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

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**FORM 8-K**

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**CURRENT REPORT  
Pursuant to Section 13 OR 15(d)  
of The Securities Exchange Act of 1934**

**Date of report (Date of earliest event reported): November 13, 2017**

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**MEDICAL PROPERTIES TRUST, INC.**

(Exact name of registrant as specified in its charter)

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**Maryland**  
(State or other jurisdiction of  
incorporation or organization)

**001-32559**  
Commission  
File Number

**20-0191742**  
(I. R. S. Employer  
Identification No.)

**1000 Urban Center Drive, Suite 501**  
**Birmingham, AL**  
(Address of principal executive offices)

**35242**  
(Zip Code)

**Registrant's telephone number, including area code**  
**(205) 969-3755**

(Former name or former address, if changed since last report)

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the Registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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**Item 1.01. Entry into a Material Definitive Agreement.**

On November 13, 2017, Medical Properties Trust, Inc. (the “Company”) and MPT Operating Partnership, L.P. entered into separate equity distribution agreements, each dated as of November 13, 2017 (each, an “Equity Distribution Agreement” and collectively, the “Equity Distribution Agreements”), with each of SunTrust Robinson Humphrey, Inc., Credit Agricole Securities (USA) Inc., Credit Suisse Securities (USA) LLC, MUFG Securities Americas Inc., Raymond James & Associates, Inc., RBC Capital Markets, LLC, Stifel, Nicolaus & Company, Incorporated and Wells Fargo Securities, LLC, as sales agents (each, a “Sales Agent” and collectively, the “Sales Agents”). Under the terms of each Equity Distribution Agreement, the Company may sell from time to time shares of common stock (the “Shares”) having an aggregate offering price of up to \$750 million during a period of three years (unless earlier terminated) in “at-the-market offerings” or certain other transactions (the “Offering”). The Company may sell the Shares in amounts and at times to be determined by the Company from time to time, but has no obligation to sell any of the Shares in the Offering. Actual sales will depend on a variety of factors to be determined by the Company from time to time, including (among others) market conditions, the trading price of the Company’s common stock and determinations by the Company of the appropriate sources of funding for the Company. Each Equity Distribution Agreement provides that each Sales Agent will be entitled to compensation of up to 2.0% of the gross sales price per share for any of the Shares sold under each Equity Distribution Agreement.

The Shares will be issued pursuant to a prospectus supplement filed by the Company on November 13, 2017 with the Securities and Exchange Commission and the Company’s automatic shelf registration statement on Form S-3 (File No. 333-208813) filed on December 31, 2015. This Current Report shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

The form of Equity Distribution Agreement is filed as Exhibit 1.1 to this Current Report . The description of the Equity Distribution Agreements does not purport to be complete and is qualified in its entirety by reference to the form of Equity Distribution Agreement filed herewith as an exhibit to this Current Report and incorporated herein by reference.

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit No.</u>	<u>Description</u>
1.1	<a href="#">Form of Equity Distribution Agreement</a>
5.1	<a href="#">Opinion of Goodwin Procter LLP regarding the legality of shares offered</a>
8.1	<a href="#">Opinion of Baker, Donelson, Bearman, Caldwell &amp; Berkowitz, P.C. with respect to certain tax matters</a>
23.1	<a href="#">Consent of Goodwin Procter LLP (included in Exhibit 5.1)</a>
23.2	<a href="#">Consent of Baker, Donelson, Bearman, Caldwell &amp; Berkowitz, P.C. (included in Exhibit 8.1)</a>

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**MEDICAL PROPERTIES TRUST, INC.**

By: /s/ R. Steven Hamner  
R. Steven Hamner  
Executive Vice President  
and Chief Financial Officer

Date: November 13, 2017

## MEDICAL PROPERTIES TRUST, INC.

\$750,000,000  
 Shares of Common Stock  
 (par value \$0.001 per share)

## FORM OF EQUITY DISTRIBUTION AGREEMENT

November 13, 2017

[Name of Manager]  
 [Address of Manager]

Ladies and Gentlemen:

Medical Properties Trust, Inc., a Maryland corporation (the “**Company**”), confirms its agreement (this “**Agreement**”) with [ \_\_\_\_\_ ] (the “**Manager**”), as follows:

Section 1. Description of Securities. The Company proposes to issue and sell through or to the Manager (or any Alternative Manager (as defined below)), as sales agent and/or principal, shares of the Company’s common stock, par value \$0.001 per share (the “**Common Stock**”), having an aggregate gross sales price of up to \$750,000,000 (the “**Maximum Amount**”) on the terms set forth in Section 3 of this Agreement. The shares of Common Stock to be sold through or to the Manager pursuant hereto or pursuant to a Terms Agreement (as defined below) or through or to an Alternative Manager pursuant to an Alternative Equity Distribution Agreement or Alternative Terms Agreement (each term as defined below) are referred to herein as the “**Shares**.”

The Company has also entered into separate equity distribution agreements (each an “**Alternative Equity Distribution Agreement**” and, collectively the “**Alternative Equity Distribution Agreements**”), dated of even date herewith, with each of the entities listed on Schedule A hereto, as sales agent and/or principal (each, an “**Alternative Manager**” and collectively, the “**Alternative Managers**”). The Company agrees that whenever it determines to sell the Shares directly to the Manager or an Alternative Manager as principal, it will enter into a separate agreement (each, a “**Terms Agreement**” or “**Alternative Terms Agreement**,” respectively) in form and substance satisfactory to the Manager or the applicable Alternative Manager, as the case may be, relating to such sale in accordance with Section 3 of this Agreement. This Agreement and the Alternative Equity Distribution Agreements are sometimes hereinafter referred to as the “**Distribution Agreements**.” The Manager and the Alternative Managers are sometimes hereinafter referred to as the “**Distribution Managers**.”

The aggregate gross sales price of the Shares that may be sold pursuant to this Agreement, the Alternative Equity Distribution Agreements, any Terms Agreement and any Alternative Terms Agreement shall not exceed the Maximum Amount.

Section 2. **Representations and Warranties of the Company and the Operating Partnership.** The Company and the Company's operating partnership, MPT Operating Partnership, L.P., a Delaware limited liability partnership and majority-owned subsidiary of the Company (the "**Operating Partnership**"), jointly and severally represent and warrant to and agree with the Manager that:

(a) An automatic shelf registration statement on Form S-3 (File No. 333-208813) (the "registration statement") as defined in Rule 405 under the Securities Act of 1933, as amended, and the rules and regulations thereunder (collectively called the "**Act**"), including a form of prospectus, has been prepared and filed by the Company not earlier than three years prior to the date hereof, in conformity with the requirements of the Act, and the rules and regulations of the Securities and Exchange Commission (the "**Commission**") thereunder (the "**Rules and Regulations**"). The registration statement contains certain information concerning the offering and sale of the Common Stock, including the Shares, and contains additional information concerning the Company and its business; the Commission has not issued an order preventing or suspending the use of the Basic Prospectus (as defined below), the Prospectus Supplement (as defined below), the Prospectus (as defined below) or any Permitted Free Writing Prospectus (as defined below), or the effectiveness of the Registration Statement (as defined below), and no proceedings for that purpose or pursuant to Section 8A of the Act have been instituted or, to the Company's knowledge, threatened by the Commission. Except where the context otherwise requires, "**Registration Statement**," as used herein, means the registration statement, as amended at the time of such registration statement's effectiveness for purposes of Section 11 of the Act, as such section applies to the Manager, as well as any new registration statement, post-effective amendment or new automatic shelf registration statement as may have been filed pursuant to Sections 4(g) or (h) of this Agreement, including (1) all documents filed as a part thereof or incorporated or deemed to be incorporated by reference therein, (2) any information contained or incorporated by reference in a prospectus filed with the Commission pursuant to Rule 424(b) under the Act, to the extent such information is deemed, pursuant to Rule 430B or Rule 430C under the Act, to be part of the registration statement at the time of such registration statement's effectiveness for purposes of Section 11 of the Act, as such section applies to the Manager and (3) any registration statement filed to register the offer and sale of Shares pursuant to Rule 462(b) under the Act. Except where the context otherwise requires, "**Basic Prospectus**," as used herein, means the prospectus filed as part of each Registration Statement, together with any amendments or supplements thereto as of the date of this Agreement. Except where the context otherwise requires, "**Prospectus Supplement**," as used herein, means the final prospectus supplement, relating to the Shares, filed or to be filed by the Company with the Commission pursuant to Rule 424(b) under the Act on or before the second business day after the date hereof (or such earlier time as may be required under the Act), in the form furnished by the Company to the Manager in connection with the offering of the Shares. Except where the context otherwise requires, "**Prospectus**," as used herein, means the Prospectus Supplement together with the Basic Prospectus attached to or used with the Prospectus Supplement. Notwithstanding the foregoing, if any revised basic prospectus, prospectus supplement or prospectus shall be provided to the Manager by the Company for use in connection with the offering and sale of the Shares which differs from the Basic Prospectus, Prospectus Supplement or Prospectus, as the case may be (whether or not such revised basic prospectus, prospectus supplement or prospectus is required to be filed by the Company pursuant to Rule 424(b) of the Act), the terms "**Basic Prospectus**," "**Prospectus Supplement**" and "**Prospectus**" shall refer to such revised basic prospectus, prospectus supplement or prospectus,

as the case may be, from and after the time it is first provided to the Manager for such use. “**Permitted Free Writing Prospectuses**,” as used herein, means the documents, if any, listed on Schedule B hereto and any other “issuer free writing prospectus” (as defined in Rule 433 of the Act) that the Company and the Manager shall agree from time to time is a Permitted Free Writing Prospectus. Any reference herein to the Registration Statement, the Basic Prospectus, the Prospectus Supplement, the Prospectus or any Permitted Free Writing Prospectus shall be deemed to refer to and include the documents, if any, incorporated by reference, or deemed to be incorporated by reference, therein (the “**Incorporated Documents**”), including, unless the context otherwise requires, the documents, if any, filed as exhibits to such Incorporated Documents. Any reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement, the Basic Prospectus, the Prospectus Supplement, the Prospectus or any Permitted Free Writing Prospectus shall be deemed to refer to and include the filing of any document under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (collectively, the “**Exchange Act**”) on or after the initial effective date of the Registration Statement, or the date of the Basic Prospectus, the Prospectus Supplement, the Prospectus or such Permitted Free Writing Prospectus, if any, as the case may be, and deemed to be incorporated therein by reference.

(b) The Registration Statement complied when it became effective, complies as of the date hereof and, as amended or supplemented, at each deemed effective date with respect to the Manager pursuant to Rule 430B(f)(2) of the Act, at each Settlement Date (as defined in Section 3(a)(vi) hereof), and at all times during which a prospectus is required by the Act to be delivered (whether physically, deemed to be delivered pursuant to Rule 153 or through compliance with Rule 172 under the Act or any similar rule) in connection with any sale of Shares, will comply, in all material respects, with the requirements of the Act, and the Registration Statement did not and will not, at or during such times, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; the conditions to the use of Form S-3 in connection with the offering and sale of the Shares as contemplated hereby have been satisfied; the Registration Statement meets, and the offering and sale of the Shares as contemplated hereby comply with, the requirements of Rule 415 under the Act (including, without limitation, Rule 415(a)(5)); the Basic Prospectus complied or will comply, at the time it was or will be filed with the Commission, complies as of the date hereof (if filed with the Commission on or prior to the date hereof) and, as of the time of each sale of Shares pursuant to this Agreement (each, a “**Time of Sale**”), at each Settlement Date and at all times during which a prospectus is required by the Act to be delivered (whether physically, deemed to be delivered pursuant to Rule 153 or through compliance with Rule 172 under the Act or any similar rule) in connection with any sale of Shares, will comply, in all material respects, with the requirements of the Act; the Prospectus will comply, as of the date that it is filed with the Commission, the date of the Prospectus Supplement, the date of any other amendment or supplement, each Time of Sale, each Settlement Date, and at all times during which a prospectus is required by the Act to be delivered (whether physically, deemed to be delivered pursuant to Rule 153 or through compliance with Rule 172 under the Act or any similar rule) in connection with any sale of Shares, in all material respects, with the requirements of the Act (including, without limitation, Section 10(a) of the Act); at the date hereof, each Time of Sale and each Settlement Date, the Prospectus, as then amended or supplemented, either alone or together with any combination of one or more of the then issued Permitted Free Writing Prospectuses, if any, does not and will not include an untrue statement of a material fact or omit to state a material fact

necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; each Permitted Free Writing Prospectus will comply, as of its date, as of each Time of Sale and Settlement Date and at all times during which a prospectus is required by the Act to be delivered (whether physically, deemed to be delivered pursuant to Rule 153 or through compliance with Rule 172 under the Act or any similar rule) in connection with any sale of Shares, in all material respects with the requirements of the Act; and did not and will not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the Company makes no representation or warranty with respect to any statement or omission made in the Registration Statement, the Basic Prospectus, the Prospectus Supplement, the Prospectus or any Permitted Free Writing Prospectus or any amendment or supplement to any of the foregoing in reliance upon and in conformity with information concerning the Manager and furnished in writing by or on behalf of the Manager expressly for use in the Registration Statement, the Basic Prospectus, the Prospectus Supplement, the Prospectus or any Permitted Free Writing Prospectus or any amendment or supplement to any of the foregoing, as the case may be; each Incorporated Document, at the time such document was filed with the Commission or at the time such document became effective, as applicable, complied, in all material respects, with the requirements of the Exchange Act and did not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. For all purposes of this Agreement (including, without limitation, the provisions of this paragraph and of Section 6 of this Agreement), the Company and the Manager agree that the only information furnished by or on behalf of the Manager expressly for use in the Registration Statement, the Basic Prospectus, the Prospectus Supplement, the Prospectus or any Permitted Free Writing Prospectus or any amendment or supplement to any of the foregoing is the statement that the Manager will not engage in any transactions that stabilize the Common Stock appearing in the third sentence of the first paragraph under the caption "Plan of Distribution" in the Prospectus Supplement dated November 13, 2017.

