UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): February 11, 2026

HIGHWOODS PROPERTIES, INC.
(Exact name of registrant as specified in its charter)

Maryland	**001-13100**	**56-1871668**
(State or other jurisdiction of incorporation or organization)	(Commission File Number)	(I.R.S. Employer Identification Number)

HIGHWOODS REALTY LIMITED PARTNERSHIP
(Exact name of registrant as specified in its charter)

North Carolina	**000-21731**	**56-1869557**
(State or other jurisdiction of incorporation or organization)	(Commission File Number)	(I.R.S. Employer Identification Number)

150 Fayetteville Street, Suite 1400
Raleigh, NC 27601
(Address of principal executive offices) (Zip Code)

919-872-4924
(Registrants' telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrants 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. ☐

Securities registered pursuant to Section 12(b) of the Act:

Title of Each Class	**Trading Symbol(s)**	**Name of Each Exchange on Which Registered**
Common Stock, $.01 par value, of Highwoods Properties, Inc.	HIW	New York Stock Exchange

Item 8.01. Other Events.

On February 11, 2026, Highwoods Properties, Inc. (the "Company") and Highwoods Realty Limited Partnership entered into separate equity distribution agreements (collectively, the "equity distribution agreements") with each of Wells Fargo Securities, LLC, BofA Securities, Inc., BTIG, LLC, Jefferies LLC, J.P. Morgan Securities LLC, TD Securities (USA) LLC and Truist Securities, Inc. (and certain of their respective affiliates or agents), acting in their capacity as Agents, Forward Sellers and/or Forward Purchasers (each as defined in the equity distribution agreements), as applicable, and, in the case of Jefferies LLC, also acting in its capacity as Warrant Hedge Seller and/or Warrant Purchaser (each as defined in the equity distribution agreements), as applicable, relating to the offer and sale of shares of the Company's common stock having an aggregate gross sales price of up to $300 million (the "Shares").

Sales of the Shares, if any, may be made in negotiated transactions, which may include block trades, or transactions that are deemed to be "at the market" offerings as defined in Rule 415 under the Securities Act of 1933, as amended (the "Securities Act"), including sales made directly on the New York Stock Exchange or sales made to or through a market maker other than on an exchange.

The equity distribution agreements provide that, in addition to the issuance and sale of the Shares through the Agents, the Company may enter into forward sale agreements under separate master forward sale agreements and related supplemental confirmations between the Company and a Forward Seller or its affiliate or agent. In connection with each particular forward sale agreement, the relevant Forward Purchaser (or an affiliate or agent thereof) will borrow from third parties and, through the relevant Forward Seller, sell a number of shares of the Company's common stock equal to the number of shares of the Company's common stock underlying the particular forward sale agreement.

The Company will not initially receive any proceeds from the sale of borrowed shares of the Company's common stock by a Forward Seller. The Company expects to fully physically settle each particular forward sale agreement with the relevant Forward Purchaser on one or more dates specified by the Company on or prior to the maturity date of the particular forward sale agreement, in which case the Company expects to receive aggregate net cash proceeds at settlement equal to the number of Shares underlying the particular forward sale agreement multiplied by the relevant forward sale price. However, the Company may also elect to cash settle or net share settle a particular forward sale agreement, in which case the Company may not receive any proceeds from the issuance of shares of the Company's common stock, and the Company will instead receive or pay cash (in the case of cash settlement) or receive or deliver shares of its common stock (in the case of net share settlement).

The equity distribution agreement with Jefferies LLC provides that, in addition to the issuance and sale of shares of the Company's common stock by the Company through the Agent and the entry into the forward sale agreements described above, the Company may sell warrants to purchase shares of the Company's common stock to Jefferies LLC under a separate master warrant sale agreement and related supplemental confirmations between the Company and Jefferies LLC. In connection with each particular warrant sale agreement, the Warrant Purchaser (or an affiliate or agent thereof) will borrow from third parties and, through the Warrant Hedge Seller, sell a number of shares of the Company's common stock equal to the number of shares underlying such warrant sale agreement. The Company expects that the strike price of the warrants will be above, but not substantially above, the volume-weighted average sale price per share at which the Warrant Hedge Seller established its hedge position in respect of such warrant sale agreement.

The Company will not receive any proceeds from the sale of borrowed shares of the Company's common stock by the Warrant Hedge Seller, but the Company will initially receive a premium for the warrants sold under each particular warrant sale agreement. To the extent the Warrant Purchaser exercises such warrants, which may occur in whole or in part from time to time following the entry into such warrant sale agreement and prior to the expiry of such warrants, the Company will physically settle each warrant, in which case the Company will deliver to the Warrant Purchaser shares of the Company's common stock equal to the number of shares of the Company's common stock underlying such exercised warrants and will receive aggregate net cash proceeds at settlement equal to such number of shares so delivered multiplied by the relevant settlement price for such exercised warrants, which is equal to the product of (i) the strike price for such exercised warrants and (ii) one minus a mutually agreed percentage that will not exceed, but may be lower than, 1.5%.

Each Agent will be entitled to compensation that will not exceed, but may be lower than, 1.5% of the gross sales price of all Shares sold through it as Agent from time to time under the applicable equity distribution agreement. In connection with each forward sale agreement, the Company will pay the Forward Seller, in the form of a reduced initial forward sale price under the particular forward sale agreement, commissions at a mutually agreed rate that will not exceed, but may be lower than, 1.5% of the gross sales price of all borrowed Shares sold by it as a Forward Seller. In connection with each warrant sale agreement, the Company will pay the Warrant Hedge Seller, in the form of a deduction from the net cash proceeds the Company receives at

settlement for each exercised warrant, at a mutually agreed percentage of the strike price for such exercised warrants that will not exceed, but may be lower than, 1.5%. Each of the Agents, the Forward Sellers, the Forward Purchasers, the Warrant Hedge Seller and/or the Warrant Purchaser may be deemed an "underwriter" within the meaning of the Securities Act, and the compensation paid to the Agents, the Forward Sellers or the Warrant Hedge Seller in the form of a reduced initial forward sale price under the forward sale agreements or in the form of reduced net cash proceeds the Company receive at settlement for any exercised warrants, as applicable, may be deemed to be underwriting discounts or commissions.

