February 7, 2020

Brian D. Miller
Latham & Watkins LLP
brian.miller@lw.com

Re: Highlands REIT, Inc.
Incoming letter dated January 3, 2020

Dear Mr. Miller:

This letter is in response to your correspondence dated January 3, 2020 concerning the shareholder proposal (the “Proposal”) submitted to Highlands REIT, Inc. (the “Company”) by Robert Sarasin (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.

Sincerely,

M. Hughes Bates
Acting Deputy Chief Counsel

Enclosure

cc: Robert Sarasin

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Response of the Office of Chief Counsel  
Division of Corporation Finance

Re: Highlands REIT, Inc.  
Incoming letter dated January 3, 2020

The Proposal requires that the board shall immediately implement a plan to liquidate its properties by December 31, 2021 and return the proceeds to shareholders, in accordance with the original intent upon which the Company was formed.

There appears to be some basis for your view that the Company may exclude the Proposal under rules 14a-8(i)(2) and 14a-8(i)(6). We note that in the opinion of your counsel, implementation of the Proposal would cause the Company to violate state law. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on rules 14a-8(i)(2) and 14a-8(i)(6). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which the Company relies.

Sincerely,

Michael Killoy  
Attorney-Adviser
January 3, 2020

VIA ELECTRONIC MAIL

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

Re:  Stockholder Proposal to Highlands REIT, Inc. from Robert Sarasin

Ladies and Gentlemen:

This letter is submitted on behalf of Highlands REIT, Inc. (the “Company”) pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended. The Company has received a stockholder proposal and related supporting statement, attached hereto as Exhibit A (the “Proposal”), from Robert Sarasin (the “Proponent”) for inclusion in the Company’s proxy statement for its 2020 annual meeting of stockholders. The Company hereby advises the staff (the “Staff”) of the Division of Corporation Finance that it intends to exclude the Proposal from its proxy statement for the 2020 annual meeting (the “Proxy Materials”). The Company respectfully requests confirmation that the Staff will not recommend enforcement action to the Securities and Exchange Commission (the “Commission”) if the Company excludes the Proposal on the following grounds:

(i) pursuant to Rule 14a-8(i)(1), as the Proposal is not a proper subject for action by stockholders under the laws of the jurisdiction of the Company’s organization;

(ii) pursuant to Rule 14a-8(i)(2), as the Proposal would, if implemented, cause the Company to violate state law to which it is subject;

(iii) pursuant to rule 14a-8(i)(6), as the Company lacks the power and authority to implement the Proposal; and

(iv) pursuant to Rule 14a-8(i)(7), as the Proposal relates to the ordinary business operations of the Company.
By copy of this letter, we are advising the Proponent of the Company’s intention to exclude the Proposal. In accordance with Rule 14a-8(j)(2) and Staff Legal Bulletin No. 14D, we are submitting by electronic mail (i) this letter, which sets forth our reasons for excluding the Proposal, and (ii) the Proposal.

Pursuant to Rule 14a-8(j), we are submitting this letter not less than 80 days before the Company intends to file its Proxy Materials.

I. The Stockholder Proposal

The Proposal submitted for inclusion in the Proxy Materials requests that:

“The Board of Directors shall immediately implement a plan to liquidate its properties by December 31, 2021, and return the proceeds to Shareholders, in accordance with the original intent upon which the Company was formed.”

II. Grounds for Exclusion

The Company intends to exclude this Proposal from its Proxy Materials and respectfully requests that the Staff concur that the Company may exclude the Proposal on the following grounds.

A. Rule 14a-8(i)(1) – The Proposal may be excluded because the Proposal is not a proper subject for action by stockholders under Maryland law.

Rule 14a-8(i)(1) permits a company to exclude a stockholder proposal “[i]f the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company’s organization.” Most stockholder proposals cast as recommendations or requests are proper under state law; however, mandatory proposals that purport to be binding on a company if approved by stockholders may not be considered proper under state law. See Rule 14a-8(i)(1) (note). The Commission has explained that the purpose of Rule 14a-8(i)(1) is to prevent stockholders from proposing stockholder action on matters that are not proper subjects for a stockholder vote, and that proposals that “mandate or direct the board to take certain action may constitute an unlawful intrusion on the board’s discretionary authority.” Exchange Act Release No. 12999 (Nov. 22, 1976). The Staff has stated “that proposals that are binding on the company face a much greater likelihood of being improper under state law and, therefore, excludable under rule 14a-8(i)(1).” See Staff Legal Bulletin No. 14 (Jul. 13, 2001). The Staff has consistently permitted the exclusion of stockholder proposals mandating or directing a company’s board of directors to take action inconsistent with the discretionary authority provided to the board of directors under state law. See, e.g., Bank of America Corp. (avail. Feb. 24, 2010), MGM Mirage (avail. Feb. 6, 2008) and Phelps Dodge Corp. (avail. Jan. 7, 2004).