(c) (i) At the time of filing of the Registration Statement, (ii) at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), (iii) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) under the Act) made any offer relating to the Shares in reliance on the exemption of Rule 163 under the Act and (iv) at the date hereof, the Company is a "well-known seasoned issuer" as defined in Rule 405 under the Act. The Company has not received from the Commission any notice pursuant to Rule 401(g) (2) under the Act objecting to the use of the automatic shelf registration form.

(d) Prior to the execution of this Agreement, the Company has not, directly or indirectly, offered or sold any Shares by means of any "prospectus" or "free writing prospectus" (in each case within the meaning of the Act) or used any "prospectus" or "free writing prospectus" (in each case within the meaning of the Act) in connection with the offer or sale of the Shares, and from and after the execution of this Agreement, the Company will not, directly or indirectly, offer or sell any Shares by means of any "prospectus" or "free writing prospectus" (in each case within the meaning of the Act) or use any "prospectus" or "free writing prospectus" (in each case within the meaning of the Act) in connection with the offer or sale of the Shares, other than the Prospectus, as amended or supplemented from time to time in accordance with the provisions of this Agreement, and any Permitted Free Writing Prospectuses.

(e) *Company Financial Statements.* The consolidated historical financial statements and related notes of the Company thereto included or incorporated by reference in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus comply in all material respects with the applicable requirements of the Act and the Exchange Act, as applicable, and present fairly the consolidated financial position of the Company and its Subsidiaries (as defined below) as of the dates indicated and the consolidated results of their operations and changes in their cash flows and stockholders' equity of the Company for the periods specified; such financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis throughout the periods covered thereby, and the supporting schedules included or incorporated by reference in the Registration Statement present fairly the information required to be stated therein; and the other financial and statistical data with respect to the Company and its Subsidiaries included or incorporated by reference in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, other than information of the Company's tenants, have been derived from the accounting records of the Company and its Subsidiaries and present fairly the information shown; there are no financial statements (historical or pro forma) that are required to be included or incorporated by reference in the Registration Statement or the Prospectus that are not included or incorporated by reference as required; the Company and its Subsidiaries do not have any material liabilities or obligations, direct or contingent (including any off-balance sheet obligations), not described in the Registration Statement (excluding the exhibits thereto), the Prospectus and any Permitted Free Writing Prospectus; and all disclosures included or incorporated by reference in the Registration Statement, the Prospectus and any Permitted Free Writing Prospectus, regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission) comply with Regulation G of the Exchange Act and Item 10 of Regulation S-K under the Act, to the extent applicable; the interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus fairly present the information called for in all material respects and have been prepared in accordance with the Commission's rules and guidelines applicable thereto.

(f) *No Material Adverse Change.* Except as disclosed in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, since the most recent date of the Company's financial statements included in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, there has not been (i) any material adverse change, or any development involving a prospective material adverse change, in the business, properties, management, financial condition or results of operations of the Company and its Subsidiaries taken as a whole, (ii) any transaction which is material to the Company and its Subsidiaries taken as a whole, (iii) any obligation or liability, direct or contingent (including any off-balance sheet obligations), incurred by the Company or any of its Subsidiaries, which is material to the Company and its Subsidiaries taken as a whole, (iv) any material change in the capital stock or outstanding indebtedness of the Company or any of its Subsidiaries or (v) except for regular quarterly dividends, any dividend or distribution of any kind declared, paid or made on the capital stock of the Company or any of its Subsidiaries.



(g) *Organization and Good Standing.* The Company and its Subsidiaries have been duly organized and are validly existing and in good standing under the laws of their respective jurisdictions of organization (and, with respect to the Company, is in good standing with the State Department of Assessments and Taxation of Maryland), are duly qualified to do business and are in good standing in each jurisdiction in which their respective ownership or lease of property or the conduct of their respective businesses requires such qualification, and have all power and authority necessary to own or lease and operate their respective properties and to conduct the businesses in which they are engaged as described in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, except where the failure to be so qualified, in good standing, or have such power or authority would not, individually or in the aggregate, have a material adverse effect on the business, properties, management, financial condition, results of operations or prospects of the Company and its Subsidiaries taken as a whole, or prevent or materially interfere with consummation of the transactions contemplated hereby (a “**Material Adverse Effect**”). The Company has no “significant subsidiaries” (as defined in Rule 1-02 of Regulation S-X under the Act) other than as set forth in Exhibit 21.1 to the Company’s most recent Annual Report on Form 10-K (the “**Subsidiaries**”); the Company owns, directly or indirectly, all of the issued and outstanding capital stock or other ownership interest of each of the Subsidiaries, other than the Operating Partnership, of which the Company owns, directly or indirectly, a majority of the limited partnership units (“**OP units**”).

(h) *Capitalization of the Company and its Subsidiaries.* The Company has an authorized capitalization as set forth in the Registration Statement, the Prospectus and any Permitted Free Writing Prospectus (subject to the issuance of shares of Common Stock upon exercise of stock options and warrants, or the exercise, conversion or redemption of any other equity-based compensatory awards, disclosed as outstanding in the Registration Statement (excluding the exhibits thereto), the Prospectus and any Permitted Free Writing Prospectus, the issuance of shares of Common Stock upon the redemption of Operating Partnership units in accordance with the Second Amended and Restated Agreement of Limited Partnership of the Operating Partnership, disclosed as outstanding in the Registration Statement (excluding the exhibits thereto), the Prospectus and any Permitted Free Writing Prospectus, and the grant of options and other equity-based awards under existing stock option and other equity-based compensatory plans described in the Registration Statement (excluding the exhibits thereto), the Prospectus and any Permitted Free Writing Prospectus; all of the issued and outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable, have been issued in compliance with all applicable securities laws and were not issued in violation of any preemptive right, resale right, right of first refusal or similar right; application has been, or will be, made to list the Shares on the New York Stock Exchange (the “**NYSE**”), and as of each Settlement Date, the Shares to be issued on such Settlement Date shall be duly listed, and admitted and authorized for trading, subject to official notice of issuance; all of the outstanding shares of capital stock or other ownership interests of each of the Subsidiaries have been duly authorized and validly issued, are fully paid and non-assessable, have been issued in compliance with all applicable securities laws, were not issued in violation of any preemptive right, resale right, right of first refusal or similar right, and except as otherwise described in paragraph (g) above, are owned directly or indirectly by the Company, free and clear of any security interest, other encumbrance or adverse claim, except where such security interests, other encumbrances or adverse claims would not materially affect or interfere in any material respect with the Company’s ability to exercise control over each of its Subsidiaries; and no options, warrants or other rights to purchase, agreements or other obligations to issue or other rights to convert any obligation into shares of capital stock or ownership interests in the Subsidiaries are outstanding.

(i) *Due Authorization of the Company.* The Company has full right, power and authority to own, lease and operate its properties and conduct its business as described in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, to execute and deliver the Distribution Agreements and to issue, sell and deliver the Shares as contemplated herein.

(j) *Due Authorization of the Shares.* The Shares have been duly and validly authorized by the Company and, when issued and delivered against payment therefor as provided herein, will be duly and validly issued, fully paid and non-assessable and free of statutory and contractual preemptive rights, resale rights, rights of first refusal and similar rights.

(k) *Company Capital Stock.* The capital stock of the Company, including the Shares, conforms in all material respects to each description thereof contained or incorporated by reference in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus; and the certificates for the Shares, if any, are in due and proper form.

(l) *This Agreement.* This Agreement has been duly authorized, executed and delivered by the Company and the Operating Partnership.

(m) *No Violation or Default.* Neither the Company nor any of the Subsidiaries is in breach or violation of or in default under (nor has any event occurred which, with notice, lapse of time or both, would result in any breach or violation of, constitute a default under or give the holder of any indebtedness (or a person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a part of such indebtedness under) (i) its respective charter or bylaws, or other organizational documents, or (ii) any indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any license, lease, contract or other agreement or instrument to which it is a party or any of the Subsidiaries is a party or by which any of them or any of their respective properties may be bound or affected, except as disclosed in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, or (iii) any federal, state, local or foreign law, regulation or rule, or (iv) any rule or regulation of any self-regulatory organization or other non-governmental regulatory authority (including, without limitation, the rules and regulations of the NYSE), or (v) any decree, judgment or order applicable to the Company or any of the Subsidiaries or any of their respective properties; except with respect to clauses (ii) through (v) only for any such breach or violation or default that would not reasonably be expected to have a Material Adverse Effect.

(n) *No Conflicts.* The execution, delivery and performance of this Agreement, the issuance and sale of the Shares and the consummation of the transactions contemplated by this Agreement will not conflict with, result in any breach or violation of or constitute a default under (nor constitute any event which, with notice, lapse of time or both, would result in any breach or violation of, constitute a default under or give the holder of any indebtedness (or a person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a part of such indebtedness under) or result in the creation or imposition of a lien, charge or encumbrance on any property or assets of the Company or any Subsidiary pursuant to (i) the

charter or bylaws, or other organizational document, of the Company or any of the Subsidiaries or (ii) any indenture, mortgage, deed of trust, bank loan or credit agreement or other evidence of indebtedness, or any license, lease, contract or other agreement or instrument to which the Company or any of the Subsidiaries is a party or by which any of them or any of their respective properties may be bound or affected, or (iii) any federal, state or local law, regulation or rule or, to the Company's knowledge, any foreign law, regulation or rule, or (iv) any rule or regulation of any self-regulatory organization or other non-governmental regulatory authority (including, without limitation, the rules and regulations of the NYSE), or (v) any decree, judgment or order applicable to the Company or any of the Subsidiaries or any of their respective properties; except with respect to clauses (ii) through (v) only for any such breach or violation or default that would not reasonably be expected to have a Material Adverse Effect.

(o) *No Consents Required.* No consent, approval, authorization, order, registration or qualification of or with any court or arbitrator or filing with any federal, state, local or foreign governmental or regulatory commission, board, body, authority or agency, or of or with any self-regulatory organization or other non-governmental regulatory authority, or approval of the stockholders of the Company, is required in connection with the issuance and sale of the Shares, compliance by the Company of the terms thereof and the consummation by the Company of the transactions contemplated by this Agreement, except for (i) such consents, approvals, authorizations, orders and registrations or qualifications as may be required (A) by the Financial Industry Regulatory Authority, Inc., (B) under applicable state securities laws or blue sky laws of the various jurisdictions in which the Shares are being offered by the Distribution Managers, (C) registration of the Shares under the Act, which has been effected, and (D) those that have been obtained or will be obtained or completed by the time of purchase of the Shares on the relevant Settlement Date, including the approval for listing and/or qualification of the Shares for trading on the NYSE or (ii) such consents, approvals, authorizations, orders, registrations, qualifications or filings, the absence of which would not reasonably be expected to have a Material Adverse Effect.

(p) *Legal Proceedings.* Except as described in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, there are no actions, suits, claims, investigations or proceedings pending or, to the Company's or the Operating Partnership's knowledge, threatened or contemplated to which the Company or any of its Subsidiaries or any of their respective directors or officers is or would be a party or of which any of their respective properties is or would be subject at law or in equity, before or by any federal, state, local or foreign governmental or regulatory commission, board, body, authority or agency, or before or by any self-regulatory organization or other non-governmental regulatory authority (including, without limitation, the NYSE), except any such action, suit, claim, investigation or proceeding which, if resolved adversely to the Company or any Subsidiary, would not, individually or in the aggregate, have a Material Adverse Effect.

(q) *Independent Accountants.* PricewaterhouseCoopers LLP with respect to the Company and its Subsidiaries, which has expressed its opinion on the audited financial statements and related schedules included in, or incorporated by reference into, the Registration Statement and the Prospectus, is an independent registered public accounting firm within the applicable rules and regulations adopted by the Commission and the Public Company Accounting Oversight Board (United States) and as required by the Act.

*(r) Title to Real and Personal Property.*

(i) The Company and its Subsidiaries have good and marketable title in fee simple to all real property, and good title to all personal property, owned by them, in each case free and clear of all liens, claims, security interests, pledges, charges, encumbrances, encroachments, restrictions, mortgages and other defects, except such as are disclosed in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus or listed as an exception to any owner's or leasehold title insurance policy with respect to such real property and personal property made available by the Company to the Manager or its counsel or such as do not materially and adversely affect the value of such property and do not materially interfere with the use made or proposed to be made of such property by the Company and its Subsidiaries; any real property, improvements, equipment and personal property held under lease by the Company or any of its Subsidiaries are held under valid, existing and enforceable leases, with such exceptions as are disclosed in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus or are not material and do not interfere with the use made or proposed to be made of such real property, improvements, equipment or personal property by the Company or such Subsidiary; except as otherwise disclosed in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, the Company or a Subsidiary has obtained an owner's or leasehold title insurance policy, from a title insurance company licensed to issue such policy, on any real property owned in fee or leased, as the case may be, by the Company or any Subsidiary, that insures the Company's or the Subsidiary's fee or leasehold interest, as the case may be, in such real property, or a lender's title insurance policy insuring the lien of its mortgage securing the real property with coverage equal to the maximum aggregate principal amount of any indebtedness held by the Company or a Subsidiary and secured by the real property.

