2018 annual meeting. HPT Letter at p. 6. We respond to these points as follows.

At the outset, we address the misconception that the Funds have filing obligations under Exchange Act §13(f). The Funds are beneficial owners of shares that are managed predominantly through investment managers, and the Commission was clear when it adopted Rule 13F that "beneficial owners" did not have filing obligations under that rule. The Commission had proposed such a filing requirement in the Notice of Proposed Rulemaking for what is now Rule 13F (Release No. 34-13396, 42 Fed. Reg. 16831 (March 30, 1977)), but removed this requirement in the final adopted rule (Release No. 34-14852, 43 Fed. Reg. 26700, 26702 (June 22, 1978)). In addition, as defined benefit plans that beneficially own securities, the Funds are not holding or managing "accounts" for clients, which is the focus of the concept of "investment discretion" within the meaning of Exchange Act 3(a)(35).<sup>3</sup>

Moreover, the trustees of the respective Funds long ago expressed their intent to invest the substantial majority of their allocation to domestic equities broadly across the entire market, by investing in all companies included in broad market indices. Fund trustees have consistently reaffirmed this intent when periodically reviewing and approving their respective Fund's asset allocation. Of the \$61.7 billion the Funds invested in U.S. public equity (out of total assets of \$191.2 billion) as of October 31, 2017, 87 percent was invested through passive index strategies that include investments in HPT. Although these strategies are managed by external managers, the Funds beneficially own all portfolio companies and retain the legal and contractual right to instruct managers to purchase or sell (and thus presumably hold) a particular security. The remaining 13 percent is invested in active strategies, and some of these portfolios include HPT. The ability of the Funds to instruct managers regarding their holdings of particular securities is made clear by an examination of the standard contracts that each of the Funds signs with asset managers, both as to funds that are actively managed and those that are passive investments. We

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<sup>3</sup> Section 3(a)(35), with its multiple reference to "accounts" under management, states: "A person exercises "investment discretion" with respect to an account if, directly or indirectly, such person (A) is authorized to determine what securities or other property shall be purchased or sold by or for the account, (B) makes decisions as to what securities or other property shall be purchased or sold by or for the account even though some other person have responsibility for such investment decisions, or (C) otherwise exercises such influence with respect to the purchase and sale of securities or other property by or for the account as the Commission, determines, in the public interest or for the protection of investors, should be subject to the operation of the provisions of this chapter and the rules and regulations thereunder."

set forth pertinent language in the bottom margin footnote.<sup>4</sup>

In addition to their allocations to public equity, which includes investments in REITS such as HPT, the Funds have allocated an additional \$2.2 billion (at October 31, 2017) for REIT investments as part of their allocation to real estate. This portfolio — which is actively managed — also includes investments in HPT, and the Funds retain the legal and contractual right to instruct managers regarding holdings in these accounts as well.<sup>5</sup>

These facts all establish that the Funds and the Comptroller have what your letter refers to as the “unceded power to determine that at least \$2,000 worth of the Company’s common shares then held by it, would continue to be held (and not sold) through the date of the Company’s annual meeting.” The cover letter accompanying the resolution stated the intent of the Funds to hold \$2,000 worth of shares through the date of HPT’s 2018 annual meeting. The ability of the Funds

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<sup>4</sup> The Funds’ standard agreement states in pertinent part as follows:

“1.1. Discretionary Investment.

“1.1.1. The Manager shall invest and reinvest Fund assets in accordance with the Investment Guidelines and other provisions of this Agreement. Except as otherwise provided in this Agreement, the Manager shall have full discretion in managing the Fund. In the event the Comptroller amends the Investment Guidelines, the Manager agrees to be bound by any such amendments upon receipt of written notice from the Comptroller and to acknowledge such amendments in writing.

“1.1.2. Notwithstanding the Manager’s discretionary investment authority, *the Comptroller may direct the Manager in writing from time to time to sell any Security in the Fund or to purchase any Security with available funds.* Upon receipt of such direction, the Manager shall arrange such purchase or sale and instruct the Custodian to receive or deliver the Security against payment. The Manager shall have no duty to question any such instruction from the Comptroller concerning such purchase or sale.

“1.1.3. The Manager shall have the authority *to direct the Trustee with respect to (i) the acquisition or disposition (by purchase, sale, exchange, subscription or otherwise) of Securities in the Fund; (ii) the portion of the Fund assets that shall be held in cash or cash-equivalents; and (iii) the exercise of conversion rights, subscription rights, warrants, or other options relating to the assets of the Fund.* The Manager may direct the Trustee to invest Fund assets in short-term or other cash-equivalents for such periods of time as may be deemed reasonably prudent by the Manager, with such assets to be invested by the Trustee in accordance with the Trust Agreement.”

<sup>5</sup> Information about allocations of investments of the five Funds is publicly available at <https://comptroller.nyc.gov/services/financial-matters/pension/asset-allocation/>.

to state such an intent is demonstrated by the documents and explanation provided here. That is all that is needed for present purposes. There is no reason for additional confirmation from each of the Funds as to their intent when the documents that you have make it clear that the Funds retain the discretion to hold their shares through the meeting and when the Comptroller — their agent and fiduciary — has stated that intent. Moreover, if HPT should request verification that the Funds continue to hold at least \$2,000 worth of HPT stock as the date of the annual meeting draws near, we will provide confirmation at the time — as the requirement to hold shares through the meeting date is independent of the requirement to state at the time of submission that a proponent intends to hold the minimum number of shares.