As explained more broadly in the supporting opinion of Venable LLP with respect to matters of Maryland law attached hereto as Exhibit B (the “Maryland Law Opinion”), the Proposal is not a proper subject for action by stockholders under Maryland law because it mandates the Board of Directors (the “Board”) of the Company to take an action that is
exclusively reserved to the discretionary authority of the Board pursuant to Maryland law. The Company is incorporated under the laws of the State of Maryland and is governed by the Maryland General Corporation Law (the “MGCL”). The MGCL grants broad discretionary power to the Board to manage all of the business and affairs of the Company, and under Maryland law, the stockholders do not have the power to direct the Board to take specific actions upon which the Board retains discretionary authority.

The Proposal is not drafted as a request of, or as a recommendation to, the Board, but rather mandates that the Board liquidate the entire Company by a certain date and distribute all proceeds to the stockholders. Under Maryland law, the two components of such liquidation, a sale of all the assets of the Company and dissolution, may only be initiated by the Board. Only after the Board has declared such actions advisable may the stockholders consider and vote on these matters. Stockholders cannot require the Board to deem a sale of assets or dissolution advisable under Maryland law. Rather, the duties of directors under Maryland law require directors of a Maryland corporation to carefully consider such actions and only deem them advisable if the directors reasonably believe that a sale of all assets or dissolution is in the best interests of the corporation. If implemented, the Proposal would usurp the Board’s statutory right to initiate the liquidation and dissolution procedures of the Company and would require the Board to take these actions regardless of whether the Board determined that such actions are in the best interests of the Company. Accordingly, the Proposal is not a proper subject for stockholder action under Maryland law and it may be properly excluded pursuant to Rule 14a-8(i)(1).

B. Rule 14a-8(i)(2) – The Proposal may be excluded because, if implemented, it would cause the Company to violate Maryland law.

Rule 14a-8(i)(2) permits a company to omit a stockholder proposal that would, if implemented, cause the company to violate any state, federal or foreign law to which it is subject. The Staff has determined that a company may properly exclude a stockholder proposal recommending that the board of directors take an action that would result in the company violating state law. In The Adams Express Co. (avail. Jan. 26, 2011) (the “Adams Letter”), the staff of the Division of Investment Management (the “Investment Management Staff”) concurred with a Maryland corporation’s (the “Fund”) view that a stockholder proposal requesting that the board of directors liquidate the Fund was excludable under Rule 14a-8(i)(2) and (i)(6) because under Maryland law, the board of directors lacked authority to take such action without stockholder approval. The Investment Management Staff noted that, “in the opinion of the Fund’s counsel, the [board of directors] lacks authority to liquidate . . . the Fund and the implementation of these aspects of the [p]roposal would violate state law.” See also Northrop Grumman Corp. (avail. Feb. 29, 2008) (concurring with the exclusion pursuant to Rule 14a-8(i)(2) of a proposal requesting that the board of directors of a company adopt cumulative voting – an action requiring both board and stockholder approval – because the proposal would violate state law). The Proposal mandates that the Board take the same action as requested by the stockholder in the Adams Letter and is excludable under Rule 14a-8(i)(2) because, if implemented, it would violate Maryland law.
As explained more broadly in the Maryland Law Opinion, the implementation of the Proposal would cause the Company to violate Maryland law because the Board cannot liquidate the Company without stockholder approval. The liquidation of the Company would necessarily involve the sale of all the Company’s assets and/or the dissolution of the Company. In order for the Company to effect either a sale of all (or substantially all) of the Company’s assets or a dissolution under Maryland law, the Board must approve the proposed action, declare it advisable and then submit it to the stockholders for consideration at an annual or special meeting, and then the stockholders must approve the action by a majority of the votes entitled to be cast on the matter. Maryland law does not permit the liquidation action described in the Proposal without a stockholder vote. Were the Proposal approved by the Company’s stockholders, it would not constitute the necessary stockholder approval of the sale of assets and/or dissolution of the Company required under Maryland law because (i) the approval of a liquidation by stockholders under Maryland law may only occur after the Board declares such action advisable and (ii) the approval of the Proposal requires a lower voting threshold than the approval of a liquidation under Maryland law. If the Proposal were to be implemented in accordance with its terms, the Board and the Company would violate state law by not following the procedures and approvals required by Maryland law. Accordingly, the Proposal may be properly excluded pursuant to Rule 14a-8(i)(2).

