



DIVISION OF  
CORPORATION FINANCE

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

February 20, 2018

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

Re: Government Properties Income Trust  
Incoming letter dated December 7, 2017

Dear Ms. Cohen:

This letter is in response to your correspondence dated December 7, 2017 concerning the shareholder proposal (the "Proposal") submitted to Government Properties Income Trust (the "Company") by UNITE HERE (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Copies of all of the correspondence on which this response is based will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair  
Senior Special Counsel

Enclosure

cc: JJ Fueser  
UNITE HERE  
jjfueser@unitehere.org

February 20, 2018

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

Re: Government Properties Income Trust  
Incoming letter dated December 7, 2017

The Proposal relates to board declassification.

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 Proponent holds 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,

William Mastrianna  
Attorney-Adviser

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

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

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

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

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December 7, 2017

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

RE: Government Properties Income 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 Government Properties Income 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 2018 annual meeting of shareholders (the “2018 Proxy Materials”) the shareholder proposal and supporting statement (collectively, the “Proposal”) of UNITE HERE (the “Proponent”), submitted by JJ Fueser, Deputy Director, Research, of the Proponent to the Company on October 25, 2017. The Proposal and other materials submitted by the Proponent to the Company on October 25, 2017 are attached hereto as Exhibit A.

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

In accordance with Staff Legal Bulletin No. 14D (Nov. 7, 2008), this letter and its attachments are being emailed to [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov). In accordance with Rule 14a-8(j), a copy of this letter and its attachments are being sent



Office of Chief Counsel  
Division of Corporate Finance  
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December 7, 2017  
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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 2018 Proxy Materials on or after February 27, 2018. 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 2018 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 December 7, 2017 (the "*Saul Ewing Opinion*"). Please note that as to all matters of Maryland law referenced herein, we direct you to the Saul Ewing Opinion enclosed herewith. In preparing and submitting this letter on behalf of the Company, we do not express any opinion as to Maryland law.

## **BACKGROUND**

As explained in the Saul Ewing Opinion, the Company is a Maryland real estate investment trust ("*Maryland REIT*") formed in accordance with Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland (the "*Maryland REIT Law*"). The Company's governing documents are its Amended and Restated Declaration of Trust, dated June 8, 2009, as amended (the "*Company's Declaration of Trust*"), a copy of which is attached hereto as Exhibit C, and its Amended and Restated Bylaws, adopted September 7, 2016 (the "*Company's Bylaws*"), a copy of which is attached hereto as Exhibit D.

The Proposal requests that the shareholders of the Company recommend that the Board of Trustees of the Company (the "*Board*") "take all necessary steps, in compliance with applicable law, to eliminate the classification of the Board of Trustees after the 2018 election, such that implementation of this proposal should not prevent any Trustee elected at or before the annual meeting held in 2018 from completing the term for which such Trustee was or is elected."

The Company received the Proposal on October 25, 2017. Included with the Proposal was a letter dated October 25, 2017 from the Amalgamated Bank

of Chicago, which declared that the Proponent “beneficially owns 221 shares of Government Properties Income Trust common stock through the Amalgamated Bank of Chicago as an intermediary . . . and has owned these shares continuously for more than one year.”

### **BASES FOR EXCLUSION**

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

- (1.) The Company may exclude the Proposal pursuant to Rule 14a-8(b)(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 2018 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 2018 Proxy Materials, would cause members of the Board to violate state law.

### **ANALYSES**

- 1. The Company may exclude the Proposal from its 2018 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 this 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 of Trustees, and ***the shareholders shall not otherwise be entitled to act thereon except as otherwise expressly required by law.***  
[Emphasis added.]

The Proposal asks that shareholders of the Company adopt a resolution pursuant to which the shareholders of the Company recommend that the

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<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.

Board take all steps necessary to eliminate the classification of the Board of Trustees after the 2018 election. The Saul Ewing Opinion explains that 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. 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 2018 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 2018 annual meeting.

The Staff has concurred with the view that a Maryland REIT may exclude a shareholder proposal pursuant to Rule 14a-8(b) in circumstances where its declaration of trust does not permit the shareholder proponent to vote on the subject of the proposal. In *RAIT Financial Trust* (March 10, 2017), the Staff accepted the position of RAIT Financial Trust, a Maryland REIT ("*RAIT*"), that its shareholders were entitled to vote only on certain enumerated matters in its declaration of trust, which did not include the proposal in question, and that, therefore, the shareholder proponent did not hold securities entitled to be voted on the proposal as required by Rule 14a-8(b). The pertinent language of RAIT's declaration of trust, Article VIII, Section 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) termination of REIT status as provided in Article V, Section 1(C), (b) election of Trustees as provided in Article V, Section 2(A) and the removal of Trustees as provided in Article V, Section 3; (c) amendment of the Declaration of Trust as provided in Article X; (d) termination of the Trust as provided in Article XII, Section 2; (e) merger or consolidation of the Trust, or the sale or disposition of substantially all of the Trust Property, as provided in Article XI; and (f) such other matters with respect to which a vote of the shareholders is required by applicable law or 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.]

This provision is substantially the same as Section 8.2 of Article VIII of the Company's Declaration of Trust, which is set forth above. A comparison of the above-provision and Section 8.2 of Article VIII of the Company's Declaration of Trust is attached hereto as Exhibit E.

The letters and supporting opinions submitted by RAIT and its counsel and the shareholder proponent and his counsel included significant discussion regarding whether the shareholder proposal in question was precatory or binding. The shareholder proponent was of the view that the proposal was precatory and therefore a proper subject for action by RAIT's shareholders under Maryland law and RAIT's declaration of trust.<sup>2</sup> RAIT was of the view that the proposal was cast in binding language, and that, even if it were recast in precatory terms, the proposal would still be excludable because the proposal was not within the enumerated matters that RAIT's declaration of trust allows shareholders to vote upon. Counsel for the shareholder proponent in the RAIT matter was of the view that the proposal was precatory. We respectfully submit, on behalf of the Company, that the Staff accepted RAIT's position that the proposal was excludable if precatory. Had it not, the Staff, in accordance with longstanding practice, would have afforded the shareholder proponent the opportunity to recast the proposal in terms that are more clearly precatory. *See e.g.*, Division of Corporate Finance, Staff Legal Bulletin No. 14D (Nov. 7, 2008), Section B.

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

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<sup>2</sup> The proposal in question directed RAIT's board of trustees to "take the steps necessary" to externalize management. The Staff has previously expressed the view that it will consider a proposal precatory where it includes wording such as "take the steps necessary." Division of Corporate Finance, Staff Legal Bulletin No. 14D (Nov. 7, 2008), Section B.

**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 2018 Proxy Materials under Rule 14a-8(i)(1) because, as confirmed by the Saul Ewing Opinion, the Proposal is not a proper subject for action by shareholders of the Company under the laws of the State of Maryland, the Company's jurisdiction of formation.

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 Declaration of Trust is absolute and unambiguous in regard to the management of the Company; Section 5.1 of the 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 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 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 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 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 2018 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 that if the Board is required to include the Proposal in the 2018 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 2018 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 2018 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 2018 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

Office of Chief Counsel  
Division of Corporate Finance  
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December 7, 2017  
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would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of its response.

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

Very truly yours,

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

Margaret R. Cohen

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



**Exhibit A**

(see attached)

# UNITEHERE!

275 Seventh Avenue, New York, NY 10001 • TEL (212) 265-7000 • FAX (212) 265-3415  
WWW.UNITEHERE.ORG • facebook.com/UNITEHERE • @UNITEHERE

October 25, 2017

**Via email ([secretary@govreit.com](mailto:secretary@govreit.com)) and hand-delivery**

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

Dear Ms. Clark:

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

Materials enclosed include:

- A copy of our proposal and supporting statement;
- A letter from our custodial intermediary, Amalgamated Bank of Chicago (DTC #2567), demonstrating UNITE HERE's beneficial ownership of 221 shares of common stock of Government Properties Income Trust (GOV) for at least a one-year period.

UNITE HERE intends to continue to hold at least these 221 shares at least through the date of the 2018 Annual General Meeting. We will appear in person to properly introduce this proposal at the 2018 Annual General Meeting. The reason for presenting this proposal is stated in our supporting statement. We have no material interest in the proposal's subject other than that interest which all shareholders have in its enactment.

Please do not hesitate to contact me if you require further information or wish to discuss this proposal.

Sincerely,



JJ Fueser  
Deputy Director, Research, UNITE HERE  
416-893-8570

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D. TAYLOR, PRESIDENT

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



Lawrence M. Kaplan  
Vice President, Amalgamated Bank of Chicago  
30 N. LaSalle Street  
Chicago, IL 60602  
Phone: 312-822-3220  
Fax: 312-267-8775  
[lkaplan@aboc.com](mailto:lkaplan@aboc.com)

October 25, 2017

To Whom It May Concern,

Please be advised that UNITE HERE beneficially owns 221 shares of Government Properties Income Trust common stock through the Amalgamated Bank of Chicago as an intermediary (DTC participant #2567), and has owned these shares continuously for more than one year. If you have any questions, please call me at 312-822-3220.

Sincerely,

A handwritten signature in cursive script that reads "Lawrence M. Kaplan".

Lawrence M. Kaplan,  
Vice President

## Proposal

RESOLVED, that the shareholders of Government Properties Trust ("GOV," or the "Company") recommend that the Company shall take all necessary steps, in compliance with applicable law, to eliminate the classification of the Board of Trustees after the 2018 election, such that implementation of this proposal should not prevent any Trustee elected at or before the annual meeting held in 2018 from completing the term for which such Trustee was or is elected.

## Supporting statement

When trustees are held accountable for their actions, they perform better. This resolution urges the Board of Trustees to facilitate a declassification of the board, which would enable shareholders to register their views on the performance of all trustees at each annual meeting. Under the current structure, trustees are elected to staggered three-year terms, so shareholders only have the opportunity to vote on a portion of the Board each year. Annual elections make trustees more accountable to shareholders, and could thereby contribute to improving performance and increasing firm value. As of September 2017, Ernst and Young [estimate](#) that 88% of S&P 500 and 69% of S&P 1500 companies have adopted annual director elections.

Greater accountability to shareholders is needed on the board of GOV, where last year between one-quarter and one-third of votes were [cast against](#) the trustees standing for election. At two related real estate investment trusts (REITs) (also externally advised by GOV's external adviser, RMR), Hospitality Properties Trust ([HPT](#)) and Senior Housing Properties Trust ([SNH](#)), there were trustees who were reappointed by the Board to serve after a majority of shares were voted against their re-election.

Trustee elections are one of the few tools shareholders have to hold our board accountable. Numerous other restrictions to shareholder rights are in place; trustees do not currently require majority support for election, and shareholders may not take action between annual meetings, either through a special meeting or by written consent. Leading proxy advisor Institutional Shareholder Services (ISS) has called GOV's failure to allow shareholders the right to amend bylaws "a material governance failure."

Empirical studies have shown that staggered boards are associated with lower firm valuation and poor corporate decision-making. (Bebchuk and Cohen, 2005; Faleye, 2007; Frakes, 2007). Firms with classified boards are more likely to make acquisitions that decrease shareholder value (Masulis, Wang, and Xie, 2007), and are associated with lower returns to shareholders in the event of a takeover (Bebchuk, Coates, and Subramanian, 2002). GOV's 3- and 5-year total shareholder return (TSR), according to ISS, trails the Russell 3000 and GICS 6010 TSR indices.

To improve corporate governance at GOV, thereby preserving shareholder value and strategic opportunities, we urge shareholders demand annual elections for all GOV trustees.

**Exhibit B**

(see attached)

December 7, 2017

Government Properties Income Trust  
Two Newton Place  
225 Washington Street  
Newton, Massachusetts 02458

Re: Government Properties Income Trust – Shareholder Proposal of UNITE HERE

Ladies and Gentlemen:

We have acted as Maryland counsel for Government Properties Income 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 UNITE HERE (the “**Proposal**”) and the related Supporting Statement (the “**Supporting Statement**”) for inclusion in the Company’s proxy statement and form of proxy for its 2018 Annual Meeting of Shareholders (collectively, the “**2018 Proxy Materials**”). We have been asked to consider (1) whether the Proposal is a proper subject for action by shareholders of the Company under Maryland law and (2) whether the Proposal, if included in the 2018 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 June 5, 2009 and effective at 9:00 a.m. on June 8, 2009 (the “**Original Declaration of Trust**”);

(ii) certified copies of the Articles of Amendment of the Company recorded by the SDAT on December 30, 2009, July 20, 2011, July 24, 2014 and June 28, 2017 (the “**Articles of Amendment**”);

(iii) a certified copy of the Certificate of Correction of the Company recorded by the SDAT on August 1, 2014 (together with the Original Declaration of Trust and Articles of Amendment, the “**Declaration of Trust**”)

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

(v) the Proposal;

(vi) the Supporting Statement; and

(vii) 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 October 25, 2017, UNITE HERE presented the following Proposal along with the Supporting Statement pursuant to Rule 14a-8 for inclusion in the Company’s 2018 Proxy Materials:

“RESOLVED, that the shareholders of Government Properties Income Trust (“GOV” or the “Company”) recommend that the Company shall take all necessary steps, in compliance with applicable law, to eliminate the classification of the Board of Trustees after the 2018 election, such that implementation of this proposal should not prevent any Trustee elected at or before the annual meeting held in 2018 from completing the term for which such Trustee was or is elected.”

## **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 and investing in a REIT to select and construct their own governance structure and to organize how their REIT will be governed, and provides broad power and discretion to trustees to determine the best way to manage the business and affairs of the REIT.<sup>2</sup> In this way, the governance of Maryland REITs 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 set forth 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”).

In accordance with the 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 this Declaration of Trust as provided in ARTICLE X; (c) termination of the

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

<sup>2</sup> See, e.g., Theodore S. Lynn, Micah W. Broomfield & David W. Lowden, *Real Estate Investment Trusts* § 2:3e (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)e

<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.”)e

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

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



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** except as otherwise expressly required by law.” (emphasis added).

Section 5.2.2 of the Company’s Declaration of Trust provides that the “Trustees shall be classified.” Whether or not the Trustees should be classified is not a subject set forth in Section 8.2 of the Company’s Declaration of Trust as a matter that can be voted on by the Company’s shareholders. Classified boards are a common feature of corporate governance for Maryland REITs. A classified board structure serves important and legitimate corporate governance objectives including (1) providing a measure of continuity and stability in business operations; (2) requiring corporate and operational changes to be deliberate, enabling the board to focus on long-term value maximization rather than short-term stock price movements; and (3) protecting the REIT from coercive takeovers and preventing a sudden shift in the board to individuals seeking a transaction not necessarily in the best interests of the REIT.

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 such that shareholders who invest in such REITs assent to be bound by board-adopted bylaws when they buy shares in those REITs. 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.” Each of the Company’s Declaration of Trust and Bylaws are documents filed publicly with the Securities and Exchange Commission and available for inspection before a person decides to buy shares in the Company. In a recent Maryland court decision, the court held that a bylaw provision unilaterally adopted by the board of trustees of a

<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”).

Maryland REIT, pursuant to the broad authority provided to the board under the MRL and its declaration of trust, was valid and a binding contractual obligation of the plaintiff shareholder.<sup>8</sup> Under Maryland law, the Declaration of Trust and Bylaws represent contractual obligations of the Proposal's proponent and the Company and govern the relationship between the two, including the matters that may be voted upon and the process under which a shareholder may or may not propose an item for shareholder action.

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 or the Declaration of Trust which authorizes or requires the vote by shareholders on the Proposal or the subject matter of the Proposal, and without any 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") requiring a REIT to allow shareholders of the REIT to consider whether or not the Board of Trustees should be classified,<sup>9</sup> the Proposal is not a proper subject for action by the Company's shareholders at such meeting under applicable Maryland law.<sup>10</sup> Accordingly, the securities UNITE HERE has represented to the Company that it owns are not entitled under applicable Maryland law to vote on the Proposal at the Company's 2018 Annual Meeting of Shareholders.

B.e The Proposal, If Included In The 2018 Proxy Statement, Would Cause Thee Company To Violate Maryland Law

As noted above, the Declaration of Trust definitively and proscripively 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 would never be a proper matter that could be brought before the Company's 2018 Annual Meeting of Shareholders.

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<sup>8</sup> *Corvex Management LP*, 2013 WL 1915769.

<sup>9</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>10</sup> See also American Bar Association, *Handbook for the Conduct of Shareholders' Meetings* 62 (2nd ed. 2010)s (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).

If the Board is required by the proponents and the Securities and Exchange Commission to include the Proposal in the 2018 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 the best interests of the Company, then the Board would be prevented from making the determination mandated by Section 8.2(e) of the Declaration of Trust. This would preclude the Company's trustees from exercising the authority delegated to them and meeting the standard of conduct applicable to the Company under 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>11</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 2018 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 2018 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 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 2018 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 2018 Proxy Materials (the "**Purpose**"). Without our written

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<sup>11</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.

consent, this 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 the Staff of the Securities and Exchange commission (the "**Staff**") in connection with the Purpose and/or Skadden, Arps, Slate, Meagher & Flom LLP ("**Skadden**"). Skadden (a) may use this letter and rely upon it, in connection with any correspondence on your behalf that relates to the Purpose and (b) furnish or quote this letter, on your behalf, to the Staff in connection with any correspondence with the Staff on your behalf that relates to the Purpose. Further, we consent to you or, on your behalf, Skadden furnishing a copy of this 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,

  
SAUL EWING ARNSTEIN & LEHR LLP

**Exhibit C**

(see attached)

**GOVERNMENT PROPERTIES INCOME TRUST**  
**AMENDED AND RESTATED DECLARATION OF TRUST**

**June 8, 2009**

**STATE OF MARYLAND**

I hereby certify that this is a true and complete copy of the 30  
page document on file in this office. DATED: 12/4/17  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:

BY: *R. W. [Signature]* Custodian  
This stamp replaces our previous certification system. Effective: 6/95

## **GOVERNMENT PROPERTIES INCOME TRUST**

### **ARTICLES OF AMENDMENT AND RESTATEMENT**

FIRST: Government Properties Income Trust, a Maryland real estate investment trust (the "Trust") formed under Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland ("Title 8"), desires to amend and restate its Declaration of Trust as currently in effect and as hereinafter amended.

SECOND: The following provisions are all the provisions of the Declaration of Trust currently in effect and as hereinafter amended:

#### **ARTICLE I**

##### **FORMATION**

Section 1.1. Formation. The Trust is a real estate investment trust within the meaning of Title 8. The Trust shall not be deemed to be a general partnership, limited partnership, joint venture, joint stock company or a corporation, but nothing herein shall preclude the Trust from being treated for tax purposes as an association under the Code (as defined in ARTICLE VII below); nor shall the Trustees or shareholders or any of them for any purpose be, nor be deemed to be, nor be treated in any way whatsoever as, liable or responsible hereunder as partners or joint venturers.

#### **ARTICLE II**

##### **NAME**

Section 2.1. Name. The name of the Trust is: Government Properties Income Trust. Under circumstances in which the Board of Trustees of the Trust (the "Board of Trustees" or "Board") determines that the use of the name of the Trust is not practicable or desirable, the Trust may use any other designation or name for the Trust.

#### **ARTICLE III**

##### **PURPOSES AND POWERS**

Section 3.1. Purposes. The purposes for which the Trust is formed are to invest in and to acquire, hold, manage, administer, control and dispose of property and interests in property, including, without limitation or obligation, engaging in business as a real estate investment trust under the Code.



Section 3.2. Powers. The Trust shall have all of the powers granted to real estate investment trusts by Title 8 and all other powers set forth in this Declaration of Trust which are not inconsistent with law and are appropriate to promote and attain the purposes set forth in this Declaration of Trust.

#### **ARTICLE IV**

##### **RESIDENT AGENT**

Section 4.1. Resident Agent. The name of the resident agent of the Trust in the State of Maryland is CSC-Lawyers Incorporating Service Company, whose post office address is 7 St. Paul Street, Suite 1660, Baltimore, Maryland 21202. The resident agent is a Maryland corporation. The Trust may change such resident agent from time to time as the Board of Trustees shall determine. The Trust may have such offices or places of business within or outside the State of Maryland as the Board of Trustees may from time to time determine.

#### **ARTICLE V**

##### **BOARD OF TRUSTEES**

Section 5.1. Powers. Subject to any express limitations contained in this Declaration of Trust or in the Bylaws, (a) the business and affairs of the Trust shall be managed under the direction of the Board of Trustees and (b) the Board shall have full, exclusive and absolute power, control and authority over any and all property of the Trust. The 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. This Declaration of Trust shall be construed with the presumption in favor of the grant of power and authority to the Board. Any construction of this Declaration of Trust or determination made in good faith by the Board concerning its powers and authority hereunder shall be conclusive. The enumeration and definition of particular powers of the Trustees included in this Declaration of Trust or in the Bylaws shall in no way be construed or deemed by inference or otherwise in any manner to exclude or limit the powers conferred upon the Board or the Trustees under the general laws of the State of Maryland or any other applicable laws.

The Board, without any action by the shareholders of the Trust, shall have and may exercise, on behalf of the Trust, without limitation, the power to terminate the status of the Trust as a real estate investment trust under the Code; to determine that compliance with any restriction or limitations on ownership and transfers of shares of the Trust's beneficial interest set forth in ARTICLE VII is no longer required in order for the Trust to qualify as a real estate investment trust; to adopt, amend and repeal Bylaws; to elect officers in the manner prescribed in the Bylaws; to solicit proxies from holders of shares of beneficial interest of the Trust; and to do any other acts and deliver any other documents necessary or appropriate to the foregoing powers.



Section 5.2. Number; Initial Trustees; Classification; Qualifications.

