



DIVISION OF  
CORPORATION FINANCE

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

March 13, 2019

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

Re: Senior Housing Properties Trust  
Incoming letter dated January 11, 2019

Dear Ms. Cohen:

This letter is in response to your correspondence dated January 11, 2019 concerning the shareholder proposal (the "Proposal") submitted to Senior Housing Properties Trust (the "Company") by the New York City Employees' Retirement System et al. (the "Proponents") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. 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,

M. Hughes Bates  
Special Counsel

Enclosure

cc: Michael Garland  
The City of New York  
Office of the Comptroller  
mgarlan@comptroller.nyc.gov

March 13, 2019

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

Re: Senior Housing Properties Trust  
Incoming letter dated January 11, 2019

The Proposal relates to director nominations.

There appears to be some basis for your view that the Company may exclude the Proposal under rule 14a-8(b). You represent that the Proponents hold securities that are entitled to vote only on certain matters, which do not include the subject of the Proposal. Rule 14a-8(b) requires that in order to be eligible to have a proposal included in a company's proxy materials, a shareholder must hold "securities entitled to be voted on the proposal." Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rule 14a-8(b). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which the Company relies.

Sincerely,

Kasey L. Robinson  
Special Counsel

**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.

SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

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January 11, 2019

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

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

Ladies and Gentlemen:

I am writing on behalf of Senior Housing 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 plans to exclude from the Company’s proxy materials for its 2019 annual meeting of shareholders (the “*2019 Proxy Materials*”) the shareholder proposal and supporting statement (collectively, the “*Proposal*”) of the New York City Employees’ Retirement System, The New York City Teachers’ Retirement System, the New York City Police Pension Fund and the New York City Board of Education Retirement System (together, the “*Proponent*”), submitted by Michael Garland, Assistant Comptroller of the City of New York to the Company on November 26, 2018. The Proposal and other materials submitted by the Proponent to the Company on November 26, 2018 are attached hereto as Exhibit A.

The Company also respectfully requests that the Staff of the Division of Corporation Finance of the Commission (the “*Staff*”) concur with the Company’s

Office of Chief Counsel  
Division of Corporation Finance  
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view that the Proposal may be excluded from the 2019 Proxy Materials for the reasons stated below.

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

The Company advises that it intends to begin distribution of its definitive 2019 Proxy Materials on or after April 2, 2019. Accordingly, pursuant to Rule 14a-8(j), this letter is being submitted not less than 80 days before the Company currently intends to file its definitive 2019 Proxy Materials with the Commission.

Attached to this letter as Exhibit B is an opinion of Saul Ewing Arnstein & Lehr LLP, special counsel to the Company dated January 10, 2019 (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 Articles of Amendment and Restatement of the Declaration of Trust, dated September 20, 1999, as amended (the “*Company’s Declaration of Trust*”), a copy of which can be found [here](#), and its Amended and Restated Bylaws, adopted September 7, 2016 (the “*Company’s Bylaws*”).

The Proposal requests that the shareholders of the Company adopt a resolution pursuant to which the shareholders of the Company ask the Board of Trustees of the Company (the “*Board*”) “to take the steps necessary to adopt a ‘proxy access’ bylaw [...] shall require the Company to include in proxy materials

prepared for a shareholder meeting at which directors are to be elected the name, Disclosure and Statement (as defined herein) of any person nominated for election to the board by a shareholder or group [...] that meets the criteria established below.”

The Company received the Proposal on November 26, 2018. Included with the Proposal were four letters, each dated November 14, 2018, from State Street Bank and Trust Company (“*State Street*”), which declared that State Street held in custody continuously, on behalf of each Proponent, the requisite number of Senior Housing Properties Trust common shares from October 31, 2017 through the date of the letters.