The Company also may sell some or all of the Shares to an Agent as principal for its own account at a price agreed upon at the time of sale.

The Shares will be issued pursuant to the Company's automatic shelf registration statement on Form S-3 (Registration No. 333-293352), as amended, including the related prospectus, dated February 10, 2026, and a prospectus supplement, dated February 11, 2026, as the same may be amended or supplemented.

The foregoing descriptions of the equity distribution agreements, the master forward sale agreements and the master warrant sale agreements do not purport to be complete and are qualified in their entirety by reference to the exhibits filed with this current report on Form 8-K.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

No.	Description
1.1	Form of Equity Distribution Agreement without Warrants
1.2	Form of Equity Distribution Agreement with Warrants
1.3	Form of Master Forward Confirmation
1.4	Form of Master Warrant Confirmation
5	Opinion of Paul Hastings LLP regarding the legality of the shares
8	Opinion of Paul Hastings LLP as to certain tax matters (incorporated herein by reference to Exhibit 8.1 to the Registration Statement on Form S-3 (File No. 333-293352))
23.1	Consent of Paul Hastings LLP (included in Exhibit 5)
23.2	Consent of Paul Hastings LLP (included in Exhibit 8)
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

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

HIGHWOODS PROPERTIES, INC.

By: /s/ Jeffrey D. Miller

Jeffrey D. Miller

Executive Vice President, General Counsel and Secretary

HIGHWOODS REALTY LIMITED PARTNERSHIP

By: Highwoods Properties, Inc., its general partner

By: /s/ Jeffrey D. Miller

Jeffrey D. Miller

Executive Vice President, General Counsel and Secretary

Dated: February 11, 2026

Exhibit 1.1

Highwoods Properties, Inc.

Common Stock
($0.01 par value)

EQUITY DISTRIBUTION AGREEMENT

February 11, 2026

[•]
[•]
[•]
[•]

Ladies and Gentlemen:

Highwoods Properties, Inc., a Maryland corporation (the "Company"), and Highwoods Realty Limited Partnership, a North Carolina limited partnership (the "Operating Partnership"), propose, subject to the terms and conditions stated herein, to issue and sell from time to time to or through [•] (in its capacity as purchaser under any Forward Contract (as defined below), the "Forward Purchaser") and [•] (in its capacity as agent for the Company and/or principal in connection with the offering and sale of any Issuance Securities (as defined below) hereunder, "Agent," and in its capacity as agent for the Forward Purchaser in connection with the offering and sale of any Forward Hedge Securities (as defined below) hereunder, the "Forward Seller"), shares of the Company's common stock, $0.01 par value per share (the "Common Stock"), having an aggregate gross sales price of up to $300,000,000 (the "Maximum Amount") on the terms set forth in Section 5 of this Equity Distribution Agreement (this "Agreement").

The Company and the Operating Partnership have also entered into separate equity distribution agreements (the "Separate Equity Distribution Agreements"), dated of even date herewith, with each of [•], [•], [•], [•], [•], [•] and [•] (and, as applicable, their respective affiliates or agents) (collectively, in the capacity as agent and/or principal, forward seller, forward purchaser, warrant hedge seller and warrant purchaser thereunder, as applicable, the "Separate Agents"), for the issuance (in the case of the Issuance Securities) or borrowing (in the case of Forward Hedge Securities and Warrant Hedge Securities (as defined below)) and sale from time to time of shares of Common Stock through the applicable Separate Agents on the terms set forth in the applicable Separate Equity Distribution Agreements. The Company and the Operating Partnership may also in the future enter into additional equity distribution agreements (if any, together with the Separate Equity Distribution Agreements, the "Alternative Equity Distribution Agreements") with one or more additional agents and/or principals, forward sellers and forward purchasers (if any, together with the Separate Agents, the "Alternative Agents"). The aggregate gross sales price of the Securities that may be sold pursuant to this Agreement and the Alternative Equity Distribution Agreements shall not exceed the Maximum Amount.

As used in this Agreement, the following terms have the respective meanings set forth below:

"Actual Sold Forward Amount" means, for any Forward Hedge Selling Period for any Forward, the number of Forward Hedge Securities that the Forward Seller has sold during such Forward Hedge Selling Period.

"Aggregate Forward Hedge Price" means, with respect to a period, the product of the Actual Sold Forward Amount during such period and the Forward Hedge Price during such period.

"Aggregate Sales Price" means, with respect to a period, the sum of the Sales Prices for all Issuance Securities or Forward Hedge Securities, as applicable, sold during such period.

"Applicable Time" means the time of each sale of any Securities pursuant to this Agreement.

"Capped Number" with respect to any Forward Contract has the meaning set forth in such Forward Contract.

"Commitment Period" means the period commencing on the date of this Agreement and expiring on the date this Agreement is terminated pursuant to Section 13.

"Forward" means the transaction resulting from each Placement Notice (as defined below) (as amended by the corresponding Acceptance (as defined below), if applicable) specifying that it relates to a "Forward" and requiring the Forward Seller to use commercially reasonable efforts to sell, as specified in such Placement Notice and subject to the terms and conditions of this Agreement and the applicable Forward Contract, the Forward Hedge Securities.

"Forward Contract" means, for each Forward, the contract evidencing such Forward between the Company and the Forward Purchaser, which shall be comprised of the Master Forward Confirmation and the related Supplemental Confirmation (as defined in the Master Forward Confirmation, a "Supplemental Confirmation") for such Forward.

"Forward Hedge Amount" means, for any Forward, the amount specified as such in the Placement Notice for such Forward (as amended by the corresponding Acceptance, if applicable), which amount shall be the target Aggregate Sales Price of the Forward Hedge Securities to be sold by the Forward Seller in respect of such Forward, subject to the terms and conditions of this Agreement.

"Forward Hedge Price" means, for any Forward Contract, the product of (x) an amount equal to one (1) minus the Forward Hedge Selling Commission Rate for such Forward Contract; and (y) the Volume-Weighted Hedge Price.

"Forward Hedge Securities" means all Common Stock borrowed by the Forward Purchaser (or its affiliate) and offered and sold by the Forward Seller in connection with any Forward that has occurred or may occur in accordance with the terms and conditions of this Agreement. Where the context requires, the term "Forward Hedge Securities" as used herein shall include the definition of the same under the Alternative Equity Distribution Agreements.