C. Rule 14a-8(i)(6) – The Proposal may be excluded because the Company lacks the power and authority to implement the Proposal.

Under Rule 14a-8(i)(6), a company may exclude a stockholder proposal “if the company would lack the power or authority to implement the proposal.” The Staff has consistently allowed stockholder proposals to be excluded under both Rule 14a-8(i)(2) and Rule 14a-8(i)(6) when the implementation of the proposal would violate state corporate law and, accordingly, the company would lack the authority to implement the proposal. See the Adams Letter discussed above; see also The Boeing Co. (avail. Feb. 20, 2008) (concurring with the exclusion of a proposal requesting that the board of directors adopt cumulative voting pursuant to Rule 14a-8(i)(2) and Rule 14a-8(i)(6) because the opinion of the company’s counsel stated that implementing the proposal would cause the company to violate state law); Northrop, supra (concurring with the exclusion of the proposal pursuant to Rule 14a-8(i)(6) because it was not within the power of the company or the board to adopt cumulative voting without a stockholder vote).

As explained more broadly in the Maryland Law Opinion, the Company does not possess the power or authority to implement the Proposal because the Proposal conflicts with Maryland Law and the charter of the Company (the “Charter”). Maryland law provides that a Maryland corporation has the powers set forth in its charter and may take any act that is not inconsistent with law. In other words, a corporation does not have the power to do what it is prohibited from doing by law or in its charter. As discussed above in Part II.B, under Maryland law and the Charter, it is impermissible for the Company to liquidate its assets by unilateral Board action. Because the implementation of the Proposal would cause the Company to violate Maryland law and its Charter, the Company lacks the power and authority to implement the Proposal and it may be properly excluded pursuant to Rule 14a-8(i)(1).
D. **Rule 14a-8(i)(7) – The Proposal may be excluded because it deals with a matter relating to the ordinary business operations of the Company.**

i. **Rule 14a-8(i)(7) Background.**

Under Rule 14a-8(i)(7), a company may exclude a stockholder proposal from its proxy materials “[i]f the proposal deals with a matter relating to the company’s ordinary business operations.” The Commission has stated that the policy underlying the ordinary business exclusion is based on two considerations:

- first, whether a proposal relates to “tasks that are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight”; and

- second, whether a “proposal seeks to ‘micro-manage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.”


With respect to the second consideration, the Staff will determine that a proposal seeks to micromanage a company when it specifies “intricate detail, or seeks to impose specific time-frames or methods for implementing complex policies” that would cause the demands of the Proposal to displace the judgment of a company’s board of directors and/or management. *Id.* (emphasis added). The Staff recently reiterated that, when considering arguments for exclusion based on micromanagement, it looks “to whether the proposal seeks intricate detail or imposes a specific strategy, method, action, outcome or timeline for addressing an issue, thereby supplanting the judgment of management and the board.” Staff Legal Bulletin No. 14K (Oct. 16, 2019) ("SLB 14K"). The Staff’s analysis of micromanagement arguments is based on “the manner in which a proposal seeks to address an issue” regardless of whether that issue concerns a subject matter that is appropriate for stockholders to vote on. Staff Legal Bulletin No. 14J (Oct. 23, 2018) ("SLB 14J"). As a result, a proposal that seeks to micromanage the company may be excluded under Rule 14a-8(i)(7) even if the proposal is not excludable under the first consideration discussed above. *Id.*

The Staff has determined that proposals which seek to micromanage a company are excludable because they do not afford a company, its board of directors or its management sufficient flexibility or discretion in addressing complex matters or making decisions regarding the day-to-day business of the company. SLB 14K. Following a stockholder vote on a proposal, it is the job of the board of directors and management to determine how to implement the proposal. “If the method or strategy for implementing the action requested by the proposal is overly prescriptive, thereby potentially limiting the judgment and discretion of the board and management, the proposal may be viewed as micromanaging the company.” *Id.*