### **BASES FOR EXCLUSION**

The Company is of the view that the Proposal may be excluded from the 2019 Proxy Materials on the following bases:

- (1.) The Company may exclude the Proposal pursuant to Rule 14a-8(b)(1) because the Proponent does not hold securities entitled to be voted on the Proposal.
- (2.) The Company may exclude the Proposal pursuant to Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by shareholders at the Company’s 2019 annual meeting of shareholders under state law.
- (3.) The Company may exclude the Proposal pursuant to Rule 14a-8(i)(2) because the Proposal, if included in the 2019 Proxy Materials, would cause members of the Board to violate state law.

### **ANALYSES**

- 1. The Company may exclude the Proposal from its 2019 Proxy Materials pursuant to Rule 14a-8(b) because the Proponent does not hold securities entitled to be voted on the Proposal.**

To be eligible to submit a shareholder proposal for inclusion in a company’s proxy materials under Rule 14a-8(b), a shareholder must have held at least \$2,000 in market value, or 1%, of the company’s securities entitled to be voted on the proposal at the meeting for at least one year by the date such shareholder submits her proposal.

The Saul Ewing Opinion explains that the Company's Declaration of Trust clearly and unambiguously states that shareholders of the Company are permitted to vote only on specific matters that are enumerated in the Company's Declaration of Trust. The pertinent section of the Company's Declaration of Trust, Section 8.2 of Article VIII, provides as follows:

Voting Rights. Subject to the provisions of any class or series of Shares then outstanding, ***the shareholders shall be entitled to vote only on the following matters:*** (a) election of Trustees as provided in Section 5.2 and the removal of Trustees as provided in Section 5.3; (b) amendment of the Declaration of Trust as provided in Article X;<sup>1</sup> (c) termination of the Trust as provided in Section 12.2; (d) merger or consolidation of the Trust to the extent required by Title 8, or the sale or disposition of substantially all of the Trust Property, as provided in Article XI; and (e) such other matters with respect to which the Board of Trustees has adopted a resolution declaring that a proposed action is advisable and directing that the matter be submitted to the shareholders for approval or ratification. Except with respect to the foregoing matters, no action taken by the shareholders at any meeting shall in any way bind the Board of Trustees. [Emphasis added.]

In addition, as noted in the Saul Ewing Opinion, another section of the Company's Declaration of Trust, Section 8.5 of Article VIII, addresses the rights of shareholders to vote on proposals without the Board's prior approval. It states:

Board Approval. The submission of ***any action*** to the shareholders for their consideration shall first be approved or advised by the Board

---

<sup>1</sup> Article X of the Company's Declaration of Trust states, in relevant part, that "any amendment to this Declaration of Trust must first be advised by the Board of Trustees." This provision reflects § 8-501 of Maryland REIT Law, which requires that,

The board of trustees of a real estate investment trust proposing an amendment to its declaration of trust shall:

- (1) Adopt a resolution which sets forth the proposed amendment and declares that it is advisable; and
- (2) Direct that the proposed amendment be submitted for consideration by the shareholders.

of Trustees, ***and the shareholders shall not otherwise be entitled to act thereon.*** [Emphasis added.]

The Proposal asks that the shareholders of the Company adopt a resolution pursuant to which the shareholders of the Company ask the Company's board of directors "to take the steps necessary to adopt a 'proxy access' bylaw." As explained in the Saul Ewing Opinion, the subject matter of the Proposal, as well as the Proposal itself, are not among those enumerated matters that shareholders of the Company are permitted to vote on pursuant to Section 8.2 of Article VIII of the Company's Declaration of Trust. In addition, the Board has not declared the Proposal advisable or directed that the Proposal be submitted to the shareholders of the Company for approval or ratification. Accordingly, the Company believes, as confirmed by the Saul Ewing Opinion, that the Company's Declaration of Trust does not permit shareholders to vote on the Proposal. The Company respectfully submits that it may properly exclude the Proposal from its 2019 Proxy Materials pursuant to Rule 14a-8(b) because the Proponent does not hold securities entitled to be voted on the Proposal at the Company's 2019 annual meeting.