(ii) To the knowledge of the Company and the Operating Partnership, each of the real properties owned or leased by the Company or any of its Subsidiaries, whether owned in fee simple or through a joint venture or other partnership (collectively, the "**Properties**"), is free of any material structural defects and all building systems contained therein are in good working order in all material respects, subject to ordinary wear and tear or, in each instance, the Company or any of its Subsidiaries, as the case may be, has either caused tenant to be responsible for such matters or has created or caused to be created an adequate reserve or capital budget to effect reasonably required repairs, maintenance and capital expenditures; and to the knowledge of the Company and the Operating Partnership, each of the Properties complies with all applicable zoning laws, ordinances, regulations and deed restrictions or other covenants in all material respects or, if and to the extent there is a failure to comply, such failure does not materially impair the value of any of the Properties and will not result in a forfeiture or reversion of title; to the knowledge of the Company and the Operating Partnership, there is no pending or threatened condemnation, zoning change or other similar proceeding or action that will in any material respect affect the size or use of, improvements on, or construction on or access to the Properties, except such zoning changes, proceedings or actions that individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect; to the knowledge of the Company and the Operating Partnership, no lessee of any portion of any of the Properties is in default under any of the leases governing such Properties and

there is no event which, but for the passage of time or the giving of notice or both would constitute a default under any of such leases, except such defaults that would not reasonably be expected to have a Material Adverse Effect or as disclosed in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus; and except as disclosed in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, no tenant under any lease pursuant to which any of the Subsidiaries leases the Properties has an option or right of first refusal to purchase the premises leased thereunder or the building of which such premises are a part, except as such options or rights of first refusal which, if exercised, would not reasonably be expected to have a Material Adverse Effect.

(iii) Except as disclosed in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, (A) the mortgages and deeds of trust encumbering the real property owned by the Company and its Subsidiaries are not convertible nor will the Company hold a participating interest therein and (B) such mortgages and deeds of trust are not cross-defaulted or cross-collateralized to any property not to be owned directly or indirectly by the Company or its Subsidiaries.

(s) *Title to Intellectual Property.* Except as would not reasonably be expected to have a Material Adverse Effect, (i) each of the Company and its Subsidiaries own, or have obtained valid and enforceable licenses for, or other rights to use, the inventions, patent applications, patents, trademarks (both registered and unregistered), tradenames, service names, copyrights, trade secrets and other proprietary information described in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus as being owned or licensed by it or which are necessary for the conduct of, or material to, their respective businesses as currently conducted (collectively, “**Intellectual Property**”), and (ii) the Company is not aware of any claim to the contrary or any challenge by any other person to the rights of the Company or any of its Subsidiaries with respect to the Intellectual Property.

(t) *Intellectual Property Infringement.* To the knowledge of the Company and the Operating Partnership and except as disclosed in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, neither the Company nor any of its Subsidiaries has infringed or is infringing the intellectual property of a third party, and neither the Company nor any of its Subsidiaries has received notice of a claim by a third party to the contrary, except for any such notice that would not reasonably be expected to have a Material Adverse Effect.

(u) *No Undisclosed Relationship.* No relationship, direct or indirect, exists between or among the Company or any of its Subsidiaries, on the one hand, and the directors, officers, stockholders or other affiliates of the Company or any of its Subsidiaries, on the other, that would be required by the Act to be described pursuant to Section 404 of Regulation S-K in an Annual Report on Form 10-K that is not so described in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus.

(v) *Investment Company Act.* Neither the Company nor any of its Subsidiaries is, and, after giving effect to the offering and sale of the Shares and the application of the proceeds thereof as described in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, none of them will be, an “investment company” or an entity “controlled” by an “investment company,” within the meaning of the Investment Company Act of 1940, as amended.

(w) *Taxes.* Except as disclosed in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, (i) each of the Company and its Subsidiaries have timely filed all material tax returns required to be filed through the date hereof or have properly requested extensions thereof, and (ii) all material taxes and other assessments of a similar nature (whether imposed directly or through withholding) including any interest, additions to tax or penalties applicable thereto due or claimed to be due from such entities have been timely paid, other than those being contested in good faith and for which adequate reserves have been provided.

(x) *Licenses and Permits.* Each of the Company and its Subsidiaries, and, to the knowledge of the Company, each tenant or proposed tenant of the Properties, has all necessary licenses, permits, authorizations, consents and approvals, possess valid and current certificates, has made all necessary filings required under any federal, state or local law, regulation or rule, and has obtained all necessary authorizations, consents and approvals from other persons, required in order to conduct their respective businesses and own their respective properties and other assets as described in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, except to the extent that any failure to have any such licenses, permits, authorizations, consents or approvals, to make any such filings or to obtain any such authorizations, consents or approvals, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect; except as disclosed in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, neither the Company nor any of its Subsidiaries is required by any applicable law to obtain accreditation or certification from any governmental agency or authority in order to conduct the business or own the properties and other assets which it currently provides or owns or which it proposes to provide or own as described in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, except such accreditations and certifications described in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus or except to the extent that any failure to have any such accreditation or certification, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect; except as disclosed in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, neither the Company nor any of its Subsidiaries is in violation of, or in default under, or has received any written notice regarding a possible violation, default or revocation of any such certificate, license, permit, authorization, consent or approval or any federal, state, local or foreign law, regulation or rule or any decree, order or judgment applicable to the Company or any of its Subsidiaries, the effect of which, individually or in the aggregate, would result in a Material Adverse Effect.

(y) *No Labor Disputes.* Except as disclosed in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, and except for matters which would not, individually or in the aggregate, have a Material Adverse Effect, no labor problem or dispute with the employees of the Company or any of its Subsidiaries exists or, to the knowledge of the Company and the Operating Partnership, is imminent.

(z) *Compliance with Environmental Laws.*

(i) Except as disclosed in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, the Company and its Subsidiaries, and, to the

knowledge of the Company and the Operating Partnership, each tenant of the Properties, are in compliance with, and the Company and each of its Subsidiaries, and, to the knowledge of the Company and the Operating Partnership, each tenant of the Properties, hold all permits, authorizations and approvals required under Environmental Laws (as defined below), except to the extent that failure to so comply or to hold such permits, authorizations or approvals would not, individually or in the aggregate, have a Material Adverse Effect; there are no past or present conditions, circumstances, activities, practices, or actions or omissions on the part of the Company or its Subsidiaries that would reasonably be expected to give rise to any material costs or liabilities to the Company or any of its Subsidiaries under, or to interfere with or prevent material compliance by the Company or any of its Subsidiaries with, Environmental Laws, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, and except as disclosed in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, neither the Company nor any of its Subsidiaries (A) is the subject of any investigation, (B) has received any notice or written claim, (C) is a party to or affected by any pending or, to the Company's knowledge, threatened action, suit or proceeding, (D) is bound by any judgment, decree or order or (E) has entered into any agreement, in each case relating to any alleged violation of any Environmental Law or any actual or alleged release or threatened release or cleanup at any location of any Hazardous Materials (as defined below) (as used herein, "**Environmental Law**" means any federal, state, local or foreign law, statute, ordinance, rule, regulation, order, decree, judgment, injunction, permit, license, authorization or other binding requirement, or common law, relating to the protection, cleanup or restoration of the environment or natural resources, including those relating to the distribution, processing, generation, treatment, storage, disposal, transportation, other handling or release or threatened release of Hazardous Materials, and "**Hazardous Materials**" means any material (including, without limitation, pollutants, contaminants, hazardous or toxic substances or wastes) that is regulated by or may give rise to liability under any Environmental Law).

(ii) To the knowledge of the Company and the Operating Partnership, except as disclosed in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, there are no costs or liabilities associated with any Environmental Law (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with any Environmental Law or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(iii) To the knowledge of the Company and the Operating Partnership, none of the entities which prepared appraisals of the Properties, nor the entities which prepared Phase I or other environmental assessments with respect to the Properties, was employed for such purpose on a contingent basis or has any substantial interest in the Company or any of the Subsidiaries, and none of their directors, officers or employees is connected with the Company or any of the Subsidiaries as a promoter, selling agent, officer, director or employee.

(aa) *Internal Accounting Controls.* Except as disclosed in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, the Company and its Subsidiaries maintain an effective system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of consolidated financial statements, taken as a whole, in conformity with generally accepted accounting principles and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences. (bb) *Disclosure Controls and Procedures; Internal Control Over Financial Reporting.* The Company has established and maintains and evaluates "disclosure controls and procedures" (as such term is defined in Rule 13a-15 and 15d-15 under the Exchange Act) and "internal control over financial reporting" (as such term is defined in Rule 13a-15 and 15d-15 under the Exchange Act); such disclosure controls and procedures are designed to ensure that material information relating to the Company, including its consolidated subsidiaries, is made known to the Company's Chief Executive Officer and its Chief Financial Officer by others within those entities, and such disclosure controls and procedures are effective to perform the functions for which they were established; the Company's independent auditors and the Audit Committee of the Board of Directors of the Company (the "**Audit Committee**") have been advised of: (i) all significant deficiencies, if any, in the design or operation of internal controls which could adversely affect the Company's ability to record, process, summarize and report financial data; and (ii) all fraud, if any, whether or not material, that involves management or other employees who have a role in the Company's internal controls; all material weaknesses, if any, in internal controls have been identified to the Company's independent auditors and the Audit Committee; since the date of the most recent evaluation of such disclosure controls and, procedures and internal controls, there have been no significant changes in internal controls or in other factors that could significantly affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses; the principal executive officers (or their equivalents) and principal financial officers (or their equivalents) of the Company have made all certifications required by the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the "**Sarbanes-Oxley Act**") and any related rules and regulations promulgated by the Commission, and the statements contained in each such certification are complete and correct; the Company, the Subsidiaries and the Company's directors and officers are each in compliance in all material respects with all applicable effective provisions of the Sarbanes-Oxley Act and the rules and regulations of the Commission and the NYSE promulgated thereunder.

(cc) *Insurance.* The Company and each of its Subsidiaries maintain or arrange for insurance covering their respective properties (not including those properties subject to a triple-net lease pursuant to which the tenant is responsible for maintaining or arranging for insurance relating to such property), personnel and businesses as the Company reasonably deems adequate; such insurance insures against such losses and risks to an extent which is adequate in accordance with customary industry practice to protect the Company and its Subsidiaries and their respective businesses; to the knowledge of the Company and the Operating Partnership, all such insurance is fully in force on the date hereof.



(a) *Material Contracts.* Other than in the ordinary course of business, neither the Company nor any of its Subsidiaries has sent or received any communication regarding termination of, or intent not to renew, any of the material contracts or agreements referred to or described in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus, and no such termination or non-renewal has been threatened by the Company or any of its Subsidiaries or, to the Company's knowledge, any other party to any such contract or agreement, except in all cases for any communication regarding such termination or non-renewal which would not reasonably be expected to have a Material Adverse Effect and except as disclosed in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus.

(dd) *No Unlawful Payments.* Neither the Company nor any of its Subsidiaries or, to the knowledge of the Company and the Operating Partnership, any director, officer, employee, agent, affiliate or other person acting on behalf of the Company or any of its Subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the "**FCPA**"), the U.K. Bribery Act of 2010 or any other applicable anti-bribery and corruption laws and regulations (the "**Anti-Bribery and Corruption Laws**") including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give, or authorization of the giving of anything of value to any "foreign official" (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA, or which payment, receipt or retention of funds is of a character required to be disclosed in the Registration Statement or the Prospectus, and the Company and, to the knowledge of the Company and the Operating Partnership, its affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith. To the best of the Company's knowledge and belief, no actions or investigations by any governmental or regulatory agency are ongoing or threatened against the Company or its Subsidiaries, or any of their respective directors, officers or employees or anyone acting on their behalf in relation to a breach of the Anti-Bribery and Corruption Laws. The Company will not directly or indirectly use, lend or contribute the proceeds from the offering of the Shares hereunder for any purpose that would breach the Anti-Bribery and Corruption Laws.

(ee) *Compliance with Money Laundering Laws.* The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, the money laundering statutes of all jurisdictions, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "**Money Laundering Laws**") and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company or any of its Subsidiaries with respect to the Money Laundering Laws is pending or, to the knowledge of the Company and the Operating Partnership, threatened.

(ff) *Compliance with OFAC.* None of the Company, any of its Subsidiaries or, to the knowledge of the Company and the Operating Partnership, any director, officer, agent, employee, affiliate or representative of the Company or any of its Subsidiaries is an individual or entity (“**Person**”) currently the subject or target of any sanctions administered or enforced by the United States Government, including, without limitation, the U.S. Department of the Treasury’s Office of Foreign Assets Control (“**OFAC**”), the United Nations Security Council (“**UNSC**”), the European Union, Her Majesty’s Treasury (“**HMT**”), or other relevant sanctions authority (collectively, “**Sanctions**”), nor is the Company or its Subsidiaries owned 50% or more by or otherwise controlled by, or acting on behalf of one or more Persons captured above, nor is the Company or its Subsidiaries located, organized or resident in a country or territory that is the subject of Sanctions (each, a “Sanctioned Country”); and the Company will not, directly or indirectly, use the proceeds of the offering of the Shares hereunder, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person, for the purpose of financing any activities of or business with any Person, or in any country or territory, that, at the time of such financing, is the subject of Sanctions or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as sales agent, advisor, investor or otherwise) of Sanctions. For the past three years, none of the Company or its Subsidiaries have knowingly engaged in and are not now knowingly engaged in any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of Sanctions or with any Sanctioned Country.

(gg) *No Restrictions on Subsidiaries.* No Subsidiary is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such Subsidiary’s capital stock, from repaying to the Company any loans or advances to such Subsidiary from the Company or from transferring any of such Subsidiary’s property or assets to the Company or any other Subsidiary of the Company, except as described in the Registration Statement (excluding the exhibits thereto), the Prospectus or any Permitted Free Writing Prospectus.

(hh) *No Right to Acquire Preferred Capital Stock.* The issuance and sale of the Shares as contemplated hereby will not cause any holder of any shares of capital stock or options, warrants or other rights to purchase capital stock or any other securities of the Company to have any right to acquire any shares of preferred stock of the Company.