Section 5.2.1. The trustees of the Trust (hereinafter, the "Trustees"), and such other persons as the Trustee or Trustees then in office shall elect, shall serve until the first meeting of shareholders at which Trustees of his or her Class (as defined below) are elected and until his or her successor is duly elected and qualified, or until he or she sooner dies, resigns, retires, or is disqualified or removed from office. Any person serving as Trustee shall meet the criteria and qualifications for office set forth from time to time in the Bylaws. The Board of Trustees shall be comprised of Independent Trustees and Managing Trustees (as each term is defined in the Bylaws) in such number as set forth from time to time in the Bylaws. The number of Trustees shall initially be five and, subject to the voting powers of one or more classes or series of Shares (as defined in Section 6.1 below) as set forth in the Bylaws, the number of Trustees shall be such number as shall be fixed from time to time by the Trustees; provided, however, that the number of Trustees shall in no event be less than three. The names of the individuals who shall serve as initial Trustees are as follows:

Managing Trustees:

Adam D. Portnoy  
Barry M Portnoy

Independent Trustees:

John L. Harrington  
Jeffrey P. Somers  
Barbara D. Gilmore

Section 5.2.2. Annual meetings of Shareholders shall be held as specified in the Bylaws. The Trustees shall be classified, with respect to the time for which they severally hold office, into the following three classes (each a "Class"): Class I, whose term expires at the initial annual meeting; Class II, whose term expires at the next succeeding annual meeting after the initial annual meeting (the "second annual meeting"); and Class III, whose term expires at the next succeeding annual meeting after the second annual meeting. Each Class shall consist of at least one Trustee. At each annual meeting beginning with the initial annual meeting, the successors of the Class of Trustees whose term expires at that meeting shall be elected to hold office for a term expiring at the annual meeting held in the third year following the year of their election, with each Trustee holding office until the expiration of the term of the relevant Class and the election and qualification of his or her successor, or until he or she sooner dies, resigns, retires, or is disqualified or removed from office. The Trustees shall assign by resolution Trustees to each of the three Classes. The Trustees also may determine by resolution those Trustees in each Class that shall be elected by shareholders of a particular class or series of Shares. If the number of Trustees is changed, any increase or decrease shall be apportioned among the Classes by resolution of the Trustees.

Section 5.2.3. Vacancies on the Board of Trustees, whether resulting from an increase in the number of Trustees or otherwise, shall be filled in the manner provided in the Bylaws. It shall not be necessary to list in this Declaration of Trust the names and addresses of any Trustees hereinafter elected. No reduction in the number of Trustees shall have the effect of removing any Trustee from office prior to the expiration of his or her term unless the Trustee is specifically removed pursuant to Section 5.3 at the time of the decrease. Subject to the provisions of Section 5.3, each Trustee shall hold office until the election and qualification of his or her successor. There shall be no cumulative voting in the election of Trustees.

Section 5.3. Resignation or Removal. Any Trustee may resign or retire as a Trustee by an instrument in writing signed by him and delivered to the secretary of the Trust, and such resignation or retirement shall be effective upon such delivery, or at a later date according to the terms of the instrument. A Trustee judged incompetent or for whom a guardian or conservator has been appointed shall be deemed to have resigned as of the date of such adjudication or appointment. A Trustee may be removed at any time (a) solely with cause, at a meeting of the shareholders properly called for that purpose, by the affirmative vote of the holders of not less than 75% of the Shares then outstanding and entitled to vote in the election of such Trustee or (b) with or without cause by the affirmative vote of not less than 75% of the remaining Trustees.

Section 5.4. Determinations by Board. The determination as to any of the following matters, made by or pursuant to the direction of the Board of Trustees consistent with this Declaration of Trust, shall be final and conclusive and shall be binding upon the Trust and every holder of Shares: the amount of the net income of the Trust for any period and the amount of assets at any time legally available for the payment of dividends, redemption of Shares or the payment of other distributions on Shares; the amount of paid-in surplus, net assets, other surplus, annual or other cash flow, funds from operations, net profit, net assets in excess of capital, undivided profits or excess of profits over losses on sales of assets; the amount, purpose, time of creation, increase or decrease, alteration or cancellation of any reserves or charges and the propriety thereof (whether or not any obligation or liability for which such reserves or charges shall have been created shall have been paid or discharged); any interpretation of the terms, preferences, conversion or other rights, voting powers or rights, restrictions, limitations as to dividends or other distributions, qualifications or terms or conditions of redemption of any class or series of Shares; the fair value, or any sale, bid or asked price to be applied in determining the fair value, of any asset owned or held by the Trust or of any Shares; the number of Shares of any class of the Trust; any matter relating to the acquisition, holding and disposition of any assets by the Trust; or any other matter relating to the business and affairs of the Trust or required or permitted by applicable law, this Declaration of Trust or the Bylaws or otherwise to be determined by the Board of Trustees.

## ARTICLE VI

### SHARES OF BENEFICIAL INTEREST

Section 6.1. Authorized Shares. The beneficial interest of the Trust shall be divided into shares of beneficial interest (the "Shares"). The Trust has authority to issue

25,000,000 Shares, consisting of 25,000,000 common shares of beneficial interest, \$.01 par value per share ("Common Shares"). If shares of one class are classified or reclassified into shares of another class of shares pursuant to this ARTICLE VI, the number of authorized shares of the former class shall be automatically decreased and the number of shares of the latter class shall be automatically increased, in each case by the number of shares so classified or reclassified, so that the aggregate number of shares of beneficial interest of all classes that the Trust has authority to issue shall not be more than the total number of shares of beneficial interest set forth in the second sentence of this paragraph. The Board of Trustees, without any action by the shareholders of the Trust, may amend this Declaration of Trust from time to time to increase or decrease the aggregate number of Shares or the number of Shares of any class or series that the Trust has authority to issue.

Section 6.2. Common Shares. Subject to the provisions of ARTICLE VII, each Common Share shall entitle the holder thereof to one vote on each matter upon which holders of Common Shares are entitled to vote. The Board of Trustees may reclassify any unissued Common Shares from time to time into one or more classes or series of Shares.

Section 6.3. Classified or Reclassified Shares. Prior to issuance of classified or reclassified Shares of any class or series, the Board of Trustees by resolution shall (a) designate that class or series; (b) specify the number of Shares to be included in the class or series; (c) set, subject to the provisions of ARTICLE VII, the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends or other distributions, qualifications and terms and conditions of redemption for each class or series; and (d) cause the Trust to file articles supplementary with the State Department of Assessments and Taxation of Maryland (the "SDAT"). Any of the terms of any class or series of Shares set pursuant to clause (c) of this Section 6.3 may be made dependent upon facts ascertainable outside this Declaration of Trust (including the occurrence of any event, determination or action by the Trust or any other person or body) and may vary among holders thereof, provided that the manner in which such facts or variations shall operate upon the terms of such class or series of Shares is clearly and expressly set forth in the articles supplementary filed with the SDAT.

Section 6.4. Authorization by Board of Share Issuance. The Board of Trustees may authorize the issuance from time to time of Shares of any class or series, whether now or hereafter authorized, or securities or rights convertible into Shares of any class or series, whether now or hereafter authorized, for such consideration (whether in cash, property, past or future services, obligation for future payment or otherwise) as the Board of Trustees may deem advisable (or without consideration), subject to such restrictions or limitations, if any, as may be set forth in this Declaration of Trust or the Bylaws of the Trust.

Section 6.5. Dividends and Distributions. The Board of Trustees may from time to time authorize and declare to shareholders such dividends or distributions, in cash or other assets of the Trust or in securities of the Trust or from any other source as the Board of Trustees in its discretion shall determine. Shareholders shall have no right to any dividend or distribution unless and until authorized and declared by the Board. The exercise of the powers and rights of the Board of Trustees pursuant to this Section 6.5 shall be subject to the provisions of any class or series of Shares at the time outstanding.

Section 6.6. General Nature of Shares. All Shares shall be personal property entitling the shareholders only to those rights provided in this Declaration of Trust. The shareholders shall have no interest in the property of the Trust and shall have no right to compel any partition, division, dividend or distribution of the Trust or of the property of the Trust. The death of a shareholder shall not terminate the Trust or affect its continuity nor give his or her legal representative any rights whatsoever, whether against or in respect of other shareholders, the Trustees or the trust estate or otherwise, except the sole right to demand and, subject to the provisions of this Declaration of Trust, the Bylaws and any requirements of law, to receive a new certificate for Shares registered in the name of such legal representative, in exchange for the certificate held by such shareholder. The Trust is entitled to treat as shareholders only those persons in whose names Shares are registered as holders of Shares on the beneficial interest ledger of the Trust.

Section 6.7. Fractional Shares. The Trust may, without the consent or approval of any shareholder, issue fractional Shares, eliminate a fraction of a Share by rounding up or down to a full Share, arrange for the disposition of a fraction of a Share by the person entitled to it or pay cash for the fair value of a fraction of a Share.

Section 6.8. Declaration and Bylaws. All shareholders are subject to the provisions of this Declaration of Trust and the Bylaws of the Trust.

Section 6.9. Divisions and Combinations of Shares. Subject to an express provision to the contrary in the terms of any class or series of beneficial interest hereafter authorized, the Board of Trustees shall have the power to divide, split or combine (by issuing or redeeming, as applicable, Shares pro rata or by any other lawful means) the outstanding shares of any class or series of beneficial interest, without a vote of shareholders.

Section 6.10. Arbitration.

Section 6.10.1. Any disputes, claims or controversies brought by or on behalf of any shareholder of the Trust (which, for purposes of this Section 6.10, shall mean any shareholder of record or any beneficial owner of Shares, or any former shareholder of record or beneficial owner of Shares), either on his, her or its own behalf, on behalf of the Trust or on behalf of any series or class of Shares or shareholders of the Trust against the Trust or any Trustee, officer, manager (including Reit Management & Research LLC or its successor), agent or employee of the Trust, including disputes, claims or controversies relating to the meaning, interpretation, effect, validity, performance or enforcement of this Declaration of Trust or the Bylaws (all of which are referred to as "Disputes") or relating in any way to such a Dispute or Disputes, shall on the demand of any party to such Dispute be resolved through binding and final arbitration in accordance with the procedures and rules for arbitration prescribed by the Bylaws. For the avoidance of doubt, and not as a limitation, Disputes are intended to include derivative actions against Trustees, officers or managers of the Trust and class actions by shareholders against those individuals or entities and the Trust. For the avoidance of doubt, a Dispute shall include a Dispute made derivatively on behalf of one party against another party.

Section 6.10.2. The award or decision of the arbitrator(s) shall be final and binding upon the parties thereto and shall be the sole and exclusive remedy between such parties relating to the Dispute, including any claims, counterclaims, issues or accounting presented to the arbitrators. Judgment upon the Award may be entered in any court having jurisdiction. To the fullest extent permitted by law, no application or appeal to any court of competent jurisdiction may be made in connection with any question of law arising in the course of arbitration or with respect to any award made, except for actions relating to enforcement of this agreement to arbitrate or any arbitral award issued hereunder and except for actions seeking interim or other provisional relief in aid of arbitration proceedings in any court of competent jurisdiction.

Section 6.10.3. Except as otherwise set forth in Section 8.6 or ARTICLE IX, the Bylaws or agreed between the parties, each party involved in a Dispute shall bear its own costs and expenses (including attorneys' fees), and the arbitrators shall not render an award that would include shifting of any such costs or expenses (including attorneys' fees) or, in a derivative case or class action, award any portion of the Trust's award to the claimant or the claimant's attorneys.

Section 6.10.4. This Section 6.10 is intended to benefit and be enforceable by the Trustees, officers, managers (including Reit Management & Research LLC or its successor), agents or employees of the Trust and shall be binding on the shareholders of the Trust and the Trust, as applicable, and shall be in addition to, and not in substitution for, any other rights to indemnification or contribution that such individuals or entities may have by contract or otherwise.

## ARTICLE VII

### RESTRICTIONS ON TRANSFER AND OWNERSHIP OF SHARES

Section 7.1. Definitions. For the purpose of this ARTICLE VII, the following terms shall have the following meanings:

"Affiliate" shall mean, with respect to any Person, another Person controlled by, controlling or under common control with such Person.

"Beneficial Ownership" shall mean ownership of Shares by a Person, whether the interest in Shares is held directly or indirectly (including by a nominee), and shall include, but not be limited to, interests that would be treated as owned through the application of Section 544 of the Code, as modified by Section 856(h)(1)(B) of the Code. The terms "Beneficial Owner", "Beneficially Owns" and "Beneficially Owned" shall have the correlative meanings.

"Charitable Beneficiary" shall mean one or more beneficiaries of the Charitable Trust as determined pursuant to Section 7.3(g), provided that each such organization shall be described in Sections 501(c)(3), 170(b)(1)(A) (other than clause (vii) or (viii) thereof) and 170(c)(2) of the

Code and contributions to each such organization shall be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code.

“Charitable Trust” shall mean any trust provided for in Section 7.2(a)(ii) and Section 7.3(a).

“Charitable Trustee” shall mean each Person, unaffiliated with the Trust and a Prohibited Owner, that is appointed by the Trust from time to time to serve as a trustee of a Charitable Trust as provided by Section 7.3(a).

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Common Shares” shall mean the common shares of beneficial interest designated as such in this Declaration of Trust.

“Constructive Ownership” shall mean ownership of Shares by a Person, whether the interest in Shares is held directly or indirectly (including by a nominee), and shall include any interests that would be treated as owned through the application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code, or treated as beneficially owned under Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The terms “Constructive Owner”, “Constructively Owns” and “Constructively Owned” shall have the correlative meanings.

“Excepted Holder” shall mean (a) a shareholder of the Trust for whom an Excepted Holder Limit (if any) is created by the Board of Trustees pursuant to Section 7.2(e)(i), (b) HRPT Properties Trust, (c) the Trust's manager (the “Manager”), (d) Affiliates of HRPT Properties Trust or the Manager and (e) on account of Constructive Ownership, Persons to whom HRPT Properties Trust's or the Manager's share ownership is attributable or whose share ownership is attributable to HRPT Properties Trust or the Manager.

“Excepted Holder Limit” shall mean, provided that and only so long as the affected Excepted Holder complies with all of the requirements (if any) established by the Board of Trustees pursuant to Section 7.2(e), the percentage limit (if any) established by the Board of Trustees with respect to such Excepted Holder.

“Market Price” with respect to Shares on any date shall mean the last sale price for such Shares, regular way, or, in case no such sale takes place on such day, the average of the closing bid and asked prices, regular way, for such Shares, in either case as reported on the principal consolidated transaction reporting system with respect to such Shares, or if such Shares are not listed or admitted to trading on any National Securities Exchange, the last sale price in the over the counter market, or if no trading price is available for such Shares, the fair market value of such Shares as determined in good faith by the Board of Trustees.

“National Securities Exchange” means an exchange registered with the Securities and Exchange Commission under Section 6(a) of the Exchange Act, as amended, supplemented or restated from time to time, and any successor to such statute.



“Ownership Limit” shall mean (a) with respect to Common Shares, 9.8% (in value or number of shares, whichever is more restrictive) of the Common Shares outstanding at the time of determination and (b) with respect to any other class or series of Shares, 9.8% (in value or number of shares, whichever is more restrictive) of the Shares of such class or series outstanding at the time of determination.

“Person” shall mean and include individuals, corporations, limited partnerships, general partnerships, joint stock companies or associations, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts and other entities and governments and agencies and political subdivisions thereof.

“Prohibited Owner” shall mean any Person who, but for the provisions of Section 7.2(a), would Beneficially Own or Constructively Own Shares in excess of the Ownership Limit, and if appropriate in the context, shall also mean any Person who would have been the holder of record in the books of the Trust or the Trust’s transfer agent of Shares that the Prohibited Owner would have so owned.

“REIT” shall mean a “real estate investment trust” within the meaning of Section 856 of the Code.

“Shares” shall mean the shares of beneficial interest of the Trust.

“Transfer” shall mean any issuance, sale, transfer, gift, assignment, devise or other disposition, as well as any other event (or any agreement to take any such actions or cause any such events) that causes any Person to acquire Beneficial Ownership or Constructive Ownership of Shares or the right to vote or receive distributions on Shares, including, without limitation, (a) any change in the capital structure of the Trust which has the effect of increasing the total equity interest of any Person in the Trust, (b) a change in the relationship between two or more Persons which causes a change in ownership of Shares by application of Section 318(a) of the Code, as modified by Section 856(d)(5) of the Code, (c) the grant or exercise of any option or warrant (or any disposition of any option or warrant, or any event that causes any option or warrant not theretofore exercisable to become exercisable), pledge, security interest or similar right to acquire Shares, (d) any disposition of any securities or rights convertible into or exchangeable for Shares or any interest in Shares or any exercise of any such conversion or exchange right, and (e) transfers of interests in other entities that result in changes in Beneficial Ownership or Constructive Ownership of Shares, in each case, whether voluntary or involuntary, whether owned of record or Beneficially Owned or Constructively Owned, and whether by operation of law or otherwise. The terms “Transferring” and “Transferred” shall have the correlative meanings.

Section 7.2.      Restrictions on Ownership.

(a) Ownership Limitations.

(i) Basic Restrictions. (A) No Person, other than an Excepted Holder, shall Beneficially Own or Constructively Own Shares in excess of the Ownership Limit. (B) No Excepted Holder

shall Beneficially Own or Constructively Own Shares in excess of the Excepted Holder Limit (if any) for such Excepted Holder. (C) No Person shall Beneficially Own or Constructively Own Shares to the extent that such Beneficial Ownership or Constructive Ownership of Shares would result in the Trust being "closely held" within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of a taxable year), or otherwise failing to qualify as a REIT (including, without limitation, Beneficial Ownership or Constructive Ownership that would result in the Trust owning (actually or Constructively) an interest in a tenant that is described in Section 856(d)(2)(B) of the Code if the income derived by the Trust from such tenant would cause the Trust to fail to satisfy any of the gross income requirements of Section 856(c) of the Code). (D) Subject to Section 7.6, notwithstanding any other provisions contained herein, any Transfer of Shares (whether or not such Transfer is the result of a transaction entered into through the facilities of a National Securities Exchange or automated inter-dealer quotation system) that, if effective, would result in Shares being beneficially owned by less than 100 Persons (determined under the principles of Section 856(a)(5) of the Code) shall be void ab initio, and the intended transferee shall acquire no rights in such Shares.

(ii) Transfer in Trust or Voided Transfer. If any Transfer of Shares occurs (whether or not such Transfer is the result of a transaction entered into through the facilities of a National Securities Exchange or automated inter-dealer quotation system) which, if effective, would result in any Person Beneficially Owning or Constructively Owning Shares in violation of Section 7.2(a)(i)(A), Section 7.2(a)(i)(B) or Section 7.2(a)(i)(C), as applicable, then the Board of Trustees shall be authorized and empowered to deem (and if so deemed, such action and result shall be deemed to occur and the officers of the Trust shall be authorized to take such actions in the name and on behalf of the Trust authorized by the Board of Trustees to effectuate the same): (A) that number of Shares the Beneficial Ownership or Constructive Ownership of which otherwise would cause such Person to violate Section 7.2(a)(i)(A), Section 7.2(a)(i)(B) or Section 7.2(a)(i)(C) (rounded upward to the nearest whole share, and such excess shares, including as so rounded, the "Excess Shares") to be automatically transferred to a Charitable Trust or Charitable Trusts for the benefit of a Charitable Beneficiary, as described in Section 7.3, effective as of the close of business on the business day prior to the date of such determination of such Transfer or at such other time determined by the Board of Trustees, and such Person shall acquire no rights in the Excess Shares; or (B) to the fullest extent



permitted by law, the Transfer of Excess Shares to be void ab initio, in which case, the intended transferee shall acquire no rights in the Excess Shares.

(iii)Cooperation. The shareholder that would otherwise qualify as a Prohibited Owner absent the application of the provisions of Section 7.2(a)(ii) shall use best efforts and take all actions necessary or requested by the Trust to cooperate with effecting the actions taken by the Board of Trustees pursuant to Section 7.2(a)(ii), including, without limitation, informing the Trust where any Excess Shares may be held and instructing its agents to cooperate in the prompt implementation and effectuation of the actions so taken by the Board of Trustees.

(b)Remedies for Breach. If the Board of Trustees or any duly authorized committee thereof shall at any time determine that a Transfer or other event has taken place that results in a violation of Section 7.2(a)(i) or that a Person intends to acquire or has attempted to acquire Beneficial Ownership or Constructive Ownership of any Shares in violation of Section 7.2(a)(i) (whether or not such violation is intended), the Board of Trustees or a committee thereof may take such action as it deems advisable to refuse to give effect to or to prevent such Transfer or other event, including, without limitation, causing the Trust to redeem Shares, refusing to give effect to such Transfer on the books of the Trust or the Trust's transfer agent or instituting proceedings to enjoin such Transfer or other event and such Person shall be liable, without limitation, for all costs incurred in connection therewith and pursuant to Section 8.6, including the costs and expenses of the Charitable Trustee. This Section 7.2(b) shall not in any way limit the provisions of Section 7.2(a)(ii).

(c)Notice of Restricted Transfer. Any Person who acquires or attempts to acquire Beneficial Ownership or Constructive Ownership of Shares that will or may violate Section 7.2(a)(i), or any Person who would have owned Excess Shares, shall immediately give written notice to the Trust of such event, or in the case of such a proposed or attempted transaction, give at least 15 days prior written notice, and shall provide to the Trust such other information as the Trust may request.

(d)Owners Required to Provide Information. Every shareholder of five percent or more (or such lower percentage as required by the Code or the regulations promulgated thereunder) of the Shares of any series or class outstanding at the time of determination, within 30 days after the end of each taxable year and also within three business days after a request from the Trust, shall give written notice to the Trust stating the name and address of such owner, the number of Shares Beneficially Owned, and a description of the manner in which such Shares are held; provided that a shareholder who holds Shares as nominee for another Person, which other Person is required to include in gross income the distributions received on such Shares (an "Actual Owner"), shall give written notice to the Trust stating the name and address of such Actual Owner and the number of Shares of such Actual Owner with respect to which the shareholder is nominee.

Each Person who is a Beneficial Owner or Constructive Owner of Shares and each Person (including the shareholder) who is holding Shares for a Beneficial Owner or Constructive Owner shall provide to the Trust such information as the Trust may request, in good faith, in order to determine the Trust's status as a REIT, to determine the Trust's compliance with other applicable laws or requirements of any governmental authority and to comply with requirements of any taxing authority or other governmental authority or to determine such compliance.

(e) Exceptions.