The Staff has concurred with the view that a Maryland REIT may exclude a shareholder proposal, including a precatory shareholder proposal, pursuant to Rule 14a-8(b) in circumstances where its declaration of trust does not permit the shareholder proponent to vote on the subject of the proposal. The Company was granted no-action relief last year in respect of a precatory shareholder proposal on the same basis. In *Senior Housing Properties Trust* (Feb. 20, 2018), a shareholder proposal requested that the Company's shareholders adopt a resolution recommending that the Company's Board take all steps necessary to require trustee nominees be elected by an affirmative vote of the majority of votes cast in uncontested trustee elections, with a plurality vote standard for contested elections. The Staff permitted the exclusion of that proposal under Rule 14a-8(b) because the Company's governing documents did not permit the proponent to vote on the subject of the proposal. In a similar matter, *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 in question as required by Rule 14a-8(b).

The pertinent language of the Company's Declaration of Trust, Article VIII, Section 8.2, provides as follows:

Voting Rights. Subject to the provisions of any class or series of Shares then outstanding, ***the shareholders shall be entitled to vote only on the following matters:*** (a) election of Trustees as provided in Section 5.2 and the removal of Trustees as provided in Section 5.3; (b) amendment of the Declaration of Trust as provided in Article X; (c) termination of the Trust as provided in Section 12.2; (d) merger or consolidation of the Trust to the extent required by Title 8, or the sale or disposition of substantially all of the Trust Property, as provided in Article XI; and (e) such other matters with respect to which the Board of Trustees has adopted a resolution declaring that a proposed action is advisable and directing that the matter be submitted to the shareholders for approval or ratification. Except with respect to the foregoing matters, no action taken by the shareholders at any meeting shall in any way bind the Board of Trustees. [Emphasis added.]

Accordingly, consistent with the precedent described above, we respectfully submit that the Proposal may be excluded from the Company's 2019 proxy materials under Rule 14a-8(b).

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

A company is permitted to omit a proposal from its proxy materials under Rule 14a-8(i)(1) if the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of organization of the company. The Company believes that it may exclude the Proposal from its 2019 Proxy Materials under Rule 14a-8(i)(1) because, as confirmed by the Saul Ewing Opinion, the proposal is not a proper subject for action by shareholders of the Company under the laws of the State of Maryland, the Company's jurisdiction of formation.

The Saul Ewing Opinion explains that the Maryland REIT Law provides maximum flexibility to Maryland REITs to select and construct their own governance structures and to determine the best way to manage their businesses and affairs. As also explained by the Saul Ewing Opinion, the governance of a Maryland REIT, which is defined predominately by contract, differs from the governance of a Maryland corporation, the governance of which is defined largely by statute.

The Saul Ewing Opinion explains that the Company's Declaration of Trust is absolute and unambiguous in regard to the management of the Company;

Section 5.1 of the Company's Declaration of Trust grants the Board broad authority, stating, "[t]he Board may take *any action as in its sole judgment* and discretion is necessary or appropriate to conduct the business and affairs of the Trust," and, "the Declaration of Trust shall be construed with the *presumption in favor of the grant of power* and authority of the Board. Any construction of the Declaration of Trust or determination made in good faith by the Board concerning its power and authority hereunder shall be conclusive." [Emphasis added.]

As noted above, the Company's Declaration of Trust expressly sets forth the voting rights of shareholders of the Company. The Saul Ewing Opinion explains that Section 8.2 of the Company's Declaration of Trust specifically enumerates the matters that the Company's shareholders may vote on, and the subject matter of the Proposal and the Proposal itself are not within those enumerated matters. Additionally, the Company believes, as confirmed by the Saul Ewing Opinion, recognizing the authority of the Board in the management of the Company's business and affairs and the wide deference granted under the Maryland REIT Law, Section 8.5 of the Company's Declaration of Trust provides that the Board first approve or advise the submission of any action to the shareholders for their consideration.