(ii) *NYSE.* The Company has not received any notice from the NYSE regarding the delisting of the Common Stock from the NYSE.

(jj) *No Broker’s Fees.* Neither the Company nor any of its Subsidiaries is a party to any contract or agreement with any person (other than the Distribution Agreements) that would give rise to a valid claim against any of them or the Manager for an agent’s commission, brokerage commission, finder’s fee or like payment in connection with the execution and delivery of this Agreement, or the consummation of the transactions contemplated hereby or by the Prospectus Supplement.

(kk) *No Registration Rights.* Except as described in the Registration Statement (excluding the exhibits thereto), the Prospectus or any Permitted Free Writing Prospectus, (i) no person has the right, contractual or otherwise, to cause the Company to issue or sell to it any shares

of Common Stock or shares of any other capital stock or other equity interests of the Company, except such rights that have been granted pursuant to the Company's equity incentive plan and the issuance of shares of Common Stock upon the redemption of outstanding OP units in accordance with the Second Amended and Restated Agreement of Limited Partnership of the Operating Partnership (the "**Operating Partnership Agreement**"), (ii) no person has any preemptive rights, resale rights, rights of first refusal or other rights to purchase any shares of Common Stock or shares of any other capital stock of or other equity interests in the Company, (iii) no person has the right to act as an underwriter or as a financial advisor to the Company in connection with the offer and sale of the Shares and (iv) no person has the right, contractual or otherwise, to cause the Company to register under the Act any shares of Common Stock or shares of any other capital stock of or other equity interests in the Company, or to include any such shares or interests in the Registration Statement or the offering contemplated hereby.

(ll) *No Stabilization.* Neither the Company nor any of its Subsidiaries nor any of their respective directors, officers, affiliates or controlling persons has taken, directly or indirectly, any action designed, or which has constituted or could reasonably be expected to cause or result in any stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares.

(mm) *Margin Rules.* Neither the issuance, sale and delivery of the Shares nor the application of the proceeds thereof by the Company as described in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus will violate Regulation T, U or X of the Board of Governors of the Federal Reserve System or any other regulation of such Board of Governors.

(nn) *Forward-Looking Statements.* No "forward-looking statement" (within the meaning of Section 27A of the Act and Section 21E of the Exchange Act) included or incorporated by reference in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus has been made or reaffirmed without a reasonable basis or has been disclosed other than in good faith.

(oo) *Statistical and Market Data.* All statistical or market-related data included or incorporated by reference in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus are based on or derived from sources that the Company believes to be reliable and accurate in all material respects, and the Company has obtained the written consent to the use of such data from such sources to the extent required.

(pp) *Real Estate Investment Trust.* The Company has qualified to be taxed as a real estate investment trust pursuant to Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the "**Code**"), for all taxable years ended on or prior to December 31, 2016, beginning with its taxable year that began on April 6, 2004 and ended on December 31, 2004, and its current and proposed method of operation as described in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus will enable the Company to continue to meet the requirements for qualification and taxation as a real estate investment trust under the Code for its taxable year ending December 31, 2017 and thereafter; all statements in the Registration Statement, the Prospectus or any Permitted Free Writing Prospectus regarding the Company's qualification and taxation as a real estate investment trust are correct in all material respects; the

Company presently intends to continue to qualify as a real estate investment trust under the Code this year and for all subsequent years, and the Company does not know of any existing condition that would cause or is likely to cause the Company to fail to qualify as a real estate investment trust under the Code for the taxable year ending December 31, 2017 or anytime thereafter.

(qq) *Prior to REIT Status.* The Company was at all times from its formation on August 27, 2003 through April 6, 2004 an S corporation within the meaning of Section 1361(a)(1) of the Code

(rr) *The Operating Partnership.* The Operating Partnership is and has been at all times classified as a partnership or disregarded entity, and not as an association or partnership taxable as a corporation, for federal income tax purposes.

(ss) *Sarbanes-Oxley Act.* There is and has been no failure on the part of Company or any of the Company's directors or officers, in their capacities as such, to comply in all material respects with any provision of the Sarbanes-Oxley Act, including Section 402 related to loans and Sections 302 and 906 related to certifications.

(tt) *Status.* At the time of filing the Registration Statement and any post-effective amendment thereto, at the earliest time thereafter that the Company or any offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) under the Act) of the Shares and at the date hereof, the Company was not and is not an "ineligible issuer," and is a well-known seasoned issuer, in each case as defined in Rule 405 under the Act.

In addition, any certificate signed by or on behalf of the Company or any of its Subsidiaries and delivered to the Manager or to the counsel for the Manager in connection with the offering of the Shares shall be deemed to be a representation and warranty by the Company or such Subsidiary, as to matters covered thereby, to the Manager.

### Section 3. Sale and Delivery of Shares.

(a) On the basis of the representations, warranties and agreements herein contained, but subject to the terms and conditions herein set forth, the Company agrees to issue and sell through the Manager, as sales agent, and the Manager agrees to use its commercially reasonable efforts to sell, as sales agent for the Company, the Shares on the following terms.

(i) The Shares are to be sold on a daily basis or otherwise as shall be agreed to by the Company and the Manager on any day that (A) is a trading day for the NYSE (a "**Trading Day**"), (B) the Company has instructed the Manager by telephone (confirmed promptly by electronic mail to any of the individuals listed as authorized representatives of the Company on Schedule C hereto (the "**Authorized Company Representatives**")) to make such sales and (C) the Company has satisfied its obligations under Section 5 of this Agreement. The Company will designate the maximum number of Shares to be sold by the Manager daily or as otherwise agreed to by the Manager and the Company and in any event not in excess of the amount of Shares available for issuance under the currently effective Registration Statement or in excess of the amount of Shares authorized from time to time to be issued and sold under this Agreement by the Company's board of directors, or a duly authorized committee thereof, and the minimum price per

share at which such Shares may be sold. Subject to the terms and conditions hereof, the Manager shall use its commercially reasonable efforts to offer and sell on any day all of the Shares designated for the sale by the Company on such day; *provided, however*, that the Manager shall have no obligation to offer or sell any Shares, and the Company acknowledges and agrees that the Manager shall have no such obligation, in the event an offer or sale of the Shares on behalf of the Company may in the reasonable judgment of the Manager constitute the sale of a “block” under Rule 10b-18(a)(5) under the Exchange Act or a “distribution” within the meaning of Rule 100 of Regulation M under the Exchange Act or the Manager reasonably believes it may be deemed an “underwriter” under the Act in a transaction that is other than by means of ordinary brokers’ transactions between members of the NYSE that qualify for delivery of a Prospectus to the NYSE in accordance with Rule 153 under the Act.

(ii) Notwithstanding the foregoing, the Company, through any of the Authorized Company Representatives, may instruct the Manager by telephone (confirmed promptly by electronic mail from the Company) not to sell the Shares if such sales cannot be effected at or above the price designated by the Company in any such instruction, which price shall not be below the par value of the Common Stock. In addition, the Company or the Manager may, upon notice to the other party hereto by telephone (confirmed promptly by electronic mail from such party), suspend the offering of the Shares; *provided, however*, that such suspension shall not affect or impair the parties’ respective obligations with respect to the Shares sold hereunder prior to the giving of such notice.

(iii) The Manager hereby covenants and agrees not to make any sales of the Shares on behalf of the Company, pursuant to this Section 3(a), other than (A) by means of “at the market” offerings as defined in Rule 415 under the Act, including without limitation sales made directly on the NYSE, on any other existing trading market for the Common Stock or to or through a market maker, and (B) such other sales of the Shares on behalf of the Company in its capacity as agent of the Company as shall be agreed by the Company and the Manager, including but not limited to in privately negotiated transactions.

(iv) The compensation to the Manager, as an agent of the Company under this Agreement, for sales of the Shares shall be at a mutually agreed rate, not to exceed 2.00% of the gross sales price of the Shares sold pursuant to this Section 3(a). The remaining proceeds, after further deduction for any documented transaction fees imposed on the Manager by any governmental or self-regulatory organization in connection with such sales, shall constitute the net proceeds to the Company for such Shares (the “**Net Proceeds**”).

(v) The Manager shall provide written confirmation to the Company as soon as practicable following the close of trading on the NYSE each day in which the Shares are sold under this Section 3(a), but in any event no later than the opening of the immediately following Trading Day, setting forth the aggregate number of the Shares sold on such day, the aggregate gross sales proceeds and the aggregate Net Proceeds to the Company, and the aggregate compensation payable by the Company to the Manager with respect to such sales.

(vi) Settlement for sales of the Shares pursuant to this Section 3(a) will occur on the second Trading Day following the date on which such sales are made (*provided* that, if such second Trading Day is not a business day (as defined below), then settlement will occur on the next succeeding Trading Day that is also a business day), unless another date shall be agreed upon by the Company and the Manager (each such date, a “**Settlement Date**”). As used in the preceding sentence and in Section 6 below, the term “business day” means any day other than a Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law, regulation or executive order to close. On each Settlement Date, the Shares sold through the Manager for settlement on such date shall be issued and delivered by the Company to the Manager against payment of the Net Proceeds for the sale of such Shares. Settlement for all such Shares shall be effected by free delivery of the Shares by the Company or its transfer agent to the Manager’s account, or to the account of the Manager’s designee, at The Depository Trust Company (“**DTC**”) through its Deposit and Withdrawal at Custodian System (“**DWAC**”) or by such other means of delivery as may be mutually agreed upon by the parties hereto, which in all cases shall be freely tradable, transferable, registered shares eligible for delivery through DTC, in return for payments in same day funds delivered to the account designated by the Company. If the Company, or its transfer agent (if applicable), shall default on its obligation to deliver the Shares on any Settlement Date, the Company shall (A) indemnify and hold the Manager harmless against any loss, claim or damage arising from or as a result of such default by the Company and (B) pay the Manager any commission to which it would otherwise be entitled absent such default. The Authorized Company Representatives, or any designees thereof as notified to the Manager in writing, shall be the contact persons for the Company for all matters related to the settlement of the transfer of the Shares through DWAC for purposes of this Section 3(a)(vi).

(vii) At each Time of Sale, Settlement Date and Representation Date (as defined below), the Company shall be deemed to have affirmed each representation and warranty contained in this Agreement, modified as necessary to relate to the Registration Statement and the Prospectus as amended as of such date. Any obligation of the Manager to use its commercially reasonable efforts to sell the Shares on behalf of the Company shall be subject to the accuracy of the representations and warranties of the Company herein as of each Time of Sale, Settlement Date and Representation Date, to the performance by the Company of its obligations hereunder and to the continuing satisfaction of the additional conditions specified in Section 5 of this Agreement.

(b) (i) If the Company, at its discretion, wishes to issue and sell the Shares to the Manager on a principal basis (each, a “**Placement**”), it will notify the Manager of the proposed terms of such Placement. If the Manager, acting as principal, wishes to accept such proposed terms (which it may decline to do for any reason in its sole discretion) or, following discussions with the Company, wishes to accept amended terms, the Manager, the Company and, if applicable, the Alternative Managers will enter into a Terms Agreement setting forth the terms of such Placement. The terms set forth in a Terms Agreement will not be binding on the Company or the Manager unless and until the Company and the Manager have each executed such Terms Agreement accepting all of the terms of such Terms Agreement. In the event of a conflict between the terms of this Agreement and the terms of any Terms Agreement, the terms of such Terms Agreement will control.

(ii) In the event the Company engages the Manager for a sale of Shares that would constitute the sale of a “block” under Rule 10b-18(a)(5) under the Exchange Act or a “distribution,” within the meaning of Rule 100 of Regulation M under the Exchange Act, the Company and the Manager will agree to compensation that is customary for the Manager with respect to such transactions.

(c) (i) Under no circumstances shall the Company cause or request the offer or sale of any Shares if, after giving effect to the sale of such Shares, the aggregate gross sales proceeds or the aggregate number of the Shares sold pursuant to this Agreement and any Alternative Equity Distribution Agreement would exceed the lesser of (A) the Maximum Amount, (B) the amount available for offer and sale under the currently effective Registration Statement and (C) the amount authorized from time to time to be issued and sold under this Agreement and any Alternative Equity Distribution Agreement by the Company’s board of directors, or a duly authorized committee thereof. Under no circumstances shall the Company cause or request the offer or sale of any Shares at a price lower than the minimum price authorized from time to time by the Company’s board of directors or a duly authorized committee thereof, and notified to the Manager in writing.

(ii) If either party has reason to believe that the exemptive provisions set forth in Rule 101(c)(1) of Regulation M under the Exchange Act are not satisfied with respect to the Shares, it shall promptly notify the other party and sales of the Shares under this Agreement and any Alternative Equity Sales Distribution Agreement shall be suspended until that or other exemptive provisions have been satisfied in the judgment of each party. Upon the reasonable request of the Company in writing to the Manager (which such request may be by electronic mail), the Manager shall promptly calculate and provide in writing to the Company a report setting forth, for the prior week, the average daily trading volume (as defined in Rule 100 of Regulation M under the Exchange Act) of the Common Stock.

(d) Subject to such further limitations on offers and sales of Shares or delivery of instructions to offer and sell Shares as are set forth herein, or in any Alternative Equity Distribution Agreement, and as may be mutually agreed upon by the Company and the Manager or any Alternative Manager, as applicable, offers and sales of Shares pursuant to this Agreement or any Alternative Equity Distribution Agreement, as applicable, shall not be requested by the Company and need not be made by the Manager or any Alternative Manager, as applicable, at any time when or during any period (i) in which the Company is or could be deemed to be in possession of material non-public information or (ii) the Company’s insider trading policy, as then in effect, would prohibit the purchases or sales of the Company’s Common Stock by its officer or directors; *provided* that, for purposes of this clause (ii), such period shall be deemed to end on the date that is two (2) business days after the date on which the Company shall issue a press release containing, or shall otherwise publicly announce, its earnings, revenues or other results of operations, unless the Company provides prior written notice to the Manager of a change in its insider trading policy or an extension of the prohibition of purchases and sales thereunder.

