



DIVISION OF  
CORPORATION FINANCE

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

March 23, 2018

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

Re: Hospitality Properties Trust  
Incoming letter dated January 22, 2018

Dear Ms. Cohen:

This letter is in response to your correspondence dated January 22, 2018 concerning the shareholder proposal (the "Proposal") submitted to Hospitality Properties Trust (the "Company") by UNITE HERE (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. 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: JJ Fueser  
UNITE HERE  
jjfueser@unitehere.org

March 23, 2018

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

Re: Hospitality Properties Trust  
Incoming letter dated January 22, 2018

The Proposal recommends that the board take all steps necessary in accordance with applicable laws to adopt a consequential majority vote standard for uncontested director elections and that directors who do not receive the support of a voting majority of shareholders in an uncontested election of directors serve a truncated 180-day term.

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

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(c). In our view, the Proponent has submitted only one proposal. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(c).

We are unable to concur in your view that the Company may exclude the Proposal under rules 14a-8(i)(2) or 14a-8(i)(6). Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rules 14a-8(i)(2) or 14a-8(i)(6).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(3). We are unable to conclude that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(3).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(8)(ii). We are unable to conclude that the Proposal would remove a director from office before his or her term expired. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(8)(ii).

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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January 22, 2018

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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 Proposals 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 proposals and supporting statement (collectively, the "*Proposals*") of UNITE HERE (the "*Proponent*"), submitted by JJ Fueser, Deputy Director, Research, of the Proponent to the Company on December 22, 2017. The Proposals and other materials submitted by the Proponent to the Company on December 22, 2017 are attached hereto as Exhibit A and are referred to herein as the "*Submission*."

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 Proposals may be excluded from the 2018 Proxy Materials for the reasons stated below.

Office of Chief Counsel  
Division of Corporate Finance  
U.S. Securities and Exchange Commission  
January 22, 2018  
Page 2

In accordance with Rule 14a-8(j)(2), I am enclosing six copies of this letter and its attachments. In accordance with Rule 14a-8(j), a copy of this letter and its attachments are being sent simultaneously to the Proponent. We hereby inform the Proponent that, if the Proponent elects to submit correspondence to the Commission or the Staff with respect to the Proposals 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](mailto:margaret.cohen@skadden.com).

The Company advises that it intends to begin distribution of its definitive 2018 Proxy Materials at least 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 22, 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 through 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 through the date hereof (the "*Company's Bylaws*"), a copy of which is attached hereto as Exhibit D. The Proposals put forth the following requests to the Company:

Be it resolved that shareholders of Hospitality Properties Trust ("HPT," or "the Company") recommend that the board take all steps necessary in accordance with applicable laws to adopt a consequential majority vote standard for uncontested director elections (elections in which the number of director candidates is identical to the number of directors to be elected), such that the board of directors makes every effort to ensure that directors whose election is opposed by a voting majority of shareholders (a "rejected director," or someone receiving more

“against” votes than “for”) are replaced in a reasonable time frame (we recommend six months). A plurality voting standard, in which the candidates receiving the greatest number of votes are seated, should be used for contested elections (in which the number of director candidates exceeds the number of directors to be elected).

We recommend that directors who do not receive the support of a voting majority of shareholders in an uncontested election of directors serve a truncated 180-day term, and that the board be given the power to appoint any replacement director it finds suitable, other than the rejected director, to succeed the rejected director upon the expiration of his or her truncated term.

The Company sent a letter to Ms. Fueser on December 29, 2017, pointing out that Rule 14a-8(c) provides that the Proponent may not submit more than one proposal to be included in the 2018 Proxy Materials and that, because the Proponent submitted multiple proposals, the Proponent must notify the Company which proposal it wishes to submit and which proposals it would like to withdraw within 14 calendar days from the date the Proponent received the letter. The Company’s letter dated December 29, 2017 to the Proponent is attached hereto as Exhibit E and is referred to as the “*Deficiency Letter*.” The Deficiency Letter was received by the Proponent by email on December 29, 2017 and by FedEx on January 2, 2018, as confirmed by the FedEx tracking information attached hereto as Exhibit F.

Through the date of this letter, which is more than 14 days after the date the Proponent received the Deficiency Letter by email and FedEx, the Company has not received a response to the Deficiency Letter from the Proponent.

#### **BASES FOR EXCLUSION**

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

- (1.) The Company may exclude the Proposals pursuant to Rule 14a-8(i)(3) because the Proposals violate proxy rules.
- (2.) The Company may exclude the Proposals pursuant to Rule 14a-8(c) because the Proponent submitted more than one proposal.

- (3.) The Company may exclude the Proposals pursuant to Rule 14a-8(i)(2) because the Proposals would, if implemented, cause the Company to violate the laws of the State of Maryland.
- (4.) The Company may exclude the Proposals pursuant to Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposals.
- (5.) The Company may exclude the Proposals pursuant to Rule 14a-8(i)(8)(ii) because the Proposals would remove a director from office before his or her term expired.
- (6.) The Company may exclude the Proposal pursuant to Rule 14a-8(i)(1) because the Proposals are not proper subjects for action by shareholders at the Company's 2018 annual meeting of shareholders under state law.
- (7.) The Company may exclude the Proposals pursuant to Rule 14a-8(b)(1) because the Proponent does not hold securities entitled to be voted on the Proposals.

#### ANALYSES

**1. The Company may exclude the Proposals pursuant to Rule 14a-8(i)(3) because the Proposals violate proxy rules. The Proposals fail to define key terms and provide necessary guidance on their implementation. The Proposals fail to disclose the significant issues they raise under Maryland law and that they would require amendments to the Company's Declaration of Trust.**

A proposal submitted under Rule 14a-8 may be excluded from a company's proxy materials under Rule 14a-8(i)(3) if the proposal or supporting statement violates proxy rules. Rule 14a-9 provides that proxy materials shall not contain materially false or misleading statements or omit to state any material fact necessary to make the statements therein not false or misleading. In Staff Legal Bulletin No. 14B (Sept. 15, 2004), the Staff has stated its view that it may be appropriate for a company to determine to exclude a Rule 14a-8 proposal in reliance upon Rule 14a-8(i) where,

the resolution contained in the proposal is so inherently vague or indefinite that neither the shareholders voting on the proposal, nor the company implementing the proposal (if

adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires – this objection also may be appropriate where the proposal and the supporting statement, when read together, have the same result.

The Staff has consistently agreed not to recommend enforcement action against a company that excludes a proposal from its proxy materials if the proposal fails to define key terms or provide necessary guidance on its implementation. *See e.g., Pfizer Inc.* (Dec. 22, 2014) (concurring with a company’s exclusion of a proposal requesting that the chairman of the company’s board have no connection to the board except his directorship without specifying what “connection” means); *The Boeing Company* (Jan. 28, 2011) (concurring with a company’s exclusion of a proposal requesting that senior executives relinquish “executive pay rights” without adequately explaining the meaning of “executive pay rights”).

Here, the Proposals recommend that the Board take all steps necessary to adopt a “consequential majority vote standard” without defining the quoted phrase or giving a sense of how a so-called consequential majority vote standard is to be achieved or what its implementation would entail.

The Company respectfully submits that the phrase consequential majority vote standard is inherently vague and misleading. The phrase is not in wide use.<sup>1</sup> This ambiguity is compounded by the fact that the Company’s Declaration of Trust already requires a majority of votes cast by the Company’s shareholders to elect a Trustee in an uncontested election. As a result, the Company believes that its shareholders will not be familiar with and will be confused by the phrase “consequential majority vote standard.”

The Proposals include some information regarding what the Proponent appears to consider elements of the so-called consequential majority vote standard, but the Proponent fails to give the Company and its shareholders reasonable clarity as to what actions or measures would be required to implement a consequential majority vote standard or the elements set forth in the Proposals. For example, do the Proposals seek a Board adopted policy, amendments to the

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<sup>1</sup> We found no reference to the phrase in the 2017 voting policies for U.S. companies of the two most prominent proxy advisory firms, the 2017 voting policies of the company’s two largest institutional shareholders or various academic sources. The only place we found the phrase “consequential majority vote standard” appear is in an FAQ released by the Council of Institutional Investors (an association of employee pension and benefit funds) last year.

Company's Bylaws, amendments to the Company's Declaration of Trust or something else? Do the Proposals seek a mandatory resignation policy or bylaw, a revision of the term of office of the Trustees or something else? The Proposals provide no guidance as to how they are to be implemented.

The Company is of the view that some of the elements set forth in the Proposals cannot be implemented simply by the adoption of a bylaw, and that several of the elements set forth in the Proposals – a plurality of votes cast standard for the election of Trustees in a contested election and a truncated holdover term for Trustees of no more than 180 days (as opposed to until such Trustee resigns or his or her successor is appointed as provided by law) – would require amendments of the Company's Declaration of Trust. The Company is also of the view that there are many important questions regarding implementation of the elements expressly set forth in the Proposals that are not at all disclosed in the Proposals. For example, how does the Proponent recommend that the Company address provisions of Maryland law, as described in the Saul Ewing Opinion, that do not permit the Company to change the shareholder vote required to remove a Trustee to less than a majority of all the votes entitled to be cast on such removal? How does the Proponent recommend the Company address concerns that the Proposals, if implemented, would preclude Trustees from exercising their independent judgment and meeting their standard of conduct required under Maryland law. The Proponent has not disclosed any of these important questions, or provided any clarity as to the actions or measures recommended by the Proposals.