The Saul Ewing Opinion explains that the Company's Declaration of Trust is clear that the Board has authority over the business and affairs of the Company, including the decision of whether shareholders should vote on the Proposal. Further, the Saul Ewing Opinion confirms that nothing in the Company's Bylaws or under the Maryland REIT Law creates a right for shareholders to vote on the Proposal. Therefore, the Company believes it may exclude the Proposal pursuant to Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by shareholders under the laws of the State of Maryland.

**3. The Company may exclude the Proposal pursuant to Rule 14a-8(i)(2) because the Proposal, if included in the 2019 Proxy Materials, would cause the members of the Board to violate state law.**

The Saul Ewing Opinion explains that the Maryland REIT Law requires that members of the Board meet a standard of conduct, 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. The Saul Ewing Opinion also explains that such standard requires trustees of a Maryland REIT to exercise independent judgment in the performance of their duties. The Saul Ewing Opinion also explains

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that if the Board is required to include the Proposal in the 2019 Proxy Materials without having determined that it is in the best interests of the Company to permit shareholders to vote on the Proposal, the members of the Board will be preempted from exercising their independent judgment and would be preempted from meeting their statutory standard of conduct in violation of the Maryland REIT Law. Therefore, the Company believes it may exclude the Proposal pursuant to Rule 14a-8(i)(2) because the Proposal, if included in the 2019 Proxy Materials, would cause the members of the Board to violate the Maryland REIT Law's statutorily defined standard of conduct.

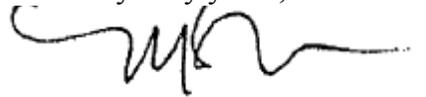
### **CONCLUSION**

For the reasons stated above, on behalf of the Company, we request that the Staff concur with the Company's view that the Proposal may be properly omitted from the 2019 Proxy Materials under (i) Rule 14a-8(b) because the Proponent does not hold securities entitled to be voted on the Proposal, (ii) Rule 14a-8(i)(1) because the Proposal is not a proper subject for action by shareholders under state law and (iii) Rule 14a-8(i)(2) because the Proposal, if included in the 2019 Proxy Materials, would cause members of the Board to violate state law. Should the Staff disagree with the Company's position or require additional information, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of its response.

Office of Chief Counsel  
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January 11, 2019  
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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 be 'MRC', written over a horizontal line.

Margaret R. Cohen

cc: Jennifer Clark, Secretary, Senior Housing Properties Trust  
Michael Garland, Assistant Comptroller, City of New York

**Exhibit A**

(see attached)



Michael Garland  
ASSISTANT COMPTROLLER  
CORPORATE GOVERNANCE AND  
RESPONSIBLE INVESTMENT

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

NOV 26 2018

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

November 14, 2018

Jennifer B. Clark  
Secretary  
Senior Housing Properties Trust  
Two Newton Place, 255 Washington Street, Suite 100  
Newton, MA 02458

Dear Ms. Clark:

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

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

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

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

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

Sincerely,

Michael Garland  
Enclosures

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

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

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

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

#### SUPPORTING STATEMENT

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

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

The proposed terms enjoy strong investor support and company acceptance. A similar shareholder proposal received 79% of votes cast at the Company in 2017 and more than 440 companies have enacted bylaws with similar terms.

We urge shareholders to vote FOR this proposal.



STATE STREET.

Derek A. Farrell  
Asst. Vice President, Client Services

State Street Bank and Trust Company  
c/o NYC Office of the Comptroller  
Municipal Building  
One Centre Street  
New York, NY 10007

Telephone: 347 749-2420  
[dfarrell@statestreet.com](mailto:dfarrell@statestreet.com)

November 14, 2018

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

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Board of Education Retirement System, the below position from October 31, 2017 through today as noted below:

**Security:** Senior Housing Properties Trust

**Cusip:** 81721M109

**Shares:** 9,927

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

Sincerely,

Derek A. Farrell  
Assistant Vice President



STATE STREET

Derek A. Farrell  
Asst. Vice President, Client Services

State Street Bank and Trust Company  
c/o NYC Office of the Comptroller  
Municipal Building  
One Centre Street  
New York, NY 10007