"Forward Hedge Selling Commission" means, for any Forward Contract, the product of (x) the Forward Hedge Selling Commission Rate for such Forward Contract and (y) the Volume-Weighted Hedge Price.

"Forward Hedge Selling Commission Rate" means, for any Forward Contract, a rate mutually agreed to between the Company and the Forward Seller and recorded in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable), not to exceed 1.5%.

"Forward Hedge Selling Period" means, subject to Section 2(c) hereof, the period of one (1) to twenty (20) consecutive Trading Days (as determined by the Company in the Company's sole discretion and specified in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable) specifying that it relates to a "Forward") beginning on the date specified in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable) or, if such date is not a Trading Day, the next Trading Day following such date and ending on the last such Trading Day or such earlier date on which the Forward Seller shall have completed the sale of Forward Hedge Securities in connection with the applicable Forward; provided that if, prior to the scheduled end of any Forward Hedge Selling Period (i) any event occurs that would permit the Forward Purchaser to designate a "Scheduled Trading Day" as an "Early Valuation Date" (as each such term is defined in the Master Forward Confirmation) under, and pursuant to the provisions opposite the caption "Early Valuation" in Section 2 of the Master Forward Confirmation or (ii) a "Bankruptcy Termination Event" (as such term is defined in the Master Forward Confirmation) occurs, then the Forward Hedge Selling Period shall, upon the Forward Seller or the Forward Purchaser becoming aware of such occurrence, immediately terminate as of the first such occurrence. Any

Forward Hedge Selling Period then in effect shall immediately terminate upon the termination of this Agreement pursuant to Section 13 hereof and as set forth in Sections 2(b) and 4 hereof.

"Forward Purchaser" has the meaning set forth in the introductory paragraph of this Agreement. If a Forward Purchaser has not been identified in the introductory paragraph of this Agreement, the Company agrees that all provisions of this Agreement related to the Forward Purchaser are not applicable hereunder.

"Forward Seller" has the meaning set forth in the introductory paragraph of this Agreement. If a Forward Seller has not been identified in the introductory paragraph of this Agreement, the Company agrees that all provisions of this Agreement related to the Forward Seller are not applicable hereunder.

"Issuance" means each occasion the Company elects to exercise its right to deliver a Placement Notice that does not involve a Forward and that specifies that it relates to an "Issuance" and requires the Agent to use commercially reasonable efforts to sell the Issuance Securities as specified in such Placement Notice, subject to the terms and conditions of this Agreement.

"Issuance Amount" means the maximum Aggregate Sales Price of the Issuance Securities to be sold by the Agent with respect to any Issuance as specified in the Placement Notice for such Issuance.

"Issuance Securities" means all shares of Common Stock issued or issuable pursuant to an Issuance that has occurred or may occur in accordance with the terms and conditions of this Agreement. Where the context requires, the term "Issuance Securities" as used herein, shall include the definition of the same under the Alternative Equity Distribution Agreements.

"Issuance Selling Period" means the period of one (1) to twenty (20) consecutive Trading Days (as determined by the Company in the Company's sole discretion and specified in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable) specifying that it relates to an "Issuance") beginning on the date specified in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable) or, if such date is not a Trading Day, the next Trading Day following such date.

"Master Forward Confirmation" means the Master Confirmation for Issuer Share Forward Sale Transactions, dated as of the date hereof, by and among the Company, the Operating Partnership and the Forward Purchaser, including all provisions incorporated by reference therein.

"Master Warrant Confirmation" has the meaning set forth in the Separate Equity Distribution Agreement by and between the Company and [•].

"Maximum Number of Shares" with respect to any Warrant Contract has the meaning set forth in the Separate Equity Distribution Agreement by and among the Company, the Operating Partnership and [•].

"NYSE" means the New York Stock Exchange.

"Sales Price" means, for each Forward or each Issuance hereunder, the actual sale execution price of each Forward Hedge Security or Issuance Security, as the case may be, sold by the Forward Seller or the Agent on the NYSE hereunder in the case of ordinary brokers' transactions, or as otherwise agreed by the parties in other methods of sale. Where the context requires, the term "Sales Price" as used herein shall include the definition of the same under the Alternative Equity Distribution Agreements.

"Securities" means Issuance Securities and Forward Hedge Securities, as applicable. Where the context requires, the term "Securities" as used herein shall include the definition of the same under the Alternative Equity Distribution Agreements.

"Selling Period" means any Forward Hedge Selling Period or any Issuance Selling Period. Where the context requires, the term "Selling Period" as used herein shall include the definition of the same under the Alternative Equity Distribution Agreements.

"Settlement Date" means, unless the Company and the applicable parties shall otherwise agree, any Forward Hedge Settlement Date (as defined below) or any Issuance Settlement Date (as defined below), as applicable.

"Trading Day" means any day which is a trading day on the NYSE.

"Unwind Date" shall have the meaning set forth in the Master Forward Confirmation.

"Volume-Weighted Hedge Price" has the meaning set forth in the Master Forward Confirmation; provided that, for purposes of determining the Aggregate Forward Hedge Price payable to the Forward Purchaser in respect of a Trading Day on which the Forward Seller has made sales of Forward Hedge Securities hereunder pursuant to Sections 3(b) and 5(e), the Volume-Weighted Hedge Price shall be determined solely with respect to the Forward Hedge Securities sold by the Forward Seller on such Trading Day.

"Warrant" has the meaning set forth in the Separate Equity Distribution Agreement by and among the Company, the Operating Partnership and [•].

"Warrant Contract" means, for each Warrant, the contract evidencing such Warrant between the Company and the Warrant Purchaser, which shall be comprised of the Master Warrant Confirmation and the related Supplemental Confirmation (as defined in the Master Warrant Confirmation, "Warrant Supplemental Confirmation") for such Warrant.

"Warrant Hedge Securities" has the meaning set forth in the Separate Equity Distribution Agreement by and among the Company, the Operating Partnership and [•].

"Warrant Hedge Selling Period" has the meaning set forth in the Separate Equity Distribution Agreement by and among the Company, the Operating Partnership and [•].

"Warrant Hedge Seller" has the meaning set forth in the Separate Equity Distribution Agreement by and among the Company, the Operating Partnership and [•].