(e) The Company acknowledges and agrees that (i) there can be no assurance that the Manager or any Alternative Manager will be successful in selling the Shares, (ii) neither the Manager nor any Alternative Manager will incur liability or obligation to the Company or any other person or entity if it does not sell Shares for any reason other than a failure by the Manager or any Alternative Manager to use its commercially reasonable efforts consistent with its normal trading and sales practices and applicable law and regulations to sell such Shares in accordance with the terms of this Agreement or any Alternative Equity Distribution Agreement, as applicable, and (iii) neither the Manager nor any Alternative Manager shall be under any obligation to purchase Shares on a principal basis pursuant to this Agreement or any Alternative Equity Distribution Agreement, as applicable, except as otherwise specifically agreed in writing by the Manager and the Company or any Alternative Manager and the Company, as applicable.

(f) The Company agrees that, during the term of this Agreement, any offer to sell, any solicitation of an offer to buy, or any sales of Shares shall only be effected by or through the Manager or an Alternative Manager, but in no event by more than one Manager on any single given day, and the Company shall in no event request that the Manager and any Alternative Manager sell Shares on the same day.

Section 4. Covenants of the Company. The Company agrees with the Manager:

(a) to notify the Manager promptly of the time on or after the date of this Agreement when the Registration Statement or any amendment to the Registration Statement has been filed or becomes effective or when the Basic Prospectus, the Prospectus or any Permitted Free Writing Prospectus or any supplement to any of the foregoing has been filed; to prepare and file with the Commission, promptly upon the Manager's request, any amendments or supplements to the Registration Statement, the Basic Prospectus, the Prospectus or any Permitted Free Writing Prospectus that the Manager reasonably believes is required under the Act or the Exchange Act in connection with the offering of the Shares by the Manager; and to cause the Basic Prospectus, the Prospectus Supplement and the Prospectus and each amendment or supplement to the Basic Prospectus, the Prospectus Supplement or the Prospectus to be filed with the Commission as required pursuant to the applicable paragraph of Rule 424(b) of the Act (without reliance on Rule 424(b)(8)) or, in the case of any Incorporated Document, to be filed with the Commission as required pursuant to the Exchange Act, within the time period prescribed; to cause each Permitted Free Writing Prospectus to be filed with the Commission as required by Rule 433 of the Act (to the extent such filing is required by such rule) and to retain copies of each Permitted Free Writing Prospectus that is not required to be filed with the Commission in accordance with Rule 433 of the Act.

(b) To promptly advise the Manager, confirming such advice in writing, of any request by the Commission for amendments or supplements to the Registration Statement, the Basic Prospectus, the Prospectus or any Permitted Free Writing Prospectus (in each case including, without limitation, any Incorporated Document) or for additional information with respect thereto, or of notice of examination, institution of proceedings for or the entry of a stop order suspending the effectiveness of the Registration Statement and, if the Commission should enter a stop order suspending the effectiveness of the Registration Statement, to use its best efforts to obtain the lifting or removal of such order as soon as possible; to promptly advise the Manager of any proposal to amend or supplement the Registration Statement, the Basic Prospectus, the Prospectus



or any Permitted Free Writing Prospectus (other than any amendment or supplement relating solely to the issuance or offering of securities other than the Shares and any amendment or supplement to be effected by the Company's filing of a report, document or proxy or information statement pursuant to Sections 13, 14 or 15(d) of the Exchange Act), and to provide the Manager and its counsel copies of any such documents for review a reasonable amount of time prior to any proposed filing and not to file or use any such amendment or supplement to which the Manager shall have reasonably objected in writing. Notwithstanding the forgoing, so long as the Company shall promptly advise the Manager of any such event and the Company's intended actions with respect thereto, the obligations of the Company under this subsection 4(b) shall be deferred for any Suspension Period (as defined below) and shall recommence upon the termination of such Suspension Period.

(c) To make available to the Manager, as soon as practicable after this Agreement becomes effective, and thereafter from time to time to furnish to the Manager, as many copies of the Prospectus and each Permitted Free Writing Prospectus (or of the Prospectus or any Permitted Free Writing Prospectus as amended or supplemented if the Company shall have made any amendments or supplements thereto after the effective date of the Registration Statement) as the Manager may reasonably request for the purposes contemplated by the Act; *provided, however*, that the Company shall not be required to furnish any document (other than the Prospectus) to the Manager to the extent such document is available on EDGAR; in case the Manager is required to deliver (whether physically, deemed to be delivered pursuant to Rule 153 or through compliance with Rule 172 under the Act or any similar rule), in connection with the sale of the Shares, a prospectus after the nine-month period referred to in Section 10(a)(3) of the Act, or after the time a post-effective amendment to the Registration Statement is required pursuant to Item 512(a) of Regulation S-K under the Act, the Company will prepare, at its expense, such amendment or amendments to the Registration Statement and the Prospectus as may be necessary to permit compliance with the requirements of Section 10(a)(3) of the Act or Item 512(a) of Regulation S-K under the Act, as the case may be.

(d) To file promptly all reports and documents and any preliminary or definitive proxy or information statement required to be filed by the Company with the Commission in order to comply with the Exchange Act for so long as a prospectus is required by the Act to be delivered (whether physically, deemed to be delivered pursuant to Rule 153 or through compliance with Rule 172 under the Act or any similar rule) in connection with any sale of Shares.

(e) To pay the fees applicable to the Registration Statement in connection with the offering of the Shares within the time required by Rule 456(b)(1)(i) under the Act (without reliance on the proviso to Rule 456(b)(1)(i) under the Act) and in compliance with Rule 456(b) and Rule 457(r) under the Act.

(f) If the Company receives from the Commission a notice pursuant to Rule 401(g)(2) under the Act or otherwise ceases to be eligible to use the automatic shelf registration statement form, the Company will (i) promptly notify the Manager, (ii) promptly file a new registration statement or post-effective amendment on the proper form relating to the Shares, in a form satisfactory to the Manager, (iii) use its best efforts to cause such registration statement or post-effective amendment to be declared effective as soon as practicable (if such filing is not otherwise effective immediately pursuant to Rule 462 under the Act), and (iv) promptly notify the

Manager of such effectiveness. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Shares to continue as contemplated in the Registration Statement that was the subject of the notice under Rule 401(g)(2) under the Act or for which the Company has otherwise become ineligible. References herein to the Registration Statement relating to the Shares shall include such new registration statement or post-effective amendment, as the case may be. Notwithstanding the forgoing, so long as the Company shall promptly advise the Manager of any such event and the Company's intended actions with respect thereto, the obligations of the Company under this subsection 4(f) shall be deferred for any Suspension Period and shall recommence upon the termination of such Suspension Period.

(g) If immediately prior to the third anniversary (the "**Renewal Deadline**") of the initial effective date of the Registration Statement, any of the Shares remain unsold by the Manager, the Company will, prior to the Renewal Deadline file, if it has not already done so and is eligible to do so, file a new automatic shelf registration statement relating to the Shares, in a form satisfactory to the Manager. If the Company is not eligible to file an automatic shelf registration statement, the Company will, prior to the Renewal Deadline, if it has not already done so, file a new shelf registration statement relating to the Shares, in a form satisfactory to the Manager, and will use its best efforts to cause such registration statement to be declared effective within 180 days after the Renewal Deadline. The Company will take all other action necessary or appropriate to permit the public offering and sale of the Shares to continue as contemplated in the expired registration statement. References herein to the Registration Statement shall refer to such new automatic shelf registration statement or such new shelf registration statement, as the case may be, from the date of effectiveness thereof. Notwithstanding the forgoing, so long as the Company shall promptly advise the Manager of any such event and the Company's intended actions with respect thereto, the obligations of the Company under this subsection 4(g) shall be deferred for any Suspension Period and shall recommence upon the termination of such Suspension Period.

(h) To promptly notify the Manager of the happening of any event that could require the making of any change in the Prospectus then being used so that the Prospectus would not include an untrue statement of material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading and, subject to Section 4(b) and Section 4(d), to prepare and furnish, at the Company's expense, to the Manager promptly such amendments or supplements to such Prospectus as may be necessary to reflect any such change; and to promptly notify the Manager of the happening of any event that could require the making of any change in any Permitted Free Writing Prospectus so that such Permitted Free Writing Prospectus would not conflict with information contained in the Registration Statement, the Prospectus or the Incorporated Documents or so that such Permitted Free Writing Prospectus would not include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading and, subject to Section 4(b) and Section 4(d), to prepare and furnish, at the Company's expense, to the Manager promptly such amendments or supplements to such Permitted Free Writing Prospectus as may be necessary to eliminate any such conflict or reflect any such change. Notwithstanding the forgoing, so long as the Company shall promptly advise the Manager of any such event and the Company's intended actions with respect thereto, the obligations of the Company under this subsection 4(h) shall be deferred for any Suspension Period and shall recommence upon the termination of such Suspension Period.

(i) To use its commercially reasonable efforts to furnish such information as may be required and otherwise to cooperate in qualifying the Shares for offering and sale under the securities or blue sky laws of such states or other jurisdictions as the Manager may reasonably designate and to maintain such qualifications in effect so long as required for the distribution of the Shares; *provided, however*, that the Company shall not be required to subject itself to taxation, to qualify as a foreign corporation or to consent to the service of process under the laws of any such jurisdiction (except service of process with respect to the offering and sale of the Shares); and to promptly advise the Manager of the receipt by the Company of any notification with respect to the suspension of the qualification of the Shares for offer or sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose.

(j) To make generally available to its security holders, and, to the extent that such information is not filed via EDGAR, to deliver to the Manager, an earnings statement of the Company (which will satisfy the provisions of Section 11(a) of the Act) covering a period of twelve months beginning after the effective date of the Registration Statement (as defined in Rule 158(c) of the Act) as soon as is reasonably practicable after the termination of such twelve-month period but not later than eighteen months after the effective date of the Registration Statement (as such date is defined in Rule 158(c) under the Act).

(k) The Company shall pay all expenses incident to the performance of its obligations under this Agreement, whether or not the transactions contemplated hereby are consummated or this Agreement is terminated, including without limitation such costs, expenses, fees and taxes in connection with (i) the preparation and filing of the Registration Statement, the Basic Prospectus, the Prospectus, each Prospectus Supplement, each Permitted Free Writing Prospectus and any amendments or supplements thereto, and the printing and furnishing of copies of each thereof to the Manager (including costs of mailing and shipment), (ii) the registration, issue, sale and delivery of the Shares including any stock or transfer taxes and stamp or similar duties payable upon the sale, issuance or delivery of the Shares, (iii) the producing, word processing and/or printing of this Agreement, any Powers of Attorney and any closing documents (including compilations thereof) and the reproduction and/or printing and furnishing of copies of each thereof to the Manager (including costs of mailing and shipment), (iv) the qualification of the Shares for offering and sale under state laws and the determination of their eligibility for investment under state or foreign law (including the reasonable legal fees and filing fees and other disbursements of U.S. or other foreign counsel for the Manager) and the printing and furnishing of copies of any blue sky surveys, (v) the listing of the Shares on the NYSE and any other securities exchange and any registration thereof under the Exchange Act, (vi) any filing with, and any review of the public offering of the Shares by, FINRA, including the reasonable legal fees and other reasonable disbursements of counsel for the Manager relating to FINRA matters and (vii) the documented reasonable fees and disbursements of the Company's and Manager's counsel as further described on Annex I and of the Company's accountants. Except as set forth on Annex I hereto, the Manager will pay all of its other out-of-pocket costs and expenses incurred in connection with entering into this Agreement and the transactions contemplated by this Agreement, including, without limitation, travel and similar expenses, whether or not the transactions contemplated hereby are consummated or this Agreement is terminated.

(l) To apply the net proceeds from the sale of the Shares in the manner set forth under the caption "Use of Proceeds" in the Prospectus Supplement.

(m) During the period beginning on and including the first Trading Day immediately prior to the date on which the Company has instructed the Manager to make sales of Shares under this Agreement through and including the first Trading Day immediately following the related Settlement Date, not to sell, offer to sell, contract or agree to sell, hypothecate, pledge, grant any option to sell or otherwise dispose of or agree to dispose of, directly or indirectly, or permit the registration under the Act of, any shares of Common Stock or any other securities of the Company that are substantially similar to the Common Stock (“**Similar Securities**”) or any securities convertible into or exchangeable or exercisable for Common Stock or Similar Securities (including without limitation, any options, warrants or other rights to purchase Common Stock or Similar Securities), in each case without giving the Manager at least three Trading Days’ prior written notice specifying the nature of the proposed sale and the date of such proposed sale. Notwithstanding the foregoing, the Company may (i) register the offer and sale of the Shares through or to the Manager or any Alternative Manager pursuant to this Agreement or any Terms Agreement, Alternative Equity Distribution Agreement or Alternative Terms Agreement, as applicable; (ii) file registration statements relating to Common Stock that may be issued pursuant to the Company’s (A) dividend reinvestment and stock purchase plan, (B) director and executive compensation plans and (C) other employee benefit plans (in the case of (A), (B) and (C) above, as such plans are described in the Company’s reports filed with the Commission under the Exchange Act); (iii) issue shares of the Common Stock, issue options to purchase shares of the Common Stock or make grants of other equity awards, each pursuant to any of the plans referred to in clause (ii) above; (iv) issue securities in connection with an acquisition, merger or sale or purchase of assets; and (v) issue any Common Stock issuable upon the exercise of any option outstanding on the date hereof or upon the redemption of outstanding OP units in accordance with the Operating Partnership Agreement. To the extent requested in writing by the Company, the Manager shall keep notices provided under this Section 4(m) confidential, except as required by applicable law or regulation. In the event that notice of a proposed sale is provided by the Company pursuant to this Section 4(m), the Manager may suspend activity under this Agreement for such period of time as may be requested by the Company or as may be deemed appropriate by the Manager.