Finally, it should be apparent from the materials just cited, notably the *Corporate Governance Principles and Proxy Voting Guidelines*, that the Funds have and do exercise voting authority, with the Comptroller having been delegated the authority to vote pursuant to instructions from the Funds. See *Corporate Governance Principles and Proxy Voting Guidelines*, at p. 9 (“The Bureau of Asset Management at the Office of the Comptroller, through its Corporate Governance and Responsible Investment division, is *responsible for casting the Systems’ proxy votes, consistent with the policies adopted by each System.*” (Emphasis added)).

The protocols that the Funds thus have in place are designed to assure accountability of the Funds to their participants and beneficiaries, as well as of the Comptroller to the Funds. These sources also demonstrate that the Funds have the power to retain those shares through the date of the HPT annual meeting and to vote those shares in connection with that meeting. The concerns expressed in *Staff Legal Bulletin 14I* are thus not germane as to these investors.

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Accordingly, on both issues you have raised, as to authority and intent to hold, the Funds have well demonstrated their eligibility to submit the subject shareholder proposal.

Thank you for your consideration of these points.

Sincerely,



Michael I. Garland

**EXHIBIT 1**





**EXHIBIT 2**



# FDNY

[www.nyc.gov/fdny](http://www.nyc.gov/fdny)

BOARD OF TRUSTEES  
Subchapter II Medical Board

Room 5W-23-K  
(718) 999-1950  
Fax: (718) 999-0427

11/21/2017

To Whom It May Concern:

This letter confirms for the purpose of complying with SEC Rule 14a-8(b) and Staff Legal Bulletin No. 14I (CF) issued on November 1, 2017 that, further to its delegated investment authority, the Comptroller of the City of New York submits shareholder proposals on behalf of New York City Fire Pension Fund.

Douglas White

Chair

Board of Trustees



November 15, 2017

To Whom It May Concern:

This letter confirms for the purpose of complying with SEC Rule 14a-8(b) and Staff Legal Bulletin No. 14I (CF) issued on November 1, 2017 that, further to its delegated investment authority, the Comptroller of the City of New York submits shareholder proposals on behalf of the New York City Employees' Retirement System.

John Adler  
Chair of NYCERS Board of Trustees

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Brooklyn, NY 11201  
(347) 643-3000

**FORMS AND CORRESPONDENCE MAILING ADDRESS** 30-30 47th Avenue, 10th Floor  
Long Island City, NY 11101  
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**EXECUTIVE OFFICES** 135 Adams Street  
Suite 2300  
Brooklyn, NY 11201



**SANFORD R. NICH**  
EXECUTIVE DIRECTOR  
**DANIEL D. MILLER**  
DEPUTY EXECUTIVE DIRECTOR

**BOARD OF EDUCATION RETIREMENT SYSTEM  
OF THE CITY OF NEW YORK**  
65 COURT STREET - ROOM 1603  
BROOKLYN, NEW YORK 11201- 4965

929-305-3600  
OUTSIDE NEW YORK STATE  
1-800-843-5575

December 20, 2017

To Whom It May Concern:

This letter confirms for the purpose of complying with SEC Rule 14a-8(b) and Staff Legal Bulletin No. 14I (CF) issued on November 1, 2017 that, further to its delegated investment authority, the Comptroller of the City of New York submits shareholder proposals on behalf of the Board of Education Retirement System of the City of New York.

Raymond Orlando  
Co-Chair of Board of Trustees  
Board of Education Retirement System  
of the City of New York

John Maderich  
Co-Chair of Board of Trustees  
Board of Education Retirement System  
of the City of New York



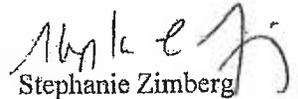
## New York City Police Pension Fund

233 Broadway  
New York, NY 10279  
(212) 693-5100

Kevin Holloran  
Executive Director

To Whom It May Concern:

This letter confirms for the purpose of complying with SEC Rule 14a-8(b) and Staff Legal Bulletin No. 14I (CF) issued on November 1, 2017 that, further to its delegated investment authority, the Comptroller of the City of New York submits shareholder proposals on behalf of the New York City Police Pension Fund.

  
Stephanie Zimberg  
Chair, Board of Trustees



TEACHERS' RETIREMENT SYSTEM OF THE CITY OF NEW YORK  
55 Water Street, New York, NY 10041 • [www.trsnyc.org](http://www.trsnyc.org) • 1 (888) 8-NYC-TRS

To Whom It May Concern:

This letter confirms for the purpose of complying with SEC Rule 14a-8(b) and Staff Legal Bulletin No. 14I (CF) issued on November 1, 2017 that, further to its delegated investment authority, the Comptroller of the City of New York submits shareholder proposals on behalf of Teachers' Retirement System of the City of New York.

John Adler  
Chair