"Warrant Purchaser" has the meaning set forth in the Separate Equity Distribution Agreement by and among the Company, the Operating Partnership and [•].

The Agent has been appointed by the Company as its agent to sell the Issuance Securities and agrees to use commercially reasonable efforts to sell the Issuance Securities offered by the Company upon the terms and subject to the conditions contained herein. The Forward Seller agrees with the Company and the Forward Purchaser to use commercially reasonable efforts to sell the Forward Hedge Securities to be borrowed by the Forward Purchaser (or its affiliate) upon the terms and subject to the conditions contained herein. Notwithstanding any other provision of this Agreement, if a Forward Seller and Forward Purchaser have not been identified in the introductory paragraph of this Agreement and have not executed this Agreement, the Company agrees that all provisions of this Agreement related to the Forward Seller, the Forward Purchaser and Forwards are not applicable hereunder and no sales of Forward Hedge Securities shall take place pursuant to this Agreement.

Section 1. Representations and Warranties. Each of the Company and the Operating Partnership jointly and severally represents and warrants to the Agent, the Forward Seller and the Forward Purchaser that as of the date of this Agreement, as of each date on which Issuance Securities are delivered to the Agent pursuant to any Principal Transaction (as defined below), as of each Representation Date (as defined in Section 6 below) on which a certificate is required to be delivered pursuant to Section 9(e) of this Agreement, as of each Applicable Time, as of the date each Placement Notice is effective and as of each Settlement Date (as defined in Section 5 below):

(a) Compliance with Registration Requirements. The Company and the Operating Partnership have filed with the Securities and Exchange Commission (the "Commission") an "automatic shelf registration statement" as defined under Rule 405 under the Securities Act of 1933, as amended (the "1933 Act"), on Form S-3 (File Nos. 333-293352 and 333-293352-01), in respect of securities of the Company and the Operating Partnership, including the Common Stock (including the Securities) not earlier than three years prior to the date hereof; such registration statement, and any post-effective amendment thereto, became effective on filing; and no stop order suspending the effectiveness of such registration statement or any part thereof has been issued and no proceeding for that purpose has been initiated or, to the knowledge of the Company or Operating Partnership, threatened by the Commission, and no notice of objection of the Commission to the use of such form of registration statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the 1933 Act has been received by the Company or the Operating Partnership (the base prospectus filed as part of such registration statement, in the form in which it has most recently been filed with the Commission on or prior to the date of this Agreement, is hereinafter called the "Basic Prospectus"); the various parts of such registration statement, excluding any Form T-1 but including all other exhibits thereto and any prospectus supplement or prospectus relating to the Securities that is filed with the Commission and deemed by virtue of Rule 430B under the 1933 Act to be part of such registration statement, each as amended at the time such part of the registration statement became effective, are hereinafter collectively called the "Registration Statement"; the prospectus supplement specifically relating to the Securities prepared and filed with the Commission pursuant to Rule 424(b) under the 1933 Act is hereinafter called the "Prospectus Supplement"; the Basic Prospectus, as amended and supplemented by the Prospectus Supplement, is hereinafter called the "Prospectus"; any reference herein to the Basic Prospectus, the Prospectus Supplement or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act; provided, however, that no representation or warranty included in any exhibit to any such incorporated document, other than the representations and warranties contained herein, is deemed to be made to you; any reference to any amendment or supplement to the Basic Prospectus, the Prospectus Supplement or the Prospectus shall be deemed to refer to and include any post-effective amendment to the Registration Statement, any prospectus supplement or base prospectus relating to the Securities filed with the Commission pursuant to Rule 424(b) under the 1933 Act and any documents filed under the Securities Exchange Act of 1934, as amended (the "1934 Act"), and incorporated therein, in each case after the date of the Basic Prospectus, the Prospectus Supplement or the Prospectus, as the case may be; any reference to any amendment to the Registration Statement shall be deemed to refer to and include any annual report of the Company filed pursuant to Section 13(a) or 15(d) of the 1934 Act after the effective date of the Registration Statement that is incorporated by reference in the Registration Statement; and any "issuer free writing prospectus" as defined in Rule 433 under the 1933 Act relating to the Securities is hereinafter called an "Issuer Free Writing Prospectus." For purposes of this Agreement, all references to the Registration Statement, the Prospectus Supplement, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system ("EDGAR").

No order preventing or suspending the use of the Registration Statement, the Basic Prospectus, the Prospectus Supplement, the Prospectus or any Issuer Free Writing Prospectus has been issued by the Commission, and the Basic Prospectus and the Prospectus Supplement, at the time of filing thereof, conformed in all material respects to the requirements of the 1933 Act and the rules and regulations of the Commission thereunder (the "1933 Act Regulations") and did 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, in the light of the circumstances under which they were made, not misleading.

At the respective times the Registration Statement and any post-effective amendments thereto became effective and at each deemed effective date with respect to the Agent and the Forward Seller pursuant to Rule 430B(f)(2), the Registration Statement and any amendments and supplements thereto complied in all material respects with the requirements under the 1933 Act, and did 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.

The Prospectus and any Issuer Free Writing Prospectus (when considered together with the Prospectus), and any amendment or supplement thereto, as of each Applicable Time and at each Settlement Date, will not include any 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 each applicable Issuer Free Writing Prospectus will not conflict with the information contained in the Registration Statement, the Prospectus Supplement or the Prospectus.

The documents incorporated or deemed to be incorporated by reference in the Registration Statement and the Prospectus, when they became effective or were filed with the Commission, as the case may be, complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the Commission thereunder, and, when read together with the other information in the Prospectus, (a) at the time the Registration Statement became effective, (b) at the time the Prospectus was issued and (c) on the date of this Agreement, did 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, in the light of the circumstances under which they were made, not misleading.