Moreover, the Company respectfully submits that use of the word "consequential" in the Proposals' description is misleading. It suggests by implication that the Company's current majority vote standard for the election of Trustees does not have the consequences of a majority vote standard, which is not accurate. Under the Company's Declaration of Trust, Trustees are elected by a majority of votes cast in an uncontested election. If shareholders do not support the election of a Trustee by a majority of votes cast, the consequence is that the Trustee is not elected by shareholders.

The Company respectfully submits that it may exclude the Proposals pursuant to Rule 14a-8(i)(3) because: (i) the Proposals are misleading and so inherently vague that the Company and its shareholders cannot determine with any reasonable certainty what actions or measures the Proposals request; (ii) the Proposals use descriptive words that are misleading and fail to define key terms and provide necessary guidance on their implementation; and (iii) the Proposals also fail to disclose the significant issues they raise under Maryland law (e.g., impermissibly lowering the shareholder vote required to remove a trustee from a majority of all the

votes entitled to be cast generally in the election of trustees to a majority of votes cast).

**2. The Company may exclude the Proposals pursuant to Rule 14a-8(c) because the Proponent submitted more than one proposal.**

Rule 14a-8(c) provides that a shareholder may submit no more than one proposal pursuant to Rule 14a-8 to a company for a particular shareholders' meeting.

The Staff recognizes that a proposal which has multiple parts must be "closely related and essential to a single well-defined unifying concept" in order to be considered one proposal for purposes of Rule 14a-8. *American Power Conversion Corp.* (Mar. 10, 2000). On numerous occasions, the Staff has concurred in the exclusion by a company of a proposal that calls for multiple actions that serve a loosely-defined idea. For example, in *PG&E Corp.* (Mar. 11, 2010), the Staff concurred in the exclusion by a company of a proposal that called for the company to undertake actions to mitigate environmental risks, including analyzing various studies, deferring requests or expenditure for certain license renewals and decreasing production of wastes. Similarly, in *Duke Energy Corp.* (Feb. 27, 2009), the Staff concurred that the company may exclude a proposal requesting that the Board impose director qualification requirements, limit directors' compensation and disclose directors' conflicts of interests, despite the proponent's argument that each measure might serve to improve director accountability.

Packaged as one submission, the Proposals include: (i) a proposal to change the vote standard for uncontested elections from a majority vote standard to a so-called consequential majority vote standard; (ii) a proposal to limit to 180 days the holdover term for a Trustee who does not receive the support of a majority of votes cast by shareholders in an uncontested election; (iii) a proposal to limit who the Trustees may elect/appoint as a replacement Trustee if a Trustee up for election does not receive the support of a majority of votes cast by shareholders in an uncontested election; and (iv) a proposal to change the vote standard for contested elections of Trustees to a plurality of votes cast. These Proposals fall short of having a single unifying concept. Instead, they touch multiple facets of the Trustee election and appointment process and Board power and discretion, namely – the vote standard for contested *and* uncontested Trustee elections, the term of office of holdover Trustees and the Board's power and discretion to fill Board vacancies.

The Staff has recognized that shareholder proposals that include issues on which shareholders may reasonably hold different views are not one

proposal. *See Parker-Hannifin Corp.* (Sep. 4, 2009) In *Parker-Hannifin Corp.*, the Staff concurred in the exclusion by a company of a proposal that called for (i) a triennial executive pay vote, (ii) the ballot for that triennial executive pay vote to be in a specific form and (iii) a triennial webcam forum regarding executive compensation. There the company had noted that shareholders should be able to consider separately whether they want a shareholder forum “as a general matter.” *Parker-Hannifin Corp.*

Here, the Proponent has bundled multiple proposals in one submission. While starting the Proposals with an introductory reference to a so-called consequential majority vote standard for uncontested elections, the Proposals also ask shareholders to recommend a change to the vote standard for the election of the Company’s Trustees in contested elections, clearly a separate matter. In addition, a shareholder may support some elements set forth in the Proposals, while not supporting others. For example, a shareholder may support recommending to the Board that it not re-elect a Trustee who failed to receive a majority of votes cast at the Company’s last annual meeting, but have a different view on whether a Trustee’s holdover term should be mandatorily truncated.

The Company gave the Proponent timely and proper notice that the Submission was deficient because it includes more than one proposal. See the Deficiency Letter. The Proponent did not respond to the Deficiency Letter, which the Proponent received by email and by FEDEX more than 14 days ago. For the reasons set forth above, and because the Proponent was given the opportunity to remedy the deficiency and did not, the Company respectfully submits that it may exclude the Proposals pursuant to Rule 14a-8(c) on the basis that Proponent has submitted more than one proposal. Also, the Company respectfully submits that, in light of the Proponent’s failure to provide any response to the Deficiency Letter, the Staff should not afford the Proponent a second opportunity to remedy this deficiency. Allowing the Proponent another opportunity to cure the deficiency, after the Proponent has ignored the procedure contemplated by Rule 14a-8(j) for resolving deficiencies, will encourage other proponents to likewise ignore that procedure and burden public companies and the Commission with added expenses and delays that might have been otherwise avoided.

3. The Company may exclude the Proposals pursuant to Rule 14a-8(i)(2) because the Proposals would, if implemented, cause the Company and members of the Board to violate state law.

Rule 14a-8(i)(2) permits a company to exclude a shareholder proposal from its proxy materials if “the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject.”

The Proposals ask the Company’s shareholders to adopt, among other things, a resolution recommending that the Company’s Trustees who do not receive the support of a voting majority of shareholders in an uncontested election serve a truncated 180-day term. As explained in the Saul Ewing opinion, pursuant to §3-803(b)-(e) of the Title 3 of the Corporations and Associations Article of the Annotated Code of Maryland (“§3-803”), the terms of the Company’s Trustees are as follows:

- The term of office of the Class II Trustee shall continue *until* the annual meeting of the Company’s shareholders in 2018 and *until* his successor is elected and qualifies.
- The term of office of each Class III Trustee shall continue *until* the annual meeting of the Company’s shareholders in 2019 and *until* his or her successor is elected and qualifies.
- The term of office of each Class I Trustee shall continue *until* the annual meeting of the Company’s shareholders in 2020 and *until* his or her successor is elected and qualifies.
- The successors to the Class of Trustees whose term expires at any annual meeting of the Company’s shareholders shall be elected to hold office for a term continuing *until* the annual meeting of shareholders held in the third year following the year of their election and *until* their successors are elected and qualify.

Additionally, as explained in the Saul Ewing Opinion, Section 2.1 of the Company’s Declaration of Trust states that a Trustee shall hold office “until the election and qualification of [the Trustee’s] successor” subject to the removal, resignation or incapacity of a Trustee. Section 3.1 of the Company’s Bylaws provides, as explained in the Saul Ewing Opinion, that 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 [Company] until they may resign or until their successors are elected and qualify.”

The Company is of the view, as confirmed by the Saul Ewing Opinion, that if the Proposals are asking the Company to implement a policy or bylaw that truncates the holdover term of a Trustee to 180-days, that policy or bylaw would violate §3-803(e) because it would have the effect of removing a Trustee from office before the Trustee’s term has expired in accordance with §3-803(e).<sup>2</sup>

The Proposals require the Board to take all steps necessary to adopt a shareholder voting standard that would, in effect, remove a Trustee whose election is opposed by just a majority of the votes cast at the annual meeting. The Company is of the view, as confirmed by the Saul Ewing Opinion, that a shareholder voting standard that, in effect, provides for shareholder removal of a Trustee by a majority of the votes cast at an annual meeting would be a shareholder voting standard that is lower than the lowest voting standard permitted by §8-205 and §8-202(c) of the Maryland REIT law (*i.e.* a majority of all the votes entitled to be cast generally in the election of trustees), and therefore that the adoption of such a standard would cause the Company to violate Maryland REIT law.

The Staff has consistently agreed not to recommend enforcement action against a company that relies on Rule 14a-8(i)(2) to exclude a shareholder proposal that demands that the company’s board adopt a shareholder vote standard not permitted by the laws of the state in which the company is incorporated. *See, e.g., Sigma Designs, Inc.* (Jun. 9, 2015) (permitting exclusion of a proposal that demanded the company’s board to adopt a simple majority vote standard for uncontested elections, which implicated the elimination of cumulative voting in violation of California law); *Reliance Steel & Aluminum Co.* (March 10, 2011) (permitting exclusion of a similar proposal on the same grounds as *Sigma Designs*). Similar reasoning with regard to the Proposals should lead the Staff to a similar conclusion.

The Saul Ewing Opinion also explains that 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

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<sup>2</sup> The Saul Ewing Opinion also confirms, that for the same reason, such a policy or bylaw would violate Sections 2.1 of the Company’s Declaration of Trust, with a bylaw amendment further violating Section 3.3 of the Company’s Declaration of Trust, which prohibit the adoption of bylaws that are inconsistent with the Company’s Declaration of Trust.