As explained in SLB 14J, a proposal may be properly excluded under Rule 14a-8(i)(7) for micromanaging even if the proposal alludes to extraordinary actions to be taken by the
Company. This is because the Staff analyzes these proposals based on the manner in which they are presented, rather than the subject matter of the proposal. Although a plan of liquidation and distribution would be considered an extraordinary action, it has no bearing on the fact that the Proposal seeks to micromanage the manner in which the Company should pursue such an extraordinary transaction (i.e., immediately and no later than a specific date, December 31, 2021). Therefore, even though the Proposal may not be afforded exclusion based on the first consideration under Rule 14a-8(i)(7) (i.e., that it relates to “tasks that are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight”), it may nonetheless be properly excluded under the “micromanagement” consideration.

Where a proposal makes specific demands regarding how or when the proposal should be implemented, the Staff has granted no-action relief under Rule 14a-8(i)(7) because such proposals seek to micromanage the company. See, e.g., Exxon Mobil Corp. (avail. Apr. 2, 2019) (concurring with the exclusion of a proposal demanding that the company disclose “short-, medium- and long-term greenhouse gas targets aligned with the greenhouse gas reduction goals established by the Paris Climate Agreement” because requiring the company to adopt such time-bound targets seeks “to impose specific methods for implementing complex policies in place of the ongoing judgments of management as overseen by its board of directors”); Devon Energy Corp. (avail. Mar. 4, 2019) (same); and Duke Energy Corp. (avail. Feb. 16, 2001) (concurring with the exclusion of a proposal requesting that the company reduce its nitrogen oxide emissions to a precise numerical target using a specific methodology by the year 2007). In Apple, Inc. (avail. Dec. 5, 2016), the Staff concurred with the exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company generate a plan to reach net-zero greenhouse emissions by the year 2030. In SLB 14J, the Staff explained that the Apple proposal, “which sought to impose specific timeframes or methods for implementing complex policies, was excludable on the basis of micromanagement.” By contrast, in Anadarko Petroleum Corp. (avail. Mar. 4, 2019), the Staff denied exclusion of a proposal requesting a report describing the company’s plans to reduce its total contribution to climate change and align its operations and investments with the Paris Agreement’s goals. In SLB 14K, the Staff explained that the Anadarko proposal was not properly excludable under Rule 14a-8(i)(7) because the proposal “deferred to management’s discretion to consider if and how the company plans to reduce its carbon footprint and asked the company to consider the relative benefits and drawbacks of several actions.” SLB 14K.

ii. The Proposal seeks to micromanage the Company because it imposes a specific deadline by which the Proposal must be implemented.

The Proposal requires the Company to immediately implement a plan to liquidate its properties and distribute the proceeds to stockholders no later than December 31, 2021. As discussed in further detail below, because the Proposal imposes a specific deadline by which the liquidation plan must be implemented, it seeks to micromanage the Company and may therefore be properly excluded from the Proxy Materials pursuant to Rule 14a-8(i)(7).

As noted above, the Staff states in the 1998 Release, SLB 14J and SLB 14K that proposals demanding a specific timeframe or timeline can be interpreted as an attempt to micromanage the company by unduly limiting the ability of the board of directors or
management to manage complex matters with the flexibility necessary to fulfill their fiduciary duties. Here, in direct opposition to the Staff’s guidance, the Proposal sets a specific deadline of December 31, 2021 for the liquidation of the Company, and provides neither the Board nor management with any flexibility in executing on this complex task. The Proposal’s efforts to micromanage the Company are further evident by the Proponent’s demands for the Company to “immediately implement a plan to liquidate” and, as stated in the supporting statement, for cash to be “distributed to shareholders immediately” (emphases added). Here, by imposing a specific deadline by which the Company must liquidate, the Proposal micromanages the Company in the manner deemed impermissible by the 1998 Release, SLB 14J and SLB 14K. If the Company’s stockholders approved the Proposal, the Board and management would be required to liquidate the Company by December 31, 2021. Their judgment and discretion in terms of how to best liquidate the Company would be limited by this strict deadline. Under ordinary circumstances, the Company’s Board and management would have flexibility to consider different options, weigh the benefits and drawbacks of each, and determine the best course of action to maximize value for stockholders. The Proposal, by imposing a strict and arbitrary deadline, strips the Board and management of the discretion and judgment required to accomplish the requested task and limits the Company’s opportunities to maximize stockholder value. As presented, the Proposal makes it nearly impossible for the Board and management to fulfill their fiduciary duties to stockholders. In this way, the Proposal seeks to micromanage the Company and may therefore be properly excluded from the Proxy Materials pursuant to Rule 14a-8(i)(7).