(n) Not, at any time at or after the execution of this Agreement, to offer or sell any Shares by means of any “prospectus” (within the meaning of the Act), or use any “prospectus” (within the meaning of the Act) in connection with the offer or sale of the Shares, in each case other than the Prospectus or a Permitted Free Writing Prospectus.

(o) The Company will not, and will cause its Subsidiaries not to, take, directly or indirectly, any action designed, or which will constitute, or has constituted, or might reasonably be expected to cause or result in (i) the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Shares or (ii) a violation of Regulation M. The Company shall notify the Manager of any violation of Regulation M by the Company or any Subsidiary or any of their respective officers or directors promptly after the Company has received notice or obtained knowledge of any such violation.

(p) To use its best efforts to cause the Shares to be listed on the NYSE, subject only to notice of issuance, and to maintain such listing. (q) To advise the Manager immediately after it shall have received notice or obtain knowledge thereof, of any information or fact that would materially alter or affect any opinion, certificate, letter and other document provided to the Manager pursuant to Section 5 herein.

(r) Upon commencement of the offering of the Shares under this Agreement (and upon the recommencement of the offering of the Shares under this Agreement following the termination of a Suspension Period), and each time that (i) the Registration Statement or the Prospectus shall be amended or supplemented (other than by the filing with the Commission of any document incorporated by reference therein, which shall be subject to the provisions of subclauses (ii) and (iii) below, and other than any amendment or supplement relating solely to the issuance or offering of securities other than the Shares), (ii) the Company shall file an Annual Report on Form 10-K or a Quarterly Report on Form 10-Q (other than an amendment to an Annual Report on Form 10-K or amendment to a Quarterly Report on Form 10-Q filed with the Commission solely for the purpose of filing financial statements of a significant tenant, if required at any time), or (iii) upon reasonable request by the Manager and upon reasonable advance notice to the Company there is filed with the Commission any document (other than an amendment to an Annual Report on Form 10-K or amendment to a Quarterly Report on Form 10-Q or a Current Report on Form 8-K filed with the Commission solely for the purpose of filing financial statements of a significant tenant, if required at any time) incorporated by reference into the Prospectus (other than a proxy statement in connection with the Company's annual or special meeting of shareholders) (the date of commencement of the offering of the Shares under this Agreement, the date of commencement of the offering of the Shares under this Agreement following the termination of a Suspension Period and each date referred to in subclauses (i), (ii) and (iii) above, each a "**Representation Date**"), to furnish or cause to be furnished to the Manager forthwith a certificate of two of the Company's executive officers, dated and delivered the Representation Date, in form satisfactory to the Manager to the effect that the statements contained in the certificate referred to in Section 5(e) of this Agreement which was last furnished to the Manager are true and correct as of such Representation Date as though made at and as of such date (except that such certificate shall state that such statements shall be deemed to relate to the Registration Statement and the Prospectus and to all Permitted Free Writing Prospectuses, in each case as amended and supplemented to such date) or, in lieu of such certificate, a certificate of the same tenor as the certificate referred to in said Section 5(e), modified as necessary to relate to the Registration Statement and the Prospectus and to all Permitted Free Writing Prospectuses, in each case as amended and supplemented to the time of delivery of such certificate; *provided* that the obligation of the Company under this subsection (r) shall be deferred for any period that the Company has suspended the offering of Shares pursuant to Section 3(a)(ii) hereof (each, a "**Suspension Period**") and shall recommence upon the termination of such Suspension Period. The Manager shall not be required or requested to make offers or sales of Shares until such time as it has received the deliverables provided for in Sections 4(s) – (v).

(s) Within two business days of each Representation Date, to furnish or cause to be furnished forthwith to the Manager written opinion(s) of Goodwin Procter LLP, counsel to the Company, or its successors and assigns, and/or such other counsel satisfactory to the Manager ("**Company Counsel**"), dated and delivered as of such Representation Date, in form and substance reasonably satisfactory to the Manager, of the same tenor as the opinion referred to in Section 5(c) of this Agreement, but modified as necessary to relate to the Registration Statement and the Prospectus and to all Permitted Free Writing Prospectuses, in each case as amended and supplemented to the time of delivery of such opinion; *provided* that the obligation of the Company under this subsection (s) shall be deferred for any Suspension Period and shall recommence upon the termination of such Suspension Period.

(t) Within two business days of each Representation Date, to furnish or cause to be furnished forthwith to the Manager a written opinion of Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., tax counsel to the Company, or its successors and assigns, or other counsel satisfactory to the Manager (“**Tax Counsel**”), dated and delivered as of such Representation Date, in form and substance reasonably satisfactory to the Manager, of the same tenor as the opinion referred to in Section 5(g) of this Agreement, but modified as necessary to relate to the Registration Statement and the Prospectus and to any Permitted Free Writing Prospectuses, in each case as amended and supplemented to the time of delivery of such opinion; *provided* that the obligation of the Company under this subsection (t) shall be deferred for any Suspension Period and shall recommence upon the termination of such Suspension Period.

(u) Within two business days of each Representation Date, to furnish or cause to be furnished to the Manager forthwith a certificate of the Secretary or Assistant Secretary of the Company, dated and delivered as of such Representation Date, in form and substance reasonably satisfactory to the Manager but modified to relate to the Registration Statement and the Prospectus, in each case, as amended and supplemented to the date of such certificate; *provided* that the obligation of the Company under this subsection (u) shall be deferred for any Suspension Period and shall recommence upon the termination of such Suspension Period.

(v) Within two business days of each Representation Date, Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Manager, shall deliver a written opinion, dated and delivered as of such Representation Date, in form and substance satisfactory to the Manager; *provided* that the obligation of the Company under this subsection (v) shall be deferred for any Suspension Period and shall recommence upon the termination of such Suspension Period.

(w) Upon commencement of the offering of the Shares under this Agreement (and upon the recommencement of the offering of the Shares under this Agreement following the termination of a Suspension Period), and each time that (i) the Registration Statement or the Prospectus shall be amended or supplemented to include additional or amended financial information (other than an amendment or supplement effected by the filing with the Commission of any document incorporated by reference therein, which shall be subject to the provisions of subclauses (ii) and (iii) below, and other than any amendment or supplement relating solely to the issuance or offering of securities other than the Shares), (ii) the Company shall file an Annual Report on Form 10-K or a Quarterly Report on Form 10-Q (other than an amendment to an Annual Report on Form 10-K or amendment to a Quarterly Report on Form 10-Q filed with the Commission solely for the purpose of filing financial statements of a significant tenant, if required at any time), or (iii) upon reasonable request by the Manager and upon reasonable advance notice to the Company there is filed with the Commission any document (other than an amendment to an Annual Report on Form 10-K or amendment to a Quarterly Report on Form 10-Q or any Current Report on Form 8-K filed with the Commission solely for the purpose of filing financial statements of a significant tenant, if required at any time) incorporated by reference into the Prospectus which contains financial information, to cause the accountants, or other independent accountants satisfactory to the Manager, forthwith to furnish the Manager a letter, dated the date of the commencement of the offering, the date of effectiveness of such amendment, the date of filing of such supplement or other document with the Commission, or the date of such request, as the case may be, in form and substance satisfactory to the Manager, of the same tenor as the letter referred to in Section 5(d) of this Agreement but modified to relate to the Registration Statement and the Prospectus and to all Permitted Free Writing Prospectuses, in each case, as amended and supplemented to the date of such letter; *provided* that the obligation of the Company under this subsection (w) shall be deferred for any Suspension Period and shall recommence upon the termination of such Suspension Period.

(x) At, or promptly after, each Representation Date, to conduct a due diligence session, in form and substance, satisfactory to the Manager, which shall include representatives of the management and the accountants of the Company; *provided* that the obligation of the Company under this subsection (x) shall be deferred for any Suspension Period and shall recommence upon the termination of such Suspension Period.

(y) That the Company consents to the Manager trading in the Common Stock for the Manager's own account and for the account of its clients at the same time as sales of the Shares occur pursuant to this Agreement; *provided* that such trading does not violate any applicable laws, including applicable federal or state securities laws and all rules or regulations promulgated thereunder.

(z) If to the knowledge of the Company and the Operating Partnership, any condition set forth in Section 5(a), 5(j) or 5(k) of this Agreement shall not have been satisfied on the applicable Settlement Date, to offer to any person who has agreed to purchase the Shares from the Company as the result of an offer to purchase solicited by the Manager the right to refuse to purchase and pay for such Shares.

(aa) To use its commercially reasonable efforts to continue to qualify for taxation as a REIT under Sections 856 through 860 of the Code.

(bb) To disclose in its Quarterly Reports on Form 10-Q and in its Annual Report on Form 10-K the number of the Shares sold through or to the Manager under this Agreement, and the Net Proceeds to the Company with respect to sales of the Shares pursuant to this Agreement during the relevant quarter.

(cc) To ensure that prior to instructing the Manager to sell Shares the Company shall have obtained all necessary corporate authority for the offer and sale of such Shares.

(dd) That each delivery of sale instructions in accordance with Section 3(a)(i) of this Agreement and each delivery of Shares on a Settlement Date shall be deemed to be an affirmation to the Manager that the representations and warranties of the Company contained in or made pursuant to this Agreement are true and correct as of the date of such sale instruction or of such Settlement Date as though made at and as of such date, and an undertaking that such representations and warranties will be true and correct as of the Settlement Date for the Shares relating to such acceptance, as though made at and as of such date (except that such representations and warranties shall be deemed to relate to the Registration Statement and the Prospectus and to all Permitted Free Writing Prospectuses, in each case as amended and supplemented relating to such Shares).

Section 5. **Conditions of Manager's Obligations.** The obligations of the Manager hereunder are subject to (i) the accuracy of the representations and warranties on the part of the Company on the date hereof, any applicable Representation Date and as of each Settlement Date, (ii) the performance by the Company of its obligations hereunder and (iii) to the following additional conditions precedent.

(a) (i) No stop order with respect to the effectiveness of the Registration Statement shall have been issued under the Act or proceedings initiated under Section 8(d) or 8(e) of the Act, and no order preventing or suspending the use of the Prospectus has been issued by the Commission, and no suspension of the qualification of the Shares for offering or sale in any jurisdiction, or, to the knowledge of the Company and the Operating Partnership or the Manager, of the initiation or threatening of any proceedings for any of such purposes, has occurred; (ii) the Registration Statement and all amendments thereto shall not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; (iii) none of the Basic Prospectus or the Prospectus, and no amendment or supplement thereto, shall include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading; (iv) no Prospectus, together with any combination of one or more of the Permitted Free Writing Prospectuses, if any, and no amendment or supplement thereto, shall include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading; and (v) none of the Permitted Free Writing Prospectuses, if any, shall include an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading.

(b) Subsequent to the respective dates as of which information is given in the Registration Statement, the Basic Prospectus, the Prospectus and the Permitted Free Writing Prospectuses, if any, no material and unfavorable change, financial or otherwise (other than as referred to in the Registration Statement and Prospectus), in the business, condition or prospects of the Company and its Subsidiaries taken as a whole, in the judgment of the Manager, shall occur or become known and no transaction which is material and unfavorable to the Company (other than as referred to in the Registration Statement and Prospectus), in the judgment of the Manager, shall have been entered into by the Company or any of its Subsidiaries.

(c) The Company shall furnish to the Manager, at every date specified in Section 4(s) of this Agreement, opinion(s) of Company Counsel, addressed to the Manager, and dated as of such date, and in form and substance satisfactory to the Manager, in substantially the form set forth in Exhibit A hereto or as otherwise satisfactory to the Manager.

(d) At the dates specified in Section 4(w) of this Agreement, the Manager shall have received from the accountants letters dated the date of delivery thereof and addressed to the Manager in form and substance satisfactory to the Manager.

(e) The Company shall deliver to the Manager, at every date specified in Section 4(r) of this Agreement, a certificate of two of its executive officers to the effect that (i) the representations and warranties of the Company and the Operating Partnership as set forth in each Distribution Agreement are true and correct as of the Representation Date, (ii) the Company has performed all of its obligations under each Distribution Agreement as are to be performed at or before such Representation Date, and (iii) the conditions set forth in paragraphs (a) and (b) of Section 5 of each



Distribution Agreement have been met. The certificate shall also state that the Shares have been duly and validly authorized by the Company, that all corporate action required to be taken for the issuance and sale of the Shares has been validly and sufficiently taken, and that the Company's Board of Directors or any other body with authority has not revoked, rescinded or otherwise modified or withdrawn such authorization or corporate action.

(f) The Manager shall have received, at every date specified in Section 4(v) of this Agreement, an opinion of Skadden, Arps, Slate, Meagher & Flom LLP, counsel to the Manager, dated as of such date, and in form and substance satisfactory to the Manager.

(g) The Company shall furnish to the Manager, at every date specified in Section 4(t) of this Agreement, an opinion of Tax Counsel, addressed to the Manager, and dated as of such date, and in form and substance satisfactory to the Manager, in substantially the form set forth in Exhibit B hereto or as otherwise satisfactory to the Manager.

(h) The Manager shall have received, at every date specified in Section 4(u) of this Agreement, a certificate of the Secretary or Assistant Secretary of the Company, dated as of such date, in form and substance satisfactory to the Manager but modified to relate to the Registration Statement and the Prospectus, in each case, as amended and supplemented to the date of such certificate.