The representations and warranties in this Section 1(a) shall not apply to any statements in or omissions from the Registration Statement, the Basic Prospectus or the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus, made in reliance upon and in conformity with written information furnished to the Company or the Operating Partnership by the Agent or the Forward Seller, as applicable, expressly for use therein. For all purposes of this Agreement (including, without limitation, the provisions of this Section 1(a) and of Section 10 of this Agreement), the Company, the Operating Partnership and the Agent or the Forward Seller, as applicable, agree that the only information furnished to the Company or the Operating Partnership by the Agent or the Forward Seller, as applicable, expressly for use in the Registration Statement, the Basic Prospectus, the Prospectus or any Issuer Free Writing Prospectus or any amendment or supplement to any of the foregoing is the name of the Agent (the "Counterparty Information"). In the event that, at a later date, the parties hereto agree in writing that any additional information shall constitute Counterparty Information, such information shall automatically be incorporated into Section 1(a) of this Agreement as Counterparty Information.

(b) Well-Known Seasoned Issuer. (A)(i) At the time of filing 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 1933 Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the 1934 Act or form of prospectus), and (iii) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) of the 1933 Act Regulations) made any offer relating to the Securities in reliance on the exemption of Rule 163 under the 1933 Act Regulations, the Company was a "well-known seasoned issuer" as defined in Rule 405 of the 1933 Act Regulations; and (B) at the earliest time after the filing of the Registration Statement that the Company or any other offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) of the 1933 Act Regulations) of the Securities, the Company was not an "ineligible issuer" as defined in Rule 405 of the 1933 Act Regulations.

(c) Independent Accountants. The accountants who certified the financial statements and supporting schedules included in the Registration Statement are independent public accountants as required by the 1933 Act and the 1933 Act Regulations.

(d) Financial Statements. The financial statements included or incorporated by reference in the Registration Statement and the Prospectus, together with the related schedules and notes, present fairly in all material respects the financial position of the Company and its consolidated subsidiaries at the dates indicated and the statement of operations, equity, capital and cash flows of the Company and its consolidated subsidiaries for the periods specified; said financial statements have been prepared in conformity with generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods involved. The supporting schedules, if any, present fairly in all material respects in accordance with GAAP the information required to be stated therein. The pro forma financial statements

and the related notes thereto included or incorporated by reference in the Registration Statement and the Prospectus, if any, present fairly the information shown therein, have been prepared in accordance with the Commission's rules and guidelines with respect to pro forma financial statements and have been properly compiled on the bases described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein. All disclosures contained in the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus, or incorporated by reference therein, regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission) comply, in all material respects, with Regulation G of the 1934 Act and Item 10 of Regulation S-K of the 1933 Act, to the extent applicable. The interactive data in eXtensible Business Reporting Language incorporated by reference in the Registration Statement and the Prospectus fairly presents the information called for in all material respects and has been prepared in all material respects in accordance with the Commission's rules and guidelines applicable thereto.

(e) Real Estate Investment Trust. With respect to all tax periods in respect of which the Internal Revenue Service is or will be entitled to any claim, the Company has been organized and operated in conformity with the requirements for qualification and taxation as a real estate investment trust (a "REIT") under the Internal Revenue Code of 1986, as amended (the "Code," which term, as used herein, includes the regulations and published interpretations thereunder), and the Company's present and proposed method of operation will enable it to continue to meet the requirements for taxation as a REIT under the Code.

(f) No Material Adverse Change in Business. Since the respective dates as of which information is given in the Registration Statement or the Prospectus, except as otherwise stated therein, (A) there has been no material adverse change in the condition (financial or otherwise), or in the earnings, business affairs or business prospects of the Company, the Operating Partnership and their subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business (a "Material Adverse Effect"), (B) there have been no transactions entered into by the Company, the Operating Partnership or any of their subsidiaries, other than those in the ordinary course of business, which are material with respect to the Company, the Operating Partnership and their subsidiaries considered as one enterprise, and (C) except for quarterly dividends on the Common Stock or the Company's preferred stock or the Operating Partnership's units or any special dividends on the Common Stock and the Operating Partnership's units that are the subject of a press release (whether in cash, Common Stock or a combination of both), there has been no dividend or distribution of any kind declared, paid or made by the Company, the Operating Partnership on any class of capital stock or partnership interests.

(g) Good Standing of the Company and the Operating Partnership. Each of the Company and the Operating Partnership has been duly incorporated or formed, as applicable, and is validly existing as a corporation or limited partnership, as applicable, in good standing under the laws of the jurisdiction of its incorporation or formation, as applicable, and has the corporate or limited partnership power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and to enter into and perform its obligations under this Agreement, the Master Forward Confirmation and any Supplemental Confirmation thereunder, as applicable. Each of the Company and the Operating Partnership is duly qualified as a foreign corporation or limited partnership, as applicable, to transact business and is in good standing or equivalent status in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except for such jurisdictions where the failure to so qualify or to be in good standing would not, individually or in the aggregate, result in a Material Adverse Effect.

(h) Good Standing of Subsidiaries. Each subsidiary of the Company and the Operating Partnership has been duly incorporated or formed, as applicable, and is validly existing as a corporation, limited partnership or limited liability company, as applicable, in good standing under the laws of the jurisdiction of its incorporation or formation, as applicable, and has the corporate, limited partnership or limited liability company power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus, except in any case in which the failure to be in good standing would not,

individually or in the aggregate, result in a Material Adverse Effect. Each subsidiary is duly qualified as a foreign corporation, limited partnership or limited liability company, as applicable, to transact business and is in good standing or equivalent status in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except for such jurisdictions where the failure to so qualify or to be in good standing would not, individually or in the aggregate, result in a Material Adverse Effect. The Company does not own or control, directly or indirectly, any corporation, association or other entity that would be deemed a Significant Subsidiary (as such term is defined in Rule 405 under the 1933 Act) other than the Operating Partnership and the subsidiaries identified as "Significant Subsidiaries," if any, on Exhibit 21 to the Company's Annual Report on Form 10-K for the most recently ended fiscal year and other than those Significant Subsidiaries, if any, formed since the last day of the most recently completed fiscal year.