(i) The Board of Trustees, in its sole discretion, may grant to any Person who makes a request therefor (a "Requesting Person") an exception to the Ownership Limit (or one or more elements thereof) with respect to the ownership of any series or class of Shares, subject to the following conditions and limitations: (A) the Board of Trustees shall have determined, in its discretion, that: (1) the Beneficial Ownership or Constructive Ownership of Shares by such shareholder in excess of the Ownership Limit would not violate Section 7.2(a)(i)(C), (2) the Requesting Person does not and will not own, actually or Constructively, an interest in a tenant of the Trust (or a tenant of any entity owned or controlled by the Trust) that would cause the Trust to own, actually or Constructively, more than a 9.8% interest (as set forth in Section 856(d)(2)(B) of the Code) in such tenant, (3) the Requesting Person's ownership of Shares in excess of the Ownership Limit pursuant to the exception requested hereunder (together with the ownership of Shares by all other Persons as permitted under this ARTICLE VII, taking into account any previously granted exceptions pursuant hereto) would not cause a default under the terms of any contract to which the Trust or any of its subsidiaries is a party or reasonably expects to become a party and (4) the Requesting Person's ownership of Shares in excess of the Ownership Limit pursuant to the exception requested hereunder (together with the ownership of Shares by all other Persons as permitted under this ARTICLE VII, taking into account any previously granted exceptions pursuant hereto) is in the best interests of the Trust; and (B)(1) prior to granting any exception pursuant to this Section 7.2(e)(i), the Board of Trustees may require a ruling from the Internal Revenue Service, or an opinion of counsel, in either case in form and substance satisfactory to the Board of Trustees in their sole discretion, as they may deem necessary or advisable in order to determine or ensure the Trust's status as a REIT and (2) such Requesting Person provides to the Board of Trustees, for the benefit of the Trust, such representations and undertakings, if any, as the Board of Trustees may, in its discretion, determine to be necessary in order for it to make the

determination that the conditions set forth in Section 7.2(e)(i)(A) have been and/or will continue to be satisfied (including, without limitation, an agreement as to a reduced Ownership Limit or Excepted Holder Limit (if any) for such Requesting Person with respect to the Constructive Ownership of one or more other classes or series of Shares not subject to the exception), and such Requesting Person agrees that any violation of such representations and undertakings or any attempted violation thereof will give rise to the application of the remedies set forth in Section 7.2(a)(ii) and Section 7.2(b) with respect to Shares held in excess of the Ownership Limit or the Excepted Holder Limit (as may be applicable) with respect to such Requesting Person (determined without regard to the exception granted such Requesting Person under this Section 7.2(e)(i)). If a member of the Board of Trustees requests that the Board of Trustees grant an exception pursuant to this Section 7.2(e) with respect to such member, or with respect to any other Person if such member of the Board of Trustees would be considered to be the Beneficial Owner or Constructive Owner of Shares owned by such other Person, such member of the Board of Trustees shall not participate in the decision of the Board of Trustees as to whether to grant any such exception.

(ii) In determining whether to grant any exemption pursuant to Section 7.2(e)(i), the Board of Trustees may, but need not, consider, among other factors, (A) the general reputation and moral character of the Requesting Person, (B) whether ownership of Shares would be direct or through ownership attribution, (C) whether the Requesting Person's ownership of Shares would interfere with the conduct of the Trust's business, including, without limitation, the Trust's ability to acquire additional properties, (D) whether granting an exemption for the Requesting Person would adversely affect any of the Trust's existing contractual arrangements or business policies, (E) whether the Requesting Person to whom the exception would apply has been approved as an owner of the Trust by all regulatory or other governmental authorities who have jurisdiction over the Trust and (F) whether the Requesting Person to whom the exemption would apply is attempting to change control of the Trust or affect its policies in a way which the Board of Trustees, in its discretion, considers adverse to the best interests of the Trust or its shareholders. Nothing in this Section 7.2(e)(ii) shall be interpreted to mean that the Board of Trustees may not act in its discretion in making any determination under Section 7.2(e)(i).

(iii) An underwriter or initial purchaser that participates in a public offering or a private placement of Shares (or securities convertible into or exchangeable for Shares) may Beneficially Own or Constructively Own Shares (or securities convertible into or exchangeable for Shares) in excess of the Ownership Limit, but only to the extent necessary to facilitate such public offering or private placement as determined by the Board of Trustees.

Section 7.3. Transfer of Shares.

(a) Ownership in Trust. Upon any purported Transfer or other event described in Section 7.2(a)(i) that results in a transfer of Shares to a Charitable Trust, such Shares shall be deemed to have been transferred to the Charitable Trustee as trustee or trustees, as applicable, of a Charitable Trust for the exclusive benefit of one or more Charitable Beneficiaries (except to the extent otherwise provided in Section 7.3(e)). Such transfer to the Charitable Trustee shall be deemed to be effective as of the time provided in Section 7.2(a)(ii). Any Charitable Trustee shall be appointed by the Trust and shall be a Person unaffiliated with the Trust and any Prohibited Owner. Each Charitable Beneficiary shall be designated by the Trust as provided in Section 7.3(g).

(b) Status of Shares Held by a Charitable Trustee. Shares held by a Charitable Trustee shall be issued and outstanding Shares of the Trust. The Prohibited Owner shall:

(i) have no rights in the Shares held by the Charitable Trustee;

(ii) not benefit economically from ownership of any Shares held in trust by the Charitable Trustee (except to the extent otherwise provided in Section 7.3(e));

(iii) have no rights to dividends or other distributions;

(iv) not possess any rights to vote or other rights attributable to the Shares held in the Charitable Trust; and

(v) have no claim, cause of action or other recourse whatsoever against the purported transferor of such Shares.

(c) Dividend and Voting Rights. The Charitable Trustee shall have all voting rights and rights to dividends or other distributions with respect to Shares held in

the Charitable Trust, which rights shall be exercised for the exclusive benefit of the Charitable Beneficiary (except to the extent otherwise provided in Section 7.3(e)). Any dividend or other distribution paid with respect to any Shares which constituted Excess Shares at such time and prior to Shares having been transferred to the Charitable Trustee shall be paid to the Charitable Trustee by the Prohibited Owner upon demand and any dividend or other distribution authorized but unpaid with respect to such Shares shall be paid when due to the Charitable Trustee. Any dividends or distributions so paid to the Charitable Trustee shall be held in trust for the Charitable Beneficiary. The Prohibited Owner shall have no voting rights with respect to Shares held in the Charitable Trust and, effective as of the date that Shares have been transferred to the Charitable Trustee, the Charitable Trustee shall have the authority (at the Charitable Trustee's discretion) (i) to rescind as void any vote cast by a Prohibited Owner with respect to such Shares at any time such Shares constituted Excess Shares with respect to such Prohibited Owner and (ii) to recast such vote in accordance with the desires of the Charitable Trustee acting for the benefit of the Charitable Beneficiary; provided, however, that if the Trust has already taken irreversible action, then the Charitable Trustee shall not have the power to rescind and recast such vote. Notwithstanding the provisions of this ARTICLE VII, until the Shares have been transferred into a Charitable Trust, the Trust shall be entitled to rely on its share transfer and other shareholder records for purposes of preparing lists of shareholders entitled to vote at meetings, determining the validity and authority of proxies, and otherwise conducting votes of shareholders.

(d) Rights upon Liquidation. Upon any voluntary or involuntary liquidation, dissolution or winding up of or any distribution of the assets of the Trust, the Charitable Trustee shall be entitled to receive, ratably with each other holder of Shares of the class or series of Shares that is held in the Charitable Trust, that portion of the assets of the Trust available for distribution to the holders of such class or series (determined based upon the ratio that the number of Shares of such class or series of Shares held by the Charitable Trustee bears to the total number of Shares of such class or series of Shares then outstanding). The Charitable Trustee shall distribute any such assets received in respect of the Shares held in the Charitable Trust in any liquidation, dissolution or winding up or distribution of the assets of the Trust, in accordance with Section 7.3(e).

(e) Sale of Shares by Charitable Trustee. Unless otherwise directed by the Board of Trustees, within 20 days of receiving notice from the Trust that Shares have been transferred to the Charitable Trust, or as soon thereafter as practicable, the Charitable Trustee shall sell the Shares held in the Charitable Trust (together with the right to receive dividends or other distributions with respect to such Shares as to any Shares transferred to the Charitable Trustee as a result of the operation of Section 7.2(a)(ii)) to a Person, designated by the Charitable Trustee, whose ownership of the Shares will not violate the ownership limitations set forth in Section 7.2(a)(i). Upon such sale, the interest of the Charitable Beneficiary in the Shares sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and to the Charitable Beneficiary as provided in this Section 7.3(e).

A Prohibited Owner shall receive the lesser of (A) the net price paid by the Prohibited Owner for the Shares or, if the Prohibited Owner did not give value for the Shares in connection with the event causing the Shares to be held in the Charitable Trust (for example, in the case of a gift, devise or other such transaction), the Market Price of the Shares on the day of the event causing the Shares to be held in the Charitable Trust, less the costs, expenses and compensation of the Charitable Trustee and the Trust as provided in Section 7.4 and (B) the net sales proceeds received by the Charitable Trustee from the sale or other disposition of the Shares held in the Charitable Trust. Any net sales proceeds in excess of the amount payable to the Prohibited Owner shall be paid to the Charitable Beneficiary, less the costs, expenses and compensation of the Charitable Trustee and the Trust as provided in Section 7.4. If such Shares are sold by a Prohibited Owner, then (A) such Shares shall be deemed to have been sold on behalf of the Charitable Trust and (B) to the extent that the Prohibited Owner received an amount for such Shares that exceeds the amount that such Prohibited Owner was entitled to receive pursuant to this Section 7.3(e), such excess shall be paid promptly to the Charitable Trustee upon demand.

(f) Trust's Purchase Right in Excess Shares. Notwithstanding any transfer of Excess Shares to a Charitable Trust pursuant to this ARTICLE VII, Excess Shares shall be deemed to have been offered for sale to the Trust, or its designee, at a price per Share equal to the lesser of (i) the price per Share in the transaction that resulted in such Shares becoming Excess Shares (or, if the Prohibited Owner did not give value for such Shares, such as in the case of a devise, gift or other such transaction, the Market Price per such Share on the day of the event causing the Shares to become Excess Shares) and (ii) the Market Price per such Share on the date the Trust, or its designee, accepts such offer, in each case of clauses (i) and (ii) of this sentence, less the costs, expenses and compensation of the Charitable Trustee, if any, and the Trust as provided in Section 7.4. The Trust shall have the right to accept such offer until the Charitable Trustee, if any, has sold the Shares held in the Charitable Trust, if any, pursuant to Section 7.3(e). Upon such a sale to the Trust, if a Charitable Trust has been established pursuant to this ARTICLE VII, the interest of the Charitable Beneficiary in the Shares sold shall terminate and the Charitable Trustee shall distribute the net proceeds of the sale to the Prohibited Owner and the Charitable Beneficiary as provided in Section 7.3(e).

(g) Designation of Charitable Beneficiaries. By written notice to the Charitable Trustee, the Trust shall designate from time to time one or more nonprofit organizations to be the Charitable Beneficiary of the interest in the Charitable Trust such that (i) Shares held in the Charitable Trust would not violate the restrictions set forth in Section 7.2(a)(i) in the hands of such Charitable Beneficiary and (ii) contributions to each such organization shall be eligible for deduction under each of Sections 170(b)(1)(A), 2055 and 2522 of the Code. The Charitable Beneficiary shall not obtain any enforceable right to the Charitable Trust or any of its trust corpus until so designated and thereafter any such rights remain subject to the provisions of this ARTICLE VII, including, without limitation, Section 7.3(h).

(h) Retroactive Changes. Notwithstanding any other provisions of this ARTICLE VII, the Board of Trustees is authorized and empowered to retroactively amend, alter or repeal any rights which the Charitable Trust, the Charitable Trustee or the Charitable Beneficiary may have under this ARTICLE VII, including, without limitation, granting retroactive Excepted Holder status to any otherwise Prohibited Owner, with the effect of any transfer of Excess Shares to a Charitable Trust being fully and retroactively revoked; provided, however, that the Board of Trustees shall not have the authority or power to retroactively amend, alter or repeal any obligations to pay amounts incurred prior to such time and owed or payable to the Charitable Trustee pursuant to Section 7.4.

Section 7.4. Costs, Expenses and Compensation of Charitable Trustee and the Trust.

(a) The Charitable Trustee shall be indemnified by the Trust or from the proceeds from the sale of Shares held in the Charitable Trust, as further provided in this ARTICLE VII, for its costs and expenses reasonably incurred in connection with conducting its duties and satisfying its obligations pursuant to this ARTICLE VII.

(b) The Charitable Trustee shall be entitled to receive reasonable compensation for services provided by the Charitable Trustee in connection with serving as a Charitable Trustee, the amount and form of which shall be determined by agreement of the Board of Trustees and the Charitable Trustee.

(c) Costs, expenses and compensation payable to the Charitable Trustee pursuant to Section 7.4(a) and Section 7.4(b) may be funded from the Charitable Trust or by the Trust. The Trust shall be entitled to reimbursement on a first priority basis (after payment in full of amounts payable to the Charitable Trustee pursuant to Section 7.4(a) and Section 7.4(b)) from the Charitable Trust for any such amounts funded by the Trust.

(d) Costs and expenses incurred by the Trust in the process of enforcing the ownership limitation set forth in Section 7.2(a)(i), in addition to reimbursement of costs, expenses and compensation of the Charitable Trustee which have been funded by the Trust, may be collected from the Charitable Trust; provided, however, that the ability of the Trust to fund its costs from the Charitable Trust shall not relieve the Prohibited Owner from his or her obligation to reimburse the Trust for costs under Section 8.6 of this Declaration of Trust, except to the extent the Trust has in fact been previously paid from the Charitable Trust; nor will the possibility of the Trust receiving payment from the Charitable Trust create a marshalling obligation which would require the Trust to reimburse itself from the Charitable Trust before enforcing the Trust's claims under Section 8.6 or otherwise.

Section 7.5. Legend. Each certificate for Shares, if any, shall bear a legend describing the restrictions on transferability of Shares contained herein or, instead of a legend, the certificate may state that the Trust will furnish a full statement about certain restrictions on transferability to a shareholder on request and without charge.



Section 7.6. Transactions on a National Securities Exchange. Nothing in this ARTICLE VII shall preclude the settlement of any transaction entered into through the facilities of a National Securities Exchange or any automated inter-dealer quotation system. The fact that the settlement of any transaction takes place shall not negate the effect of any other provision of this ARTICLE VII and any transferee in such a transaction shall be subject to all of the provisions and limitations set forth in this ARTICLE VII.

Section 7.7. Enforcement. The Trust is authorized specifically to seek equitable relief, including injunctive relief, to enforce the provisions of this ARTICLE VII.

Section 7.8. Non-Waiver. No delay or failure on the part of the Trust or the Board of Trustees in exercising any right hereunder shall operate as a waiver of any right of the Trust or the Board of Trustees, as the case may be, except to the extent specifically waived in writing.

Section 7.9. Enforceability. If any of the restrictions on transfer of Shares contained in this ARTICLE VII are determined to be void, invalid or unenforceable by any court of competent jurisdiction, then, to the fullest extent permitted by law, the Prohibited Owner may be deemed, at the option of the Trust, to have acted as an agent of the Trust in acquiring such Shares and to hold such Shares on behalf of the Trust.

## ARTICLE VIII

### SHAREHOLDERS

Section 8.1. Meetings. There shall be an annual meeting of the shareholders, to be held on proper notice at such time (after the delivery of the annual report) and convenient location as shall be determined by or in the manner prescribed in the Bylaws, for the election of the Trustees, if required, and for the transaction of any other business within the powers of the Trust. Except as otherwise provided in this Declaration of Trust, special meetings of shareholders may be called in the manner provided in the Bylaws. Shareholders meetings, including the annual meeting and any special meetings, may be called only by the Board of Trustees. If there are no Trustees, the officers of the Trust shall promptly call a special meeting of the shareholders entitled to vote for the election of successor Trustees. Any meeting may be adjourned and reconvened as the Trustees determine or as provided in the Bylaws.

Section 8.2. 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 this 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.

Section 8.3. Preemptive and Appraisal Rights. Except as may be provided by the Board of Trustees in setting the terms of classified or reclassified Shares pursuant to Section 6.3, or as may otherwise be provided by contract approved by the Board of Trustees, no holder of Shares shall, as such holder, (a) have any preemptive right to purchase or subscribe for any additional Shares of the Trust or any other security of the Trust which it may issue or sell or (b) have any right to require the Trust to pay him the fair value of his Shares in an appraisal or similar proceeding, including, without limitation, any right to exercise the rights of an objecting shareholder provided for under Title 8 and Title 3, Subtitle 2 of the Maryland General Corporation Law or any successor statute, unless the Board of Trustees, upon the affirmative vote of a majority of the Board of Trustees, shall determine that such rights apply, with respect to all or any classes or series of Shares, to one or more transactions occurring after the date of such determination in connection with which holders of such Shares would otherwise be entitled to exercise such rights.

Section 8.4. Voting Standards. Except as specifically provided in Section 5.3 (relating to removal of Trustees) or the Bylaws and subject to Section 8.5 and Section 10.3, notwithstanding any provision of law permitting or requiring any action to be taken or authorized by the affirmative vote of the holders of a greater number of votes, any such action shall be effective and valid if taken or approved by (a) the affirmative vote of holders of Shares entitled to cast a majority of all the votes entitled to be cast on the matter, or (b) if Maryland law hereafter permits the effectiveness of a vote described in this clause (b), the affirmative vote of a majority of the votes cast on the matter.

Section 8.5. 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 except as otherwise expressly required by law.

Section 8.6. Indemnification of the Trust. Each shareholder will be liable to the Trust for, and indemnify and hold harmless the Trust (and any affiliates thereof) from and against, all costs, expenses, penalties, fines or other amounts, including without limitation, reasonable attorneys' and other professional fees, whether third party or internal, arising from such shareholder's breach of or failure to fully comply with any covenant, condition or provision of this Declaration of Trust or the Bylaws (including Section 2.14 of the Bylaws) or any action by or against the Trust in which such shareholder is not the prevailing party, and shall pay such amounts on demand, together with interest on such amounts, which interest will accrue at the lesser of 18% per annum and the maximum amount permitted by law, from the date such costs or the like are incurred until the receipt of payment.

Section 8.7. Compliance with Law. Shareholders shall comply with this Declaration of Trust, the Bylaws, all applicable requirements of federal and state laws, including all rules and regulations promulgated thereunder, and the contractual obligations of the Trust, in connection with such shareholder's ownership interest in the Trust and all other laws which

apply to the Trust or any subsidiary of the Trust or their respective businesses, assets or operations and which require action or inaction on the part of the shareholder.

## ARTICLE IX

### LIABILITY LIMITATION, INDEMNIFICATION AND TRANSACTIONS WITH THE TRUST

Section 9.1. Limitation of Shareholder Liability. No shareholder shall be personally liable for any debt, claim, demand, judgment or obligation of any kind of the Trust by reason of his being a shareholder.

Section 9.2. Limitation of Trustee and Officer Liability. To the maximum extent that Maryland law in effect from time to time permits limitation of the liability of trustees and officers of a real estate investment trust, no current or former Trustee or officer of the Trust shall be liable to the Trust or to any shareholder for money damages. Neither the amendment nor repeal of this Section 9.2, nor the adoption or amendment of any other provision of this Declaration of Trust inconsistent with this Section 9.2, shall apply to or affect in any respect the applicability of the preceding sentence with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption. In the absence of any Maryland statute limiting the liability of trustees and officers of a Maryland real estate investment trust for money damages in a suit by or on behalf of the Trust or by any shareholder, or arising by reason of his or her action on behalf of the Trust, no Trustee or officer of the Trust shall be liable to the Trust or to any shareholder for money damages except to the extent that (a) the Trustee or officer actually received an improper benefit or profit in money, property or services, for the amount of the benefit or profit in money, property or services actually received, or (b) a judgment or other final adjudication adverse to the Trustee or officer is entered in a proceeding based on a finding in the proceeding that the Trustee's or officer's action or failure to act was the result of active and deliberate dishonesty and was material to the cause of action adjudicated in the proceeding.

Section 9.3. Express Exculpatory Clauses and Instruments. Any written instrument creating an obligation of the Trust shall, to the extent practicable, include a reference to this Declaration and provide that neither the shareholders nor the Trustees nor any officers, employees or agents (including the Manager) of the Trust shall be liable thereunder and that all persons shall look solely to the trust estate for the payment of any claim thereunder or for the performance thereof; however, the omission of such provision from any such instrument shall not render the shareholders, any Trustee, or any officer, employee or agent (including the Manager) of the Trust liable, nor shall the shareholders, any Trustee or any officer, employee or agent (including the Manager) of the Trust be liable to anyone for such omission.

Section 9.4. Indemnification. The Trust shall have the power, to the maximum extent permitted by Maryland law in effect from time to time, to obligate itself to indemnify, and to pay or reimburse reasonable expenses in advance of final disposition of a proceeding to, (a) any individual who is a present or former Trustee or officer of the Trust or (b) any individual who, while a Trustee or officer of the Trust and at the request of the Trust, serves or has served as a trustee, director, officer, partner, employee or agent of another real estate investment trust,

corporation, partnership, joint venture, trust, employee benefit plan or any other enterprise from and against any claim or liability to which such person may become subject or which such person may incur by reason of his status as a present or former Trustee or officer of the Trust or by reason of his status as a present or former trustee, director, officer, partner, employee or agent of such other real estate investment trust, corporation, partnership, joint venture, trust, employee benefit plan or enterprise. The Trust shall have the power, with the approval of its Board of Trustees, to provide such indemnification and advancement of expenses to a person who served a predecessor of the Trust in any of the capacities described in (a) or (b) above.

**Section 9.5. Transactions Between the Trust and its Trustees, Officers, Employees and Agents.**

(a) Subject to any express restrictions adopted by the Trustees in the Bylaws or by resolution, the Trust may enter into any contract or transaction of any kind, whether or not any of its Trustees, officers, employees or agents has a financial interest in such transaction, with any person, including any Trustee, officer, employee or agent of the Trust or any person affiliated with a Trustee, officer, employee or agent of the Trust or in which a Trustee, officer, employee or agent of the Trust has a material financial interest.

(b) To the extent permitted by Maryland law, a contract or other transaction between the Trust and any Trustee or between the Trust and the Manager or any other corporation, trust, firm, or other entity in which any Trustee is a director or trustee or has a material financial interest shall not be void or voidable if:

(i) The fact of the common directorship, trusteeship or interest is disclosed or known to:

(A) The Board of Trustees or a proper committee thereof, and the Board of Trustees or such Committee authorizes, approves or ratifies the contract or transaction by the affirmative vote of a majority of disinterested Trustees, even if the disinterested Trustees constitute less than a quorum, or if there are no disinterested Trustees, then the approval shall be by a majority vote of the entire Board of Trustees and by a majority vote of the Independent Trustees; or

(B) The shareholders entitled to vote, and the contract or transaction is authorized, approved, or ratified by a majority of the votes cast by the shareholders entitled to vote other than the votes of shares owned of record or beneficially by the interested trustee, corporation, trust, firm or other entity; or

(C) The contract or transaction is fair and reasonable to the Trust.

(ii) Common or interested trustees or the shares owned by them or by an interested corporation, trust, firm or other entity may be counted in determining the presence of a quorum at a meeting of the Board of Trustees or a committee thereof or at a meeting of the shareholders, as the case may be, at which the contract or transaction is authorized, approved or ratified.