(i) At every date specified in Section 4(x) of this Agreement, the Company shall have furnished to the Manager such further information, certificates and documents as the Manager may reasonably request.

(j) All filings related to the offering of the Shares with the Commission required by Rule 424 or Rule 433 under the Act shall have been made within the applicable time period prescribed for such filing by Rule 424 (without reliance on Rule 424(b)(8)) and Rule 433, respectively.

(k) The Shares shall have been approved for listing on the NYSE, subject only to notice of issuance at or prior to the Settlement Date.

Section 6. Indemnification and Contribution.

(a) The Company agrees to indemnify, defend and hold harmless the Manager, its affiliates, its directors, officers, employees and agents and any person who controls the Manager within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, from and against any loss, damage, expense, liability or claim (including, without limitation, reasonable legal fees and other expenses incurred in connection with any suit, action or proceeding or any claim asserted, as such fees and expenses are incurred), which, jointly or severally, the Manager or any such person may incur under the Act, the Exchange Act, the common law or otherwise, insofar as such loss, damage, expense, liability or claim arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or in the Registration Statement as amended by any post-effective amendment thereof by the Company) or

arises out of or is based upon any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, except insofar as any such loss, damage, expense, liability or claim arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in, and in conformity with information concerning the Manager furnished in writing by or on behalf of the Manager to the Company expressly for use in, the Registration Statement or arises out of or is based upon any omission or alleged omission to state a material fact in the Registration Statement in connection with such information, which material fact was not contained in such information and which material fact was required to be stated in such Registration Statement or was necessary to make such information not misleading or (ii) any untrue statement or alleged untrue statement of a material fact included in any Prospectus (the term Prospectus for the purpose of this Section 6 being deemed to include any Basic Prospectus, any Prospectus Supplement, any Prospectus and any amendments or supplements to the foregoing), in any Permitted Free Writing Prospectus, in any "issuer information" (as defined in Rule 433 under the Act) of the Company or in any Prospectus together with any combination of one or more of the Permitted Free Writing Prospectuses, if any, or arises out of or is based upon any omission or alleged omission to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, except, with respect to such Prospectus or Permitted Free Writing Prospectus, insofar as any such loss, damage, expense, liability or claim arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in, and in conformity with information concerning the Manager furnished in writing by or on behalf of the Manager to the Company expressly for use in, such Prospectus or Permitted Free Writing Prospectus or arises out of or is based upon any omission or alleged omission to state a material fact in such Prospectus or Permitted Free Writing Prospectus in connection with such information, which material fact was not contained in such information and which material fact was necessary in order to make the statements in such information, in the light of the circumstances under which they were made, not misleading.

(b) The Manager agrees to indemnify, defend and hold harmless the Company, its directors and officers, and any person who controls the Company within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, to the same extent as the indemnity set forth in paragraph (a) above, but only with respect to any losses, damages, expenses, liabilities or claims arising out of or based upon (i) any untrue statement or alleged untrue statement of a material fact contained in, and in conformity with information concerning the Manager furnished in writing by or on behalf of the Manager to the Company expressly for use in, the Registration Statement (or in the Registration Statement as amended by any post-effective amendment thereof by the Company), or arises out of or is based upon any omission or alleged omission to state a material fact in such Registration Statement in connection with such information, which material fact was not contained in such information and which material fact was required to be stated in such Registration Statement or was necessary to make such information not misleading or (ii) any untrue statement or alleged untrue statement of a material fact contained in, and in conformity with information concerning the Manager furnished in writing by or on behalf of the Manager to the Company expressly for use in, the Prospectus or a Permitted Free Writing Prospectus, or arises out of or is based upon any omission or alleged omission to state a material fact in the Prospectus or a Permitted Free Writing Prospectus in connection with such information, which material fact was not contained in such information and which material fact was necessary in order to make the statements in such information, in the light of the circumstances under which they were made, not misleading.

(c) If any action, suit or proceeding (each, a “**Proceeding**”) is brought against a person (an “indemnified party”) in respect of which indemnity may be sought against the Company or the Manager (as applicable, the “indemnifying party”) pursuant to subsection (a) or (b), respectively, of this Section 6, such indemnified party shall promptly notify such indemnifying party in writing of the institution of such Proceeding and such indemnifying party shall have the right to assume the defense of such Proceeding, including the employment of counsel reasonably satisfactory to such indemnified party and payment of all fees and expenses; *provided, however*, that the failure to provide prompt notice to such indemnifying party shall not relieve such indemnifying party from any liability which such indemnifying party may have to any indemnified party or otherwise, other than to the extent that such indemnifying party is materially prejudiced by such failure. The indemnified party or parties shall have the right to employ its or their own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of such indemnified party or parties unless the employment of such counsel shall have been authorized in writing by the indemnifying party in connection with the defense of such Proceeding or the indemnifying party shall not have, within a reasonable period of time in light of the circumstances, employed counsel to defend such Proceeding or such indemnified party or parties shall have reasonably concluded based on advice of counsel that there may be defenses available to it or them which are different from, additional to or in conflict with those available to such indemnifying party (in which case such indemnifying party shall not have the right to direct the defense of such Proceeding on behalf of the indemnified party or parties), in any of which events such fees and expenses shall be borne by such indemnifying party and paid as incurred (it being understood, however, that such indemnifying party (i) shall only be liable for fees and expenses of separate counsel to the extent such fees and expenses are reasonable and (ii) shall not be liable for the fees and expenses of more than one separate counsel (in addition to any local counsel) in any one Proceeding or series of related Proceedings in the same jurisdiction representing the indemnified parties who are parties to such Proceeding, including Alternative Managers). The indemnifying party shall not be liable for any settlement of any Proceeding effected without its written consent but, if settled with its written consent, such indemnifying party agrees to indemnify and hold harmless the indemnified party or parties from and against any loss or liability, as incurred, by reason of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened Proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such Proceeding and does not include an admission of fault or culpability or a failure to act by or on behalf of such indemnified party.

(d) If the indemnification provided for in this Section 6 is unavailable to an indemnified party under subsections (a) and (b) of this Section 6 or insufficient to hold an indemnified party harmless in respect of any losses, damages, expenses, liabilities or claims referred to therein, then each applicable indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, damages, expenses, liabilities or claims (i) in such proportion as is appropriate to reflect the relative benefits received by the Company, on the one hand, and the Manager, on the other hand, from the offering of the Shares

or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company, on the one hand, and of the Manager, on the other, in connection with the statements or omissions which resulted in such losses, damages, expenses, liabilities or claims, as well as any other relevant equitable considerations. The relative benefits received by the Company, on the one hand, and the Manager, on the other, shall be deemed to be in the same respective proportions as the total proceeds from the offering (net of underwriting discounts and commissions but before deducting expenses) received by the Company, and the total underwriting discounts and commissions received by the Manager, bear to the aggregate public offering price of the Shares. The relative fault of the Company, on the one hand, and of the Manager, on the other, shall be determined by reference to, among other things, whether the untrue statement or alleged untrue statement of a material fact or omission or alleged omission relates to information supplied by the Company or by the Manager and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid or payable by a party as a result of the losses, damages, expenses, liabilities and claims referred to in this subsection shall be deemed to include any legal or other fees or expenses reasonably incurred by such party in connection with investigating, preparing to defend or defending any Proceeding.

(e) The Company and the Manager agree that it would not be just and equitable if contribution pursuant to this Section 6 were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in subsection (d) above. Notwithstanding the provisions of this Section 6, the Manager shall not be required to contribute any amount in excess of commissions received by it under this Agreement. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(f) The Company and the Manager agree to promptly notify each other of the commencement of any Proceeding against it and, in the case of the Company, against any of the Company's officers or directors in connection with the issuance and sale of the Shares, or in connection with the Registration Statement, the Basic Prospectus, the Prospectus or any Permitted Free Writing Prospectus.

Section 7. Representations and Agreements to Survive Delivery. The indemnity and contribution agreements contained in Section 6 and the covenants, warranties and representations of the Company and the Operating Partnership contained in this Agreement or in certificates delivered pursuant hereto shall remain in full force and effect regardless of any investigation made by or on behalf of the Manager or any of its affiliates or its directors, officers, employees or agents or any person (including each director, officer, employee or agent of such person) who controls the Manager within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, or by or on behalf of the Company, its directors or officers or any person who controls the Company within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, and shall survive any termination of this Agreement or the issuance and delivery of the Shares.

Section 8. Termination.

(a) The Company shall have the right, by giving written notice as hereinafter specified, to terminate the provisions of this Agreement relating to the solicitation of offers to purchase the Shares in its sole discretion at any time. Any such termination shall be without liability of any party to any other party except that (i) if any of the Shares have been sold through the Manager for the Company, then Section 4(z) shall remain in full force and effect, (ii) with respect to any pending sale, through the Manager for the Company, the obligations of the Company and the Operating Partnership, including in respect of compensation of the Manager, shall remain in full force and effect notwithstanding the termination and (iii) the provisions of Sections 4(k), 6, 7, 9, 10, 11, 15, 16, 17, 18, 19 and 20 of this Agreement shall remain in full force and effect notwithstanding such termination.

(b) The Manager shall have the right, by giving written notice as hereinafter specified, to terminate the provisions of this Agreement relating to the solicitation of offers to purchase the Shares in its sole discretion at any time. Any such termination shall be without liability of any party to any other party except that the provisions of Sections 4(k), 6, 7, 9, 10, 11, 15, 16, 17, 18, 19 and 20 of this Agreement shall remain in full force and effect notwithstanding such termination.

(c) This Agreement shall remain in full force and effect unless terminated pursuant to Sections 8(a) or 8(b) above or otherwise by mutual agreement of the parties; *provided* that any such termination by mutual agreement shall in all cases be deemed to provide that the provisions of Sections 4(k), 6, 7, 9, 10, 11, 15, 16, 17, 18, 19 and 20 of this Agreement shall remain in full force and effect notwithstanding such termination.

(d) Any termination of this Agreement shall be effective on the date specified in such notice of termination; *provided* that such termination shall not be effective until the close of business on the date of receipt of such notice by the Manager or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of the Shares, such sale shall settle in accordance with the provisions of Section 3(a)(vi) of this Agreement.

(e) Notwithstanding the foregoing, the term of this Agreement shall commence on the date of this Agreement and expire on the earliest to occur of (i) the date on which the Maximum Amount of Shares have been sold under this Agreement and any Alternative Equity Distribution Agreement, (ii) the date this Agreement is terminated pursuant to Sections 8(a), (b) or (c) above or (iii) three years from the date of this Agreement.

Section 9. Notices. Except as otherwise herein provided, all statements, requests, notices and agreements under this Agreement shall be in writing and delivered by hand, overnight courier, mail or facsimile and, if to the Manager, shall be sufficient in all respects if delivered or sent to \_\_\_\_\_], with copies to Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036, Fax No. (212) 735-2000, Attention: David J. Goldschmidt, and if to the Company, it shall be sufficient in all respects if delivered or sent to the Company at the offices of the Company at Medical Properties Trust, Inc., 1000 Urban Center Drive, Suite 501, Birmingham, Alabama 35242, Fax No. (205) 969-3756, Attention: Charles Lambert, with copies to Goodwin Procter LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018, Fax No. (212) 355-3333, Attention: Yoel Kranz, Esq. Each party to this Agreement may change such address for notices by sending to the parties to this Agreement written notice of a new address for such purpose.

Section 10. Parties at Interest. The Agreement herein set forth has been and is made solely for the benefit of the Manager, the Company and the Operating Partnership and to the extent provided in Section 6 of this Agreement the controlling persons, directors and officers referred to in such section, and their respective successors, assigns, heirs, personal representatives and executors and administrators. No other person, partnership, association or corporation (including a purchaser, as such purchaser, from the Manager) shall acquire or have any right under or by virtue of this Agreement.

Section 11. No Fiduciary Relationship. The Company and the Operating Partnership hereby acknowledge that the Manager is acting solely as sales agent and/or principal in connection with the purchase and sale of the Company's securities. The Company and the Operating Partnership further acknowledge that the Manager is acting pursuant to a contractual relationship created solely by this Agreement entered into on an arm's length basis, and in no event do the parties intend that the Manager act or be responsible as a fiduciary to the Company and the Operating Partnership, their management, stockholders or creditors or any other person in connection with any activity that the Manager may undertake or have undertaken in furtherance of the purchase and sale of the Company's securities, either before or after the date hereof. The Manager hereby expressly disclaims any fiduciary or similar obligations to the Company and the Operating Partnership, either in connection with the transactions contemplated by this Agreement or any matters leading up to such transactions, and the Company and the Operating Partnership hereby confirm their understanding and agreement to that effect. The Company and the Manager agree that they are each responsible for making their own independent judgments with respect to any such transactions and that any opinions or views expressed by the Manager to the Company regarding such transactions, including, but not limited to, any opinions or views with respect to the price or market for the Company's securities, do not constitute advice or recommendations to the Company. The Company and the Operating Partnership hereby waive and release, to the fullest extent permitted by law, any claims that the Company and the Operating Partnership may have against the Manager with respect to any breach or alleged breach of any fiduciary or similar duty to the Company and the Operating Partnership in connection with the transactions contemplated by this Agreement or any matters leading up to such transactions.