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 further explains that such standard requires trustees of a Maryland REIT to exercise independent judgment in the performance of their duties. The Company is of the view, as confirmed by the Saul Ewing Opinion, that if the Proposals are implemented as a Board made policy or bylaw, such policy or bylaw would, in effect, mandate the removal of a Trustee upon the end of his or her truncated term when the Board might believe that keeping a Trustee who failed to receive a majority of votes cast is nonetheless in the best interests of the Company. The Company is also of the view, as confirmed by the Saul Ewing Opinion, that requiring the Board under such a bylaw or policy to remove and replace a Trustee without the Board having determined that such action was in the best interests of the Company or to remove and replace a Trustee even if the Board determined that removal of the Trustee was not in the best interests of the Company may constitute a violation of the Board's statutory duties to the Company.

For the reasons above, the Company respectfully submits that it may exclude the Proposals pursuant to Rule 14a-8(i)(2) because the Proposals would, if implemented, cause the Company to violate Maryland law.

**4. The Company may exclude the Proposals pursuant to Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposals.**

Rule 14a-8(i)(6) permits a company to exclude a shareholder proposal from its proxy materials if the company would lack the power or authority to implement the proposal.

The Proposals recommend, among other things, that incumbent Trustees who are not re-elected in an uncontested election by a majority of votes cast serve a truncated 180-day term and be required to leave office by or before the end of that 180-day term. It is unclear exactly how this truncated term of office is to be implemented. Also, as discussed above and as the Saul Ewing Opinion explains, a Board made policy or a bylaw mandating that a holdover Trustee serve a truncated 180-day term, would, in effect, impermissibly allow shareholders to remove Trustees by a vote that is lower than the minimum threshold required by the Maryland law for shareholders to remove a Trustee. Such a Board made policy or a bylaw could also cause the Company to violate securities law or stock exchange listing requirements if it leaves the Company with less than the required number of Independent Trustees on the Board or its committees. Accordingly, the Company is of the view, which is supported by the Saul Ewing Opinion, that the Company lacks the power or authority

to implement the Proposals and therefore respectfully submits that it may exclude the Proposals pursuant to Rule 14a-8(i)(6).

**5. The Company may exclude the Proposals pursuant to Rule 14a-8(i)(8)(ii) because the Proposals would remove a director from office before his or her term expired.**

Rule 14a-8(i)(8)(ii) permits a company to exclude a shareholder proposal from its proxy materials if the proposal, if implemented, “would remove a director from office before his or her term expired.” It has been a longstanding position of the Staff that proposals that have the purpose or that could have the effect of prematurely removing a director from office are excludable. *See, e.g., Neustar, Inc.* (Mar. 19, 2014); *The Brink’s Company* (January 14, 2014); *Kinetic Concepts* (Mar. 21, 2011); *Fisher Communications, Inc.* (February 12, 2009).

The Proposals recommend, among other things, that incumbent Trustees who are not re-elected in an uncontested election by a majority of votes cast serve a truncated 180-day term and be required to leave office by or before the end of that 180-day term. As discussed above and as explained in the Saul Ewing Opinion, pursuant to §3-803 and the Company’s Declaration of Trust, the Company’s Trustees have been elected to serve until their successors are elected and qualify. The Company therefore believes that the Proposals, if implemented, through a Board made policy or bylaw would have the effect of mandating the removal of a Trustee from office before the Trustee’s term has expired in accordance with Maryland law if the Trustee had not been re-elected in an uncontested election by a majority of votes cast. Therefore, the Company respectfully submits that it may exclude the Proposals pursuant to 14a-8(i)(8)(ii).

**6. The Company may exclude the Proposals pursuant to Rule 14a-8(i)(1) because the Proposals are not proper subjects for action by shareholders under Maryland 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 Proposals from its 2018 Proxy Materials under Rule 14a-8(i)(1) because, as confirmed by the Saul Ewing Opinion, the Proposals are not proper subjects for action by shareholders of the Company under the laws of the State of Maryland, the Company’s jurisdiction of formation.

The Company is of the view, as confirmed by the Saul Ewing Opinion, that the matters contemplated by the Proposals, as well as the Proposals

themselves, are matters on which the shareholders of the Company are not entitled to vote 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.]

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 3.1 of the Company's Bylaws, the procedure for holdover Trustees, which is one of the elements of the Proposals. The Saul Ewing Opinion also explains that the Company's Bylaws may only be amended by the Board.<sup>3</sup>

The Proposals are resolutions of the shareholders of the Company asking the Board to take the steps necessary to adopt a "consequential majority vote standard," an element of which would be to limit the term of holdover Trustees to a maximum 180 days. The Company is of the view, as confirmed by the Saul Ewing Opinion, that because the procedure for holdover Trustees 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 the Proposals, as well as the Proposals themselves, 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 confirms that there is no provision of the Maryland REIT Law, the Company's Declaration of Trust or the Company's Bylaws that authorizes or requires shareholders of the Company to vote on the

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<sup>3</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 . . . ."

Proposals or the subject matters of the Proposals. Therefore, the Company respectfully submits that it may exclude the Proposals pursuant to Rule 14a-8(i)(1) because the Proposals are not proper subjects for action by shareholders of the Company under the laws of the State of Maryland.

**7. The Company may exclude the Proposals from its 2018 Proxy Materials pursuant to Rule 14a-8(b) because the Proponent does not hold securities entitled to be voted on the Proposals.**

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 Proposals from its 2018 Proxy Materials under Rule 14a-8(b) because, as confirmed by the Saul Ewing Opinion, the Proponent does not hold securities entitled to be voted on the Proposals.

As explained above, the Company is of the view, as confirmed by the Saul Ewing Opinion, that the matters contemplated by the Proposals, as well as the Proposals themselves, 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 Proposals or the subject matters of the Proposals. The Company therefore respectfully submits that it may properly exclude the Proposals from its 2018 Proxy Materials pursuant to Rule 14a-8(b)(1) because the Proponent does not hold securities entitled to be voted on the Proposals 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 in the RAIT matter 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>4</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 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.

### Conclusion

For the reasons stated above, the Company requests that the Staff concur with the Company's view that the Proposals may be properly omitted from the 2018 Proxy Materials under: (i) Rule 14a-8(i)(3) because the Proposals violate proxy rules; (ii) Rule 14a-8(c) because the Proponent submitted more than one proposal; (iii) Rule 14a-8(i)(2) because the Proposals would, if implemented, cause the Company to violate state law to which it is subject; (iv) Rule 14a-8(i)(6) because the Company lacks the power or authority to implement the Proposals; (v) Rule 14a-8(i)(8)(ii) because the Proposals would remove a director from office before his or her term expired; (vi) Rule 14a-8(i)(1) because the Proposals are not proper subjects for action by shareholders under state law; and (vii) Rule 14a-8(b)(1) because the Proponent does not hold securities entitled to be voted on the Proposals.

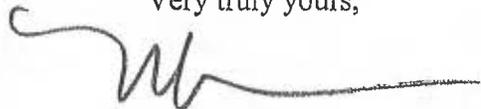
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<sup>4</sup> The proposal in question directed RAIT's board of trustees to "take the steps necessary" to externalize management. The Staff has previously expressed the view that it may consider a proposal precatory where it includes wording such as "take the steps necessary." Division of Corporate Finance, Staff Legal Bulletin No. 14D (Nov. 7, 2008), Section B.

Office of Chief Counsel  
Division of Corporate Finance  
U.S. Securities and Exchange Commission  
January 22, 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,

A handwritten signature in black ink, appearing to read 'M. Cohen', with a long horizontal flourish extending to the right.

Margaret R. Cohen

cc: Jennifer Clark, Secretary, Hospitality Properties Trust  
JJ Fueser, Deputy Director, Research, UNITE HERE

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December 21, 2017

*Via fax (617-969-5730), email (jclark@rmrgroup.com) & U.S. Mail*

Jennifer Clark, Corporate Secretary  
Hospitality Properties Trust  
Two Newton Place, 255 Washington Street, Suite 300  
Newton, Massachusetts 02458

Dear Ms. Clark:

I am submitting on behalf of UNITE HERE the enclosed shareholder proposal for inclusion in Hospitality Properties Trust's proxy statement and form of proxy relating to the 2018 Annual Meeting, pursuant to SEC Rule 14-a8.

Materials enclosed include:

- A copy of our proposal and supporting statement;
- A statement from our custodial intermediary, Morgan Stanley (DTC #0015), representing UNITE HERE's beneficial ownership of 100 common shares for at least a one-year period, and a letter from UNITE HERE's Secretary Treasurer representing UNITE HERE's record (directly registered) ownership of 90 common shares since December 2015.

UNITE HERE intends to continue to hold these 190 shares through the date of the 2018 Annual General Meeting. We intend to appear in person to properly introduce this proposal at the 2018 Annual General Meeting.

While we believe the above disclosures, together with the enclosed proposal and supporting statement, satisfy the requirements for properly submitting a shareholder proposal pursuant to Rule 14-a8, we voluntarily submit additional information sought by HPT's advance notice bylaws:

- A) Section 2.14.1(c) (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, ...