(i) Ownership of the Operating Partnership and Subsidiaries. All of the issued and outstanding capital stock (or similar equity interests) of each subsidiary of the Company and the Operating Partnership has been duly authorized and validly issued, is fully paid and nonassessable and such capital stock (or similar equity interests) owned by the Company is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance or claim ("Liens"), except as disclosed in the Registration Statement and the Prospectus or as would not, singly or in the aggregate, result in a Material Adverse Effect. All of the issued and outstanding units of limited partnership ("Units") of the Operating Partnership have been duly and validly authorized and issued by the Operating Partnership. None of the Units was issued in violation of the preemptive or other similar rights of any security holder of the Operating Partnership or any other person or entity. Except as set forth in the Registration Statement and the Prospectus, there are no outstanding options, warrants or other rights to purchase, agreements or other obligations to issue, or rights to convert any obligations into or exchange any securities or interests for, Units or other ownership interests of the Operating Partnership (in each case, except for subsequent issuances, if any, pursuant to (i) this Agreement, (ii) reservations, agreements, employee benefit plans, dividend reinvestment plans or stock purchase plans referred to in the Prospectus, (iii) the exercise, redemption or exchange of convertible or exchangeable securities, options or warrants referred to in the Prospectus or (iv) unregistered issuances not required to be disclosed pursuant to the 1934 Act, the 1933 Act or any regulation promulgated thereunder). The Company is the sole general partner of the Operating Partnership. The Units owned by the Company are owned directly by the Company, free and clear of all Liens, except as disclosed in the Registration Statement and the Prospectus. The common Units to be issued by the Operating Partnership in connection with the contribution of the net proceeds from the sale of the Securities to the Operating Partnership (the "New Common Units") have been duly authorized, and, when issued and delivered by the Operating Partnership, the New Common Units will be validly issued and fully paid. The New Common Units will be exempt from registration or qualification under the 1933 Act and applicable state securities laws. None of the New Common Units will be issued in violation of the preemptive or other similar rights of any security holder of the Operating Partnership or any other person or entity.

(j) Capitalization. The shares of issued and outstanding Common Stock have been duly authorized and validly issued and are fully paid and non-assessable; none of the outstanding shares of capital stock was issued in violation of the preemptive or other similar rights of any securityholder of the Company and the authorized, issued and outstanding capital stock of the Company is as set forth in the Prospectus (except for subsequent issuances, if any, pursuant to (i) this Agreement or the Alternative Equity Distribution Agreements, the Master Forward Confirmation and, any Supplemental Confirmation thereunder the Master Forward Confirmation, the Master Warrant Confirmation and any Warrant Supplemental Confirmation thereunder the Master Warrant Confirmation, as applicable, (ii) reservations, agreements, employee benefit plans, dividend reinvestment plans or stock purchase plans referred to in the Prospectus, (iii) the exercise, redemption or exchange of convertible or exchangeable securities, options or warrants referred to in the Prospectus or (iv) unregistered issuances not required to be disclosed pursuant to the 1934 Act, the 1933 Act or any regulation promulgated thereunder). The Company's Common Stock has been registered pursuant to Section 12(b) of the 1934 Act and is listed on the NYSE and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock from the

NYSE, nor has the Company received any notification that the Commission or the NYSE is contemplating terminating such registration or listing.

(k) Authorization of Agreements. This Agreement has been duly authorized, executed and delivered by the Company and the Operating Partnership. The Master Forward Confirmation has been duly authorized, executed and delivered by the Company and the Operating Partnership and, assuming the authorization, execution and delivery thereof by the Forward Purchaser, constitutes a valid and binding agreement of the Company and the Operating Partnership, enforceable against the Company and the Operating Partnership in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws relating to or affecting creditors' rights and remedies generally or general principles of equity and except as rights to indemnity and contribution thereunder may be limited by applicable law or policies underlying such law. Each Supplemental Confirmation (if any) will have been, as of its date, duly authorized, executed and delivered by the Company and, assuming the due authorization, execution and delivery thereof by the Forward Purchaser, will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws relating to or affecting creditors' rights and remedies generally or general principles of equity and except as rights to indemnity and contribution thereunder may be limited by applicable law or policies underlying such law.

(l) Authorization and Description of Securities. The Securities and the shares of Common Stock to be issued in connection with any Forward Contract have been duly authorized for issuance and sale pursuant to this Agreement and, in the case of any Forward, the Forward Contract, as applicable, and, when issued and delivered by the Company pursuant to this Agreement, and, in the case of any Forward, the related Forward Contract, against payment of the consideration set forth herein or therein (which may include net share settlement), will be validly issued and fully paid and non-assessable; the Common Stock conforms in all material respects to all statements relating thereto contained in the Prospectus and such description conforms in all material respects to the rights set forth in the instruments defining the same; no holder of the Common Stock will be subject to personal liability solely by reason of being such a holder; and the issuance of the Securities and the shares of Common Stock to be issued in connection with any Forward Contract is not or will not be, as applicable, subject to the preemptive or other similar rights of any securityholder of the Company.

(m) Partnership Agreement. The Agreement of Limited Partnership of the Operating Partnership (the "Partnership Agreement") has been duly and validly authorized, executed and delivered by the Company and is a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or by general principles of equity.

(n) Non-Contravention of Existing Instruments; No Further Authorizations or Approvals Required. None of the Company, the Operating Partnership, nor any of their subsidiaries is in violation of its partnership agreement, charter, bylaws, or limited liability company agreement or is in default (or, with the giving of notice or lapse of time, would be in default) ("Default") under any indenture, mortgage, loan or credit agreement, note, contract, franchise, lease or other instrument to which the Company, the Operating Partnership or any of their subsidiaries is a party or by which the Company, the Operating Partnership or any of their subsidiaries may be bound, or to which any of the property or assets of the Company, the Operating Partnership or any of their subsidiaries is subject (each, an "Existing Instrument"), except for such Defaults as would not, individually or in the aggregate, result in a Material Adverse Effect. The execution, delivery and performance by the Company and the Operating Partnership of this Agreement, the execution, delivery and performance by the Company and the Operating Partnership of each of the Master Forward Confirmation and any Supplemental Confirmation, and the consummation of the transactions contemplated by this Agreement, the Master Forward Confirmation and any Supplemental Confirmation and the Prospectus (including the Company's issuance and sale of the Securities from time to time pursuant

to this Agreement or the Alternative Equity Distribution Agreements and the shares of Common Stock to be issued in connection with any Forward Contract or any Warrant Contract, as applicable) (i) have been or will be duly authorized by all necessary partnership or corporate action, as applicable, and will not result in any violation of the provisions of the partnership agreement, charter, bylaws or limited liability company agreement of the Company, the Operating Partnership or any of their subsidiaries, (ii) will not conflict with or constitute a breach of, or Default or a Debt Repayment Triggering Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company, the Operating Partnership or any of their subsidiaries pursuant to, or require the consent of any other party to, any Existing Instrument, except in the case of this clause (ii)for such conflicts, breaches, Defaults or Debt Repayment Triggering Events, or liens, charges or encumbrances that would not result in a Material Adverse Effect, and (iii) will not result in any violation of any law, statute, administrative regulation or administrative or court decree applicable to the Company, the Operating Partnership or any subsidiary, except in the case of this clause (iii)for such violations that would not result in a Material Adverse Effect. As used herein, a "Debt Repayment Triggering Event" means any event or condition which gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company, the Operating Partnership, or any of their subsidiaries.