(c) The failure of a contract or other transaction between the Trust and any Trustee or between the Trust and the Manager or any other corporation, trust, firm, or other entity in which any Trustee is a director or trustee or has a material financial interest to satisfy the criteria set forth in Section 9.5(b) shall not create any presumption that such contract or other transaction is void, voidable or otherwise invalid, and any such contract or other transaction shall be valid to the fullest extent permitted by Maryland law. To the fullest extent permitted by Maryland law, (i) the fixing by the Board of Trustees of compensation for a Trustee (whether as a Trustee or in any other capacity) and (ii) Section 9.4 of this Declaration of Trust or any provision of the Bylaws or any contract or transaction requiring or permitting indemnification (including advancing of expenses) in accordance with terms and procedures not materially less favorable to the Trust than those described in Section 2-418 (or any successor section thereto) of the Maryland General Corporation Law (as in effect at the time such provision was adopted or such contract or transaction was entered into or as it may thereafter be in effect) shall be deemed to have satisfied the criteria set forth in Section 9.5(b).

**Section 9.6. Right of Trustees, Officers, Employees and Agents to Own Shares or Other Property and to Engage in Other Business.** Subject to any restrictions which may be adopted by the Trustees in the Bylaws or otherwise: any Trustee or officer, employee or agent of the Trust may acquire, own, hold and dispose of Shares in the Trust, for his or her individual account, and may exercise all rights of a shareholder to the same extent and in the same manner as if he or she were not a Trustee or officer, employee or agent of the Trust. Any Trustee or officer, employee or agent of the Trust may, in his or her personal capacity or in the capacity of trustee, officer, director, stockholder, partner, member, advisor or employee of any Person or otherwise, have business interests and engage in business activities similar to or in addition to those relating to the Trust, which interests and activities may be similar to and competitive with those of the Trust and may include the acquisition, syndication, holding, management, development, operation or disposition, for his or her own account, or for the account of such Person or others, of interests in mortgages, interests in real property, or interests in Persons engaged in the real estate business. Each Trustee, officer, employee and agent of the Trust shall be free of any obligation to present to the Trust any investment opportunity which comes to him or her in any capacity other than solely as a Trustee, officer, employee or agent of the Trust even if such opportunity is of a character which, if presented to the Trust, could be taken by the Trust. Any Trustee or officer, employee or agent of the Trust may be interested as a trustee, officer, director, stockholder, partner, member, advisor or employee of, or otherwise have a direct or

indirect interest in, any Person who may be engaged to render advice or services to the Trust, and may receive compensation from such Person as well as compensation as a Trustee, officer, employee or agent or otherwise hereunder. None of these activities shall be deemed to conflict with his or her duties and powers as a Trustee or officer, employee or agent of the Trust.

Section 9.7. Persons Dealing with Trustees, Officers, Employees or Agents. Any act of the Trustees or of the officers, employees or agents of the Trust purporting to be done in their capacity as such, shall, as to any Persons dealing with such Trustees, officers, employees or agents, be conclusively deemed to be within the purposes of this Trust and within the powers of such Trustees or officers, employees or agents. No Person dealing with the Board or any of the Trustees or with the officers, employees or agents of the Trust shall be bound to see to the application of any funds or property passing into their hands or control. The receipt of the Board or any of the Trustees, or of authorized officers, employees or agents of the Trust, for moneys or other consideration, shall be binding upon the Trust.

Section 9.8. Reliance. Each Trustee, officer, employee and agent of the Trust shall, in the performance of his or her duties with respect to the Trust, be entitled to rely on any information, opinion, report or statement, including any financial statement or other financial data, prepared or presented by an officer or employee of the Trust or by the Manager, accountants, appraisers or other experts or consultants selected by the Board of Trustees or officers of the Trust, regardless of whether such counsel or expert may also be a Trustee.

## ARTICLE X

### AMENDMENTS

Section 10.1. General. The Trust reserves the right from time to time to make any amendment to this Declaration of Trust, now or hereafter authorized by law, including any amendment altering the terms or contract rights, as expressly set forth in this Declaration of Trust, of any Shares, except that the provisions governing the personal liability of the shareholders, Trustees and of the officers, employees and agents of the Trust and the prohibition of assessments upon shareholders may not be amended in any respect that could increase the personal liability of such shareholders, Trustees or officers, employees and agents of the Trust. All rights and powers conferred by this Declaration of Trust on shareholders, Trustees and officers are granted subject to this reservation. An amendment to this Declaration of Trust (a) shall be signed and acknowledged by at least a majority of the Trustees, or an officer duly authorized by at least a majority of the Trustees, (b) shall be filed for record as provided in Section 13.6 and (c) shall become effective as of the later of the time the SDAT accepts the amendment for record or the time established in the amendment, not to exceed 30 days after the amendment is accepted for record. All references to this Declaration of Trust shall include all amendments and supplements thereto.

Section 10.2. By Trustees. The Trustees may amend this Declaration of Trust from time to time, in the manner provided by Title 8, without any action by the shareholders, to qualify as a real estate investment trust under the Code or under Title 8 and as otherwise provided in Section 8-501(e) of Title 8 and this Declaration of Trust, including, to the extent

permitted by law, supplying any omission, curing any ambiguity, correcting any defective or inconsistent provision or error or clarifying the meaning and intent of this Declaration of Trust. If permitted by Maryland law as in effect from time to time, the Trustees may amend this Declaration of Trust from time to time in any other respect, in accordance with such law, without any action by the shareholders.

Section 10.3. By Shareholders. Except as otherwise provided in Section 10.2 and subject to the following sentence, any amendment to this Declaration of Trust must first be approved by 60% of the Trustees then in office, including 60% of the Independent Trustees then in office, and then shall be valid only if approved by (a) the affirmative vote of a majority of all the votes entitled to be cast on the matter or (b) if Maryland law hereafter permits the effectiveness of a vote described in this clause (b), the affirmative vote of a majority of the votes cast on the matter. Any amendment to Section 5.2.2 or Section 5.3 or to this sentence of this Declaration of Trust shall be valid only if approved by the Board of Trustees and then by the affirmative vote of two-thirds of all votes entitled to be cast on the matter.

## ARTICLE XI

### MERGER, CONSOLIDATION OR SALE OF TRUST PROPERTY

Section 11.1. Merger, Consolidation or Sale. Subject to the provisions of any class or series of Shares at the time outstanding, the Trust may (a) merge with or into another entity, (b) consolidate with one or more other entities into a new entity or (c) sell, lease, exchange or otherwise transfer all or substantially all of the trust property. Any such action must first be approved by 60% of the Trustees then in office, including 60% of the Independent Trustees then in office, and, after notice to all shareholders entitled to vote on the matter, by (i) the affirmative vote of a majority of all the votes entitled to be cast on the matter or (ii) if Maryland law hereafter permits the effectiveness of a vote described in this clause (ii), the affirmative vote of a majority of the votes cast on the matter.

## ARTICLE XII

### DURATION AND TERMINATION OF TRUST

Section 12.1. Duration. The Trust shall continue perpetually unless terminated pursuant to Section 12.2.

Section 12.2. Termination.

(a) Subject to the provisions of any class or series of Shares at the time outstanding, after approval by 60% of the Trustees then in office, including 60% of the Independent Trustees then in office, the Trust may be terminated at any meeting of shareholders by (i) the affirmative vote of a majority of all the votes entitled to be cast on the matter or (ii) or if hereafter expressly authorized by Title 8, the



affirmative vote of a majority of the votes cast on the matter. Upon the termination of the Trust:

(i) The Trust shall carry on no business except for the purpose of winding up its affairs.

(ii) The Trustees shall proceed to wind up the affairs of the Trust and all of the powers of the Trustees under this Declaration of Trust shall continue, including the powers to fulfill or discharge the Trust's contracts, collect its assets, sell, convey, assign, exchange, transfer or otherwise dispose of all or any part of the remaining property of the Trust to one or more persons at public or private sale for consideration which may consist in whole or in part of cash, securities or other property of any kind, discharge or pay its liabilities and do all other acts appropriate to liquidate its business.

(iii) After paying or adequately providing for the payment of all liabilities, and upon receipt of such releases, indemnities and agreements as they deem necessary for their protection, the Trust may distribute the remaining property of the Trust among the shareholders so that after payment in full or the setting apart for payment of such preferential amounts, if any, to which the holders of any Shares at the time outstanding shall be entitled, the remaining property of the Trust shall, subject to any participating or similar rights of Shares at the time outstanding, be distributed ratably among the holders of Common Shares at the time outstanding.

(b) After termination of the Trust, the liquidation of its business and the distribution to the shareholders as herein provided, a majority of the Trustees shall execute and file with the Trust's records a document certifying that the Trust has been duly terminated and the Trustees shall be discharged from all liabilities and duties hereunder, and the rights and interests of all shareholders shall cease.

### **ARTICLE XIII**

#### **MISCELLANEOUS**

Section 13.1. Governing Law. This Declaration of Trust is executed and delivered with reference to the laws of the State of Maryland, and the rights of all parties and the validity, construction and effect of every provision hereof shall be subject to and construed according to the laws of the State of Maryland.

Section 13.2. Ambiguity. In the case of an ambiguity in the application of any provision of this Declaration of Trust or any definition contained in this Declaration of Trust, the Board of Trustees shall have the sole power to determine the application of such provisions with respect to any situation based on the facts known to it and such determination shall be final and binding unless determined by a court of competent jurisdiction to have been made in bad faith.

Section 13.3. Reliance by Third Parties. Any certificate shall be final and conclusive as to any person dealing with the Trust if executed by the Secretary or an Assistant Secretary of the Trust or a Trustee, and if certifying to: (a) the number or identity of Trustees, officers of the Trust or shareholders; (b) the due authorization of the execution of any document; (c) the action or vote taken, and the existence of a quorum, at a meeting of the Board of Trustees or shareholders; (d) a copy of this Declaration of Trust or of the Bylaws as a true and complete copy as then in force; (e) an amendment or supplement to this Declaration of Trust; (f) the termination of the Trust; or (g) the existence of any fact relating to the affairs of the Trust. No purchaser, lender, transfer agent or other person shall be bound to make any inquiry concerning the validity of any transaction purporting to be made by the Trust on its behalf or by any officer, employee or agent of the Trust.

Section 13.4. Severability.

(a) The provisions of this Declaration of Trust are severable, and if the Board of Trustees shall determine, with the advice of counsel, that any one or more of such provisions (the "Conflicting Provisions") are in conflict with the Code, Title 8 or other applicable federal or state laws, the Conflicting Provisions, to the extent of the conflict, shall be deemed never to have constituted a part of this Declaration of Trust, even without any amendment of this Declaration of Trust pursuant to ARTICLE X and without affecting or impairing any of the remaining provisions of this Declaration of Trust or rendering invalid or improper any action taken or omitted (including but not limited to the election of Trustees) prior to such determination. No Trustee shall be liable for making or failing to make such a determination. In the event of any such determination by the Board of Trustees, the Board shall amend this Declaration of Trust in the manner provided in Section 10.2.

(b) If any provision of this Declaration of Trust shall be held invalid or unenforceable in any jurisdiction, such holding shall apply only to the extent of any such invalidity or unenforceability and shall not in any manner affect, impair or render invalid or unenforceable such provision in any other jurisdiction or any other provision of this Declaration of Trust in any jurisdiction.

Section 13.5. Construction. In this Declaration of Trust, unless the context otherwise requires, words used in the singular or in the plural include both the plural and singular and words denoting any gender include all genders. The title and headings of different parts are inserted for convenience and shall not affect the meaning, construction or effect of this Declaration of Trust. In defining or interpreting the powers and duties of the Trust and its Trustees and officers, reference may be made by the Trustees or officers, to the extent



appropriate and not inconsistent with the Code, Title 8 or to Titles 1 through 3 of the Corporations and Associations Article of the Annotated Code of Maryland. In furtherance and not in limitation of the foregoing, in accordance with the provisions of Title 3, Subtitles 6 and 7, of the Corporations and Associations Article of the Annotated Code of Maryland, the Trust shall be included within the definition of "corporation" for purposes of such provisions.

Section 13.6. Recordation. This Declaration of Trust and any amendment hereto shall be filed for record with the SDAT and may also be filed or recorded in such other places as the Trustees deem appropriate, but failure to file for record this Declaration of Trust or any amendment hereto in any office other than in the State of Maryland shall not affect or impair the validity or effectiveness of this Declaration of Trust or any amendment or supplement hereto. A restated Declaration of Trust shall, upon filing, be conclusive evidence of all amendments and supplements contained therein and may thereafter be referred to in lieu of the original Declaration of Trust and the various amendments and supplements thereto.

THIRD: The amendment to and restatement of the Declaration of Trust of the Trust as hereinabove set forth have been duly advised by the Board of Trustees and approved by the sole shareholder of the Trust as required by law.

FOURTH: The foregoing amendment and restatement of the Declaration of Trust does not increase the authorized number of shares of beneficial interest of the Trust .

FIFTH: These Articles of Amendment and Restatement shall become effective at 9:00 a.m. on June 8, 2009.

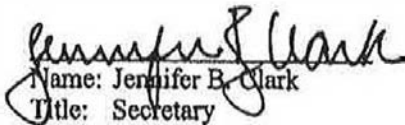
The undersigned President acknowledges these Articles of Amendment and Restatement to be the trust act of the Trust and, as to all matters or facts required to be verified under oath, the undersigned President acknowledges that, to the best of his knowledge, information and belief, these matters and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

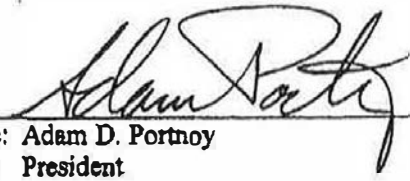
[Signature Page Follows]

IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment and Restatement to be signed in its name and on its behalf by its President and attested to by its Secretary on this 5<sup>th</sup> day of June, 2009.

ATTEST:

GOVERNMENT PROPERTIES INCOME TRUST

  
Name: Jennifer B. Clark  
Title: Secretary

  
Name: Adam D. Portnoy  
Title: President

# CORPORATE CHARTER APPROVAL SHEET

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

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

DOCUMENT CODE 25 BUSINESS CODE \_\_\_\_\_

# 012915401

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

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

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

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

Affix Barcode Label Here



1000361998125797

Affix Barcode Label Here

ID # D12915401 ACK # 1000361998125797  
PAGES: 0030  
GOVERNMENT PROPERTIES INCOME TRUST

06/05/2009 AT 12:27 P WO # 0001731759

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

### FEES REMITTED

Base Fee:	_____	<u>100</u>
Org. & Cap. Fee:	_____	<u>70</u>
Expedite Fee:	_____	
Penalty:	_____	
State Recordation Tax:	_____	
State Transfer Tax:	_____	
Certified Copies	_____	<u>49</u>
Copy Fee:	_____	
Certificates	_____	
Certificate of Status Fee:	_____	
Personal Property Filings:	_____	
Mail Processing Fee:	_____	
Other:	_____	

TOTAL FEES: \_\_\_\_\_

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

Documents on \_\_\_\_\_ Checks 6

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

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

COMMENT(S):

*Filer asserts No change in Ag. Par Value*

**EFF 9AM 6/8/09**

**CERTIFIED COPY MADE**

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

Code 063  
Attention: Andrea Cohen

Mail: Name and Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Stamp Work Order and Customer Number HERE

CUST ID: 0002288721  
WORK ORDER: 0001731759  
DATE: 06-05-2009 12:27 PM  
AMT. PAID: \$219.00

*Handwritten mark*

**GOVERNMENT PROPERTIES INCOME TRUST**

**ARTICLES OF AMENDMENT**

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

**FIRST:** The Declaration of Trust of the Trust is hereby amended by deleting the second sentence of Section 6.1 of Article VI in its entirety and substituting in lieu thereof a new sentence to read as follows:

"The Trust has authority to issue 50,000,000 Shares, consisting of 50,000,000 common shares of beneficial interest, \$.01 par value per share ("Common Shares")."

**SECOND:** The amendment to the Declaration of Trust of the Trust as set forth above has been duly approved by the Board of Trustees.

**THIRD:** The total number of shares of beneficial interest which the Trust had authority to issue immediately prior to this amendment was 25,000,000, consisting of 25,000,000 common shares, \$.01 par value per share, having an aggregate par value of \$250,000.

**FOURTH:** The total number of shares of beneficial interest which the Trust has authority to issue pursuant to this amendment is 50,000,000, consisting of 50,000,000 common shares, \$.01 par value per share, having an aggregate par value of \$500,000.

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

[SIGNATURE PAGE FOLLOWS]

**STATE OF MARYLAND**

I hereby certify that this is a true and complete copy of the 3 page document on file in this office. DATED: 12/11/97  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:


BY: *Rosina G. Smith*, Custodian

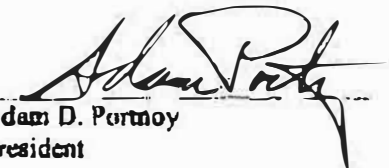
This stamp replaces our previous certification system. Effective: 6/95

IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment to be signed in its name and on its behalf by its President and attested to by its Secretary on this 30<sup>th</sup> day of December, 2009.

ATTEST:

GOVERNMENT PROPERTIES INCOME TRUST

By:   
Jennifer B. Clark  
Secretary

By:   
Adam D. Portnoy  
President

# CORPORATE CHARTER APPROVAL SHEET

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

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

DOCUMENT CODE 71 BUSINESS CODE 13

# W 12915401

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

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

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

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



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ID # 012915401 ACK # 1000361999144771  
PAGES: 0003  
GOVERNMENT PROPERTIES INCOME TRUST

12/30/2009 AT 02:25 P WO # 0001812051

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

### FEES REMITTED

Base Fee:	<u>100</u>
Org. & Cap. Fee:	<u>50</u>
Expedite Fee:	<u>70</u>
Penalty:	
State Recordation Tax:	
State Transfer Tax:	
<u>1</u> Certified Copies	
Copy Fee:	<u>22</u>
Certificates	
Certificate of Status Fee:	
Personal Property Filings:	
Mail Processing Fee:	
Other:	
<b>TOTAL FEES:</b>	<u>242</u>

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

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

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

Code 063

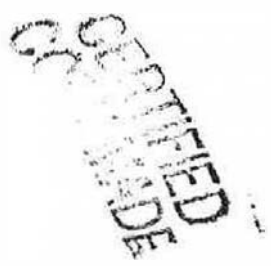
Attention: Andrea Cohen

Mail: Name and Address

Approved By: MW/13

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

COMMENT(S):



**Stamp Work Order and Customer Number HERE**

CUST ID: 0002369013  
 WORK ORDER: 0001812051  
 DATE: 12-30-2009 02:25 PM  
 AMT. PAID: \$242.00

**GOVERNMENT PROPERTIES INCOME TRUST**

**ARTICLES OF AMENDMENT**

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

**FIRST:** The Declaration of Trust of the Trust is hereby amended by deleting the second sentence of Section 6.1 of Article VI in its entirety and substituting in lieu thereof a new sentence to read as follows:

"The Trust has authority to issue 70,000,000 Shares, consisting of 70,000,000 common shares of beneficial interest, \$.01 par value per share ("Common Shares")."

**SECOND:** The amendment to the Declaration of Trust of the Trust as set forth above has been duly approved by the Board of Trustees of the Trust. Pursuant to Section 8-203(a)(8) of the Maryland REIT Law and Article VI, Section 6.1 of the Declaration of Trust of the Trust, no shareholder approval was required.

**THIRD:** The total number of shares of beneficial interest which the Trust had authority to issue immediately prior to this amendment was 50,000,000, consisting of 50,000,000 common shares, \$.01 par value per share, having an aggregate par value of \$500,000.

**FOURTH:** The total number of shares of beneficial interest which the Trust has authority to issue pursuant to this amendment is 70,000,000, consisting of 70,000,000 common shares, \$.01 par value per share, having an aggregate par value of \$700,000.

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

[SIGNATURE PAGE FOLLOWS]


(B1306407; 3)

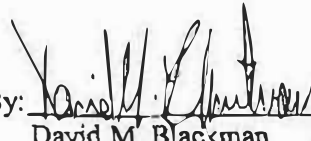
**STATE OF MARYLAND**  
I hereby certify that this is a true and complete copy of the  
page document on file in this office. DATED: 12/4/17<sup>3</sup>  
**STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:**  
BY: [Signature], Custodian  
This stamp replaces our previous certification system. Effective: 6/95

IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment to be signed in its name and on its behalf by its President and attested to by its Secretary on this 20th day of July, 2011.

ATTEST:

GOVERNMENT PROPERTIES INCOME  
TRUST

By:   
Jennifer B. Clark  
Secretary

By:   
David M. Blackman  
President

CUST ID: 0002619857  
WORK ORDER: 0003836437  
DATE: 07-20-2011 02:06 PM  
AMT. PAID: \$233.00



# CORPORATE CHARTER APPROVAL SHEET

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

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

DOCUMENT CODE 71 BUSINESS CODE \_\_\_\_\_

# D 12915401



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

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

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

ID # 012915401 ACK # 1000362002031369  
PAGES: 0003  
GOVERNMENT PROPERTIES INCOME TRUST

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

07/20/2011 AT 02:06 P WO # 0003836437

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

### FEES REMITTED

Base Fee:	<u>100</u>
Org. & Cap. Fee:	<u>40</u>
Expedite Fee:	<u>7.00</u>
Penalty:	_____
State Recordation Tax:	_____
State Transfer Tax:	_____
Certified Copies	<u>23</u>
Copy Fee:	_____
Certificates	_____
Certificate of Status Fee:	_____
Personal Property Filings:	_____
Mail Processing Fee:	_____
Other:	_____

TOTAL FEES: 233

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

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

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

Approved By: [Signature]

Keyed By: [Signature]

COMMENT(S): [Handwritten]

Code 063  
Attention: Andrea Cohen

Mail: Name and Address  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



Stamp Work Order and Customer Number HERE

CUST ID: 0002619857  
WORK ORDER: 0003836437  
DATE: 07-20-2011 02:06 PM  
AMT. PAID: \$233.00

**GOVERNMENT PROPERTIES INCOME TRUST**

**ARTICLES OF AMENDMENT**

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

**FIRST:** The Declaration of Trust of the Trust is hereby amended by deleting the second sentence of Section 6.1 of Article VI in its entirety and substituting in lieu thereof a new sentence to read as follows:

"The Trust has authority to issue 100,000,000 Shares, consisting of 100,000,000 common shares of beneficial interest, \$.01 par value per share ("Common Shares")."