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D. TAYLOR, PRESIDENT

GENERAL OFFICERS: Gwen Mills, Secretary-Treasurer • Peter Ward, Recording Secretary  
Jo Marie Agriesti, General Vice President • Maria Elena Durazo, General Vice President for Immigration, Civil Rights and Diversity

The business to be brought before the meeting is the enclosed shareholder proposal, further described in the enclosed supporting statement. We have no material interest in the proposal's subject other than that interest which all shareholders have in its enactment. There is to our knowledge no Shareholder Associated Person as defined in Section 2.14.1(g).

**B) Section 2.14.1(c) (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, ...

UNITE HERE currently beneficially owns 100 shares of HPT common stock through our custodial intermediary, Morgan Stanley (DTC #0015), and is the directly registered holder of 90 common shares of HPT common stock.

83 of these shares were acquired on 12/19/2006 at approximately \$47.27 per share; 107 shares were acquired on 11/20/2009 at approximately \$18.25/share. On or around December 1, 2015, 90 of these shares were moved from custodial to record (directly registered) ownership.

**C) Section 2.14.1(c) (iv) (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; ...

UNITE HERE has engaged in no derivative transactions nor has any interest in any derivative transactions in HPT securities during this period, does not stand to gain any fees based on the increase or decrease in values of these securities, and holds no rights to dividends on the shares of the trust separable from our underlying shares.

**D) Section 2.14.1(c)(iv)(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;...

At the time of writing, there are no agreements, arrangements and understandings with any other shareholders, Shareholder Associated Persons or others in connection with this proposal. We are not aware of other shareholders who support the proposal. We intend to appear in person to bring this business before the meeting.

**E) Section 2.14.1(c) (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; ...

The name of the beneficial shareholder proposing the above-named business is UNITE HERE. Its address is 275 7th Ave., New York, NY 10001. There is no applicable Shareholder Associated Person.

**F) Section 2.14.1(c) (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. ...

We presently know of no particular beneficial shareholder or shareholder of record who has professed support for the business proposed.

For purposes of transparency only, we note that UNITE HERE represents workers at a small number of hotels owned by Hospitality Properties Trust. From time to time, labor disputes may arise in the ordinary course of our organizing and/or representational activity. We intend to pursue the proposed business regardless of the status of labor relations, and do not believe the adoption of the proposed business would have any impact on labor relations issues.

Please contact me at the email address below regarding any issues or questions arising out of this submission. Please email any responses to me in addition to faxing or mailing them.

Sincerely,



JJ Fueser  
Deputy Director, Research, UNITE HERE  
T: 416-384-0983 x 303  
F: 416-384-0991  
[jjfueser@unitehere.org](mailto:jjfueser@unitehere.org)

## **Shareholder proposal**

Be it resolved that shareholders of Hospitality Properties Trust (“HPT,” or “the Company”) recommend that the board take all steps necessary in accordance with applicable laws to adopt a consequential majority vote standard for uncontested director elections (elections in which the number of director candidates is identical to the number of directors to be elected), such that the board of directors makes every effort to ensure that directors whose election is opposed by a voting majority of shareholders (a “rejected director,” or someone receiving more “against” votes than “for”) are replaced in a reasonable time frame (we recommend six months). A plurality voting standard, in which the candidates receiving the greatest number of votes are seated, should be used for contested elections (in which the number of director candidates exceeds the number of directors to be elected).

We recommend that directors who do not receive the support of a voting majority of shareholders in an uncontested election of directors serve a truncated 180-day term, and that the board be given the power to appoint any replacement director it finds suitable, other than the rejected director, to succeed the rejected director upon the expiration of his or her truncated term.

## **Supporting statement**

We believe the election of directors to be a fundamental right of shareholders; however, when boards keep in place directors rejected by a voting majority of shareholders, this right becomes largely ceremonial.

Our company adopted a majority vote standard for the election of directors on paper in 2010. Even though the number of directors standing for election each year has been small, due to the company’s classified board, a voting majority of shareholders have rejected director candidates on six (6) separate occasions. Every single rejected director continued in or was returned to office by the remaining board members. By way of contrast, Ernst and Young estimate that out of all director elections at listed companies on the Russell 3000 index, less than a third of one percent failed to receive the support of a voting majority of shareholders in 2017 (current to 10/31/2017).

The Council of Institutional Investors (CII), an organization dedicated to improving corporate governance representing a membership with over \$3 trillion in assets under management, reviewed uncontested elections from 2013-2016 and found a “rejected director” (a director receiving less than 50% support, as measured by votes for and against or votes for and withhold) left the board just 25 percent of the time. CII supports what it calls “consequential majority voting” to remove the risk of rejected directors lingering on boards beyond a reasonable transition period. Our proposal provides the board significant time to identify and recruit a replacement director of their choice to fill the vacancy created by the departure of the rejected director while also limiting the time rejected directors continue to hold office.

We urge you to vote YES to ensure shareholders are represented at the board by directors of their choosing.

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December 20, 2017

Jennifer Clark, Corporate Secretary  
Hospitality Properties Trust  
Two Newton Place, 255 Washington Street, Suite 300,  
Newton, Massachusetts 02458

Dear Ms. Clark:

On or about December 1, 2015, we moved approximately 90 shares of Hospitality Properties Trust (NYSE:HPT) common stock held beneficially via our custodian Morgan Stanley (DTC participant #0015) to direct registration. We have continuously held these 90 shares through today's date.

Please do not hesitate to contact me if you have further questions.



Gwen Mills  
Secretary-Treasurer  
UNITE HERE International Union

Morgan Stanley

James W. McClelland  
Senior Vice President  
Financial Advisor

Wealth Management  
690 Madison Avenue  
11th Floor  
New York, NY 10022  
tel 212 307 2845  
fax 800 858 3558  
toll free 800 541 1544  
NMLS # 1416409  
james.w.mcclelland@morganstanley.com

December 21, 2017

To Whom It May Concern,

Please be advised that UNITE HERE owns 100 shares of Hospitality Properties Trust (HPT) common stock as of December 21, 2017, and has continuously owned these shares for more than one year. If you have any questions, please call me at 1-212-307-2845.

Sincerely,

  
James W. McClelland

**Exhibit B**  
(see attached)

January 22, 2018

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

Re: Hospitality Properties Trust – Shareholder Proposals of UNITE HERE

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 shareholder proposals (the “**Proposals**”) submitted, pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended (“**Rule 14a-8**”), by UNITE HERE (the “**Proponent**”) 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 Proposals, if included in the 2018 Proxy Materials, would cause the Company to violate Maryland law, (2) whether the Proposals are a proper subject for action by shareholders of the Company under Maryland law, and (3) whether the Proponent holds shares entitled to be voted on the Proposals under 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 (“**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 and the Articles Supplementary of the Company, each 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 of the Company and the Articles Supplementary of the Company, each January 18, 2012, the Articles of Amendment of the Company and the Articles Supplementary of the Company, each 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 Proposals;

(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:<sup>1</sup> (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. Proposals

On December 21, 2017, the Proponent presented the following Proposals along with the Supporting Statement pursuant to Rule 14a-8 for inclusion in the Company’s 2018 Proxy Materials:

“Be it resolved that shareholders of Hospitality Properties Trust (“HPT” or

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<sup>1</sup> The Proposals are vague and ambiguous. As a result, it is unclear exactly what the Proposals request the Company implement. We have assumed for purposes of this opinion that the Proposals require the adoption of some policy or bylaw by the Company. Further, throughout this opinion, we have attempted to assume various specific ways in which the Company may attempt to implement the Proposals in order to consider whether such a specific implementation structure would violate Maryland law.

“the Company”) recommend that the board take all steps necessary in accordance with applicable laws to adopt a consequential majority vote standard for uncontested director elections (elections in which the number of director candidates is identical to the number of directors to be elected), such that the board of directors make every effort to ensure that directors whose election is opposed by a voting majority of shareholders (a “rejected director,” or someone receiving more “against” votes than “for”) are replaced in a reasonable time frame (we recommend six months). A plurality voting standard, in which the candidates receiving the greatest number of votes are seated, should be used for contested elections (in which the number of director candidates exceeds the number of directors to be elected).

We recommend that directors who do not receive the support of a voting majority of shareholders in an uncontested election of directors serve a truncated 180-day term, and that the board be given the power to appoint any replacement director it finds suitable, other than the rejected director, to succeed the rejected director upon the expiration of his or her truncated term.”

## II. Applicable Law and Analysis

### A. The Proposals, If Implemented, Would Cause The Company To Violate 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>2</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>3</sup> In this way, the governance of Maryland REITs differs from the governance of a Maryland corporation, 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>4</sup> As a result, except as otherwise provided by the Maryland REIT Law, a REIT’s declaration of trust and bylaws articulate the governance structure of a trust REIT whereas the governance structure of a Maryland corporation is more articulated by default by statute under the Maryland General Corporation Law (the “**MGCL**”).<sup>5</sup> This broad power granted to REITs to structure their own

<sup>2</sup> MD. CODE ANN., CORPS. & ASS’NS § 8-201(a).