(o) No Material Actions or Proceedings. Except as disclosed in the Registration Statement and the Prospectus, there are no legal or governmental actions, suits or proceedings pending or, to the best of the Company's and the Operating Partnership's knowledge, threatened (i) against the Company, the Operating Partnership, or any of their subsidiaries that, if determined adversely to the Company, the Operating Partnership, or such subsidiary, would reasonably be expected to result in a Material Adverse Effect or adversely affect the consummation of the transactions contemplated by this Agreement, the Master Forward Confirmation, or any Supplemental Confirmation under the Master Forward Confirmation, or (ii) that are required to be described in the Registration Statement or the Prospectus and are not so described.

(p) Accuracy of Exhibits. There are no contracts or other documents that are required to be described in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement that are not described or filed as required.

(q) Intellectual Property Rights. Except as disclosed in the Registration Statement and the Prospectus, the Company, the Operating Partnership and their subsidiaries own or possess sufficient trademarks, trade names, patent rights, copyrights, licenses, domain names, approvals, trade secrets and other similar rights (collectively, "Intellectual Property Rights") reasonably necessary to conduct their businesses as now conducted, other than those the failure to own or possess would not have a Material Adverse Effect. Neither the Company, the Operating Partnership, nor any of their subsidiaries has received any notice of infringement or conflict with asserted Intellectual Property Rights of others, which infringement or conflict, if the subject of an unfavorable decision, would result in a Material Adverse Effect.

(r) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency is necessary or required for the execution and delivery by the Company and the Operating Partnership of this Agreement, the execution and delivery by the Company of the Master Forward Confirmation, as supplemented by each Supplemental Confirmation, or the performance by the Company or the Operating Partnership of their respective obligations under this Agreement and the Master Forward Confirmation, as supplemented by each Supplemental Confirmation, as applicable, in connection with the offering, issuance or sale of the Securities under this Agreement or the shares of Common Stock to be issued in connection with any Forward Contract under the Master Forward Confirmation, as supplemented by each Supplemental Confirmation, or the consummation of the transactions contemplated by this Agreement, the Master Forward Confirmation, as supplemented by each Supplemental Confirmation, and by the Registration Statement and the Prospectus,(including the Company's issuance and sale of the Securities from time to time pursuant to this Agreement or the Alternative Equity Distribution Agreements and the shares of

Common Stock to be issued in connection with any Forward Contract or any Warrant Contract, as applicable), except (i) such as have been already obtained or as may be required under the 1933 Act or the 1933 Act Regulations or state securities laws, (ii) such as have been obtained or as may be required under the laws and regulations of jurisdictions outside of the United States in which the Securities and the shares of Common Stock to be issued in connection with any Forward Contract and any Warrant Contract are offered, (iii) such as have been, or will be, obtained, as of each Settlement Date in connection with the approval of the listing of the Securities and the shares of Common Stock to be issued in connection with any Forward Contract and any Warrant Contract, on the NYSE, or (iv) such as may be required by the Financial Industry Regulatory Authority, Inc. ("FINRA").

(s) Absence of Manipulation. Neither the Company, the Operating Partnership nor any of their affiliates have taken, nor will the Company, the Operating Partnership or any affiliate take, directly or indirectly, any action which is designed to or which has constituted or which would be expected to cause or result in stabilization or manipulation of the price of any security of the Company or the Operating Partnership to facilitate the sale or resale of the Securities.

(t) All Necessary Permits, etc. The Company, the Operating Partnership and each of their subsidiaries possess such valid and current certificates, authorizations, permits, licenses, approvals, consents and other authorizations issued by the appropriate state, federal or foreign regulatory agencies or bodies necessary to conduct their respective businesses ("Permits"), except for those for which the failure to obtain would not result in a Material Adverse Effect. None of the Company, the Operating Partnership, nor any subsidiary has received any notice of proceedings relating to the revocation or modification of, or non-compliance with, or renewal of any such Permit which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Material Adverse Effect.

(u) Title to Properties. Except as disclosed in the Registration Statement and the Prospectus, each of the Company, the Operating Partnership and their subsidiaries has good and marketable fee simple title to or valid and enforceable leasehold title in all the properties and assets that are reflected as owned in the financial statements referred to in Section 1(d) hereof, in each case free and clear of any security interests, mortgages, liens, encumbrances, equities, claims and other defects, except for such security interests, mortgages, liens, encumbrances, equities, claims and other defects that would not have a Material Adverse Effect.

(v) Mortgages, Deeds of Trust and Ground Leases. Except as disclosed in the Registration Statement and the Prospectus, the mortgages and deeds of trust encumbering the properties and assets described in the Registration Statement and the Prospectus (i) are not convertible (in the absence of foreclosure) into an equity interest in the property or asset described therein or in the Company, the Operating Partnership or any of their subsidiaries, nor does the Company, the Operating Partnership nor any of their subsidiaries hold a participating interest therein, (ii) are not cross-defaulted to any indebtedness other than indebtedness of the Company, the Operating Partnership or any of their subsidiaries and (iii) are not cross-collateralized to any property not owned by the Company, the Operating Partnership or any of their subsidiaries. Except as disclosed in the Registration Statement and the Prospectus or would not cause a Material Adverse Effect, all ground leases affecting any of the properties, development projects or development land owned by the Company, the Operating Partnership or any of their subsidiaries are in full force and effect, and none of the Company, the Operating Partnership or any of their subsidiaries has notice of any material claim of any sort that has been asserted by a ground lessor under a ground lease threatening the rights of the Company, the Operating Partnership or any their subsidiaries to the continued possession of the leased premises under any such ground lease.