Telephone: 347 749-2420  
[dfarrell@statestreet.com](mailto:dfarrell@statestreet.com)

November 14, 2018

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

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Teachers' Retirement System, the below position from October 31, 2017 through today as noted below:

**Security:** Senior Housing Properties Trust

**Cusip:** 81721M109

**Shares:** 93,572

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

Sincerely,

Derek A. Farrell  
Assistant Vice President



STATE STREET

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

State Street Bank and Trust Company  
c/o NYC Office of the Comptroller  
Municipal Building  
One Centre Street  
New York, NY 10007

Telephone: 347 749-2420  
[dfarrell@statestreet.com](mailto:dfarrell@statestreet.com)

November 14, 2018

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

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Police Pension Fund, the below position from October 31, 2017 through today as noted below:

**Security:** Senior Housing Properties Trust

**Cusip:** 81721M109

**Shares:** 51,344

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

Sincerely,

Derek A. Farrell  
Assistant Vice President



STATE STREET

Derek A. Farrell  
Asst. Vice President, Client Services

State Street Bank and Trust Company  
c/o NYC Office of the Comptroller  
Municipal Building  
One Centre Street  
New York, NY 10007

Telephone: 347 749-2420  
[dfarrell@statestreet.com](mailto:dfarrell@statestreet.com)

November 14, 2018

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

To whom it may concern,

Please be advised that State Street Bank and Trust Company, under DTC number 997, held in custody continuously, on behalf of the New York City Employee's Retirement System, the below position from October 31, 2017 through today as noted below:

**Security:** Senior Housing Properties Trust

**Cusip:** 81721M109

**Shares:** 83,903

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

Sincerely,

Derek A. Farrell  
Assistant Vice President

**Exhibit B**

(see attached)

January 10, 2019

Senior Housing Properties Trust  
Two Newton Place  
225 Washington Street  
Newton, Massachusetts 02458

Re: Senior Housing Properties Trust – Shareholder Proposal of the New York City Employees’ Retirement System, the New York City Teachers’ Retirement System, the New York City Police Pension Fund and the New York City Board of Education Retirement System (collectively, the “**Proponent**”)

Ladies and Gentlemen:

We have acted as Maryland counsel for Senior Housing Properties Trust, a Maryland real estate investment trust (the “**Company**”), in connection with certain matters of Maryland law arising out of a shareholder proposal submitted, pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended (“**Rule 14a-8**”), by the Proponent (the “**Proposal**”) and the related supporting statement (the “**Supporting Statement**”) for inclusion in the Company’s proxy statement and form of proxy for its 2019 Annual Meeting of Shareholders (collectively, the “**2019 Proxy Materials**”). We have been asked to consider (1) whether the Proposal is a proper subject for action by shareholders of the Company under Maryland law and (2) whether the Proposal, if included in the 2019 Proxy Materials, would cause the Company to violate Maryland law.

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

(i) a certified copy of the Articles of Amendment and Restatement of the Declaration of Trust of the Company filed with the State Department of Assessments and Taxation of Maryland (the “**SDAT**”) on September 20, 1999 (the “**Original Declaration of Trust**”);

(ii) certified copies of the Articles Supplementary of the Company filed with SDAT on May 11, 2000, the Articles of Amendment of the Company filed with SDAT on February 13, 2002, the Articles of Amendment of the Company filed with SDAT on January 21, 2004, the Articles Supplementary of the Company filed with SDAT on March 15, 2004 (as corrected by the Certificate of Correction of the Company filed with SDAT on March 30, 2004), the Articles of Amendment of the Company filed with SDAT on February 7, 2007, the Articles of Amendment of the Company filed with SDAT on June 1, 2007, the Articles of Amendment of the Company filed with SDAT on December 12, 2007, the Articles of Amendment of the Company filed with SDAT on February 21, 2008, the Articles of Amendment of the Company filed with SDAT on June 3, 2008, the Articles of Amendment of the Company filed with SDAT on June 28, 2011, the Articles of Amendment of the Company filed with SDAT on July 10, 2012, the Articles Supplementary of the Company filed with SDAT on April 17, 2014, the Articles of Amendment of the Company filed with SDAT on April 17, 2014, the Articles of Amendment of the Company filed with SDAT on June 5, 2014, the Articles of Amendment of the Company filed with SDAT on February 4, 2015, and the Articles Supplementary of the Company filed with SDAT on June 30, 2017 (together with the Original Declaration of Trust, the “**Declaration of Trust**”);