The Proposal is analogous to the proposal presented in Apple, which required the company to generate a plan to reach net-zero greenhouse emissions by the year 2030, and the proposal presented in Duke Energy, which required the company to reduce its nitrogen oxide emissions by the year 2007. In both cases, the Staff agreed that the proposals could properly be excluded because they sought to micromanage the companies by demanding actions by a specific date. Here, as in both Apple and Duke Energy, the imposition of a specific deadline would unduly limit the discretion of the Board and management in carrying out their duties. The Proposal is distinguishable from the proposal in Anadarko because it does not provide the Company sufficient discretion to implement a plan of liquidation on the timeline it sees fit. In addition, similar to the deadline specified in Apple, the deadline specified in the Proposal is completely arbitrary – the Proponent does not include a rationale or analysis for the choice of this deadline. The Board has a duty to maximize value for stockholders. Forcing the Company to meet an arbitrary timeline places undue constraints on the Board’s ability to act in the best interest of its stockholders. Thus, because the Proposal seeks to micromanage the Company by unduly limiting the ability of the Board and management to manage complex matters with a level of flexibility necessary to fulfill their fiduciary duties to stockholders, the Proposal may be properly excluded from the Proxy Materials pursuant to Rule 14a-8(i)(7).

III. Conclusion

Based upon the foregoing analysis, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its Proxy Materials. If the Staff does not concur with the Company’s position, we would appreciate an opportunity to confer with the Staff concerning this matter prior to the determination of the Staff’s final position. In
addition, the Company requests that the Proponent copy the undersigned on any response it may choose to make to the Staff, pursuant to Rule 14a-8(k).

Please contact the undersigned to discuss any questions you may have regarding this matter.

Very truly yours,

Brian D. Miller
of LATHAM & WATKINS LLP

Enclosures

cc: Robert J. Lange, Highlands REIT, Inc.
Robert Sarasin
Exhibit A

PROPOSAL FROM ROBERT SARASIN
November 27, 2019

Mr. Robert J. Lange
Executive Vice President,
General Counsel and Secretary
Highlands REIT, Inc.
322 S. Michigan, Ninth Floor
Chicago, Illinois 60604

Dear Mr. Lange:

I, Robert Sarasin, am the beneficial owner of shares of Highlands REIT (the "Company") with a value in excess of $2,000.00. I have held these shares for over 12 months and plan to continue to hold them through the next meeting of stockholders.

I hereby submit the following proposal and supporting statement pursuant to rule 14a-8 of the Securities Exchange Act of 1934 for inclusion in management’s proxy material for the next meeting of stockholders for which this proposal is timely submitted. If you would like to discuss this proposal, please contact me at ***.

RESOLVED:

The Board of Directors shall immediately implement a plan to liquidate its properties by December 31, 2021, and return the proceeds to Shareholders, in accordance with the original intent upon which the Company was formed.

SUPPORT STATEMENT:

The Company was formed in 2015 as a wholly owned subsidiary the InvenTrust Properties Corp. On December 23, 2015, InvenTrust stated the Company’s objective was to hold 22 "non-core" properties, and “we expect Highlands will be better positioned to provide stockholders with a return of their investment by liquidating and distributing net proceeds from the disposition of their assets.”

Per the initial statement the Company filed with the SEC stated “Our investment objectives are to preserve, protect and maximize the total value of our portfolio in connection with our evaluation of various strategic opportunities while seeking to provide stockholders with a return of their investment by liquidating and distributing net sales
proceeds over time.” InvenTrust’s CEO stated that Highlands management committed to executing this strategy, prior to InvenTrust spinning off Highlands shares to InvenTrust shareholders in May, 2016. It was never contemplated that Highlands would use proceeds from property sales to acquire additional properties and fail to distribute sales proceeds to shareholders.