<sup>3</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>4</sup> MD. CODE ANN., CORPS. & ASS’NS § 8-301(13).

<sup>5</sup> MD. CODE ANN., CORPS. & ASS’NS §§1-101 through 3-907.

governance through their governing documents has been repeatedly recognized by Maryland courts.<sup>6</sup>

1. Truncated Term Requested By The Proposals

The Company has elected to be subject to Section 3-803 of the MGCL. As a result of this election:

- Pursuant to Section 3-803(c) of the MGCL, the term of office of the Class II Trustee continues until the annual meeting of the Company's shareholders in 2018 and until his successor is elected and qualifies.
- Pursuant to Section 3-803(d) of the MGCL, the term of office of each Class III Trustee continues until the annual meeting of the Company's shareholders in 2019 and until his or her successor is elected and qualifies.
- Pursuant to Section 3-803(b) of the MGCL, the term of office of each Class I Trustee continues until the annual meeting of the Company's shareholders in 2020 and until his or her successor is elected and qualifies.
- Pursuant to Section 3-803(e) of the MGCL, the successors to the class of trustees up for election at an annual meeting of the Company's shareholders are elected to hold office for terms continuing until the annual meeting of shareholders held in the third year following the year of their election and until their successors are elected and qualify.

Additionally, Section 2.1 of the Declaration of Trust states that a trustee shall hold office "until the election and qualification of [the trustee's] successor" subject to the removal, resignation or incapacity of a trustee. The Bylaws further provide that 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 [Company] until they may resign or until their successors are elected and qualify."<sup>7</sup>

If the Proposals are asking the Company to implement a policy or bylaw amendment that mandates that a holdover trustee serve a truncated 180-day term, such a policy or bylaw amendment would violate the terms of Section 3-803 of the MGCL as applicable to the Company. Therefore, if implemented in this way, the Proposals would have the effect of mandating the removal of a trustee prior to the trustee's successor being elected and qualified, in violation of Maryland law.<sup>8</sup>

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<sup>6</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.")

<sup>7</sup> See Section 3.1 of the Bylaws.

<sup>8</sup> The policy or bylaw amendment would also violate the terms of Section 2.1 (as described above) of the Declaration of Trust, with a bylaw amendment further violating Section 3.3 of the Declaration of Trust that prohibits

Moreover, the Declaration of Trust provides, *inter alia*, that a trustee may not be removed without cause, which is in accordance with the Maryland REIT Law.<sup>9</sup> If the Proposals were implemented as described above, the Board would be required to remove a trustee without cause and thereby would again violate the Declaration of Trust and Maryland law.

Alternatively, if the Board is required to accept the forced resignation of a trustee and appoint a different replacement trustee at the end of the “truncated term” when the Board might believe that keeping a trustee who failed to receive just a majority of votes cast is nonetheless in the best interests of the Company, then the Board would be precluded from properly exercising and meeting its standard of conduct under Maryland law.<sup>10</sup> The Maryland REIT Law requires trustees to exercise independent judgment in the performance of their duties. Requiring the Board under such a bylaw or policy to remove and replace a trustee without the Board having determined that such action was in the best interests of the Company or to remove and replace a trustee even if the Board determined that removal of the trustee was **not** in the best interests of the Company may constitute a violation of the Board’s statutory duties to the Company and, accordingly, yet another violation of applicable Maryland law.

## 2. Shareholder Vote Threshold Required To Remove A Trustee

Section 8-205 of the Maryland REIT Law provides that the threshold shareholder vote required for removal is the “**affirmative vote of a majority of all the votes entitled to be cast generally in the election of trustees.**”<sup>11</sup> If, pursuant to the Proposals, the Board is required to accept the forced resignation of a trustee and appoint a different replacement trustee at the end of the “truncated term,” such a requirement would, in effect, permit shareholders to remove a trustee by just a majority of the votes cast at the annual meeting. That standard would be impermissibly lower than the threshold required under Section 8-205 of the Maryland REIT Law, in contravention of the policy under Section 8-202(c) that does not permit a vote threshold lower than a “majority of the votes entitled to be cast” for actions required to be taken under the Maryland REIT Law, and, as a result, would violate Maryland law.

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a bylaw provision which is inconsistent with law or the Declaration of Trust. The Declaration of Trust establishes the governance structure of the Company in accordance with Section 8-202 of the Maryland REIT Law and represents the equivalent under the Maryland REIT Law of a governance structure that might otherwise be established by statute.

<sup>9</sup> See Articles Supplementary of the Company dated April 20, 2017; see MD. CODE ANN., CORPS. & ASS’NS § 8-205(b)(3) (“If the trustees have been divided into classes, a trustee may not be removed without cause.”); see also MD. CODE ANN., CORPS. & ASS’NS § 3-804(a).

<sup>10</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.

<sup>11</sup> MD. CODE ANN., CORPS. & ASS’NS § 8-205 (a) and (b)(3). See also Articles Supplementary of the Company dated April 20, 2017. The threshold shareholder vote standard provided in the Maryland REIT Law can be increased in a REIT’s declaration of trust, but cannot be decreased below the prescribed standard in accordance with the policy of Section 8-202(c) of the Maryland REIT Law.

B. The Proposals Are Not A Proper Subject For Action By Shareholders Under Maryland Law

A REIT is granted wide latitude under Maryland law to set forth the terms and conditions of its governance, as distinguished from Maryland corporations whose governance is more statutorily prescribed. Maryland law states that a REIT's declaration of trust and bylaws are to be construed under the principles governing contract interpretation.<sup>12</sup> Moreover, a Maryland court held recently 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>13</sup> The Company has adopted the Declaration of Trust and Bylaws to provide for its governance. Therefore, 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.<sup>14</sup>

The Declaration of Trust and Bylaws are unambiguous in regard to the management of the Company. Section 3.1 of the Declaration of Trust states that “[t]he 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, Section 3.1 of the Bylaws provide 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.

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

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<sup>12</sup> This allows 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. See *Tackney v. U.S. Naval Acad. Alumni Ass'n, Inc.*, 408 Md. 700, 716 (2009).

<sup>13</sup> *Corvex Management LP*, 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.

<sup>14</sup> Each of the 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. The Declaration of Trust is also available at the SDAT.

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 procedure for holdover trustees. Specifically, Section 3.1 of the Bylaws provides that an “incumbent Trustee shall hold over and continue to direct the management of the business and affairs of the Trust until [the Trustee] may resign or until [the Trustee’s] successors are elected and qualify.”<sup>15</sup> The Bylaws place the procedure for holdover trustees 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. 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 procedures for holdover trustees, can be presented at any meeting of shareholders.

Because the procedure for holdover trustees is already fully described in the Bylaws, this subject remains within the exclusive purview of the Board. 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 Proposals. As a result, the Proposals are not a proper subject for action by the Company’s shareholders at the Company’s 2018 Annual Meeting of Shareholders under Section 2.17 of the Bylaws and applicable Maryland law.<sup>16</sup>

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

Because the Proposals are 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 Proposals at the Company’s 2018 Annual Meeting of Shareholders.

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 Proposals would, if implemented, cause the Company to violate Maryland law; (2) the Proposals are not a proper subject for action by the Company’s shareholders under Maryland law; and (3) the shares held by the Proponent are not entitled under applicable Maryland law to vote on the

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<sup>15</sup> See Section 3.1 of the Bylaws.

<sup>16</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>16</sup>

Proposals.

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 Proposals, the Supporting Statement and your stated intention to exclude the Proposals 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, in connection with the Purpose, you may furnish a copy of this letter to the Staff of the Securities and Exchange Commission (the “**Staff**”) 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,

A handwritten signature in cursive script that reads "Paul Ewing Arnstein & Lehr LLP".

SAUL EWING ARNSTEIN & LEHR LLP

**Exhibit C**  
(see attached)

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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;

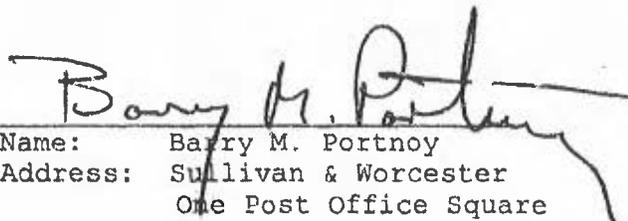
(c) a certification that a copy of this Declaration or of the Bylaws is a true and correct copy thereof as then in force, when made in writing by the secretary of the Trust;

(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

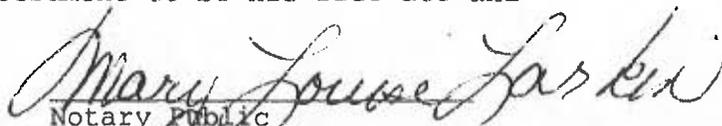
Aug 18, 1995

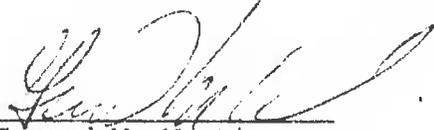
County of Suffolk

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

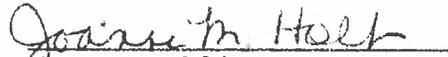
Commonwealth of Massachusetts  
County of Middlesex

ss.