**SECOND:** The amendment to the Declaration of Trust of the Trust as set forth above has been duly approved by the Board of Trustees of the Trust. Pursuant to Section 8-203(a)(8) of the Maryland REIT Law and Article VI, Section 6.1 of the Declaration of Trust of the Trust, no shareholder approval was required.

**THIRD:** The total number of shares of beneficial interest which the Trust had authority to issue immediately prior to this amendment was 70,000,000, consisting of 70,000,000 common shares, \$.01 par value per share, having an aggregate par value of \$700,000.

**FOURTH:** The total number of shares of beneficial interest which the Trust has authority to issue pursuant to this amendment is 100,000,000, consisting of 100,000,000 common shares, \$.01 par value per share, having an aggregate par value of \$1,000,000.

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

[SIGNATURE PAGE FOLLOWS]

**STATE OF MARYLAND**  
 I hereby certify that this is a true and complete copy of the  
 [unclear] document on file in this office. DATED: 12/4/17  
**STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:**  
 BY: Rosina James, Custodian  
 This stamp replaces our previous certification system. Effective: 6/95

IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment to be signed in its name and on its behalf by its President and attested to by its Secretary on this 24th day of July, 2014.


ATTEST:

GOVERNMENT PROPERTIES INCOME TRUST

By:

  
Jennifer B. Clark  
Secretary

By:

  
David M. Blackman  
President

CUST ID: 0003119507  
WORK ORDER: 0004336087  
DATE: 07-24-2014 02:18 PM  
AMT. PAID: \$210.00

# CORPORATE CHARTER APPROVAL SHEET

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

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

DOCUMENT CODE 71 BUSINESS CODE 13

# D12915401



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

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

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

\_\_\_\_\_

\_\_\_\_\_

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

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Approved By: 14

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

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

### FEE'S REMITTED

Base Fee:	<u>100</u>
Org. & Cap. Fee:	<u>60</u>
Expedite Fee:	<u>30</u>
Penalty:	
State Recordation Tax:	
State Transfer Tax:	
Certified Copies:	
Copy Fee:	
Certificates:	
Certificate of Status Fee:	
Personal Property Filings:	
Mail Processing Fee:	
Other:	

TOTAL FEES: 210

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

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

ID # D12915401 ACK # 1000362006758678  
PAGES: 0003  
GOVERNMENT PROPERTIES INCOME TRUST

07/24/2014 AT 02:18 P WO # 0004336087

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

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

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

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

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

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

\_\_\_\_\_

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

\_\_\_\_\_

Code 065

Attention: M'Linda Draughn

Mail: Names and Address

\_\_\_\_\_

SAUL EWING, LLP

M'LINDA DRAUGHN

9TH FLOOR

500 EAST PRATT STREET

BALTIMORE MD 21202

Stamp Work Order and Customer Number HERE

CUST ID: 0003119507  
WORK ORDER: 0004336087  
DATE: 07-24-2014 02:18 PM  
AMT. PAID: \$210.00

CERTIFICATE OF CORRECTION  
TO  
DECLARATION OF TRUST  
OF  
GOVERNMENT PROPERTIES INCOME TRUST

This Certificate of Correction is being duly executed by David M. Blackman, as President of the above named real estate investment trust, to correct and include an erroneously omitted effective date for Articles of Amendment filed with the Maryland Department of Assessment and Taxation ("SDAT") on July 24, 2014.

1.e Articles of Amendment were filed with SDAT on July 24, 2014, increasing the total number of shares of beneficial interest which the Trust has authority to issue.

2. The Articles of Amendment erroneously omitted the effective date of July 28, 2014.

3. The effective date as it should appear and by this Certificate of Correction is hereby corrected to appear in the records of SDAT is: July 28, 2014.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Correction on the 31<sup>st</sup> day of July 2014 to be effective as of the 24<sup>th</sup> day of July, 2014.

ATTEST: GOVERNMENT PROPERTIES INCOME TRUST

By: Jennifer B. Clark  
Jennifer B. Clark, Secretary

By: David M. Blackman  
David M. Blackman, President

CUST ID: 0003122912  
WORK ORDER: 0004339492  
DATE: 08-01-2014 08:45 AM  
AMT. PAID: \$75.00

STATE OF MARYLAND  
I hereby certify that this is a true and complete copy of the 2  
document on file in this office. DATED: 12/14/17  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:  
BY: Rosina Garrett Custodian  
This stamp replaces our previous certification system. Effective: 6/9/16

# CORPORATE CHARTER APPROVAL SHEET

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

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

DOCUMENT CODE 17 BUSINESS CODE 13  
D12915401



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

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

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

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

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ID # D12915401 ACK # 1000362006791349  
PAGES: 0002  
GOVERNMENT PROPERTIES INCOME TRUST

08/01/2014 AT 08:45 A WO # 0004339492

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

### FEES REMITTED

Base Fee:	<u>25</u>
Org. & Cap. Fee:	
Expedite Fee:	<u>50</u>
Penalty:	
State Recordation Tax:	
State Transfer Tax:	
<u>C</u> Certified Copies	
<u>C</u> Copy Fee:	
Certificates	
Certificate of Status Fee:	
Personal Property Filings:	
Mail Processing Fee:	
Other:	

TOTAL FEES: 75

_____	Change of Name
_____	Change of Principal Office
_____	Change of Resident Agent
_____	Change of Resident Agent Address
_____	Resignation of Resident Agent
_____	Designation of Resident Agent and Resident Agent's Address
_____	Change of Business Code
<u>C C</u>	Adoption of Assumed Name
_____	
<u>C</u>	Other Change(s)
_____	

Code 065  
Attention: M'Linda Draughn

Mail: Names and Address

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

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

Approved By: 2

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

COMMENT(S):

### Stamp Work Order and Customer Number HERE

CUST ID: 0003122912  
WORK ORDER: 0004339492  
DATE: 08-01-2014 08:45 AM  
AMT. PAID: \$75.00



**GOVERNMENT PROPERTIES INCOME TRUST**

**ARTICLES OF AMENDMENT**

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

**FIRST** The Declaration of Trust of the Trust is hereby amended by deleting the second sentence of Section 6 I of Article VI in its entirety and substituting in lieu thereof a new sentence to read as follows:

"The Trust has authority to issue 150,000,000 Shares, consisting of 150,000,000 common shares of beneficial interest, \$ 01 par value per share ("Common Shares")."

**SECOND:** The amendment to the Declaration of Trust of the Trust as set forth above has been duly approved by the Board of Trustees of the Trust Pursuant to Section 8-203(a)(8) of the Maryland REIT Law and Article VI, Section 6 I of the Declaration of Trust of the Trust, no shareholder approval was required

**THIRD** The total number of shares of beneficial interest which the Trust had authority to issue immediately prior to this amendment was 100,000,000, consisting of 100,000,000 common shares, \$ 01 par value per share, having an aggregate par value of \$1,000,000

**FOURTH** The total number of shares of beneficial interest which the Trust has authority to issue pursuant to this amendment is 150,000,000, consisting of 150,000,000 common shares, \$ 01 par value per share, having an aggregate par value of \$1,500,000.

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

[SIGNATURE PAGE FOLLOWS]

CUST ID: 0003562635  
WORK ORDER: 0004779212  
DATE 06-28-2017 04:40 PM  
AMT. PAID: \$243.00

STATE OF MARYLAND  
I hereby certify that this is a true and complete copy of the 3 page document on file in this office. DATED: 12/4/17  
STATE DEPARTMENT OF ASSESSMENTS AND TAXATION:  
BY: [Signature], Custodian  
This stamp replaces our previous certification system. Effective: 6/95

IN WITNESS WHEREOF, the Trust has caused these Articles of Amendment to be signed in its name and on its behalf by its President and attested to by its Secretary on this 28th day of June, 2017.

ATTEST:

GOVERNMENT PROPERTIES INCOME TRUST

By: Jennifer B. Clark  
Jennifer B. Clark  
Secretary

By: David M. Blackman  
David M. Blackman  
President



CORPORATE CHARTER APPROVAL SHEET

\*\* EXPEDITED SERVICE \*\*

\*\* KEEP WITH DOCUMENT \*\*

DOCUMENT CODE 71 BUSINESS CODE \_\_\_\_\_

# D12915401

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

PA \_\_\_\_\_ Religious \_\_\_\_\_

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

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



Affix Barcode Label Here  
ID # D12915401 ACK # 1000362010448126  
PAGES: 0003  
GOVERNMENT PROPERTIES INCOME TRUST

06/28/2017 AT 12:11 P WO # 0004779212

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

FEES REMITTED

- Base Fee
- Org & Cap Fee
- Expedite Fee
- Penalty
- State Recordation Tax
- State Transfer Tax
- Certified Copies
- Copy Fee
- Certificates
- Certificate of Status Fee
- Personal Property Filings
- Mail Processing Fee
- Other

100  
50  
70  
23  
243

TOTAL FEES

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

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

Approved By 3

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

COMMENT(S)

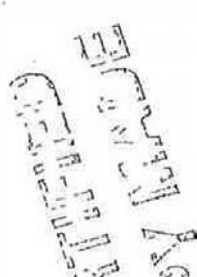
- Change of Name \_\_\_\_\_
- Change of Principal Office \_\_\_\_\_
- Change of Resident Agent \_\_\_\_\_
- Change of Resident Agent Address \_\_\_\_\_
- Resignation of Resident Agent \_\_\_\_\_
- Designation of Resident Agent and Resident Agent's Address \_\_\_\_\_
- Change of Business Code \_\_\_\_\_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

Code 063

Attention \_\_\_\_\_

Mail Names and Address

VENABLE LLP  
SUITE 900  
750 E PRATT STREET  
BALTIMORE MD 21202



Stamp Work Order and Customer Number  
 CUST ID: 0003562635  
 WORK ORDER: 0004779212  
 DATE: 06-28-2017 04:40 PM  
 AMT. PAID: \$243.00

**Exhibit D**

(see attached)

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GOVERNMENT PROPERTIES INCOME TRUST

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AMENDED AND RESTATED BYLAWS

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As Amended and Restated September 7, 2016

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# **GOVERNMENT PROPERTIES INCOME TRUST**

## **AMENDED AND RESTATED BYLAWS**

These AMENDED AND RESTATED BYLAWS (these “Bylaws”) are made as of the date set forth above by the Board of Trustees.

### **ARTICLE I**

#### **OFFICES**

Section 1.1 Principal Office. The principal office of the Trust shall be located at such place or places as the Board of Trustees may designate.

Section 1.2 Additional Offices. The Trust may have additional offices at such places as the Board of Trustees may from time to time determine or the business of the Trust may require.

### **ARTICLE II**

#### **MEETINGS OF SHAREHOLDERS**

Section 2.1 Place. All meetings of shareholders shall be held at the principal office of the Trust or at such other place as is designated by the Board of Trustees, a Managing Trustee or the president.

Section 2.2 Annual Meeting. An annual meeting of the shareholders for the election of Trustees and the transaction of any business within the powers of the Trust shall be held at such times as the Trustees may designate. Failure to hold an annual meeting does not invalidate the Trust’s existence or affect any otherwise valid acts of the Trust.

Section 2.3 Special Meetings. Special meetings of shareholders may be called only by a majority of the Trustees then in office. If there shall be no Trustees, the officers of the Trust shall promptly call a special meeting of the shareholders entitled to vote for the election of successor Trustees for the purpose of electing Trustees.

Section 2.4 Notice of Regular or Special Meetings. Notice given in writing or by electronic transmission specifying the place, day and hour of any regular or special meeting, the purposes of the meeting, to the extent required by law to be provided, and all other matters required by law shall be given to each shareholder of record entitled to vote, sent to his or her address appearing on the books of the Trust or theretofore given by him or her to the Trust for the purpose of notice, by presenting it to such shareholder personally, by leaving it at the shareholder’s residence or usual place of business or by any other means permitted by Maryland law. If mailed, such notice shall be deemed to be given once deposited in the U.S. mail addressed to the shareholder at his or her post office address as it appears on the records of the Trust, with postage thereon prepaid. If transmitted electronically, such notice shall be deemed to be given when transmitted to the shareholder by an electronic transmission to any address or

number of the shareholder at which the shareholder receives electronic transmissions. It shall be the duty of the secretary to give notice of each meeting of the shareholders. The Trust may give a single notice to all shareholders who share an address, which single notice shall be effective to any shareholder at such address, unless a shareholder objects to receiving such single notice or revokes a prior consent to receiving such single notice. Failure to give notice of any meeting to one or more shareholders, or any irregularity in such notice, shall not affect the validity of any meeting fixed in accordance with this ARTICLE II or the validity of any proceedings at any such meeting.

Section 2.5 Notice of Adjourned Meetings. It shall not be necessary to give notice of the time and place of any adjourned meeting or of the business to be transacted thereat other than by announcement at the meeting at which such adjournment is taken.

Section 2.6 Meeting Business. Except as otherwise expressly set forth elsewhere in these Bylaws, no business shall be transacted at an annual or special meeting of shareholders except as specifically designated in the notice or otherwise properly brought before the meeting of shareholders by or at the direction of the Board of Trustees.

Section 2.7 Organization of Shareholder Meetings. Every meeting of shareholders shall be conducted by an individual appointed by the Board of Trustees to be chairperson of the meeting or, in the absence of such appointment or the absence of the appointed individual, by one of the following officers present at the meeting in the following order: the chairman of the board, if there be one, a Managing Trustee (in their order of seniority), the president, the vice presidents (in their order of seniority), the secretary, or, in the absence of such officers, a chairperson chosen by the shareholders by the vote of holders of shares of beneficial interest representing a majority of the votes cast on such appointment by shareholders present in person or represented by proxy. The secretary, an assistant secretary or a person appointed by the Trustees or, in the absence of such appointment, a person appointed by the chairperson of the meeting shall act as secretary of the meeting and record the minutes of the meeting. If the secretary presides as chairperson at a meeting of the shareholders, then the secretary shall not also act as secretary of the meeting and record the minutes of the meeting. The order of business and all other matters of procedure at any meeting of shareholders shall be determined by the chairperson of the meeting. The chairperson of the meeting may prescribe such rules, regulations and procedures and take such action as, in the discretion of such chairperson, are appropriate for the proper conduct of the meeting, including, without limitation: (a) restricting admission to the time set for the commencement of the meeting; (b) limiting attendance at the meeting to shareholders of record of the Trust, their duly authorized proxies or other such persons as the chairperson of the meeting may determine; (c) limiting participation at the meeting on any matter to shareholders of record of the Trust entitled to vote on such matter, their duly authorized proxies or other such persons as the chairperson of the meeting may determine; (d) limiting the time allotted to questions or comments by participants; (e) determining when and for how long the polls should be opened and when the polls should be closed; (f) maintaining order and security at the meeting; (g) removing any shareholder or other person who refuses to comply with meeting procedures, rules or guidelines as set forth by the chairperson of the meeting; (h) concluding a meeting or recessing or adjourning the meeting to a later date and time and at a place announced at the meeting; and (i) complying with any state and local laws and regulations concerning safety and security. Without limiting the generality of the



powers of the chairperson of the meeting pursuant to the foregoing provisions, the chairperson may adjourn any meeting of shareholders for any reason deemed necessary by the chairperson, including, without limitation, if (i) no quorum is present for the transaction of the business, (ii) the Board of Trustees or the chairperson of the meeting determines that adjournment is necessary or appropriate to enable the shareholders to consider fully information that the Board of Trustees or the chairperson of the meeting determines has not been made sufficiently or timely available to shareholders or (iii) the Board of Trustees or the chairperson of the meeting determines that adjournment is otherwise in the best interests of the Trust. Unless otherwise determined by the chairperson of the meeting, meetings of shareholders shall not be required to be held in accordance with the general rules of parliamentary procedure or any otherwise established rules of order.

Section 2.8 Quorum. At any meeting of shareholders, the presence in person or by proxy of shareholders entitled to cast a majority of all the votes entitled to be cast at such meeting shall constitute a quorum; but this section shall not affect any requirement under any statute or the Declaration of Trust for the vote necessary for the adoption of any measure. If, however, such quorum shall not be present at any meeting of the shareholders, the chairperson of the meeting shall have the power to adjourn the meeting from time to time without the Trust having to set a new record date or provide any additional notice of such meeting, subject to any obligation of the Trust to give notice pursuant to Section 2.5. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified. The shareholders present, either in person or by proxy, at a meeting of shareholders which has been duly called and convened and at which a quorum was established may continue to transact business until adjournment, notwithstanding the withdrawal of enough votes to leave less than a quorum then being present at the meeting.

Section 2.9 Voting.

(a) With regard to the election of a Trustee, and except as may be mandated by applicable law or the listing requirements of the principal exchange on which the Trust's common shares of beneficial interest are listed: (i) a plurality of all the votes cast at a meeting of shareholders duly called and at which a quorum is present shall be sufficient to elect a Trustee in an uncontested election; and (ii) a majority of all the votes entitled to be cast for the election of Trustees at a meeting of shareholders duly called and at which a quorum is present shall be required to elect a Trustee in a contested election (which, for purposes of these Bylaws, is an election at which the number of nominees exceeds the number of Trustees to be elected at the meeting). Each share may be voted for as many individuals as there are Trustees to be elected and for whose election the share is entitled to be voted.

(b) With regard to any other matter which may properly come before a meeting of shareholders duly called and at which a quorum is present, and except as may be mandated by applicable law, by the listing requirements of the principal exchange on which the Trust's common shares of beneficial interest are listed or by a specific provision of the Declaration of Trust, the vote required for approval shall be the affirmative vote of seventy-five percent (75%) of the votes entitled to be cast for each such matter unless such matter has been previously approved by the Board of Trustees, in which case the vote required for approval shall

be a majority of the votes cast at a meeting of shareholders duly called and at which a quorum is present.

Section 2.10 Proxies. A shareholder may cast the votes entitled to be cast by him or her either in person or by proxy executed by the shareholder or by his or her duly authorized agent in any manner permitted by law. Such proxy shall be filed with such officer of the Trust or third party agent as the Board of Trustees shall have designated for such purpose for verification at or prior to such meeting. Any proxy relating to the Trust's shares of beneficial interest shall be valid until the expiration date therein or, if no expiration is so indicated, for such period as is permitted pursuant to Maryland law. At a meeting of shareholders, all questions concerning the qualification of voters, the validity of proxies, and the acceptance or rejection of votes, shall be decided by or on behalf of the chairperson of the meeting, subject to Section 2.13.

Section 2.11 Record Date. The Board of Trustees may fix the date for determination of shareholders entitled to notice of and to vote at a meeting of shareholders. If no date is fixed for the determination of the shareholders entitled to vote at any meeting of shareholders, only persons in whose names shares entitled to vote are recorded on the share records of the Trust on the later of: (i) the close of business on the day on which notice of such meeting of shareholders is first mailed by the Trust or (ii) the thirtieth (30th) day before the date of such meeting shall be entitled to vote at such meeting.

Section 2.12 Voting of Shares by Certain Holders. Shares of beneficial interest of the Trust registered in the name of a corporation, partnership, trust or other entity, if entitled to be voted, may be voted by the president or a vice president, a general partner, managing member or trustee thereof, as the case may be, or a proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such shares pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or pursuant to an agreement of the partners of the partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such shares. Any trustee or other fiduciary may vote shares registered in his or her name as such fiduciary, either in person or by proxy. Notwithstanding the apparent authority created by the prior two sentences of this Section 2.12, the Board of Trustees or the chairperson of the meeting may require that such person acting for a corporation, partnership, trust or other entity provide documentary evidence of his or her authority to vote such shares and of the fact that the beneficial owner of such shares has been properly solicited and authorized such person to vote as voted, and in the absence of such satisfactory evidence, the Board of Trustees or the chairperson may determine such votes have not been validly cast.

Section 2.13 Inspectors.

(a) Before or at any meeting of shareholders, the chairperson of the meeting may appoint one or more persons as inspectors for such meeting. Such inspectors, if any, shall (i) ascertain and report the number of shares of beneficial interest represented at the meeting, in person or by proxy, and the validity and effect of proxies, (ii) receive and tabulate all votes, ballots or consents, (iii) report such tabulation to the chairperson of the meeting and (iv) perform such other acts as are proper to conduct the election or voting at the meeting. In the absence of such a special appointment, the secretary may act as the inspector.

(b) Each report of an inspector shall be in writing and signed by him or her. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be *prima facie* evidence thereof.

Section 2.14 Nominations and Other Proposals to be Considered at Meetings of Shareholders. Nominations of individuals for election to the Board of Trustees and the proposal of other business to be considered by the shareholders at meetings of shareholders may be properly brought before the meeting only as set forth in this Section 2.14. Nothing in this Section 2.14 shall be deemed to affect any right of a shareholder to request inclusion of a non-binding precatory proposal in, or the right of the Trust to omit a proposal from, any proxy statement filed by the Trust with the U.S. Securities and Exchange Commission (the “SEC”) pursuant to Rule 14a-8 (or any successor provision) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). All judgments and determinations made by the Board of Trustees or the chairperson of the meeting, as applicable, under this Section 2.14 (including, without limitation, judgments and determinations as to the propriety of a proposed nomination or a proposal of other business for consideration by shareholders) shall be final and binding unless determined to have been made in bad faith.

Section 2.14.1 Annual Meetings of Shareholders.

(a) Any shareholder may recommend to the Nominating and Governance Committee of the Board of Trustees an individual as a nominee for election to the Board of Trustees. Such recommendation shall be made by written notice to the Chair of such committee and the secretary, which notice should contain or be accompanied by the information and documents with respect to such recommended nominee and shareholder that such shareholder believes to be relevant or helpful to the Nominating and Governance Committee’s deliberations. In considering such recommendation, the Nominating and Governance Committee may request additional information concerning the recommended nominee or the shareholder(s) making the recommendation. The Nominating and Governance Committee of the Board of Trustees will consider any such recommendation in its discretion. Any shareholder seeking to make a nomination of an individual for election to the Board of Trustees at an annual meeting of shareholders must make such nomination in accordance with Section 2.14.1(b)(ii).