Highlands’ management, nevertheless, departed from its agreed strategy, and has subsequently acquired properties. Highlands has over 15 cents per share in cash as of 6/30/19. Most of this cash is not needed for operations and should be distributed to shareholders immediately.

Highlands has only nine employees and administrative expenses were 28.9% of total revenues in 2018. Most REITs have administrative expense ratios of 6-12%; showing how inefficient it is to operate the Company. Total revenues declined 21.6% in 2018, and have continued to decline in 2019. The only valid business judgment is for Highlands to liquidate. Management’s refusal to distribute proceeds of property sales to stockholders is clearly an effort to pay themselves excessive salary and bonuses for as long as possible. The Company’s CEO received total compensation of $2.58 million in 2018. Highlands’ other executive officers each received over $1.0 million in compensation in 2018. These salaries are excessive, as the Company has failed to fulfill any of its original objectives to liquidate properties and distribute proceeds to shareholders. In the nearly 4 years of the Company’s existence, it has not distributed a penny to stockholders, and the NAV is less today than it was when the Company was spun off.

The majority of the Company’s shareholders own less than $1,000 worth of stock and it is cost inefficient for many to hold or sell them due to IRA custodial fees and sales commissions.

If you believe the Company should fulfill its original intent to liquidate its assets and return the proceeds to shareholders, please vote for this proposal.
Exhibit B

MARYLAND LAW OPINION
January 3, 2020

Highlands REIT, Inc.
322 S. Michigan, Ninth Floor
Chicago, Illinois 60604

Re: Highlands REIT, Inc. – Omission of the Stockholder Proposal Submitted by Robert Sarasin

Ladies and Gentlemen:

We are Maryland counsel to Highlands REIT, Inc., a Maryland corporation (the “Company”), in connection with certain matters of Maryland law arising out of a stockholder proposal (the “Proposal”) submitted by Robert Sarasin for inclusion in the Company’s proxy materials for the 2020 Annual Meeting of Stockholders. We have been asked to consider whether (1) the Proposal is a proper subject for action by stockholders under Maryland law; (2) the Proposal, if implemented, would cause the Company to violate Maryland law; and (3) the Company lacks the power and authority to implement the Proposal. In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined the charter (the “Charter”) of the Company, the Proposal and such matters of law as we have deemed necessary or appropriate to issue this opinion.

The Proposal reads, in full, as follows:

RESOLVED: The Board of Directors shall immediately implement a plan to liquidate its properties by December 31, 2021, and return the proceeds to Shareholders, in accordance with the original intent upon which the Company was formed.

Supporting Statement

The Company was formed in 2015 as a wholly owned subsidiary the InvenTrust Properties Corp. On December 23, 2015, InvenTrust stated the Company’s objective was to hold 22 “non-core” properties, and “we expect Highlands will be better positioned to provide stockholders with a return of their investment by liquidating and distributing net proceeds from the disposition of their assets.”

Per the initial statement the Company filed with the SEC stated “Our investment objectives are to preserve, protect and maximize the total value of our portfolio in connection with our evaluation of various strategic opportunities while seeking to provide
stockholders with a return of their investment by **liquidating and distributing** net sales proceeds over time.” InvenTrust’s CEO stated that Highlands management committed to executing this strategy, prior to InvenTrust spinning off Highlands shares to InvenTrust shareholders in May, 2016. It was never contemplated that Highlands would use proceeds from property sales to acquire additional properties and fail to distribute sales proceeds to shareholders.

Highlands’ management, nevertheless, departed from its agreed strategy, and has subsequently acquired properties. Highlands has over 15 cents per share in cash as of 6/30/19. Most of this cash is not needed for operations and should be distributed to shareholders immediately.

Highlands has only nine employees and administrative expenses were 28.9% of total revenues in 2018. Most REITs have administrative expense ratios of 6-12%; showing how inefficient it is to operate the Company. Total revenues declined 21.6% in 2018, and have continued to decline in 2019. The only valid business judgment is for Highlands to liquidate. Management’s refusal to distribute proceeds of property sales to stockholders is clearly an effort to pay themselves excessive salary and bonuses for as long as possible. The Company’s CEO received total compensation of $2.58 million in 2018. Highlands’ other executive officers each received over $1.0 million in compensation in 2018. These salaries are excessive, as the Company has failed to fulfill any of its original objectives to liquidate properties and distribute proceeds to shareholders. In the nearly 4 years of the Company’s existence, it has not distributed a penny to stockholders, and the NAV is less today than it was when the Company was spun off.