August 18, 1995

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: 1/16/18

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:

BY: E. R. 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

SPECIAL  
FEE PAID

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

\$ 20.00

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

04141826

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

PIPER & MARBURY  
S. LUPEZ  
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. FOR NO.

HOSPITALITY PROPERTIES TRUST 62-97 at 30P  
REC-100

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

97 JUN -2 1997

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.

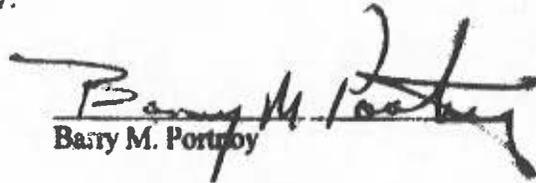
FIFTH: The shareholders of the Trust, voting at a meeting duly called and held May 20, 1997, adopted a resolution which approved said amendment by a vote of the holders of a majority of the issued and outstanding shares of beneficial interest in the Trust.

71558272

71558272

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

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. Vozzella, a Notary Public in and for said Commonwealth, personally appeared Gerard M. Martin and Barry M. Portnoy, 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. Vozzella  
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 KARNAY  
Notary Public, State of New York  
No. 24-490087  
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 page document on file in this office. DATED: 11/6/18  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:

BY: Ella McDaniel Assistant  
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:

SPECIAL  
FEE PAID:

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

\$ 20.00

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

D4141826

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

DEER & MARBURY  
SHEELAH LOPEZ  
1100 CHARLES CENTER SOUTH  
36 SOUTH CHARLES STREET  
BALTIMORE MD 21201

23503105705

A 563251



RECORDED IN THE RECORDS OF THE  
STATE DEPARTMENT OF ASSESSMENTS  
AND TAXATION OF MARYLAND IN LIBER. FOR NO.

STATE DEPARTMENT OF ASSESSMENTS  
AND TAXATION

APPROVED FOR RECORD

06-08-97 at 3:43 pm

HOSPITALITY PROPERTIES TRUST  
ARTICLES SUPPLEMENTARY

ASS  
M-3  
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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, par value \$0.01 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 \$0.01 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 \$0.01 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 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

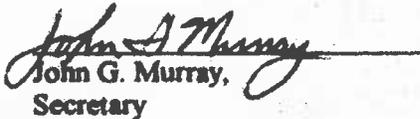
rights of the Junior Participating Preferred Shares so as to affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding Junior Participating Preferred Shares voting separately as a class.

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. Portnoy, Trustee

By:

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

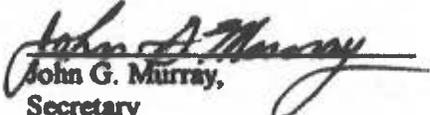
rights of the Junior Participating Preferred Shares so as to affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding Junior Participating Preferred Shares voting separately as a class.

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 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, 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 5 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 B. Clark*  
Jennifer B. Clark  
Assistant Secretary

*John G. Murray* (SEAL)  
John G. Murray  
President

STATE OF MARYLAND

I hereby certify that this is a true and correct copy of the page document as filed in this office. DATE: 5/16/00

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

BY: *Ella McDaniel* Custodian

This stamp certifies that this document is a true and correct copy of the original as filed in this office. Effective 8/00

MD DOCS A 110NPS 2

755518 041000

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

DOCUMENT CODE

16

BUSINESS CODE

19

# D4141826

P.A.

Religious

Close

Stock

Nonstock

Marging  
(Transferor)

Surviving  
(Transferee)

**FEEES REMITTED**

Base Fee: 20

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

Expense Fee: 50

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

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

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

1 Certified Copies: \_\_\_\_\_

Copy Fee: 7

Certificates: \_\_\_\_\_

Certificate Fee: \_\_\_\_\_

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

TOTAL FEES: 77

(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)

Credit Card

Check

Cash

**CERTIFIED  
COPY MADE**

Documents on

Checks

APPROVED BY: [Signature]

ID # 004161628 ACK # 1000180366000000  
LIBER: 800144 FOLIO: 1531 PAGES: 0002  
HOSPITALITY PROPERTIES TRUST

CODE

193

ATTENTION: Andrew Cohen

06/16/2006 AT 02:47 P WD # 0000314888

MAIL TO ADDRESS:

COMMENT: 00-77-1010-1010  
DATE: 05-16-2006 08:47  
HORN OBERG 0000314888  
COST: 1200000000  
DEPT OF REVENUE AND TAXATION  
STATE OF MARYLAND

STATE OF MARYLAND

I hereby certify that this is a true and complete copy of the 13 page document on file in this office. DATED: 1/16/18  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:

STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

APPROVED FOR RECORD

BY: Ella M Daniel Custodian  
This stamp replaces our previous certification system - Effective 1/1/95

04-18-97 et. 12/14/97

ARTICLES SUPPLEMENTARY

**9 1/4% 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 1.1 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 7450,000 Preferred Shares of the Trust as 9 1/4% 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 1/4% Series A Cumulative Redeemable Preferred Shares without par value

1. **Designation and Number.** A series of Preferred Shares, designated the 9 1/4% 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 7,450,000.

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 reference of the Series A Preferred Shares (equivalent to the annual rate of \$2.375 per share) 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 distribution shall be 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 (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 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 be 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 the 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 money 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 remain unclaimed by the holders of the Series A 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 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 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 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 in 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(c) 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 such 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 thereof 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 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 such 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 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 non-payment of such Shares after such Record Date and on or prior to such Quarterly Dividend Date of 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 A 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), the Trust to the extent that accrued and unpaid dividends are payable as a part of the Series A 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 A Preferred Shares called for redemption.

(vii) Notwithstanding the foregoing, unless the full cumulative dividends on all Series A Preferred Shares shall have been or contemporaneously accrued and paid or declared and a sum sufficient for the payment thereof set apart for payment for all such Dividend Periods and the then current Dividend Period, no Series A Preferred Shares shall be redeemed unless all outstanding Series A Preferred Shares are simultaneously redeemed, provided, however, that (i) the foregoing shall not prevent the redemption of Series A Preferred Shares if all outstanding Series A Preferred Shares are simultaneously redeemed.

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. **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 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 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 holder 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).

(iii) 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 Shares of any other class or series of Preferred Shares of the Trust have the right to vote as Series A Preferred Shares as a single class on any matter, the Series A Preferred Shares of each such other class or series will have one vote for each Twenty-Five Dollars (\$25.00) 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 issuing, converting or exchanging 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 5.14 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 35(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 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 outlined 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 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, and the 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 powers, 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.

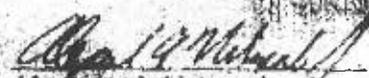
**FOURTH:** Articles Supplementary have been approved by the Board of Trustees in the manner and by the authority required by law.

**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 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 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 President and witnessed by its Assistant Secretary on April 7, 1999.

WITNESS:

HOSPITALITY PROPERTIES TRUST

  
Alexander A. Notopoulos, Jr.,  
Assistant Secretary

By:   
John G. Murray, President

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BUSINESS CODE \_\_\_\_\_

# D 4 41826

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: 10  
 Certificates: \_\_\_\_\_  
 Certificate Fee: \_\_\_\_\_  
 Other: \_\_\_\_\_

TOTAL FEES: 212.00

(Now Name) \_\_\_\_\_

\_\_\_\_\_ Credit Card

Check

\_\_\_\_\_ Cash

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

\_\_\_\_\_ Checks

APPROVED BY: [Signature]

CODE 193

**NOTE** ID # D04141826 ACK # 100,011234000000  
 LIB# B00024 FOL# 0771 PAGES: 0013  
 HOSPITALITY PROPERTIES TRUST

ATTENTION: Andrew Cohen

04/08/1999 AT 12:14 P.M. NO # 0000155133

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

COMMENT: 000000

MORNING 00015503  
 CUSTOMER ID  
 00010469  
 1998-04-21 02:26 PM  
 AMT PAID

**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** 14  
I hereby certify that this is a true and complete copy of the  
page document on file in this office. DATED 1/16/17  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:  
BY: [Signature], Custodian  
This stamp replaces our previous certification system. Effective: 6/9/16

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.

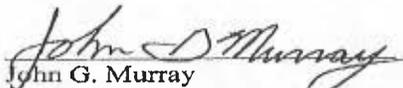
**FIFTH:** The undersigned Executive Vice President of the Trust acknowledges these Articles Supplementary to be the trust act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned Executive Vice President acknowledges that, to the best of his knowledge, information 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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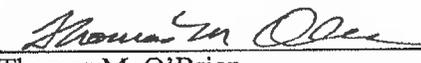
CUST ID:0001015210  
WORK ORDER:0000673184  
DATE:12-09-2002 02:48 PM  
AMT. PAID:\$145.00

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) \_\_\_\_\_

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

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

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 \_\_\_\_\_

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

Approved By: A-01

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

COMMENT(S):

Code 193

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

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

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

{B0520022: 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: 1/16/18  
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. + +

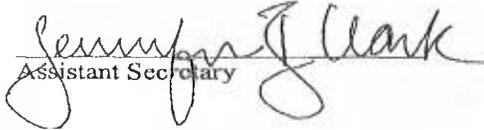
THIRD: The undersigned President of the Trust acknowledges these Articles of Amendment to be the trust act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned President acknowledges that, to the best of his knowledge, information and belief, these matters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

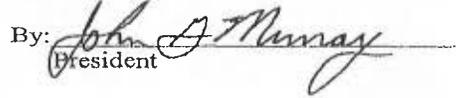
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IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment to be executed in its name and on its behalf by its President and attested by its Assistant Secretary this 23rd day of May, 2006.