(b) Nominations of individuals for election to the Board of Trustees and the proposal of other business to be considered by the shareholders at an annual meeting of shareholders may be properly brought before the meeting (i) pursuant to the Trust’s notice of meeting or otherwise properly brought before the meeting by or at the direction of the Board of Trustees or (ii) by any one or more shareholders who (A) have each continuously owned (as defined below) shares of beneficial interest of the Trust entitled to vote in the election of Trustees or on a proposal of other business, for at least three (3) years as of the date of the giving of the notice provided for in Section 2.14.1(c), the record date for determining the shareholders entitled to vote at the meeting and the time of the annual meeting (including any adjournment or postponement thereof), with the aggregate shares owned by such shareholder(s) as of each of such dates and during such three (3) year period representing at least one percent (1%) of the Trust’s shares of beneficial interest, (B) holds, or hold, a certificate or certificates evidencing the aggregate number of shares of beneficial interest of the Trust referenced in subclause (A) of this Section 2.14.1(b)(ii) as of the time of giving the notice provided for in Section 2.14.1(c), the

record date for determining the shareholders entitled to vote at the meeting and the time of the annual meeting (including any adjournment or postponement thereof), (C) is, or are, entitled to make such nomination or propose such other business and to vote at the meeting on such election or proposal of other business, and (D) complies, or comply, with the notice procedures set forth in this Section 2.14 as to such nomination or proposal of other business. For purposes of this Section 2.14, a shareholder shall be deemed to “own” or have “owned” only those outstanding shares of the Trust’s shares of beneficial interest to which the shareholder possesses both the full voting and investment rights pertaining to such shares and the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided that the number of shares calculated in accordance with the foregoing shall not include any shares (x) sold by such shareholder or any of its affiliates in any transaction that has not been settled or closed or (y) borrowed by such shareholder or any of its affiliates for any purposes or purchased by such shareholder or any of its affiliates pursuant to an agreement to resell. Without limiting the foregoing, to the extent not excluded by the immediately preceding sentence, a shareholder’s “short position” as defined in Rule 14e-4 under the Exchange Act shall be deducted from the shares otherwise “owned.” A shareholder shall “own” shares held in the name of a nominee or other intermediary so long as the shareholder retains the right to instruct how the shares are voted with respect to the election of trustees or the proposal of other business and possesses the full economic interest in the shares. For purposes of this Section 2.14, the term “affiliate” or “affiliates” shall have the meaning ascribed thereto under the General Rules and Regulations under the Exchange Act. For purposes of this Section 2.14, the period of continuous ownership of shares must be evidenced by documentation accompanying the nomination or proposal. Whether shares are “owned” for purposes of this Section 2.14 shall be determined by the Board of Trustees.

(c) For nominations for election to the Board of Trustees or other business to be properly brought before an annual meeting by one or more shareholders pursuant to this Section 2.14.1, such shareholder(s) shall have given timely notice thereof in writing to the secretary in accordance with this Section 2.14 and such other business shall otherwise be a proper matter for action by shareholders. To be timely, the notice of such shareholder(s) shall include all documentation and set forth all information required under this Section 2.14 and shall be delivered to the secretary at the principal executive offices of the Trust not later than 5:00 p.m. (Eastern Time) on the one-hundred twentieth (120th) day nor earlier than the one-hundred fiftieth (150th) day prior to the first (1st) anniversary of the date of the proxy statement for the preceding year’s annual meeting; provided, however, that if the annual meeting is called for a date that is more than thirty (30) days earlier or later than the first (1st) anniversary of the date of the preceding year’s annual meeting, notice by such shareholder(s) to be timely shall be so delivered not later than 5:00 p.m. (Eastern Time) on the tenth (10th) day following the earlier of the day on which (i) notice of the date of the annual meeting is mailed or otherwise made available or (ii) public announcement of the date of the annual meeting is first made by the Trust. Neither the postponement or adjournment of an annual meeting, nor the public announcement of such postponement or adjournment, shall commence a new time period (or extend any time period) for the giving of a notice of one or more shareholders as described above.

A notice of one or more shareholders pursuant to this Section 2.14.1(c) shall set forth:

(i) separately as to each individual whom such shareholder(s) propose to nominate for election or reelection as a Trustee (a “Proposed Nominee”), (1) the name, age, business address, residence address and educational background of such Proposed Nominee, (2) a statement of whether such Proposed Nominee is proposed for nomination as an Independent Trustee or a Managing Trustee (each as defined in Section 3.2) and a description of such Proposed Nominee’s qualifications to be an Independent Trustee or Managing Trustee, as the case may be, and such Proposed Nominee’s qualifications to be a Trustee pursuant to the criteria set forth in Section 3.1, (3) the class, series and number of any shares of beneficial interest of the Trust that are, directly or indirectly, beneficially owned or owned of record by such Proposed Nominee, (4) a description of the material terms of each Derivative Transaction that such Proposed Nominee directly or indirectly, has an interest in, including, without limitation, the counterparties to each Derivative Transaction, the class or series and number or amount of securities of the Trust to which each Derivative Transaction relates or provides exposure, and whether or not (x) such Derivative Transaction conveys any voting rights directly or indirectly, to such Proposed Nominee, (y) such Derivative Transaction is required to be, or is capable of being, settled through delivery of securities of the Trust and (z) such Proposed Nominee and/or, to their knowledge, the counterparty to such Derivative Transaction has entered into other transactions that hedge or mitigate the economic effect of such Derivative Transaction, (5) a description of all direct and indirect compensation and other agreements, arrangements and understandings or any other relationships, between or among any shareholder making the nomination, or any of its respective affiliates and associates, or others acting in concert therewith, on the one hand, and such Proposed Nominee, or his or her respective affiliates and associates, on the other hand, and (6) all other information relating to such Proposed Nominee that would be required to be disclosed in connection with a solicitation of proxies for election of the Proposed Nominee as a Trustee in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Section 14 (or any successor provision) of the Exchange Act, and the rules and regulations promulgated thereunder, or that would otherwise be required to be disclosed pursuant to the rules of any national securities exchange on which any securities of the Trust are listed or traded;

(ii) as to any other business that such shareholder(s) propose to bring before the meeting, (1) a description of such business, (2) the reasons for proposing such business at the meeting and any material interest in such business of such shareholder(s) or any Shareholder Associated Person (as defined in Section 2.14.1(g)), including any anticipated benefit to such shareholder(s) or any Shareholder Associated Person therefrom, (3) a description of all agreements, arrangements and understandings between such shareholder(s) and Shareholder Associated Person amongst themselves or with any other person or persons (including their names) in connection with the proposal of such business by such shareholder(s) and (4) a representation that such shareholder(s) intend to appear in person or by proxy at the meeting to bring the business before the meeting;

(iii) separately as to each shareholder giving the notice and any Shareholder Associated Person, (1) the class, series and number of all shares of beneficial interest of the Trust that are owned of record by such shareholder or by such Shareholder Associated Person, if any, and (2) the class, series and number of, and the nominee holder for,

any shares of beneficial interests of the Trust that are, directly or indirectly, beneficially owned but not owned of record by such shareholder or by such Shareholder Associated Person, if any;

(iv) separately as to each shareholder giving the notice and any Shareholder Associated Person, (1) a description of all purchases and sales of securities of the Trust by such shareholder or Shareholder Associated Person during the period of continuous ownership required by Section 2.14.1(b)(ii), including the date of the transactions, the class, series and number of securities involved in the transactions and the consideration involved, (2) a description of the material terms of each Derivative Transaction that such shareholder or Shareholder Associated Person, directly or indirectly, has, or during the period of continuous ownership required by Section 2.14.1(b)(ii) had, an interest in, including, without limitation, the counterparties to each Derivative Transaction, the class or series and number or amount of securities of the Trust to which each Derivative Transaction relates or provides exposure, and whether or not (x) such Derivative Transaction conveys or conveyed any voting rights, directly or indirectly, to such shareholder or Shareholder Associated Person, (y) such Derivative Transaction is or was required to be, or is or was capable of being, settled through delivery of securities of the Trust and (z) such shareholder or Shareholder Associated Person and/or, to their knowledge, the counterparty to such Derivative Transaction has or had entered into other transactions that hedge or mitigate the economic effect of such Derivative Transaction, (3) a description of the material terms of any performance related fees (other than an asset based fee) to which such shareholder or Shareholder Associated Person is entitled based on any increase or decrease in the value of shares of beneficial interest of the Trust or instrument or arrangement of the type contemplated within the definition of Derivative Transaction, and (4) any rights to dividends or other distributions on the shares of beneficial interest of the Trust that are beneficially owned by such shareholder or Shareholder Associated Person that are separated or separable from the underlying shares of beneficial interest of the Trust;

(v) separately as to each shareholder giving the notice and any Shareholder Associated Person with a material interest described in clause (ii)(2) above, an ownership interest described in clause (iii) above or a transaction or right described in clause (iv) above, (1) the name and address of such shareholder and Shareholder Associated Person, and (2) all information relating to such shareholder and Shareholder Associated Person that would be required to be disclosed in connection with a solicitation of proxies for election of Trustees in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Section 14 (or any successor provision) of the Exchange Act and the rules and regulations promulgated thereunder, or that would otherwise be required to be disclosed pursuant to the rules of any national securities exchange on which any securities of the Trust are listed or traded; and

(vi) to the extent known by the shareholder(s) giving the notice, the name and address of any other person who beneficially owns or owns of record any shares of beneficial interest of the Trust and who supports the nominee for election or reelection as a Trustee or the proposal of other business.

(d) A notice of one or more shareholders making a nomination or proposing other business pursuant to Section 2.14.1(c) shall be accompanied by a sworn verification of each shareholder making the nomination or proposal as to such shareholder's

continuous ownership of the shares referenced in subclause (A) of Section 2.14.1(b)(ii) throughout the period referenced in such subclause, together with (i) a copy of the share certificate(s) referenced in subclause (B) of Section 2.14.1(b)(ii) above; (ii) if any such shareholder was not a shareholder of record of the shares referenced in subclause (A) of Section 2.14.1(b)(ii) above continuously for the three (3) year period referenced therein, reasonable evidence of such shareholder's continuous beneficial ownership of such shares during such three (3) year period, such reasonable evidence may include, but shall not be limited to, (A) a copy of a report of the shareholder on Schedule 13D or Schedule 13G under the Exchange Act filed on or prior to the beginning of the three (3) year period and all amendments thereto, (B) a copy of a statement required to be filed pursuant to Section 16 of the Exchange Act (or any successor provisions) by a person who is a Trustee or who is directly or indirectly the beneficial owner of more than ten percent (10%) of the shares of beneficial interest of the Trust filed on or prior to the beginning of the three (3) year period and all amendments thereto, or (C) written evidence that each shareholder making the nomination or proposal maintained throughout the chain of record and non-record ownership continuous ownership of such shares (i.e. possession of full voting and investment rights pertaining to, and full economic interest in, such shares) throughout the required period, including written verification of such ownership from each person who was the "record" holder of such shares during such period (including, if applicable, the Depository Trust Company) and each participant of the Depository Trust Company, financial institution, broker-dealer or custodian through which the shares were owned; and (iii) with respect to nominations, (A) a completed and executed questionnaire (in the form available from the secretary) of each Proposed Nominee with respect to his or her background and qualification to serve as a Trustee, the background of any other person or entity on whose behalf the nomination is being made and the information relating to such Proposed Nominee and such other person or entity that would be required to be disclosed in connection with a solicitation of proxies for election of the Proposed Nominee as a Trustee in an election contest (even if an election contest is not involved), or would otherwise be required in connection with such solicitation, in each case pursuant to Section 14 (or any successor provision) of the Exchange Act, and the rules and regulations promulgated thereunder, or that would otherwise be required to be disclosed pursuant to the rules of any national securities exchange on which any securities of the Trust are listed or traded, and (B) a representation and agreement (in the form available from the secretary) executed by each Proposed Nominee pursuant to which such Proposed Nominee (1) represents and agrees that he or she is not and will not become a party to any agreement, arrangement or understanding with, and does not have any commitment and has not given any assurance to, any person or entity, in each case that has not been previously disclosed to the Trust, (x) as to how he or she, if elected as a Trustee, will act or vote on any issue or question, or (y) that could limit or interfere with his or her ability to comply, if elected as a Trustee, with his or her duties to the Trust, (2) represents and agrees that he or she is not and will not become a party to any agreement, arrangement or understanding with any person or entity, other than the Trust, with respect to any direct or indirect compensation, reimbursement or indemnification in connection with or related to his or her service as, or any action or omission in his or her capacity as, a Trustee that has not been previously disclosed to the Trust, (3) represents and agrees that if elected as a Trustee, he or she will be in compliance with and will comply with, applicable law and all applicable publicly disclosed corporate governance, conflict of interest, corporate opportunity, confidentiality and share ownership and trading policies and guidelines of the Trust and (4) consents to being named as a nominee and to serving as a Trustee if elected.

(e) Any shareholder(s) providing notice of a proposed nomination or other business to be considered at an annual meeting of shareholders shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.14 is true and correct as of the record date for such annual meeting and as of a date that is ten (10) business days prior to such annual meeting, and any such update shall be delivered to the secretary at the principal executive offices of the Trust not later than the close of business on the fifth (5th) business day after the record date (in the case of an update or supplement required to be made as of the record date), and not later than the close of business on the eighth (8th) business day prior to the date of the annual meeting (in the case of an update or supplement required to be made as of ten (10) business days prior to the meeting).

(f) A shareholder making a nomination or proposal of other business for consideration at an annual meeting may withdraw the nomination or proposal at any time before the annual meeting. After the period specified in the second sentence of Section 2.14.1(c), a shareholder nomination or proposal of other business for consideration at an annual meeting may only be amended with the permission of the Board of Trustees. Notwithstanding anything in the second sentence of Section 2.14.1(c) to the contrary, if the number of Trustees to be elected to the Board of Trustees is increased and there is no public announcement of such action at least one-hundred thirty (130) days prior to the first (1st) anniversary of the date of the proxy statement for the preceding year's annual meeting, the notice required by this Section 2.14.1 also shall be considered timely, but only with respect to nominees for any new positions created by such increase, if such notice is delivered to the secretary at the principal executive offices of the Trust not later than 5:00 p.m. (Eastern Time) on the tenth (10th) day immediately following the day on which such public announcement is first made by the Trust. If the number of the Trustees to be elected to the Board of Trustees is decreased, there shall be no change or expansion in the time period for shareholders to make a nomination from the time period specified in the second sentence of Section 2.14.1(c). Any change in time period for shareholders to make a nomination shall not change the time period to make any other proposal from the time period specified in the second sentence of Section 2.14.1(c).

(g) For purposes of this Section 2.14, (i) "Shareholder Associated Person" of any shareholder shall mean (A) any person acting in concert with, such shareholder, (B) any direct or indirect beneficial owner of shares of beneficial interest of the Trust beneficially owned or owned of record by such shareholder and (C) any person controlling, controlled by or under common control with such shareholder or a Shareholder Associated Person; and (ii) "Derivative Transaction" by a person shall mean any (A) transaction in, or arrangement, agreement or understanding with respect to, any option, warrant, convertible security, stock appreciation right or similar right with an exercise, conversion or exchange privilege, or settlement payment or mechanism related to, any security of the Trust, or similar instrument with a value derived in whole or in part from the value of a security of the Trust, in any such case whether or not it is subject to settlement in a security of the Trust or otherwise or (B) any transaction, arrangement, agreement or understanding which included or includes an opportunity for such person, directly or indirectly, to profit or share in any profit derived from any increase or decrease in the value of any security of the Trust, to mitigate any loss or manage any risk associated with any increase or decrease in the value of any security of the Trust or to increase or decrease the number of securities of the Trust which such person was, is or will be



entitled to vote, in any such case whether or not it is subject to settlement in a security of the Trust or otherwise.

Section 2.14.2 Shareholder Nominations or Other Proposals Causing Covenant Breaches or Defaults. At the same time as the submission of any shareholder nomination or proposal of other business to be considered at a shareholders meeting that, if approved and implemented by the Trust, would cause the Trust or any subsidiary (as defined in Section 2.14.5(c)) of the Trust to be in breach of any covenant or otherwise cause a default (in any case, with or without notice or lapse of time) in any existing debt instrument or agreement of the Trust or any subsidiary of the Trust or other material contract or agreement of the Trust or any subsidiary of the Trust, the notice provided pursuant to Section 2.14.1(c) shall disclose: (a) whether the lender or contracting party has agreed to waive the breach of covenant or default, and, if so, shall include reasonable evidence thereof, or (b) in reasonable detail, the plan of the proponent shareholder(s) for the repayment of the indebtedness to the lender or curing the contractual breach or default and satisfying any resulting damage claim, specifically identifying the actions to be taken and the source of funds for any such repayment, and such notice shall be accompanied by a copy of any commitment letter(s) or agreement(s) for the financing of such plan.

Section 2.14.3 Shareholder Nominations or Other Proposals Requiring Governmental Action. If (a) any shareholder nomination or proposal of other business to be considered at a shareholders meeting could not be considered or, if approved, implemented by the Trust without the Trust, any subsidiary of the Trust, any proponent shareholder, any Proposed Nominee of such shareholder, any Shareholder Associated Person of such shareholder, the holder of proxies or their respective affiliates or associates filing with or otherwise notifying or obtaining the consent, approval or other action of any federal, state, municipal or other governmental or regulatory body (a “Governmental Action”) or (b) any proponent shareholder’s ownership of shares of beneficial interest of the Trust or any solicitation of proxies or votes or holding or exercising proxies by such shareholder, any Proposed Nominee of such shareholder, any Shareholder Associated Person of such shareholder, or their respective affiliates or associates would require Governmental Action, then, in the notice provided pursuant to Section 2.14.1(c) the proponent shareholder(s) shall disclose (x) whether such Governmental Action has been given or obtained, and, if so, such notice shall be accompanied by reasonable evidence thereof, or (y) in reasonable detail, the plan of such shareholder(s) for making or obtaining the Governmental Action.

Section 2.14.4 Special Meetings of Shareholders. As set forth in Section 2.6, only business brought before the meeting pursuant to the Trust’s notice of meeting or otherwise properly brought before the meeting by or at the direction of the Board of Trustees may be considered at a special meeting of shareholders. Nominations of individuals for election to the Board of Trustees only may be made at a special meeting of shareholders at which Trustees are to be elected: (a) pursuant to the Trust’s notice of meeting; (b) if the Board of Trustees has determined that Trustees shall be elected at such special meeting; or (c) if there are no Trustees and the special meeting is called by the officers of the Trust for the election of successor Trustees; provided, however, that nominations of individuals to serve as Trustees at a special meeting called in the manner set forth in subclauses (a)-(c) above may only be made by (1) the applicable Trustees or officers of the Trust who call the special meeting of shareholders

for the purpose of electing one or more Trustees or (2) any one or more shareholder(s) of the Trust who (A) satisfy the ownership amount, holding period and certificate requirements set forth in Section 2.14.1(b)(ii), (B) have given timely notice thereof in writing to the secretary at the principal executive offices of the Trust, which notice contains or is accompanied by the information and documents required by Section 2.14.1(c) and Section 2.14.1(d), (C) satisfy the requirements of Section 2.14.2 and Section 2.14.3 and (D) further update and supplement such notice in accordance with Section 2.14; provided further, that, for purposes of this Section 2.14.4, all references in Section 2.14.1, Section 2.14.2 and Section 2.14.3 to the annual meeting and to the notice given under Section 2.14.1 shall be deemed, for purposes of this Section 2.14.4, to be references to the special meeting and the notice given under this Section 2.14.4. To be timely, a shareholder's notice under this Section 2.14.4 shall be delivered to the secretary at the principal executive offices of the Trust not earlier than the one-hundred fiftieth (150th) day prior to such special meeting and not later than 5:00 p.m. (Eastern Time) on the later of (i) the one-hundred twentieth (120th) day prior to such special meeting or (ii) the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting. Neither the postponement or adjournment of a special meeting, nor the public announcement of such postponement or adjournment, shall commence a new time period (or extend any time period) for the giving of a shareholder(s)' notice as described above.

#### Section 2.14.5 General.

(a) If information submitted pursuant to this Section 2.14 by any shareholder proposing a nominee for election as a Trustee or any proposal for other business at a meeting of shareholders shall be deemed by the Board of Trustees incomplete or inaccurate, any authorized officer or the Board of Trustees or any committee thereof may treat such information as not having been provided in accordance with this Section 2.14. Any notice submitted by a shareholder pursuant to this Section 2.14 that is deemed by the Board of Trustees inaccurate, incomplete or otherwise fails to satisfy completely any provision of this Section 2.14 shall be deemed defective and shall thereby render all proposals and nominations set forth in such notice defective. Upon written request by the secretary or the Board of Trustees or any committee thereof (which may be made from time to time), any shareholder proposing a nominee for election as a Trustee or any proposal for other business at a meeting of shareholders shall provide, within three (3) business days after such request (or such other period as may be specified in such request), (i) written verification, satisfactory to the secretary or any other authorized officer or the Board of Trustees or any committee thereof, in his, her or its discretion, to demonstrate the accuracy of any information submitted by the shareholder pursuant to this Section 2.14, (ii) written responses to information reasonably requested by the secretary, the Board of Trustees or any committee thereof and (iii) a written update, to a current date, of any information submitted by the shareholder pursuant to this Section 2.14 as of an earlier date. If a shareholder fails to provide such written verification, information or update within such period, the secretary or any other authorized officer or the Board of Trustees may treat the information which was previously provided and to which the verification, request or update relates as not having been provided in accordance with this Section 2.14. It is the responsibility of a shareholder who wishes to make a nomination or other proposal to comply with the requirements of Section 2.14; nothing in this Section 2.14.5(a) or otherwise shall create any duty of the Trust, the Board of Trustees or any committee thereof nor any officer of the Trust to inform a shareholder that the information submitted pursuant to this Section 2.14 by or on behalf of such

shareholder is incomplete or inaccurate or not otherwise in accordance with this Section 2.14 nor require the Trust, the Board of Trustees, any committee of the Board of Trustees or any officer of the Trust to request clarification or updating of information provided by any shareholder, but the Board of Trustees, a committee thereof or the secretary acting on behalf of the Board of Trustees or a committee, may do so in its, his or her discretion.

(b) Only such individuals who are nominated in accordance with this Section 2.14 shall be eligible for election by shareholders as Trustees and only such business shall be conducted at a meeting of shareholders as shall have been properly brought before the meeting in accordance with this Section 2.14. The chairperson of the meeting and the Board of Trustees shall each have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with this Section 2.14 and, if any proposed nomination or other business is determined not to be in compliance with this Section 2.14, to declare that such defective nomination or proposal be disregarded.

(c) For purposes of this Section 2.14: (i) “public announcement” shall mean disclosure in (A) a press release reported by the Dow Jones News Service, Associated Press, Business Wire, PR Newswire or any other widely circulated news or wire service or (B) a document publicly filed by the Trust with the SEC; (ii) “subsidiary” shall include, with respect to a person, any corporation, partnership, joint venture or other entity of which such person (A) owns, directly or indirectly, ten percent (10%) or more of the outstanding voting securities or other interests or (B) has a person designated by such person serving on, or a right, contractual or otherwise, to designate a person, so to serve on, the board of directors (or analogous governing body); and (iii) a person shall be deemed to “beneficially own” or “have beneficially owned” any shares of beneficial interest of the Trust not owned directly by such person if that person or a group of which such person is a member would be the beneficial owner of such shares under Rule 13d-3 and Rule 13d-5 of the Exchange Act.