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

(iv) the Proposal;

(v) the Supporting Statement; and

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

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

## **I. Proposal**

On November 26, 2018, Proponent presented the following Proposal along with the Supporting Statement pursuant to Rule 14a-8 for inclusion in the Company’s 2019 Proxy Materials:

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

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

(a) have beneficially owned 3% or more of the Company’s outstanding common stock continuously for at least three years before submitting the nomination;

(b) give the Company, within the time period identified in its bylaws, written notice of the information required by the bylaws and any Securities and Exchange Commission rules about (i) the nominee, including consent to being named in the proxy materials and to serving as director if elected; and (ii) the Nominator, including proof it owns the required shares (the “Disclosure”); and

(c) certify that (i) it will assume liability stemming from any legal or regulatory violation arising out of the Nominator’s communications with the Company shareholders, including the Disclosure and Statement; (ii) it will comply with all applicable laws and regulations if it uses soliciting material other than the Company’s proxy materials; and (iii) to the best of its knowledge, the required shares were acquired in the ordinary course of business and not to change or influence control at the Company.

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

## II. Applicable Law and Analysis

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

The Company is a real estate investment trust (a “**REIT**”) formed in accordance with the Maryland REIT Law, Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland (the “**MRL**”), by the filing of its declaration of trust with SDAT.<sup>1</sup> The MRL provides maximum flexibility to those forming a REIT to select and construct their own governance structure and to organize how their REIT will be governed, and provides broad power and discretion to trustees to determine the best way to manage the business and affairs of the REIT.<sup>2</sup> In this way, the governance of Maryland REITs may differ from the governance of a Maryland corporation, the governance of which is more defined by statute. Importantly, among the enabling powers granted to a REIT is the power to “exercise the powers set forth in its declaration of trust which are not inconsistent with law.”<sup>3</sup> This broad power has been repeatedly recognized by Maryland courts.<sup>4</sup> Additionally, a REIT is granted the power to establish in its declaration of trust the preferences, conversion or other rights, voting powers, and restrictions regarding its shares.<sup>5</sup>

The Declaration of Trust is unambiguous in regard to the management of the Company. Section 5.1 of the Declaration of Trust states that “the business and affairs of the Trust shall be managed under the direction of the Board of Trustees,” and “the Board shall have full, exclusive and absolute power, control and authority over any and all property of the Trust.” Moreover, the Declaration of Trust provides that it “shall be construed with a presumption in favor of the grant of power and authority to the Board,” and that “[a]ny construction of the Declaration of Trust or determination made in good faith by the Board concerning its powers and authority hereunder shall be conclusive.” Section 3.1 of the Bylaws also unambiguously reinforces that “[t]he business and affairs of the Trust shall be managed under the direction of its Board of Trustees.” Therefore, all authority with respect to the management of the Company is reserved to the Board of Trustees of the Company (the “**Board**”).

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

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

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

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

<sup>5</sup> MD. CODE ANN., CORPS. & ASS’NS § 8-203.

In accordance with the limited rights granted under the MRL, the Declaration of Trust sets forth the voting rights attributable to the Company's shares under Maryland law.<sup>6</sup> Section 8.2 of the Declaration of Trust provides as follows:

**Voting Rights.** Subject to the provisions of any class or series of Shares then outstanding, **the shareholders shall be entitled to vote only on the following matters:** (a) election of Trustees as provided in Section 5.2 and the removal of Trustees as provided in Section 5.3; (b) amendment of the Declaration of Trust as provided in Article X; (c) termination of the Trust as provided in Section 12.2; (d) merger or consolidation of the Trust to the extent required by Title 8, or the sale or disposition of substantially all of the Trust Property, as provided in Article XI; and (e) such other matters with respect to which the Board of Trustees has adopted a resolution declaring that a proposed action is advisable and directing that the matter be submitted to the shareholders for approval or ratification. Except with respect to the foregoing matters, no action taken by the shareholders at any meeting shall in any way bind the Board of Trustees.” (emphasis added).