ATTEST:

HOSPITALITY PROPERTIES TRUST

  
Assistant Secretary

By:   
President

# CORPORATE CHARTER APPROVAL SHEET

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

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

DOCUMENT CODE

09

BUSINESS CODE

# 04111826

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

4 Certificates

Copy Fee: 23

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 \_\_\_\_\_

Documents on Checks

Approved By: 9

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

COMMENT(S):

Code 063

Attention: ABCover

Mail: Name and Address

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. Murray  
President

CUST ID:0001918731  
WORK ORDER:0001361769  
DATE:02-16-2007 10:27 AM  
AMT. PAID:\$201.00

# CORPORATE CHARTER APPROVAL SHEET

\*\*EXPEDITED SERVICE\*\*

\*\* KEEP WITH DOCUMENT \*\*

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

# 704141826



1000361994335903

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

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

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

Mail Processing Fee: \_\_\_\_\_

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

TOTAL FEES: 271

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: 9

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

COMMENT(S):

Code 063

Attention: A B Cohen

Mail: Name and Address

VENABLE LLP  
1800 MERCANTILE BANK & TRUST BLDG  
2 HOPKINS PLAZA  
BALTIMORE MD 21201-2930

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

(H0612093; 1)

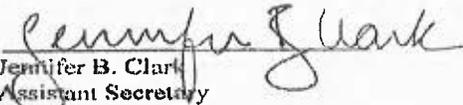
**STATE OF MARYLAND**  
I hereby certify that this is a true and complete copy of the  
page document on file in this office. DATED 3/14/07  
**STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**  
BY: Robina James, Custodian  
This stamp replaces our previous certification system. Effective: 6/95

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.

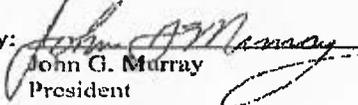
ATTEST:

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) \_\_\_\_\_

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

ID # D04141826 ACK # 1000361994411910  
LIBER: B01081 FOLIO: 0082 PAGES: 0003  
HOSPITALITY PROPERTIES TRUST

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

\_\_\_\_\_ 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 \_\_\_\_\_

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

Approved By: [Signature]

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

COMMENT(S):

Code 063

Attention: ABCohen

VENABLE LLP  
AB COHEN  
1800 MERCANTILE BANK & TRUST BLDG  
2 HOPKINS PLZ  
BALTIMORE

MD 21201-2930

1082  
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: 0001926943  
WORK ORDER: 0001369981  
DATE: 03-05-2007 04:21 PM  
AMT. PAID: \$434.00

000613331.31

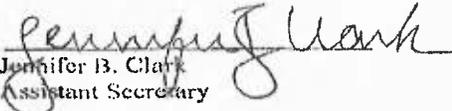
**STATE OF MARYLAND**  
I hereby certify that this is a true and complete copy of the  
page document on file in this office. DATED: 1/16/18  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION  
BY: *[Signature]*, Custodian  
This stamp replaces our previous certification system. Effective: 6/95

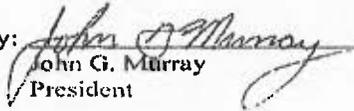
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IN WITNESS WHEREOF, the Trust has caused these Articles Supplementary to be signed in its name and on its behalf by its President and attested to by its Assistant Secretary on this 5<sup>th</sup> day of March, 2007.

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

# D04141826

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

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

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

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



ID # D04141826 ACK # 1000361994411936  
LIBER: B01081 FOLIO: 0085 PAGES: 0003  
HOSPITALITY PROPERTIES TRUST

03/05/2007 AT 04:22 P W0 # 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 and Resident Agent's Address
Copy Fee: <u>22</u>	Change of Business Code
Certificate of Status Fee: _____	Adoption of Assumed Name
Personal Property Filings: _____	Other Change(s)
Mail Processing Fee: _____	
Other: _____	
<b>TOTAL FEES: <u>192</u></b>	

Credit Card \_\_\_\_\_ Check / Cash \_\_\_\_\_

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

Approved By: [Signature]

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

COMMENT(S):

Code 063  
Attention: Abraham

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 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.

[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 this office. DATED: 5/16/08  
**STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:**

BY: [Signature], Custodian

This stamp replaces our previous certification system. Effective: 6/9<sup>s</sup>

---

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 11 BUSINESS CODE \_\_\_\_\_

# D04141826

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

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

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

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



1000361994766644

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: 160

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

Expedite Fee: 30

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

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

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

1 Certified Copies

Copy Fee: 33

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)

Adding new Sec 8.8 (Indem)

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

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

Code 063

Attention: ABCohen

Mail Name and Address

VENABLE LLP

ABCOHEN

1800 MERCANTILE BANK & TRUST BLDG

2 HOPKINS PLZ

BALTIMORE

MD 21201-2930

Approved By: 10

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

COMMENT(S):

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: \$191,000 OF MARYLAND

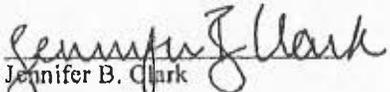
I hereby certify that this is a true and complete copy of the 3  
page document on file in this office. DATED: 4/16/10  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:

BY: Rosina Gallet, 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 \_\_\_\_\_

# 004141826

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 WO # 0001857474

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

### FEES REMITTED

Base Fee: 100  
Org. & Cap. Fee: \_\_\_\_\_  
Expedite Fee: 70  
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: M

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

*Handwritten signature/initials*

**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 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: 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: Russell 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) \_\_\_\_\_

Affix Barcode Label Here



1000361999639911

ID # **D04141826** ACK # **1000361999639911**  
PAGES: **0003**  
HOSPITALITY PROPERTIES TRUST

04/15/2010 AT 04:34 P WO H 0001857925

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

### 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 \_\_\_\_\_ Checks X

Approved By: \_\_\_\_\_

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

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.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

BA0/300596/1

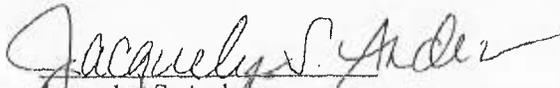
CUST ID: 0002695904  
 WORK ORDER: 0003912484  
 DATE: 01-18-2012 01:54 PM  
 AMT. PAID: \$421.00

**STATE OF MARYLAND**  
 I hereby certify that this is a true and complete copy of the  
 original document on file in this office. DATED: 1/16/12  
**STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:**  
*[Signature]*, Custodian  
 This stamp 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) \_\_\_\_\_



1000362002753665

ID # D04141826 ACK # 1000362002753665  
PAGES: 0003  
HOSPITALITY PROPERTIES TRUST

01/18/2012 AT 01:54 P WO # 0003912484

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

### FEES REMITTED

Base Fee: 100  
Org. & Cap. Fee: 30  
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: 213

\_\_\_\_\_ 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 \_\_\_\_\_

2 Documents on 1 Checks

Approved By: 9

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

COMMENT(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

(B1375653; 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: Russina 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).

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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.

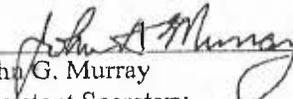
**THIRD:** The Series D Preferred Shares have been classified and designated by the Board under the authority contained in the Declaration.

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

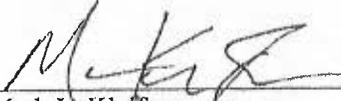
**FIFTH:** The undersigned Treasurer and Chief Financial Officer of the Trust acknowledges these Articles Supplementary to be the trust act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned Treasurer and Chief Financial Officer of the Trust acknowledges 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. Kleiffges  
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 16 BUSINESS CODE \_\_\_\_\_

# W 04141826

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

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

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

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



1000362002753681

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

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 \_\_\_\_\_

2 Documents on 1 Checks

Approved By: 9

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

COMMENT(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

2012  
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 \_\_\_\_\_ subject on file in this office. DATED: 1/16/18  
**STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:**

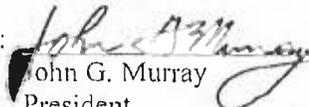
[Signature], Custodian  
This stamp replaces our previous certification system. Effective: 6/95

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

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

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

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

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



Affix Barcode Label  
ID # D04141826 ACK # 100036200655553  
PAGES: 0003  
HOSPITALITY PROPERTIES TRUST

06/10/2014 AT 04:00 P WO H 0004315864

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

### FEES REMITTED

Base Fee:	_____	<u>100</u>
Org. & Cap. Fee:	_____	
Expedite Fee:	_____	<u>70</u>
Penalty:	_____	
State Recordation Tax:	_____	
State Transfer Tax:	_____	
1 Certified Copies	_____	
Copy Fee: 4	_____	<u>23</u>
Certificates	_____	
Certificate of Status Fee:	_____	
Personal Property Filings:	_____	
Mail Processing Fee:	_____	
Other:	_____	

TOTAL FEES: 193

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

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

Approved By: A.O.