(d) Notwithstanding the foregoing provisions of this Section 2.14, a shareholder shall also comply with all applicable legal requirements, including, without limitation, applicable requirements of state law and the Exchange Act and the rules and regulations thereunder, with respect to the matters set forth in this Section 2.14. Nothing in this Section 2.14 shall be deemed to require that a shareholder nomination of an individual for election to the Board of Trustees or a shareholder proposal relating to other business be included in the Trust’s proxy statement, except as may be required by law.

(e) The Board of Trustees may from time to time require any individual nominated to serve as a Trustee to agree in writing with regard to matters of business ethics and confidentiality while such nominee serves as a Trustee, such agreement to be on the terms and in a form determined satisfactory by the Board of Trustees, as amended and supplemented from time to time in the discretion of the Board of Trustees. The terms of any such agreement may be substantially similar to the Code of Business Conduct and Ethics of the Trust or any similar code promulgated by the Trust or may differ from or supplement such Code.

(f) Determinations required or permitted to be made under this Section 2.14 by the Board of Trustees may be delegated by the Board of Trustees to a committee of the Board of Trustees, subject to applicable law.

Section 2.15 No Shareholder Actions by Written Consent. Shareholders shall not be authorized or permitted to take any action required or permitted to be taken at a meeting of shareholders by written consent, and may take such action only at a shareholders meeting of the Trust.

Section 2.16 Voting by Ballot. Voting on any question or in any election may be by voice vote unless the chairperson of the meeting or any shareholder shall demand that voting be by ballot.

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

### **ARTICLE III**

#### **TRUSTEES**

Section 3.1 General Powers; Qualifications; Trustees Holding Over. The business and affairs of the Trust shall be managed under the direction of its Board of Trustees. A Trustee shall be an individual at least twenty-one (21) years of age who is not under legal disability. To qualify for nomination or election as a Trustee, an individual, at the time of nomination and election, shall, without limitation, (a) have substantial expertise or experience relevant to the business of the Trust and its subsidiaries (as determined by the Board of Trustees), (b) not have been convicted of a felony, (c) meet the qualifications of an Independent Trustee or a Managing Trustee, as the case may be, depending upon the position for which such individual may be nominated and elected, and (d) have been nominated for election to the Board of Trustees in accordance with Section 2.14. In case of failure to elect Trustees at an annual meeting of the shareholders, the incumbent Trustees shall hold over and continue to direct the management of the business and affairs of the Trust until they may resign or until their successors are elected and qualify. The failure of shareholders to elect Trustees at an annual meeting of shareholders shall not cause vacancies on the Board of Trustees requiring the officers of the Trust to call a special meeting of shareholders to elect Trustees unless all Trustees, including holdover Trustees, are unwilling or unable to continue to serve.

Section 3.2 Independent Trustees and Managing Trustees. A majority of the Trustees holding office shall at all times be Independent Trustees; provided, however, that upon

a failure to comply with this requirement as a result of the creation of a temporary vacancy which shall be filled by an Independent Trustee, whether as a result of enlargement of the Board of Trustees or the resignation, removal or death of a Trustee who is an Independent Trustee, such requirement shall not be applicable. An “Independent Trustee” is one who is not an employee of the Manager (as defined in the Declaration of Trust), who is not involved in the Trust’s day to day activities and who meets the qualifications of an independent director (not including the specific independence requirements applicable only to members of the Audit Committee of the Board of Trustees) under the applicable rules of each securities exchange upon which shares of beneficial interest of the Trust are listed for trading and the SEC, as those requirements may be amended from time to time. If the number of Trustees, at any time, is set at less than five (5), at least one (1) Trustee shall be a Managing Trustee. So long as the number of Trustees shall be five (5) or greater, at least two (2) Trustees shall be Managing Trustees. “Managing Trustees” shall mean Trustees who have been employees, officers or directors of the Manager or involved in the day to day activities of the Trust for at least one (1) year prior to their election. If at any time the Board of Trustees shall not be comprised of a majority of Independent Trustees, the Board of Trustees shall take such actions as will cure such condition; provided that the fact that the Board of Trustees does not have a majority of Independent Trustees or has not taken such action at any time or from time to time shall not affect the validity of any action taken by the Board of Trustees. If at any time the Board of Trustees shall not be comprised of a number of Managing Trustees as is required under this Section 3.2, the Board of Trustees shall take such actions as will cure such condition; provided that the fact that the Board of Trustees does not have the requisite number of Managing Trustees or has not taken such action at any time or from time to time shall not affect the validity of any action taken by the Board of Trustees.

Section 3.3 Number and Tenure. The number of Trustees constituting the entire Board of Trustees may be increased or decreased from time to time only by a vote of the Trustees; provided however that the tenure of office of a Trustee shall not be affected by any decrease in the number of Trustees. The number of Trustees shall be five (5) until increased or decreased by the Board of Trustees.

Section 3.4 Annual and Regular Meetings. An annual meeting of the Trustees shall be held immediately after the annual meeting of shareholders, no notice other than this Bylaw being necessary. The time and place of the annual meeting of the Trustees may be changed by the Board of Trustees. The Trustees may provide, by resolution, the time and place, either within or without the State of Maryland, for the holding of regular meetings of the Trustees without other notice than such resolution. If any such regular meeting is not so provided for, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Trustees.

Section 3.5 Special Meetings. Special meetings of the Trustees may be called at any time by any Managing Trustee, the president or pursuant to the request of any two (2) Trustees then in office. The person or persons authorized to call special meetings of the Trustees may fix any place, either within or without the State of Maryland, as the place for holding any special meeting of the Trustees called by them.

Section 3.6 Notice. Notice of any special meeting shall be given by written notice delivered personally or by electronic mail, telephoned, facsimile transmitted, overnight

couriered (with proof of delivery) or mailed to each Trustee at his or her business or residence address. Personally delivered, telephoned, facsimile transmitted or electronically mailed notices shall be given at least twenty-four (24) hours prior to the meeting. Notice by mail shall be deposited in the U.S. mail at least seventy-two (72) hours prior to the meeting. If mailed, such notice shall be deemed to be given when deposited in the U.S. mail properly addressed, with postage thereon prepaid. Electronic mail notice shall be deemed to be given upon transmission of the message to the electronic mail address given to the Trust by the Trustee. Telephone notice shall be deemed given when the Trustee is personally given such notice in a telephone call to which he is a party. Facsimile transmission notice shall be deemed given upon completion of the transmission of the message to the number given to the Trust by the Trustee and receipt of a completed answer back indicating receipt. If sent by overnight courier, such notice shall be deemed given when delivered to the courier. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Trustees need be stated in the notice, unless specifically required by statute or these Bylaws.

Section 3.7 Quorum. A majority of the Trustees shall constitute a quorum for transaction of business at any meeting of the Trustees, provided that, if less than a majority of such Trustees are present at a meeting, a majority of the Trustees present may adjourn the meeting from time to time without further notice, and provided further that if, pursuant to the Declaration of Trust or these Bylaws, the vote of a majority of a particular group of Trustees is required for action, a quorum for that action shall also include a majority of such group. The Trustees present at a meeting of the Board of Trustees which has been duly called and convened and at which a quorum was established may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of such number of Trustees as would otherwise result in less than a quorum then being present at the meeting.

Section 3.8 Voting. The action of the majority of the Trustees present at a meeting at which a quorum is or was present shall be the action of the Trustees, unless the concurrence of a greater proportion is required for such action by specific provision of an applicable statute, the Declaration of Trust or these Bylaws. If enough Trustees have withdrawn from a meeting to leave fewer than are required to establish a quorum, but the meeting is not adjourned, the action of the majority of that number of Trustees necessary to constitute a quorum at such meeting shall be the action of the Board of Trustees, unless the concurrence of a greater proportion is required for such action by applicable law, the Declaration of Trust or these Bylaws.

Section 3.9 Telephone Meetings. Trustees may participate in a meeting by means of a conference telephone or similar communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting. Such meeting shall be deemed to have been held at a place designated by the Trustees at the meeting.

Section 3.10 Action by Written Consent of Trustees. Unless specifically otherwise provided in the Declaration of Trust, any action required or permitted to be taken at any meeting of the Trustees may be taken without a meeting, if a majority of the Trustees shall individually or collectively consent in writing or by electronic transmission to such action. Such written or electronic consent or consents shall be filed with the records of the Trust and shall

have the same force and effect as the affirmative vote of such Trustees at a duly held meeting of the Trustees at which a quorum was present.

Section 3.11 Waiver of Notice. The actions taken at any meeting of the Trustees, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the Trustees not present waives notice, consents to the holding of such meeting or approves the minutes thereof.

Section 3.12 Vacancies. If for any reason any or all the Trustees cease to be Trustees, such event shall not terminate the Trust or affect these Bylaws or the powers of the remaining Trustees hereunder (even if fewer than three Trustees remain). Any vacancy on the Board of Trustees may be filled only by a majority of the remaining Trustees, even if the remaining Trustees do not constitute a quorum. Any Trustee elected to fill a vacancy, whether occurring due to an increase in size of the Board of Trustees or by the death, resignation or removal of any Trustee, shall hold office for the remainder of the full term of the class of Trustees in which the vacancy occurred or was created and until a successor is elected and qualifies.

Section 3.13 Compensation. The Trustees shall be entitled to receive such reasonable compensation for their services as Trustees as the Trustees may determine from time to time. Trustees may be reimbursed for expenses of attendance, if any, at each annual, regular or special meeting of the Trustees or of any committee thereof; and for their expenses, if any, in connection with each property visit and any other service or activity performed or engaged in as Trustees. The Trustees shall be entitled to receive remuneration for services rendered to the Trust in any other capacity, and such services may include, without limitation, services as an officer of the Trust, services as an employee of the Manager, legal, accounting or other professional services, or services as a broker, transfer agent or underwriter, whether performed by a Trustee or any person affiliated with a Trustee.

Section 3.14 Surety Bonds. Unless specifically required by law, no Trustee shall be obligated to give any bond or surety or other security for the performance of any of his or her duties.

Section 3.15 Reliance. Each Trustee, officer, employee and agent of the Trust shall, in the performance of his or her duties with respect to the Trust, be entitled to rely on any information, opinion, report or statement, including any financial statement or other financial data, prepared or presented by an officer or employee of the Trust or by the Manager, accountants, appraisers or other experts or consultants selected by the Board of Trustees or officers of the Trust, regardless of whether the Manager or any such accountant, appraiser or other expert or consultant may also be a Trustee.

Section 3.16 Interested Trustee Transactions. Section 2-419 of the Maryland General Corporation Law (the "MGCL") (or any successor statute) shall be available for and apply to any contract or other transaction between the Trust and any of its Trustees or between the Trust and any other trust, corporation, firm or other entity in which any of its Trustees is a trustee or director or has a material financial interest.

Section 3.17 Certain Rights of Trustees, Officers, Employees and Agents. A Trustee shall have no responsibility to devote his or her full time to the affairs of the Trust. Any Trustee or officer, employee or agent of the Trust, in his or her personal capacity or in a capacity as an affiliate, employee or agent of any other person, or otherwise, may have business interests and engage in business activities similar or in addition to those of or relating to the Trust.

Section 3.18 Emergency Provisions. Notwithstanding any other provision in the Declaration of Trust or these Bylaws, this Section 3.18 shall apply during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the Board of Trustees under ARTICLE III cannot readily be obtained (an “Emergency”). During any Emergency, unless otherwise provided by the Board of Trustees, (a) a meeting of the Board of Trustees may be called by any Managing Trustee or officer of the Trust by any means feasible under the circumstances and (b) notice of any meeting of the Board of Trustees during such an Emergency may be given less than twenty-four (24) hours prior to the meeting to as many Trustees and by such means as it may be feasible at the time, including publication, television or radio.

Section 3.19 Removal for Cause. A shareholder(s) proposing to remove one or more Trustees for cause shall meet and comply with all requirements in these Bylaws for a nomination of an individual for election to the Board of Trustees at an annual meeting of shareholders or a proposal of other business to be properly brought by such shareholder(s) at a meeting of the shareholders as set forth in Section 2.14.1, including the timely written notice, ownership amount, holding period, certificate, information and documentation requirements of Section 2.14.1(b), Section 2.14.1(c), Section 2.14.1(d), Section 2.14.2 and Section 2.14.3. For purposes of the provisions in the Declaration of Trust regarding the removal of a Trustee, “cause” shall mean, with respect to any particular Trustee, conviction of a felony or a final judgment of a court of competent jurisdiction holding that such Trustee caused demonstrable, material harm to the Trust through bad faith or active and deliberate dishonesty.

## **ARTICLE IV**

### **COMMITTEES**

Section 4.1 Number; Tenure and Qualifications. The Board of Trustees shall appoint an Audit Committee, a Compensation Committee and a Nominating and Governance Committee. Each of these committees shall be composed of three or more Trustees, to serve at the pleasure of the Board of Trustees. The Board of Trustees may also appoint other committees from time to time composed of one or more members, at least one of which shall be a Trustee, to serve at the pleasure of the Board of Trustees. The Board of Trustees shall adopt a charter with respect to the Audit Committee, the Compensation Committee and the Nominating and Governance Committee, which charter shall specify the purposes, the criteria for membership and the responsibility and duties and may specify other matters with respect to each committee. The Board of Trustees may also adopt a charter with respect to other committees.

Section 4.2 Powers. The Trustees may delegate any of the powers of the Trustees to committees appointed under Section 4.1 and composed solely of Trustees, except as prohibited by law. If a charter has been adopted with respect to a committee composed solely of



Trustees, the charter shall constitute a delegation by the Trustees of the powers of the Board of Trustees necessary to carry out the purposes, responsibilities and duties of a committee provided in the charter or reasonably related to those purposes, responsibilities and duties, to the extent permitted by law.

Section 4.3 Meetings. Notice of committee meetings shall be given in the same manner as notice for special meetings of the Board of Trustees. One-third (1/3), but not less than one, of the members of any committee shall be present in person at any meeting of a committee in order to constitute a quorum for the transaction of business at a meeting, and the act of a majority present at a meeting at the time of a vote if a quorum is then present shall be the act of a committee. The Board of Trustees or, if authorized by the Board in a committee charter or otherwise, the committee members may designate a chairman of any committee, and the chairman or, in the absence of a chairman, a majority of any committee may fix the time and place of its meetings unless the Board shall otherwise provide. In the absence or disqualification of any member of any committee, the members thereof present at any meeting and not disqualified from voting, whether or not they constitute a quorum, may unanimously appoint another Trustee to act at the meeting in the place of absent or disqualified members.

Section 4.4 Telephone Meetings. Members of a committee may participate in a meeting by means of a conference telephone or similar communications equipment and participation in a meeting by these means shall constitute presence in person at the meeting.

Section 4.5 Action by Written Consent of Committees. Any action required or permitted to be taken at any meeting of a committee of the Trustees may be taken without a meeting, if a consent in writing or by electronic transmission to such action is signed by a majority of the committee and such written or electronic consent is filed with the minutes of proceedings of such committee.

Section 4.6 Vacancies. Subject to the provisions hereof, the Board of Trustees shall have the power at any time to change the membership of any committee, to fill all vacancies, to designate alternate members to replace any absent or disqualified member or to dissolve any such committee.

## **ARTICLE V**

### **OFFICERS**

Section 5.1 General Provisions. The officers of the Trust shall include a president, a secretary and a treasurer. In addition, the Board of Trustees may from time to time elect such other officers with such titles, powers and duties as set forth herein or as the Board of Trustees shall deem necessary or desirable, including a chairman of the board, a vice chairman of the board, a chief executive officer, a chief operating officer, a chief financial officer, one or more vice presidents, one or more assistant secretaries and one or more assistant treasurers. The officers of the Trust shall be elected annually by the Board of Trustees. Each officer shall hold office until his or her successor is elected and qualifies or until his or her death, resignation or removal in the manner hereinafter provided. Any two (2) or more offices, except that of president and vice president, may be held by the same person. In their discretion, the Trustees

may leave unfilled any office except that of president, treasurer and secretary. Election of an officer or agent shall not of itself create contract rights between the Trust and such officer or agent.

Section 5.2 Removal and Resignation. Any officer or agent of the Trust may be removed, with or without cause, by the Board of Trustees if in its judgment the best interests of the Trust would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer of the Trust may resign at any time by delivering his or her resignation to the Board of Trustees, the president or the secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation. Such resignation shall be without prejudice to the contract rights, if any, of the Trust.

Section 5.3 Vacancies. A vacancy in any office may be filled by the Board of Trustees for the balance of the term.

Section 5.4 President. Except as the Board of Trustees may otherwise provide, the president shall have the duties usually vested in a president. The president shall have such other duties as may be assigned to the president by the Board of Trustees from time to time. The president may execute any deed, mortgage, bond, lease, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board of Trustees or by these Bylaws to some other officer or agent of the Trust or shall be required by law to be otherwise executed.

Section 5.5 Chief Operating Officer. If elected, except as the Board of Trustees may otherwise provide, the chief operating officer shall have the duties usually vested in a chief operating officer. The chief operating officer shall have such other duties as may be assigned to the chief operating officer by the president or the Board of Trustees from time to time.

Section 5.6 Chief Financial Officer. If elected, except as the Board of Trustees may otherwise provide, the chief financial officer shall have the duties usually vested in a chief financial officer. The chief financial officer shall have such other duties as may be assigned to the chief financial officer by the president or the Board of Trustees from time to time.

Section 5.7 Vice Presidents. In the absence or disability of the president, the vice president, if any (or if there is more than one, the vice presidents in the order designated or, in the absence of any designation, then in the order of their election), shall perform the duties and exercise the powers of the president. The vice president(s) shall have such other duties as may be assigned to such vice president by the president or the Board of Trustees from time to time. The Board of Trustees may designate one or more vice presidents as executive vice president, senior vice president or vice presidents for particular areas of responsibility.

Section 5.8 Secretary. Except as the Board of Trustees may otherwise provide, the secretary (or his or her designee) shall (a) keep the minutes of the proceedings of the shareholders, the Board of Trustees and committees of the Board of Trustees in one or more

books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the Trust records and of the seal of the Trust, if any; and (d) maintain a share register, showing the ownership and transfers of ownership of all shares of beneficial interest of the Trust, unless a transfer agent is employed to maintain and does maintain such a share register. The secretary shall have such other duties as may be assigned to the secretary by the president or the Board of Trustees from time to time.

Section 5.9 Treasurer. Except as the Board of Trustees may otherwise provide, the treasurer shall (a) have general charge of the financial affairs of the Trust; (b) have or oversee in accordance with Section 6.3 the custody of the funds, securities and other valuable documents of the Trust; (c) maintain or oversee the maintenance of proper financial books and records of the Trust; and (d) have the duties usually vested in a treasurer. The treasurer shall have such other duties as may be assigned to the treasurer by the president or the Board of Trustees from time to time.

Section 5.10 Assistant Secretaries and Assistant Treasurers. The assistant secretaries and assistant treasurers, in general, shall perform such duties as shall be assigned to them by the secretary or treasurer, respectively, or by the president or the Board of Trustees from time to time.

## **ARTICLE VI**

### **CONTRACTS, LOANS, CHECKS AND DEPOSITS**

Section 6.1 Contracts. The Board of Trustees may authorize any Trustee, officer or agent (including the Manager or any officer of the Manager) to execute and deliver any instrument in the name of and on behalf of the Trust and such authority may be general or confined to specific instances. Any agreement, deed, mortgage, lease or other document shall be valid and binding upon the Trust when duly authorized or ratified by action of the Board of Trustees and executed by an authorized person.

Section 6.2 Checks and Drafts. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Trust shall be signed by such officer or agent of the Trust in such manner as the Board of Trustees, the president, the treasurer or any other officer designated by the Board of Trustees may determine.

Section 6.3 Deposits. All funds of the Trust not otherwise employed shall be deposited or invested from time to time to the credit of the Trust as the Board of Trustees, the president, the treasurer or any other officer designated by the Board of Trustees may determine.

## **ARTICLE VII**

### **SHARES**

Section 7.1 Certificates. Ownership of shares of any class of shares of beneficial interest of the Trust shall be evidenced by certificates, or at the election of a shareholder in book entry form. Unless otherwise determined by the Board of Trustees, any such certificates shall be signed by the president or a vice president and countersigned by the secretary

or an assistant secretary or the treasurer or an assistant treasurer and may be sealed with the seal, if any, of the Trust. The signatures may be either manual or facsimile. Certificates shall be consecutively numbered and if the Trust shall from time to time issue several classes of shares, each class may have its own number series. A certificate is valid and may be issued whether or not an officer who signed it is still an officer when it is issued.

#### Section 7.2 Transfers.

(a) Shares of beneficial interest of the Trust shall be transferable in the manner provided by applicable law, the Declaration of Trust and these Bylaws. Certificates shall be treated as negotiable and title thereto and to the shares they represent shall be transferred by delivery thereof to the same extent as those of a Maryland stock corporation.

(b) The Trust shall be entitled to treat the holder of record of any share or shares as the holder in fact thereof and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise expressly provided in these Bylaws or by the laws of the State of Maryland.

Section 7.3 Lost Certificates. For shares evidenced by certificates, any officer designated by the Trustees may direct a new certificate to be issued in place of any certificate previously issued by the Trust alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen or destroyed. When authorizing the issuance of a new certificate, an officer designated by the Trustees may, in such officer's discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or the owner's legal representative to advertise the same in such manner as he shall require and/or to give bond, with sufficient surety, to the Trust to indemnify it against any loss or claim which may arise as a result of the issuance of a new certificate.

#### Section 7.4 Closing of Transfer Books or Fixing of Record Date.

(a) The Trustees may set, in advance, a record date for the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or determining shareholders entitled to receive payment of any dividend or the allotment of any other rights, or in order to make a determination of shareholders for any other proper purpose.

(b) In lieu of fixing a record date, the Trustees may provide that the share transfer books shall be closed for a stated period but not longer than twenty (20) days. If the share transfer books are closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten (10) days before the date of such meeting.

(c) If no record date is fixed and the share transfer books are not closed for the determination of shareholders, (i) the record date for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders shall be at the close of business on the day on which the notice of meeting is mailed or the thirtieth (30th) day before the meeting, whichever is the closer date to the meeting; and (ii) the record date for the

determination of shareholders entitled to receive payment of a dividend or an allotment of any other rights shall be the close of business on the day on which the resolution of the Trustees, declaring the dividend or allotment of rights, is adopted.