Moreover, recognizing the authority of the Board in management of the Company's business and affairs and deference granted under the MRL, Section 8.5 of the Declaration of Trust provides as follows:

**Board Approval.** The submission of **any action** to the shareholders for their consideration shall first be approved or advised by the Board of Trustees, **and the shareholders shall not otherwise be entitled to act thereon.**” (emphasis added).

Maryland law states that a REIT's declaration of trust and bylaws are to be construed under the principles governing contract interpretation.<sup>7</sup> This would allow for the declaration of trust, bylaws and the governing statutes to form a flexible contract between the REIT and the shareholder governing the relationship between the two such that shareholders who invest in those REITs assent to be bound by the REIT's declaration of trust and bylaws when they buy shares in those REITs, 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. In fact, all shareholders of the Company receive notice of this fact under Section 6.9 of the Company's Declaration of Trust which provides that “[a]ll shareholders are subject to the provisions of the Declaration of Trust and the Bylaws of the Trust” The Company's Declaration of Trust and the Bylaws are publically

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<sup>6</sup> These are the only rights granted to shareholders under the Company's governance structure and not reserved to the Board.

<sup>7</sup> See *Tackney v. U.S. Naval Acad. Alumni Ass'n, Inc.*, 408 Md. 700, 716 (2009); see also *Gentile v. SinglePoint Finc., Inc.*, 788 A.2d 111, 113 (Del. 2001) (stating that “[i]t is a fundamental principle that the rules used to interpret statutes, contracts, and other written instruments are applicable when construing corporate charters and bylaws”).

filed documents with the Securities and Exchange Commission and available for inspection before a person decides to buy shares of the Company.

The matters contemplated by the Proposal, as well as the Proposal itself, are not within the enumerated matters set forth in Section 8.2 of the Declaration of Trust upon which the Company's shareholders are permitted to vote. Additionally, the Board has not approved or advised that the Proposal be submitted to the Company's shareholders for consideration as required under Section 8.5 of the Declaration of Trust. There being no other provision of the MRL, the Declaration of Trust, or the Bylaws which authorize or require the vote by shareholders on the Proposal or the subject matter of the Proposal at the Company's 2019 Annual Meeting of Shareholders, and without any other statutory or other legal requirement or basis under the laws of the State of Maryland, including any analogous provisions of the Maryland General Corporation Law (the "MGCL"),<sup>8</sup> the Proposal is not a proper subject for action by the Company's shareholders at such meeting under applicable Maryland law.<sup>9</sup> Accordingly, the securities that the Proponent has represented to the Company that it owns are not entitled under applicable Maryland law to vote on the Proposal at the Company's 2019 Annual Meeting of Shareholders.

B. The Proposal, If Included In The 2019 Proxy Statement, Would Cause The Company To Violate Maryland Law

As noted above, the Declaration of Trust definitively and proscriptively sets forth the matters each shareholder is entitled to vote upon. The Proposal calls upon the Company's shareholders to vote upon a matter that is outside of the enumerated matters, thereby usurping the authority granted under the MRL to the Board to manage the business and affairs of the Company and the authority delegated under the Declaration of Trust. Therefore, the Proposal is not a proper matter that could be brought before the Company's 2019 Annual Meeting of Shareholders.