The majority of the Company’s shareholders own less than $1,000 worth of stock and it is cost inefficient for many to hold or sell them due to IRA custodial fees and sales commissions.

If you believe the Company should fulfill its original intent to liquidate its assets and return the proceeds to shareholders, please vote for this proposal.
I. The Proposal is not a proper subject for action by stockholders under Maryland law.

The Proposal is not a proper subject for action by stockholders under the Maryland General Corporation Law (the “MGCL”) because it mandates the Board of Directors (the “Board”) of the Company to take an action that is exclusively reserved to the discretionary authority of the Board pursuant to the MGCL. Section 2-401 of the MGCL states that “all of the business and affairs of a corporation shall be managed under the board of directors.” Stockholders do not have the power or right under Maryland law to “control the directors in the exercise of the judgment vested in them by virtue of their office.”

The Proposal would require the Board to liquidate the Company’s properties by December 31, 2021 and return the proceeds to the Company’s stockholders. The intent of the Proposal and the Supporting Statement is to cause the Board to liquidate the entire company and distribute all proceeds to the stockholders. In order to carry out the contemplated liquidation, the Company would need to sell all of its assets outside of the ordinary course of business and/or effect a voluntary dissolution. The MGCL provides that neither action may be initiated by the stockholders of the corporation and reserves the right to initiate such actions to the board of directors of the corporation. Section 3-105 of the MGCL provides that a Maryland corporation may transfer all or substantially all of its assets only if (1) the board of directors first approves the sale, declares it advisable and submits the proposed sale to the stockholders for consideration at an annual or special meeting and (2) then the stockholders approve the sale of assets. As with a sale of assets, the voluntary dissolution of a Maryland corporation under Section 3-403 of the MGCL may only be consummated if (1) the board of directors first approves the dissolution, declares it advisable and directs that the proposed dissolution be submitted to the stockholders for consideration at an annual or special meeting and (2) then the stockholders approve the dissolution. If implemented, the Proposal would usurp the Board’s statutory right to initiate the liquidation and dissolution procedures of the Company after making the determination discussed in the following paragraph and is therefore not a proper subject for stockholder action under Maryland law.

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1 Warren v. Fitzgerald, 189 Md. 476, 489 (quoting People ex rel. Manice v. Powell, 201 N.Y. 194, 200, 201 (1911)).

2 Once a dissolution is approved in accordance with the MGCL and articles of dissolution are filed with the State Department of Assessments and Taxation of Maryland, Section 3-410(a) of the MGCL provides that until a court appoints a receiver, the business and affairs of the corporation shall be managed under the direction of the board of directors solely for the purpose of liquidating the corporation and winding up its affairs. Section 3-410(b) of the MGCL requires the directors, acting on behalf of the corporation, to collect and distribute the assets, apply them to the corporation’s existing debts and obligations (including “necessary expenses of liquidation”) and distribute the remaining assets among the stockholders. See Jim J. Hanks, MARYLAND CORPORATION LAW § 11.4 (Supp. 2018).

3 The requirements of Section 3-105 are subject to certain exceptions, not relevant for the purposes of this opinion.

4 See MGCL Section 3-403.
When determining whether to declare a sale of assets or dissolution advisable, directors of a Maryland corporation are required to act in accordance with their duties to the corporation, which require that such directors act in a manner they reasonably believe to be “in the best interests of the corporation.” As a leading Maryland corporate law treatise notes, directors should act with adequate deliberation in determining whether to approve a proposed transaction and recommend and submit it to the stockholders. The Proposal would require the Board to take actions regardless of whether the Board determined that such actions are in the best interests of the Company. Maryland law does not permit stockholders to substitute their judgment for the judgment of the board of directors, and stockholder resolutions meant to “bind the directors as an expression of the will of the [stockholders]” are not valid.

II. The Proposal, if implemented, would cause the Company to violate Maryland law.

The Proposal requires that the Board implement a plan to liquidate all of the Company’s properties and distribute the proceeds to the stockholders of the Company. The Proposal provides that the Board alone has the authority to take these actions. As more fully discussed above, in order for the Company to effect either a sale of all (or substantially all) of the Company’s assets or a dissolution, the Board must approve the proposed action, declare it advisable and then submit it to the stockholders for consideration at an annual or special meeting, and then the stockholders must approve the action. In view of the board approval and stockholder voting requirements of the MGCL, the Board may not unilaterally liquidate the properties of the Company and distribute the proceeds to the stockholders. If the Board were to unilaterally approve and carry out the Proposal, the Company would violate the MGCL.