(d) When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof unless the Board of Trustees shall set a new record date with respect thereto.

Section 7.5 Share Ledger. The Trust shall maintain at its principal office or at the office of its counsel, accountants or transfer agent a share ledger containing the name and address of each shareholder and the number of shares of each class of shares of beneficial interest of the Trust held by such shareholder.

Section 7.6 Fractional Shares; Issuance of Units. The Trustees may issue fractional shares or provide for the issuance of scrip, all on such terms and under such conditions as they may determine. Notwithstanding any other provision of the Declaration of Trust or these Bylaws, the Trustees may issue units consisting of different securities of the Trust. Any security issued in a unit shall have the same characteristics as any identical securities issued by the Trust, except that the Trustees may provide that for a specified period securities of the Trust issued in such unit may be transferred on the books of the Trust only in such unit.

## **ARTICLE VIII**

### **INDEMNIFICATION AND ADVANCEMENT OF EXPENSES**

#### Section 8.1 Indemnification and Advancement of Expenses.

(a) To the maximum extent permitted by Maryland law in effect from time to time, the Trust shall indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, shall pay or reimburse reasonable expenses in advance of final disposition of a proceeding to (i) any individual who is a present or former Trustee or officer of the Trust and who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity or (ii) any individual who, while a Trustee or officer of the Trust and at the request of the Trust, serves or has served as a Trustee, director, officer or partner of another real estate investment trust, corporation, partnership, joint venture, trust, employee benefit plan or other enterprise and who is made or threatened to be made a party to the proceeding by reason of his or her service in that capacity. The rights to indemnification and advance of expenses provided by the Declaration of Trust and these Bylaws shall vest immediately upon election of a Trustee or officer. The Trust may, with the approval of its Board of Trustees, provide such indemnification and advance for expenses to an individual who served a predecessor of the Trust in any of the capacities described in (a)(i) or (ii) above and to any shareholder, employee or agent of the Trust or a predecessor of the Trust.

(b) Notwithstanding anything in these Bylaws to the contrary, except with respect to proceedings to enforce rights to indemnification, the Trust shall indemnify any person referenced in Section 8.1(a)(i) or (ii) above in connection with any proceeding initiated

by such person against the Trust only if such proceeding was authorized by the Board of Trustees.

(c) The indemnification and payment or reimbursement of expenses provided in these Bylaws shall not be deemed exclusive of or limit in any way other rights to which any person seeking indemnification or payment or reimbursement of expenses may be or may become entitled under any bylaw, regulation, insurance, agreement or otherwise.

(d) Neither the amendment nor repeal of this ARTICLE VIII, nor the adoption or amendment of any other provision of these Bylaws or the Declaration of Trust inconsistent with this ARTICLE VIII, shall apply to or affect in any respect the applicability of the preceding paragraph with respect to any act or failure to act which occurred prior to such amendment, repeal or adoption.

## **ARTICLE IX**

### **REGULATORY COMPLIANCE AND DISCLOSURE**

Section 9.1 Actions Requiring Regulatory Compliance Implicating the Trust.  
If any shareholder (whether individually or constituting a group, as determined by the Board of Trustees), by virtue of such shareholder's ownership interest in the Trust or actions taken by the shareholder affecting the Trust, triggers the application of any requirement or regulation of any federal, state, municipal or other governmental or regulatory body on the Trust or any subsidiary (for purposes of this ARTICLE IX, as defined in Section 2.14.5(c)) of the Trust or any of their respective businesses, assets or operations, including, without limitation, any obligations to make or obtain a Governmental Action (as defined in Section 2.14.3), such shareholder shall promptly take all actions necessary and fully cooperate with the Trust to ensure that such requirements or regulations are satisfied without restricting, imposing additional obligations on or in any way limiting the business, assets, operations or prospects of the Trust or any subsidiary of the Trust. If the shareholder fails or is otherwise unable to promptly take such actions so to cause satisfaction of such requirements or regulations, the shareholder shall promptly divest a sufficient number of shares of beneficial interest of the Trust necessary to cause the application of such requirement or regulation to not apply to the Trust or any subsidiary of the Trust. If the shareholder fails to cause such satisfaction or divest itself of such sufficient number of shares of beneficial interest of the Trust by not later than the tenth (10th) day after triggering such requirement or regulation referred to in this Section 9.1, then any shares of beneficial interest of the Trust beneficially owned by such shareholder at and in excess of the level triggering the application of such requirement or regulation shall, to the fullest extent permitted by law, be deemed to constitute shares held in violation of the ownership limitations set forth in ARTICLE VII of the Declaration of Trust and be subject to the provisions of ARTICLE VII of the Declaration of Trust and any actions triggering the application of such a requirement or regulation may be deemed by the Trust to be of no force or effect. Moreover, if the shareholder who triggers the application of any regulation or requirement fails to satisfy the requirements or regulations or to take curative actions within such ten (10) day period, the Trust may take all other actions which the Board of Trustees deems appropriate to require compliance or to preserve the value of the Trust's assets; and the Trust may charge the offending shareholder for the Trust's costs and expenses as well as any damages which may result to the Trust.

As an example and not as a limitation, at the time these Bylaws are being amended and restated, the Trust holds a controlling ownership position in a company formed and licensed as an insurance company in the State of Indiana. The laws of the State of Indiana have certain regulatory requirements for any person who seeks to control (as defined under Indiana law) a company which itself controls an insurance company domiciled in the State of Indiana, including by exercising proxies representing ten percent (10%) or more of the Trust's voting securities. Accordingly, if a shareholder seeks to exercise proxies for a matter to be voted upon at a meeting of the shareholders without having obtained any applicable approvals from the Indiana insurance regulatory authorities, such proxies representing ten percent (10%) or more of the Trust's voting securities will, subject to Section 9.3, be void and of no further force or effect.

Section 9.2 Compliance With Law. Shareholders shall comply with all applicable requirements of federal and state laws, including all rules and regulations promulgated thereunder, in connection with such shareholder's ownership interest in the Trust and all other laws which apply to the Trust or any subsidiary of the Trust or their respective businesses, assets or operations and which require action or inaction on the part of the shareholder.

Section 9.3 Limitation on Voting Shares or Proxies. Without limiting the provisions of Section 9.1, if a shareholder (whether individually or constituting a group, as determined by the Board of Trustees), by virtue of such shareholder's ownership interest in the Trust or its receipt or exercise of proxies to vote shares owned by other shareholders, would not be permitted to vote such shares or proxies for such shares in excess of a certain amount pursuant to applicable law (including by way of example, applicable state insurance regulations) but the Board of Trustees determines that the excess shares or shares represented by the excess proxies are necessary to obtain a quorum, then such shareholder shall not be entitled to vote any such excess shares or proxies, and instead such excess shares or proxies may, to the fullest extent permitted by law, be voted by the Manager (or by another person designated by the Trustees) in proportion to the total shares otherwise voted on such matter.

Section 9.4 Representations, Warranties and Covenants Made to Governmental or Regulatory Bodies. To the fullest extent permitted by law, any representation, warranty or covenant made by a shareholder with any governmental or regulatory body in connection with such shareholder's interest in the Trust or any subsidiary of the Trust shall be deemed to be simultaneously made to, for the benefit of and enforceable by, the Trust and any applicable subsidiary of the Trust.

Section 9.5 Board of Trustees' Determinations. The Board of Trustees shall be empowered to make all determinations regarding the interpretation, application, enforcement and compliance with any matters referred to or contemplated by these Bylaws.

## **ARTICLE X**

### **FISCAL YEAR**

Section 10.1 Fiscal Year. The fiscal year of the Trust shall be the calendar year.

## **ARTICLE XI**

### **DIVIDENDS AND OTHER DISTRIBUTIONS**

Section 11.1 Dividends and Other Distributions. Dividends and other distributions upon the shares of beneficial interest of the Trust may be authorized and declared by the Trustees. Dividends and other distributions may be paid in cash, property or shares of beneficial interest of the Trust.

## **ARTICLE XII**

### **SEAL**

Section 12.1 Seal. The Trustees may authorize the adoption of a seal by the Trust. The Trustees may authorize one or more duplicate seals.

Section 12.2 Affixing Seal. Whenever the Trust is permitted or required to affix its seal to a document, it shall be sufficient to meet the requirements of any law, rule or regulation relating to a seal to place the word “(SEAL)” adjacent to the signature of the person authorized to execute the document on behalf of the Trust.

## **ARTICLE XIII**

### **WAIVER OF NOTICE**

Section 13.1 Waiver of Notice. Whenever any notice is required to be given pursuant to the Declaration of Trust, these Bylaws or applicable law, a waiver thereof in writing, signed by the person or persons entitled to such notice, or a waiver by electronic transmission by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice or waiver by electronic transmission, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

## **ARTICLE XIV**

### **AMENDMENT OF BYLAWS**

Section 14.1 Amendment of Bylaws. Except for any change for which these Bylaws require approval by more than a majority vote of the Trustees, these Bylaws may be amended or repealed or new or additional Bylaws may be adopted only by the vote or written consent of a majority of the Trustees as specified in Section 3.10.



## ARTICLE XV

### MISCELLANEOUS

Section 15.1 References to Declaration of Trust. All references to the Declaration of Trust shall include any amendments and supplements thereto.

Section 15.2 Costs and Expenses. In addition to, and as further clarification of each shareholder's obligation to indemnify and hold the Trust harmless pursuant to these Bylaws or Section 8.6 of the Declaration of Trust, to the fullest extent permitted by law, each shareholder will be liable to the Trust (and any subsidiaries or affiliates thereof) for, and indemnify and hold harmless the Trust (and any subsidiaries or affiliates thereof) from and against, all costs, expenses, penalties, fines or other amounts, including, without limitation, reasonable attorneys' and other professional fees, whether third party or internal, arising from such shareholder's breach of or failure to fully comply with any covenant, condition or provision of these Bylaws or the Declaration of Trust (including Section 2.14 of these Bylaws) or any action by or against the Trust (or any subsidiaries or affiliates thereof) in which such shareholder is not the prevailing party, and shall pay such amounts to such indemnitee on demand, together with interest on such amounts, which interest will accrue at the lesser of eighteen percent (18%) per annum and the maximum amount permitted by law, from the date such costs or the like are incurred until the receipt of payment.

Section 15.3 Ratification. The Board of Trustees or the shareholders may ratify and make binding on the Trust any action or inaction by the Trust or its officers to the extent that the Board of Trustees or the shareholders could have originally authorized the matter. Moreover, any action or inaction questioned in any shareholder's derivative proceeding or any other proceeding on the ground of lack of authority, defective or irregular execution, adverse interest of a Trustee, officer or shareholder, non-disclosure, miscomputation, the application of improper principles or practices of accounting, or otherwise, may be ratified, before or after judgment, by the Board of Trustees or by the shareholders and, if so ratified, shall have the same force and effect as if the questioned action or inaction had been originally duly authorized, and such ratification shall be binding upon the Trust and its shareholders and shall constitute a bar to any claim or execution of any judgment in respect of such questioned action or inaction.

Section 15.4 Ambiguity. In the case of an ambiguity in the application of any provision of these Bylaws or any definition contained in these Bylaws, the Board of Trustees shall have the sole power to determine the application of such provisions with respect to any situation based on the facts known to it and such determination shall be final and binding unless determined by a court of competent jurisdiction to have been made in bad faith.

Section 15.5 Inspection of Bylaws. The Trustees shall keep at the principal office for the transaction of business of the Trust the original or a copy of these Bylaws, as amended or otherwise altered to date, certified by the secretary, which shall be open to inspection by the shareholders at all reasonable times during office hours.

Section 15.6 Election to be Subject to Part of Title 3, Subtitle 8. Notwithstanding any other provision contained in the Declaration of Trust or these Bylaws, the

Trust hereby elects to be subject to Section 3-804(b) and (c) of Title 3, Subtitle 8 of the MGCL. This Section 15.6 only may be repealed, in whole or in part, by a subsequent amendment to these Bylaws.

Section 15.7 Control Share Acquisition Act. Notwithstanding any other provision contained in the Declaration of Trust or these Bylaws, Title 3, Subtitle 7 of the MGCL shall not apply to any acquisition by any person of shares of beneficial interest of the Trust. This section may be repealed, in whole or in part, at any time, whether before or after an acquisition of control shares and, upon such repeal, may, to the extent provided by any successor bylaw, apply to any prior or subsequent control share acquisition.

## ARTICLE XVI

### ARBITRATION PROCEDURES FOR DISPUTES

Section 16.1 Procedures for Arbitration of Disputes. Any disputes, claims or controversies brought by or on behalf of any shareholder (which, for purposes of this ARTICLE XVI, shall mean any shareholder of record or any beneficial owner of shares of beneficial interest of the Trust, or any former shareholder of record or beneficial owner of shares of beneficial interest of the Trust), either on his, her or its own behalf, on behalf of the Trust or on behalf of any series or class of shares of beneficial interest of the Trust or shareholders against the Trust or any Trustee, officer, manager (including The RMR Group LLC or its successor), agent or employee of the Trust, including any disputes, claims or controversies relating to the application or enforcement of the Declaration of Trust or these Bylaws (all of which are referred to as “Disputes”) or relating in any way to such a Dispute or Disputes shall, on the demand of any party to such Dispute or Disputes, be resolved through binding and final arbitration in accordance with the Commercial Arbitration Rules (the “Rules”) of the American Arbitration Association (“AAA”) then in effect, except as those Rules may be modified in this ARTICLE XVI. For the avoidance of doubt, and not as a limitation, Disputes are intended to include derivative actions against Trustees, officers or managers of the Trust and class actions by shareholders against those individuals or entities and the Trust. For the avoidance of doubt, a Dispute shall include a Dispute made derivatively on behalf of one party against another party. Notwithstanding the foregoing, (a) the provisions of this ARTICLE XVI shall not apply to any request for a declaratory judgment or similar action regarding the meaning, interpretation or validity of any provision of the Declaration of Trust or these Bylaws, but such request shall be heard and determined in the exclusive forum provided for in ARTICLE XVII; and (b) in the event a Dispute involves both a question of the meaning, interpretation or validity of any provision of the Declaration of Trust or these Bylaws and any other matter in dispute, the arbitration of such other matter in dispute, if dependent upon a determination of the meaning, interpretation or validity of any provision of the Declaration of Trust or these Bylaws, shall be stayed until a final, non-appealable judgement regarding such meaning, interpretation or validity has been rendered by the exclusive forum provided for in ARTICLE XVII.

Section 16.2 Arbitrators. There shall be three (3) arbitrators. If there are only two (2) parties to the Dispute, each party shall select one (1) arbitrator within fifteen (15) days after receipt by respondent of a copy of the demand for arbitration. The arbitrators may be affiliated or interested persons of the parties. If there are more than two (2) parties to the

Dispute, all claimants, on the one hand, and all respondents, on the other hand, shall each select, by the vote of a majority of the claimants or the respondents, as the case may be, one (1) arbitrator within fifteen (15) days after receipt of the demand for arbitration. The arbitrators may be affiliated or interested persons of the claimants or the respondents, as the case may be. If either a claimant (or all claimants) or a respondent (or all respondents) fail(s) to timely select an arbitrator then the party (or parties) who has selected an arbitrator may request AAA to provide a list of three (3) proposed arbitrators in accordance with the Rules (each of whom shall be neutral, impartial and unaffiliated with any party) and the party (or parties) that failed to timely appoint an arbitrator shall have ten (10) days from the date AAA provides the list to select one (1) of the three (3) arbitrators proposed by AAA. If the party (or parties) fail(s) to select the second (2nd) arbitrator by that time, the party (or parties) who have appointed the first (1st) arbitrator shall then have ten (10) days to select one (1) of the three (3) arbitrators proposed by AAA to be the second (2nd) arbitrator; and, if he/they should fail to select the second (2nd) arbitrator by such time, AAA shall select, within fifteen (15) days thereafter, one (1) of the three (3) arbitrators it had proposed as the second (2nd) arbitrator. The two (2) arbitrators so appointed shall jointly appoint the third (3rd) and presiding arbitrator (who shall be neutral, impartial and unaffiliated with any party) within fifteen (15) days of the appointment of the second (2nd) arbitrator. If the third (3rd) arbitrator has not been appointed within the time limit specified herein, then AAA shall provide a list of proposed arbitrators in accordance with the Rules, and the arbitrator shall be appointed by AAA in accordance with a listing, striking and ranking procedure, with each party having a limited number of strikes, excluding strikes for cause.

Section 16.3 Place of Arbitration. The place of arbitration shall be Boston, Massachusetts unless otherwise agreed by the parties.

Section 16.4 Discovery. There shall be only limited documentary discovery of documents directly related to the issues in dispute, as may be ordered by the arbitrators. For the avoidance of doubt, it is intended that there shall be no depositions and no other discovery other than limited documentary discovery as described in the preceding sentence.

Section 16.5 Awards. In rendering an award or decision (an “Award”), the arbitrators shall be required to follow the laws of the State of Maryland. Any arbitration proceedings or Award shall be governed by the Federal Arbitration Act, 9 U.S.C. §1 et seq. An Award shall be in writing and shall state the findings of fact and conclusions of law on which it is based. Any monetary Award shall be made and payable in U.S. dollars free of any tax, deduction or offset. Subject to Section 16.7, each party against which an Award assesses a monetary obligation shall pay that obligation on or before the thirtieth (30th) day following the date of such Award or such other date as such Award may provide.

Section 16.6 Costs and Expenses. Except as otherwise set forth in the Declaration of Trust or these Bylaws, including Section 15.2 of these Bylaws, or as otherwise agreed by the parties thereto, each party involved in a Dispute shall bear its own costs and expenses (including attorneys’ fees), and the arbitrators shall not render an Award that would include shifting of any such costs or expenses (including attorneys’ fees) or, in a derivative case or class action, award any portion of the Trust’s Award to the claimant or the claimant’s attorneys. Each party (or, if there are more than two (2) parties to the Dispute, all claimants, on the one hand, and all respondents, on the other hand, respectively) shall bear the costs and

expenses of its (or their) selected arbitrator and the parties (or, if there are more than two (2) parties to the Dispute, all claimants, on the one hand, and all respondents, on the other hand) shall equally bear the costs and expenses of the third (3rd) appointed arbitrator.

Section 16.7 Appeals. Any Award, including but not limited to any interim Award, may be appealed pursuant to the AAA's Optional Appellate Arbitration Rules ("Appellate Rules"). An Award shall not be considered final until after the time for filing the notice of appeal pursuant to the Appellate Rules has expired. Appeals must be initiated within thirty (30) days of receipt of an Award by filing a notice of appeal with any AAA office. Following the appeal process, the decision rendered by the appeal tribunal may be entered in any court having jurisdiction thereof. For the avoidance of doubt, and despite any contrary provision of the Appellate Rules, Section 16.6 shall apply to any appeal pursuant to this Section 16.7 and the appeal tribunal shall not render an Award that would include shifting of any costs or expenses (including attorneys' fees) of any party.

Section 16.8 Final and Binding. Following the expiration of the time for filing the notice of appeal, or the conclusion of the appeal process set forth in Section 16.7, an Award shall be final and binding upon the parties thereto and shall be the sole and exclusive remedy between those parties relating to the Dispute, including any claims, counterclaims, issues or accounting presented to the arbitrators. Judgment upon an Award may be entered in any court having jurisdiction. To the fullest extent permitted by law, no application or appeal to any court of competent jurisdiction may be made in connection with any question of law arising in the course of arbitration or with respect to any Award, except for actions seeking interim or other provisional relief in aid of arbitration proceedings in any court of competent jurisdiction.

Section 16.9 Beneficiaries. This ARTICLE XVI is intended to benefit and be enforceable by the shareholders, Trustees, officers, managers (including The RMR Group Inc. or its successor and The RMR Group LLC or its successor), agents or employees of the Trust and the Trust and shall be binding on the shareholders and the Trust, as applicable, and be in addition to, and not in substitution for, any other rights to indemnification or contribution that such individuals or entities may have by contract or otherwise.

## **ARTICLE XVII**

### **EXCLUSIVE FORUM FOR CERTAIN DISPUTES**

Section 17.1 Exclusive Forum. The Circuit Court for Baltimore City, Maryland shall be the sole and exclusive forum for (1) any derivative action or proceeding brought on behalf of the Trust, (2) any action asserting a claim of breach of a fiduciary duty owed by any Trustee, officer, manager, agent or employee of the Trust to the Trust or the shareholders, (3) any action asserting a claim against the Trust or any Trustee, officer, manager, agent or employee of the Trust arising pursuant to Maryland law or the Declaration of Trust or these Bylaws, including any disputes, claims or controversies brought by or on behalf of any shareholder (which, for purposes of this ARTICLE XVII, shall mean any shareholder of record or any beneficial owner of any class or series of shares of beneficial interest of the Trust, or any former holder of record or beneficial owner of any class or series of shares of beneficial interest of the Trust), either on his, her or its own behalf, on behalf of the Trust or on behalf of any series or class of shares of

beneficial interest of the Trust or shareholders against the Trust or any Trustee, officer, manager, agent or employee of the Trust, including any disputes, claims or controversies relating to the meaning, interpretation, effect, validity, performance or enforcement of the Declaration of Trust or these Bylaws, including this ARTICLE XVII, or (4) any action asserting a claim against the Trust or any Trustee, officer, manager, agent or employee of the Trust governed by the internal affairs doctrine of the State of Maryland. Failure to enforce the foregoing provisions would cause the Trust irreparable harm and the Trust shall be entitled to equitable relief, including injunctive relief and specific performance, to enforce the foregoing provisions. Any person or entity purchasing or otherwise acquiring any interest in shares of beneficial interest of the Trust shall be deemed to have notice of and consented to the provisions of this ARTICLE XVII. This ARTICLE XVII shall not abrogate or supersede any other provision of these Bylaws which may require the resolution of such disputes by arbitration.

**Exhibit E**

(see attached)

~~RAIT Financial Trust~~ Government Properties Income Trust

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) ~~termination of REIT status as provided in Article V, Section (1)(C), (b)~~ election of Trustees as provided in ~~Article V~~ Section ~~2(A)~~5.2 and the removal of Trustees as provided in ~~Article V~~ Section ~~3~~5.3; ~~(e)~~ amendment of ~~the~~this Declaration of Trust as provided in ~~Article~~ARTICLE X; ~~(d)~~ termination of the Trust as provided in ~~Article XII~~, Section ~~2~~12.2; ~~(e)~~ 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~~ARTICLE XI; and ~~(f)~~ such other matters with respect to which ~~a vote of the shareholders is required by applicable law or~~ 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.