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

DIVISION OF
CORPORATION FINANCE

April 23, 2018

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

Re: Hospitality Properties Trust
Incoming letter dated April 6, 2018

Dear Ms. Cohen:

This letter is in response to your correspondence dated April 6, 2018 concerning the shareholder proposal (the "Proposal") submitted to Hospitality Properties Trust (the "Company") by UNITE HERE for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. On March 23, 2018, we issued a no-action response expressing our informal view that the Company could not exclude the Proposal from its proxy materials for its upcoming annual meeting. You have asked us to reconsider our position. After reviewing the information contained in your correspondence, we find no basis to reconsider our position.

Under Part 202.1(d) of Section 17 of the Code of the Federal Regulations, the Division may present a request for Commission review of a Division no-action response relating to Rule 14a-8 under the Exchange Act if it concludes that the request involves "matters of substantial importance and where the issues are novel or highly complex." We have applied this standard to your request and determined not to present your request to the Commission.

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,

David R. Fredrickson
Chief Counsel

cc: JJ Fueser
UNITE HERE
jjfueser@unitehere.org

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April 6, 2018

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

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

Ladies and Gentlemen:

I am writing on behalf of Hospitality Properties Trust (the "*Company*") in response to a letter, dated March 23, 2018 (the "*Staff Response Letter*"), from the Staff of the Division of Corporation Finance (the "*Staff*") of the U.S. Securities and Exchange Commission (the "*Commission*") in which the Staff indicated that it was unable to concur in the Company's view that, for the reasons stated in our request for no-action relief dated January 22, 2018 (the "*Initial Request*"), the shareholder proposals and supporting statement (together, the "*Proposals*")[1] of UNITE HERE (the "*Proponent*") could be excluded from the Company's proxy materials for its 2018 annual meeting of shareholders (the "*2018 Proxy Materials*").

We respectfully request that the Commission review and reconsider the decisions articulated in the Staff Response Letter based on the issues presented below

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[1] Referring to the submission as "Proposals" is in keeping with the Company's view that the Proponent's submission contains more than one proposal in violation of Rule 14a-8(c). The Company maintains this view for the reasons articulated in the Initial Request.

and in the Initial Request and concur in the Company's view that it may omit the Proposals from the 2018 Proxy Materials. We believe that Commission review is appropriate because the Staff Response Letter, which the Company believes was decided incorrectly, deals with novel and highly complex issues of state law that are of substantial importance to any public company subject to the director holdover provisions of those laws. In particular, the Staff Response Letter deals with novel issues relating to whether a board can implement a proposal pursuant to which shareholders of a company may remove a member of the company's board without the shareholder vote required by applicable state law for such removal. Such issues are highly complex, as they turn on technical interpretations of state law, and warrant Commission review.

In support of this request, we have attached as Exhibit A an opinion of Saul Ewing Arnstein & Lehr LLP, special Maryland counsel to the Company, dated January 22, 2018 (the "*Saul Ewing Opinion*"), which was included as Exhibit B to the Initial Request. As to all matters of Maryland law referenced herein, we direct you to the Saul Ewing Opinion. In preparing and submitting this letter on behalf of the Company, we do not express any opinion as to Maryland law.

ANALYSIS

The Proposals would, if implemented, cause the Company and members of the Company's Board of Trustees (the "*Board*") to violate state law, and the Company lacks the power or authority to implement the Proposals.

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." In addition, 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. In this instance, the Proposals fall into both of these exclusionary categories.

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 the votes cast by shareholders (*i.e.*, they received more "against" votes than "for" votes) in an uncontested election serve a truncated 180-day holdover term. The Proposals provide no guidance as to how they are to be implemented. The Company has determined that this request cannot be implemented without violating current Maryland law.

As explained in the Saul Ewing opinion, pursuant to §3-803(b)-(e) ("*§3-803*") of the Corporations and Associations Article of the Annotated Code of Maryland

("*Maryland Code*"), the terms of the Company's Trustees must continue until the annual meeting at which he or she is up for election "and until his [or her] successor is elected and qualifies." In fact, whether or not the Company has elected to be subject to §3-803, the concept of continued service of a board member until his or her successor is elected and qualifies if he or she is not elected at an annual meeting of shareholders (*i.e.*, a holdover term) applies, like the statutory corporate law of many other states.

Consistent with the Maryland Code, and as explained in the Saul Ewing Opinion, the Company's Declaration of Trust states that a Trustee shall hold office "*until* the election and qualification of [the Trustee's] successor" (emphasis added) subject to the removal, resignation or incapacity of a Trustee. In addition, the Company's Bylaws provide, as explained in the Saul Ewing Opinion, that in the "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." (Emphasis added.) Therefore, as confirmed by the Saul Ewing Opinion, the Proposals' request to truncate a Trustee's holdover term to 180 days would, if implemented, violate the Maryland Code because it would have the effect of shareholders, by a majority of votes cast, removing a Trustee from office.