If the Board is required by the Proponent and the Securities and Exchange Commission to include the Proposal in the 2019 Proxy Materials when the Board has not deemed the requirement to have the Proposal voted on by the Company's shareholders to be advisable and in

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<sup>8</sup> See James J. Hanks, Jr., MARYLAND CORPORATION LAW § 17.2 (2017) ("A trust offers much greater flexibility to deal (in the declaration of trust or bylaws) with many of these issues, the resolution of which is specified or limited by the MGCL. However, this means that a trust must provide (or decide not to provide) in its declaration or bylaws for many matters dealt with in the MGCL. When neither Title 8 nor the declaration or bylaws clearly addresses an issue, a court may look to the MGCL for guidance."); Cf. *First American v. Shivers*, 97 Md. App. 405, 416 (1993) (court construing appraisal rights provisions of Financial Institutions Article looked to MGCL for manner of notice to stockholders); *Twenty Seven Trust v. Realty Growth Investors*, 533 F. Supp. 1028, 1040 (D. Md. 1982) (holding that REIT distributions are sufficiently analogous to corporate dividends to render REITs subject to the corporate law rule mandating nondiscrimination among corporate shareholders of the same class).

<sup>9</sup> See also 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).

the best interests of the Company, then the Board would be preempted from making the determination mandated by Section 8.2(e) of the Declaration of Trust. This would preclude the Company's trustees from exercising and meeting the standard of conduct delegated to them by the Declaration of Trust and the MRL, 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.<sup>10</sup> The MRL, therefore, requires trustees to exercise independent judgment in the performance of their duties. If the Board is required to include the Proposal in the 2019 Proxy Materials and to permit the shareholders to vote on the Proposal in violation of Section 8.2(e) of the Declaration of Trust without the Board having determined that such action was in the best interests of the Company, it would represent a violation of the Board's statutory duties to the Company and, accordingly, a violation of applicable Maryland law.

Further, as previously discussed, the Company has the contractual right to exclude the Proposal under Maryland law. If the Proposal were included in the 2019 Proxy Materials against the Board's exclusionary direction and the Company were required to permit the shareholder to vote on the Proposal in violation of Section 8.2(e) of the Declaration of Trust, it would violate, and be a contractual breach of, the express terms of the Declaration of Trust.

### III. Opinion

Based upon the foregoing analysis and subject to the limitations, assumptions and qualifications set forth in this letter, it is our opinion, as of the date of this letter, that: (1) the Proposal is not a proper subject for action by the Company's shareholders under Maryland law and (2) the Proposal would, if included in the 2019 Proxy Materials and the Company were required to permit the shareholder to vote on the proposal in violation of Section 8.2(e) of the Declaration of Trust, cause the Company to violate Maryland law.

The foregoing opinion is 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 securities laws. Furthermore, the foregoing opinion is limited to the matters specifically set forth herein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this opinion if any provision of Maryland law, or any judicial interpretation of any provisions of Maryland law, changes after the date hereof.

The opinion presented in this letter is solely for your use in connection with the Proposal, the Supporting Statement and your stated intention to exclude the Proposal and the Supporting Statement from the 2019 Proxy Materials (the "**Purpose**"). Without our written consent, this

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<sup>10</sup> Section 8-601.1 of the MRL now states that except as otherwise provided in the MRL or the declaration of trust, Section 2-405.1(c) of the MGCL shall apply to a Maryland REIT. Since the Declaration of Trust does not provide a standard of conduct that differs from Section 2-405.1(c), the standard set forth in Section 2-405.1(c) is the sole source of duties of the Trustees of the Trust.

letter and the opinion herein may not be (i) used by you for anything other than the Purpose, (ii) furnished to any third party or (iii) relied upon by any other person or entity. Notwithstanding the foregoing, you may furnish a copy of this letter to (i) the Staff of the Securities and Exchange Commission (the “**Staff**”) in connection with the Purpose and/or (ii) Skadden, Arps, Slate, Meagher & Flom LLP (“**Skadden**”). Skadden (a) may use this letter and rely upon it, in connection with any correspondence 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 opinion 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 blue ink that reads "Saul Ewing Arnstein & Lehr LLP". The signature is written in a cursive, flowing style.

SAUL EWING ARNSTEIN & LEHR LLP