The vote required under the MGCL for stockholders to approve a sale of all or substantially all of the assets or a dissolution is the affirmative vote of stockholders entitled to cast two-thirds of the votes entitled to be cast on the matter. However, the MGCL permits a Maryland corporation to provide in its charter for the approval of these matters by a lesser percentage, but not less than a majority of all of the votes entitled to be cast on the matter, or a greater percentage. Article Fifth, Section 2 of the Charter provides for approval of these matters by a majority of the votes entitled to be cast. While the MGCL allows flexibility on the

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5 See MGCL Section 2-405.1.
6 JIM J. HANKS, MARYLAND CORPORATION LAW § 6.6(b) (Supp. 2018).
7 Under Maryland law, the power of stockholders over the board of directors is exercised by the stockholders’ right to elect and remove directors. See MGCL Section 2-303 and Section 2-406.
8 Mutual Fire Ins. Co. v. Farquhar, 86 Md. 668, 674 (1898).
9 See MGCL Section 2-604, Section 3-105, Section 3-403 and Section 3-902.
10 See MGCL Section 2-104(b)(4) and (5).
percentage of votes required to approve a matter, the MGCL does not permit the liquidation action described in the Proposal without a stockholder vote.

Approval of the Proposal by the Company’s stockholders would not constitute the necessary stockholder approval of the sale of assets and/or dissolution of the Company required by the MGCL. The MGCL only provides for stockholder approval of a sale of assets or dissolution after the board of directors declares such action advisable. Moreover, unlike the Proposal itself, which can be approved by a majority of votes cast at a meeting of stockholders at which a quorum is present, the actions ultimately contemplated by the Proposal require a vote of at least a majority of the votes entitled to be cast on the matter. Because the Proposal requests that the Board carry out a sale of all of the Company’s assets and/or a dissolution without following the required approval process mandated by the MGCL and the Charter, the Proposal would cause the Company to violate Maryland law if implemented as proposed.

III. The Company lacks the power or authority to implement the Proposal.

The Company does not possess the power or authority to implement the Proposal because the Proposal conflicts with the MGCL and the Charter. Section 2-103 of the MGCL sets forth the general powers of a Maryland corporation. Section 2-103 does not specifically address liquidations. However, in addition to specific enumerated powers, Section 2-103(17) provides that a corporation may “[e]xercise generally the powers set forth in its charter and those granted by law.” Section 2-103(18) states that a corporation may “[d]o every other Act not inconsistent with law which is appropriate to promote and attain the purposes set forth in the charter.” (Emphasis added.) In other words, a corporation does not have the power to do what it is prohibited from doing by law or in its charter. As discussed above, under the MGCL and the Charter, it is impermissible for the Company to liquidate its assets by unilateral Board action. Because the implementation of the Proposal would cause the Company to violate both the MGCL and its Charter, the Company lacks the power and authority to implement the Proposal.

IV. Conclusion

Based upon the foregoing analysis and subject to the limitations, assumptions and qualifications set forth herein, it is our opinion that (1) the Proposal is not a proper subject for action by stockholders under the laws of the State of Maryland; (2) the Proposal would, if implemented, cause the Company to violate Maryland law and (3) the Company lacks the power and authority to implement the Proposal.

The foregoing opinion is limited to the MGCL, and judicial interpretations thereof, in effect on the date hereof and we do not express any opinion herein concerning any law other than the MGCL. Furthermore, the foregoing opinion is limited to the matters specifically
set forth therein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this opinion if any provision of the MGCL, or any judicial interpretation of any provision of the MGCL, changes after the date hereof.

The opinion presented in this letter is solely for your use in connection with the Proposal and may not be relied upon by any other person or entity, or by you for any other purpose, without our prior written consent. However, we consent to inclusion of this opinion with a request by you to the Securities and Exchange Commission (the “Commission”) for concurrence by the Commission with your decision to exclude the Proposal from the proxy materials for your next annual meeting of stockholders.

Very truly yours,

Venable LLP