Truncating a Trustee's holdover term in such manner effectively would allow shareholders to remove a director from office with less than the required vote to do so under Maryland law. Specifically, pursuant to §8-202(c) and §8-205 of the Maryland Code, shareholders of a real estate investment trust are not permitted to remove a board member with "less than a majority of the number of votes entitled to be cast on the matter" – a more onerous standard than the majority of votes cast standard recommended by the Proposals, which only counts actual votes cast "for" and "against" a director. Thus, as confirmed by the Saul Ewing Opinion, if the Proposals were implemented, the shareholders would be able, by a simple majority of the votes cast, to remove a Trustee from office in direct contravention of Maryland law.

The Saul Ewing Opinion also explains that Maryland law requires members of the Board to meet a standard of conduct that obligates Trustees to, among other things, exercise independent judgment in the performance of their duties. Importantly, the Proposals are not like the majority voting policies or standards of other companies which (i) permit the board of the company the ability to determine whether to accept a board member's resignation for failing to receive a majority of votes cast and (ii) allow the board to determine in its discretion to reappoint the same board member. In contrast, if the Proposals are implemented, the Board would be stripped of its discretion (i) to allow a Trustee to continue to holdover upon the end of his or her truncated term or (ii) to reappoint such Trustee. Stripping the Board of any opportunity

to independently determine whether retaining or reappointing such Trustee is in the best interests of the Company would also pose a potential violation of the Board members' statutory duties to the Company.

The Company notes that, in 2017, the Proponent lobbied the Maryland legislature to adopt House Bill 589,[2] a bill that would amend the Maryland Code to provide a truncated holdover term for incumbent directors/trustees who do not receive the support of a majority of the votes cast. Importantly, House Bill 589 acknowledges that a truncated holdover term requires a legislative amendment to the Maryland Code, as the bill specifically provides that the new truncated term provision would override, and not be subject to, §8-202(c) of the Maryland Code (*i.e.*, the provision of the Maryland Code we reference above that does not permit a vote threshold lower than a "majority of the votes entitled to be cast"). The Proponent's efforts to change the Maryland Code have not been successful; House Bill 589 was not enacted.

For the reasons discussed above, and despite the language in the Proposals' request "that the board take all steps necessary in accordance with applicable laws to adopt [its requested] voting standard," the Company has determined there is no conceivable way to implement the Proposals without violating Maryland law.

Accordingly, 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 and pursuant to Rule 14a-8(i)(6) because the Company lacks the power to implement the Proposals.

Conclusion

For the reasons stated above and in the Initial Request, the Company believes that the issues presented by the Proposals are of substantial importance and novel and highly complex and that the Initial Request was incorrectly decided. Accordingly, we respectfully request that the Commission review the issues presented above and in the Initial Request and concur in the Company's view that it may omit the Proposals from the 2018 Proxy Materials. If the Staff declines to present this matter to the Commission, or the Commission declines to review the matter, we respectfully request that the Staff reconsider its decision based on the foregoing and concur that it will not recommend enforcement action if the Company excludes the Proposals from the 2018 Proxy Materials.

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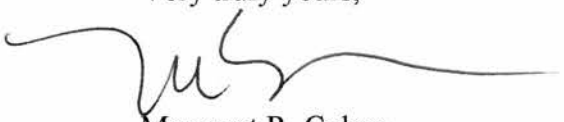
[2] House Bill 589 was introduced to the Maryland legislature in January 2017.

We respectfully request expedited review of this request, as the Company is scheduled to begin printing the 2018 Proxy Materials on or about April 23, 2018. If you would like any additional information or have any questions or comments regarding the foregoing, please contact the undersigned at 617-573-4859.

Very truly yours,



Margaret R. Cohen

cc: Jay Clayton, Chairman, U.S. Securities and Exchange Commission
Robert J. Jackson Jr., Commissioner, U.S. Securities and Exchange Commission
Hester M. Peirce, Commissioner, U.S. Securities and Exchange Commission
Michael S. Piwowar, Commissioner, U.S. Securities and Exchange Commission
Kara M. Stein, Commissioner, U.S. Securities and Exchange Commission
William Hinman, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission
Jennifer Clark, Secretary, Hospitality Properties Trust
JJ Fueser, Deputy Director, Research, UNITE HERE

Exhibit A

(see attached)

SAUL EWING
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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: [1] (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

[1] 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.[2] 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.[3] 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."[4] 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**").[5] This broad power granted to REITs to structure their own

[2] MD. CODE ANN., CORPS. & ASS'NS § 8-201(a).
[3] *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").
[4] MD. CODE ANN., CORPS. & ASS'NS § 8-301(13).
[5] MD. CODE ANN., CORPS. & ASS'NS §§1-101 through 3-907.

governance through their governing documents has been repeatedly recognized by Maryland courts.[6]

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."[7]

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.[8]

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[6] *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); s*ee 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.")

[7] *See* Section 3.1 of the Bylaws.

[8] 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.[9] 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.[10] 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**."[11] 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.

[9] *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).

[10] 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.

[11] 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.[12] 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.[13] 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.[14]

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

[12] 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).

[13] *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.

[14] 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."[15] 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.[16]

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

[15] *See* Section 3.1 of the Bylaws.
[16] *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).[16]

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,

SAUL EWING ARNSTEIN & LEHR LLP