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: Names and Address

VENABLE LLP  
ANDREA COHEN  
SUITE 900  
750 E PRATT ST  
BALTIMORE MD 21202-3142

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.

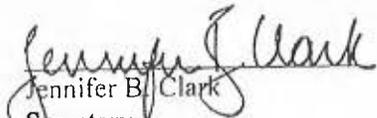
**SECOND:** The foregoing amendment to the Declaration of Trust was advised by the Board of Trustees of the Trust and approved by the shareholders of Trust as required by law.

**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.

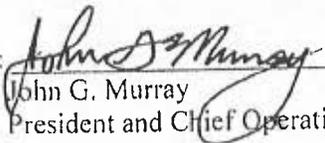
I hereby certify that this is a true and complete copy of the  
This stamp replaces our previous certification system. Effective: 6/95  
BY: *Rosanne Jarrett* Custodian  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION  
DATED: 1/16/18

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 \*\***

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

DOCUMENT CODE 09 BUSINESS CODE \_\_\_\_\_

# D04141826



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

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

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

ID # D04141826 ACK # 1000362006555561  
PAGES: 0003  
HOSPITALITY PROPERTIES TRUST

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

06/10/2014 AT 04:02 P WO # 0004315865

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

### FEES REMITTED

Base Fee: 100  
Org. & Cap. Fee: \_\_\_\_\_  
Expedite Fee: 70  
Penalty: \_\_\_\_\_  
State Recordation Tax: \_\_\_\_\_  
State Transfer Tax: \_\_\_\_\_  
Certified Copies 1  
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 X Cash \_\_\_\_\_

Code 063

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

Attention: Andrea Cohen

Approved By: A-01

Mail: Names and Address \_\_\_\_\_

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

**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**

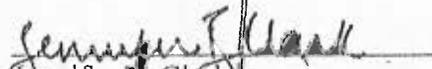
I hereby certify that this is a true and complete copy of the <sup>3</sup> page document on file in this office. DATED: 1/16/18  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

BY: *[Signature]*, Custodian

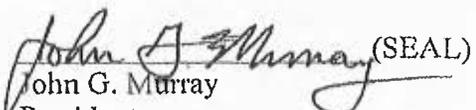
This stamp replaces our previous certification system. Effective: 6/01

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 B. 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 \_\_\_\_\_

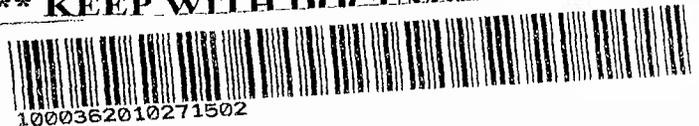
# 07141826

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

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

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

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



ID # D04141826 ACK # 1000362010271502  
PAGES: 0003  
HOSPITALITY PROPERTIES TRUST

04/20/2017 AT 02:17 P WO # 0004761050

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

### FEES REMITTED

Base Fee	<u>100</u>
Org & Cap Fee	<u>70</u>
Expedite Fee	
Penalty	
State Recordation Tax	
State Transfer Tax	
Certified Copies	
Copy Fee	<u>23</u>
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) \_\_\_\_\_

Code 063

Attention \_\_\_\_\_

Mail Names and Address \_\_\_\_\_

VENABLE LLP  
SUITE 900  
750 E. PRATT STREET  
BALTIMORE MD 21202

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

Documents on 9 Check \_\_\_\_\_

Approved By \_\_\_\_\_

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

COMMENT(S) \_\_\_\_\_

### Stamp Work Order and Customer Number HERE

CUST ID: 0003544473  
WORK ORDER: 0004761050  
DATE: 04-20-2017 02:17 PM  
AMT. PAID: \$193.00

CERTIFIED COPY MADE

**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<sup>1</sup> 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

December 29, 2017

VIA FEDEX  
AND ELECTRONIC MAIL

UNITE HERE  
275 Seventh Avenue  
New York, NY 10001

Attn: JJ Fueser  
Deputy Director, Research

Re: Shareholder Proposal Submitted to  
Hospitality Properties Trust  
(the "Company")

Dear Ms. Fueser:

The Company acknowledges receipt of the letter of UNITE HERE (the "Proponent"), dated December 21, 2017 (that was received by the Company on December 22, 2017), requesting the inclusion of a shareholder proposal in the Company's proxy statement for its 2018 annual meeting of shareholders (the "2018 Proxy Materials") pursuant to Rule 14a-8 promulgated under the Securities Exchange Act of 1934, as amended. The December 21, 2017 letter of the Proponent encloses a document with text under two headings "Shareholder proposal" and "Supporting statement," together with a letter from Morgan Stanley and a letter from the Proponent's secretary-treasurer. The December 21, 2017 letter of the Proponent, together with the enclosures with it, are referred to herein as the "Submission".

This letter is to notify you of a deficiency in the Submission under Rule 14a-8 that Rule 14a-8 requires us to bring to your attention. Specifically, Rule 14a-8(c) provides that a shareholder may submit no more than one proposal under Rule 14a-8 to a company for a particular shareholders' meeting. The Company believes that the text submitted by the Proponent under the heading "Shareholder proposal" includes not one, but multiple, proposals: (i) it resolves that shareholders of the Company recommend the Company's Board take all steps necessary to adopt a

UNITE HERE  
December 29, 2017  
Page 2

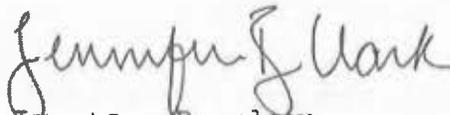
consequential majority vote standard for uncontested elections; (ii) it resolves that the vote standard for contested elections should be a plurality; (iii) it recommends that the term of a hold over trustee after an uncontested election should be truncated to a 180-day term; and (iv) it recommends that the power of the Company's Board to appoint successor trustees be limited to exclude persons whose election is opposed by a voting majority of shareholders. The Proponent can correct this deficiency by indicating in a written response to the Company which proposal it wishes to submit under Rule 14a-8 and which proposals it would like to withdraw. Rule 14a-8 requires that the Proponent's written response to this letter 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.

Please note that this letter addresses only certain procedural aspects of the requirements for submitting a shareholder proposal under Rule 14a-8 and does not address or waive any of the Company's rights or concerns regarding the Submission or the Proponent's eligibility to have a shareholder proposal included in the 2018 Proxy Materials. The Company reserves all rights to omit the proposals submitted by the Proponent from the 2018 Proxy Materials on the basis of the deficiency discussed in this letter or on any other grounds.

Please address any response to this request and any future correspondence relating to the Submission to my attention.

For your reference, I enclose a copy of Rule 14a-8.

Very truly yours,



Jennifer B. Clark  
Secretary

Enclosure













**Exhibit F**  
(see attached)



Shipping

Tracking

Printing Services

Locations

Support

Caroline

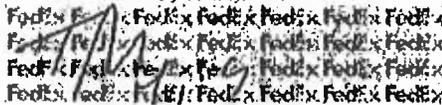
**IMPORTANT!**

A FedEx Express National Service Disruption is in effect. [Learn More](#)

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Ship date. <b>Fri 12/29/2017</b>		Actual delivery. <b>Tue 1/02/2018 1:02 pm</b>
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<p><b>The RMR Group LLC</b> Caroline Bergagna 255 Washington Street Two Newton Place Newton, MA US 02458 617 796-1456</p>	<p><b>Delivered</b> <i>Signed for by: T TIM</i></p> 	<p><b>UNITE HERE</b> JJ Fueser 275 Seventh Avenue NEW YORK, NY US 10001 212 541-4226</p>
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**Travel History**

Date/Time	Activity	Location
- 1/02/2018 - Tuesday		
1:02 pm	Delivered	NEW YORK, NY
7:31 am	On FedEx vehicle for delivery	NEW YORK, NY
6:36 am	At local FedEx facility	NEW YORK, NY
- 12/29/2017 - Friday		
11:55 pm	Arrived at FedEx location	NEWARK, NJ
6:35 pm	Left FedEx origin facility	NEEDHAM, MA
7:05 pm	Picked up	NEEDHAM, MA
11:21 am	Shipment information sent to FedEx	

**Shipment Facts**

<b>Tracking Number</b>	***	<b>Service</b>	FedEx Standard Overnight
<b>Weight</b>	0.5 lbs / 0.23 kgs	<b>Delivery attempts</b>	1
<b>Delivered To</b>	Mailroom	<b>Total pieces</b>	1
<b>Total shipment weight</b>	0.5 lbs / 0.23 kgs	<b>Terms</b>	Not Available
<b>Packaging</b>	FedEx Envelope	<b>Special handling section</b>	Deliver Weekday
<b>Standard transit</b>	1/02/2018 by 3:00 pm		

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**LANGUAGE**

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