Section 12. Press Releases and Disclosure. The Company may issue a press release in compliance with Rule 134 under the Act describing the material terms of the transactions contemplated hereby as soon as practicable following the date hereof, and may file with the Commission a Current Report on Form 8-K describing the material terms of the transaction contemplated hereby, and the Company shall consult with the Manager prior to making such disclosures, and the parties shall use all reasonable efforts, acting in good faith, to agree upon a text for such disclosures that is reasonably satisfactory to all parties. No party hereto shall issue thereafter any Current Report on Form 8-K or press release or like public statement (including, without limitation, any disclosure required in reports filed with the Commission pursuant to the Exchange Act) related to this Agreement or any of the transactions contemplated hereby without the prior written approval of the other party, except as may be necessary or appropriate in the opinion of the party seeking to make disclosure to comply with the requirements of applicable law or stock exchange rules. If any such press release or like public statement is so required, the party making such disclosure shall consult with the other party prior to making such disclosure, and the parties shall use all reasonable efforts, acting in good faith, to agree upon a text for such disclosure that is reasonably satisfactory to all parties.

Section 13. Adjustments for Stock Splits. The parties acknowledge and agree that all share-related numbers contained in this Agreement shall be adjusted to take into account any stock split, stock dividend, reverse stock split or similar transaction effected with respect to the Shares.

Section 14. Entire Agreement. This Agreement constitutes the entire agreement and supersedes all other prior and contemporaneous agreements and undertakings, both written and oral, among the parties hereto with regard to the subject matter hereof.

Section 15. Counterparts. This Agreement may be signed by the parties in one or more counterparts which together shall constitute one and the same agreement among the parties.

Section 16. Law; Construction. This Agreement and any claim, counterclaim or dispute of any kind or nature whatsoever arising out of or in any way relating to this Agreement (“**Claim**”), directly or indirectly, shall be governed by, and construed in accordance with, the internal laws of the State of New York.

Section 17. Headings. The Section headings in this Agreement have been inserted as a matter of convenience of reference and are not a part of this Agreement.

Section 18. Submission to Jurisdiction. Except as set forth below, no Claim may be commenced, prosecuted or continued in any court other than the courts of the State of New York located in the City and County of New York or in the United States District Court for the Southern District of New York, which courts shall have jurisdiction over the adjudication of such matters, and the Company and the Operating Partnership consent to the jurisdiction of such courts and personal service with respect thereto. The Company and the Operating Partnership hereby consent to personal jurisdiction, service and venue in any court in which any Claim arising out of or in any way relating to this Agreement is brought by any third party against the Manager or any indemnified party. Each of the Manager, the Company (on its behalf and, to the extent permitted by applicable law, on behalf of its stockholders and affiliates) and the Operating Partnership waives all right to trial by jury in any action, proceeding or counterclaim (whether based upon

contract, tort or otherwise) in any way arising out of or relating to this Agreement. The Company and the Operating Partnership agree that a final judgment in any such action, proceeding or counterclaim brought in any such court shall be conclusive and binding upon the Company and the Operating Partnership and may be enforced in any other courts to the jurisdiction of which the Company and the Operating Partnership are or may be subject, by suit upon such judgment.

Section 19. Use of Information. The Manager may not use any information gained in connection with this Agreement and the transactions contemplated by this Agreement, including due diligence, to advise any party with respect to transactions not expressly approved by the Company.

Section 20. Successors and Assigns. This Agreement shall be binding upon the Manager and the Company and their successors and assigns and any successor or assign of any substantial portion of the Company's and the Manager's respective businesses and/or assets.

Section 21. Miscellaneous. The Manager is solely responsible for its own contractual obligations and commitments, including obligations with respect to sales and purchases of securities. Securities sold, offered or recommended by the Manager are not deposits, are not insured by the Federal Deposit Insurance Corporation, are not guaranteed by a branch or agency, and are not otherwise an obligation or responsibility of a branch or agency.

*[Signature Page Follows]*



If the foregoing correctly sets forth the understanding among the Company, the Operating Partnership and the Manager, please so indicate in the space provided below for that purpose, whereupon this Agreement and your acceptance shall constitute a binding agreement among the Company, the Operating Partnership and the Manager. Alternatively, the execution of this Agreement by the Company and the Operating Partnership and its acceptance by or on behalf of the Manager may be evidenced by an exchange of telegraphic or other written communications.

Very truly yours,

**MEDICAL PROPERTIES TRUST, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**MPT OPERATING PARTNERSHIP, L.P.**

By: MEDICAL PROPERTIES TRUST, LLC, ITS  
GENERAL PARTNER

By: MEDICAL PROPERTIES TRUST, INC., ITS SOLE  
MEMBER

By: \_\_\_\_\_  
Name:  
Title:

**ACCEPTED** as of the date  
first above written:

[Name of Manager]

By: \_\_\_\_\_  
Name:  
Title:

**ALTERNATIVE MANAGERS**

[Credit Agricole Securities (USA) Inc.]

[Credit Suisse Securities (USA) LLC]

[MUFG Securities Americas Inc.]

[Raymond James & Associates, Inc.]

[RBC Capital Markets, LLC]

[Stifel, Nicolaus & Company, Incorporated]

[SunTrust Robinson Humphrey, Inc.]

[Wells Fargo Securities, LLC]

## [GOODWIN PROCTER LLP LETTERHEAD]

November 13, 2017

Medical Properties Trust, Inc.  
1000 Urban Center Drive, Suite 501  
Birmingham, AL 35242

Re: Securities Registered under Registration Statement on Form S-3

Ladies and Gentlemen:

We have acted as counsel to you in connection with your filing of a Registration Statement on Form S-3 (File No. 333-208813) (as amended or supplemented, the "Registration Statement") filed on December 31, 2015 with the Securities and Exchange Commission (the "Commission") pursuant to the Securities Act of 1933, as amended (the "Securities Act"), relating to the registration of the offering by Medical Properties Trust, Inc., a Maryland corporation (the "Company") of any combination of securities of the types specified therein. The Registration Statement became effective upon filing on December 31, 2015. Reference is made to our opinion letter dated December 31, 2015 and included as Exhibit 5.1 to the Registration Statement. We are delivering this supplemental opinion letter in connection with the prospectus supplement (the "Prospectus Supplement") filed on November 13, 2017 by the Company with the Commission pursuant to Rule 424 under the Securities Act. The Prospectus Supplement relates to the offering by the Company of up to \$750,000,000 in shares (the "Shares") of the Company's common stock, par value \$0.001 per share ("Common Stock") covered by the Registration Statement. The Shares are being offered and sold by the sales agent(s) named in, and pursuant to, distribution agreement(s) among the Company and such sales agent(s) (the "Distribution Agreement(s)").

We have reviewed such documents and made such examination of law as we have deemed appropriate to give the opinions set forth below. We have relied, without independent verification, on certificates of public officials and, as to matters of fact material to the opinions set forth below, on certificates of officers of the Company.

For purposes of the opinion set forth below, we have assumed that the Shares are issued for a price per share equal to or greater than the minimum price authorized by the Company's board of directors prior to the date hereof (the "Minimum Price") and, in the future, the Company does not issue shares of Common Stock or reduce the total number of shares of Common Stock that the Company is authorized to issue under its articles of incorporation such that the number of authorized but unissued shares of Common Stock under the Company's articles of incorporation is less than the number of unissued Shares that may be issued for the Minimum Price.

The opinion set forth below is limited to the Maryland General Corporation Law.

Based on the foregoing, we are of the opinion that the Shares have been duly authorized and, when issued delivered and paid for in accordance with the Distribution Agreement(s) and in exchange for a price per share equal to or greater than the minimum price authorized by the Company's board of directors, will be validly issued, fully paid and nonassessable.

This opinion is being furnished to you for submission to the Commission as an exhibit to the Company's Current Report on Form 8-K relating to the Shares (the "Current Report"), which is incorporated by reference in the Registration Statement. We hereby consent to the filing of this opinion letter as an exhibit to the Current Report and its incorporation by reference and the reference to our firm in that report. In giving our consent, we do not admit that we are in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.

Very truly yours,

/s/ GOODWIN PROCTER LLP

GOODWIN PROCTER LLP

WELLS FARGO TOWER  
420 20TH STREET NORTH  
SUITE 1400  
BIRMINGHAM, ALABAMA 35203PHONE: 205.328.0480  
FAX: 205.322.8007[www.bakerdonelson.com](http://www.bakerdonelson.com)

November 13, 2017

Medical Properties Trust, Inc.  
1000 Urban Center Drive, Suite 501  
Birmingham, Alabama 35242Re: Medical Properties Trust, Inc.  
Qualification as a Real Estate Investment Trust

Dear Ladies and Gentlemen:

We have acted as counsel to Medical Properties Trust, Inc., a Maryland corporation (the "Company"), in connection with the preparation of the prospectus supplement dated November 13, 2017 (the "Prospectus Supplement") to the registration statement and prospectus (the "Prospectus") filed by the Company with the Securities and Exchange Commission on December 31, 2015 (collectively the "Registration Statement"). You have requested our opinion regarding certain United States federal income tax matters.

The Company, through MPT Operating Partnership, L.P., a Delaware limited partnership, (the "Operating Partnership") and its subsidiary limited liability companies and partnerships, owns interests in healthcare facilities. The Operating Partnership also owns MPT Development Services, Inc., a Delaware corporation and MPT Finance Corporation, a Delaware corporation. Each of MPT Development Services, Inc. and MPT Finance Corporation have made joint elections with the Company for each to be a taxable REIT subsidiary for federal income tax purposes under Section 856(l) of the Internal Revenue Code of 1986, as amended (the "Code").

In giving the opinions rendered below, we have examined the following documents:

1. The Company's Articles of Incorporation filed on August 27, 2003 with the Department of Assessments and Taxation of the State of Maryland, as amended and restated by Second Articles of Amendment and Restatement filed on March 29, 2004 and as corrected by the Certificate of Correction to the Second Articles of Amendment and Restatement filed on January 3, 2005, as further amended by Articles of Amendment to the Second Articles of Amendment and Restatement filed October 20, 2005, Articles of Amendment filed January 9, 2009, Articles of Amendment filed January 30, 2012, Articles of Amendment filed June 23, 2015 and Articles of Amendment filed August 4, 2015;

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2. The Company's Second Amended and Restated Bylaws, as amended;
3. The Prospectus Supplement;
4. The Registration Statement;
5. The Prospectus;
6. The First Amended and Restated Agreement of Limited Partnership of the Operating Partnership dated February 29, 2004 and all amendments thereto and the Second Amended and Restated Agreement of Limited Partnership of the Operating Partnership dated July 31, 2007 (the "Operating Partnership Agreement"), as amended; and
7. Such other documents as we have deemed necessary or appropriate.

In connection with the opinions rendered below, we have assumed, with your consent, that:

1. each of the documents referred to above has been duly authorized, executed, and delivered; is authentic, if an original, or is accurate, if a copy; and has not been amended;
2. except for the Company, for which no assumption is made, each partner of the Operating Partnership (a "Partner") that is a corporation or other entity has a valid legal existence; and
3. each Partner has full power, authority, and legal right to enter into and to perform the terms of the Operating Partnership Agreement and the transactions contemplated thereby.

In connection with the opinions rendered below, we also have relied upon the correctness of the factual representations and covenants contained in that certain certificate dated November 13, 2017 executed by R. Steven Hamner as Executive Vice President and Chief Financial Officer of the Company (the "Officer's Certificate"). To the extent such representations and covenants speak to the intended ownership or operations of the Company, we assume that the Company will in fact be owned and operated in accordance with such stated intent.

Based on the documents and assumptions set forth above and the factual representations set forth in the Officer's Certificate, we are of the opinion that:

- (a) The Company is and has been qualified to be taxed as a real estate investment trust (a "REIT") pursuant to Sections 856 through 860 of the Code commencing with its initial taxable year ended December 31, 2004, and the Company's current and proposed method of operations as described in the Registration Statement and as represented to us by the Company satisfies currently, and will enable the Company to continue to satisfy in the future, the requirements for such qualification and taxation as a REIT under the Code; and

- (b) The descriptions of the law and the legal conclusions contained in the Registration Statement under the caption “United States Federal Income Tax Considerations” are correct in all material respects, and the discussion thereunder fairly summarizes the federal income tax considerations that are likely to be material to a holder of the common stock of the Company.

We will not review on a continuing basis the Company’s compliance with the documents or assumptions set forth above, or the representations set forth in the Officer’s Certificate. Accordingly, no assurance can be given that the actual results of the Company’s operations for any given taxable year will satisfy the requirements for qualification and taxation as a REIT.

The foregoing opinions are based on current provisions of the Code and the Treasury regulations promulgated thereunder (the “Regulations”), published administrative interpretations thereof, and published court decisions. The Internal Revenue Service has not issued Regulations or administrative interpretations with respect to various provisions of the Code relating to REIT qualification. No assurance can be given that the law will not change in a way that will prevent the Company from qualifying as a REIT.

The foregoing opinions are limited to the United States federal income tax matters addressed herein, and no other opinions are rendered with respect to other federal tax matters or to any issues arising under the tax laws of any other country, or any state or locality. We undertake no obligation to update the opinions expressed herein after the date of this letter. This opinion letter is solely for the information and use of the addressee and the purchasers of the securities of the Company pursuant to the Registration Statement (except as provided in the next paragraph), and it speaks only as of the date hereof. Except as provided in the next paragraph, this opinion letter may not be distributed, relied upon for any purpose by any other person, quoted in whole or in part or otherwise reproduced in any document, or filed with any governmental agency without our prior express written consent.

We hereby consent to the filing of this opinion letter as Exhibit 8.1 to the Company’s Current Report on Form 8-K dated November 13, 2017. We also consent to the references to Baker Donelson, Bearman, Caldwell & Berkowitz, P.C. under the captions “United States Federal Income Tax Considerations” and “Legal Matters” in the Registration Statement. In giving this consent, we do not admit that we are in the category of the persons whose consent is required by Section 7 of the Securities Act of 1933, as amended, or the rules and regulations promulgated thereunder by the SEC.

Very truly yours,

/s/ Baker Donelson, Bearman, Caldwell & Berkowitz, P.C.