(w) Tax Law Compliance. Each of the Company and the Operating Partnership has filed all federal, state, local and foreign income tax returns which have been required to be filed (except in any case in which the failure to so file would not have a Material Adverse Effect) and has paid all taxes required to be paid and any other assessment, fine or penalty levied against it, to the extent that any of the foregoing is due

and payable, except, in all cases, for any such tax, assessment, fine or penalty that is being contested in good faith or as would not have, individually or in the aggregate, a Material Adverse Effect.

(x) Not an Investment Company. None of the Company, the Operating Partnership, or any of their subsidiaries is or, after giving effect to the offering and sale of the Securities or the shares of Common Stock to be issued in connection with any Forward Contract and any Warrant Contract and the application of the proceeds thereof as described in the Prospectus and the consummation of the transactions contemplated by the Master Forward Confirmation and each Supplemental Confirmation under the Master Forward Confirmation and the Master Warrant Confirmation and each Warrant Supplemental Confirmation under the Master Warrant Confirmation, will be, required to register as an "investment company" under the Investment Company Act of 1940, as amended.

(y) Insurance. Each of the Company, the Operating Partnership, and their subsidiaries are insured by recognized, financially sound institutions with policies in such amounts and with such deductibles and covering such risks as are generally deemed adequate and customary for their businesses. Neither the Company nor the Operating Partnership has any reason to believe that it or any subsidiary will not be able to (i) renew its existing insurance coverage as and when such policies expire or (ii) obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Effect.

(z) Title Insurance. Each of the Company, the Operating Partnership, and their subsidiaries has title insurance or binding commitments for title insurance on all material properties and assets owned by them, except where the failure to maintain such title insurance would not reasonably be expected to have a Material Adverse Effect.

(aa) No Registration Rights. There are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to include any securities of the Company with the Securities and the shares of Common Stock to be issued in connection with any Forward Contract or any Warrant Contract registered pursuant to the Registration Statement other than as disclosed in the Registration Statement and the Prospectus.

(bb) Compliance with Sarbanes-Oxley. Except as disclosed in the Registration Statement and the Prospectus, there is and has been no failure on the part of the Company, the Operating Partnership, or their subsidiaries or their respective officers and directors to comply in all material respects with the applicable provisions of the Sarbanes-Oxley Act of 2002, including the rules and regulations of the Commission promulgated thereunder.

(cc) Accounting System. Except as disclosed in the Registration Statement and the Prospectus, the Company and its subsidiaries maintain a system of internal accounting controls that is sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP 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.

(dd) Disclosure Controls and Procedures. Each of the Company and the Operating Partnership has established and maintains disclosure controls and procedures (as such term is defined in Rules 13a-15 and 15d-14 under the 1934 Act); such disclosure controls and procedures are designed to ensure that material information required to be disclosed by the Company and the Operating Partnership in the reports that they file or submit under the 1934 Act is made known to the chief executive officer and chief financial officer of the Company by others within the Company, the Operating Partnership, or any of their subsidiaries. The auditors of the Company and the Operating Partnership and the Audit Committee of the Board of Directors of the Company have been advised of: (i) any significant deficiencies or material weaknesses in the design

or operation of internal controls which could adversely affect the ability of the Company and the Operating Partnership to record, process, summarize, and report financial data; and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls over financial reporting of the Company and the Operating Partnership. Except as disclosed in the Registration Statement and the Prospectus, since the date of the most recent evaluation of such disclosure controls and procedures, 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.

(ee) Compliance with Environmental Laws. Except as disclosed in the Registration Statement and the Prospectus or as would not, individually or in the aggregate, result in a Material Adverse Effect: (i) neither the Company, the Operating Partnership, nor any of their subsidiaries is in violation of any federal, state, local or foreign law or regulation relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws, regulations, judgments or orders relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum and petroleum products (collectively, "Materials of Environmental Concern"), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of Environmental Concern (collectively, "Environmental Laws"), which violation includes, without limitation, noncompliance with any Permits required for the ownership or operation of the business of the Company, the Operating Partnership, or their subsidiaries under applicable Environmental Laws, or noncompliance with the terms and conditions thereof, nor has the Company, the Operating Partnership, or any of their subsidiaries received any written communication from a governmental authority that alleges that the Company, the Operating Partnership, or any of their subsidiaries is in violation of any Environmental Law or Permit; (ii) there is no claim, action or cause of action filed with a court or governmental authority, no investigation with respect to which the Company or the Operating Partnership has received written notice, and no written notice by any person or entity alleging potential liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, injunctive relief, property damages, personal injuries, attorneys' fees or fines or penalties arising out of, based on or resulting from a violation of Environmental Laws or a Permit issued thereunder, or the presence, or release into the environment, of any Material of Environmental Concern at any location owned, leased or operated by the Company, the Operating Partnership, or any of their subsidiaries, now or in the past (collectively, "Environmental Claims"), pending or, to the best of the knowledge of the Company and the Operating Partnership, threatened against the Company, the Operating Partnership, or any of their subsidiaries or any person or entity whose liability for any Environmental Claim the Company, the Operating Partnership, or any of their subsidiaries has retained or assumed either contractually or by operation of law; and (iii) to the best of the knowledge of the Company and the Operating Partnership, there are no past or present actions, activities, circumstances, conditions, events or incidents, including, without limitation, the release, emission, discharge, presence or disposal of any Material of Environmental Concern, that would reasonably be expected to result in a violation of any Environmental Law or Permit issued thereunder, or form the basis of a potential Environmental Claim against the Company, the Operating Partnership, or any of their subsidiaries or against any person or entity whose liability for any Environmental Claim the Company, the Operating Partnership, or any of their subsidiaries has retained or assumed either contractually or by operation of law.

(ff) ERISA Compliance. (i) The Company, the Operating Partnership and each of their subsidiaries or their "ERISA Affiliates" (as defined below) are in compliance in all material respects with all applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("ERISA"); (ii) no "reportable event" (as defined in ERISA) has occurred with respect to any "employee benefit plan" (as defined in ERISA) for which the Company, the Operating Partnership or any of their subsidiaries or ERISA Affiliates would have any liability; (iii) the Company, the Operating Partnership and each of their subsidiaries or their ERISA Affiliates have not incurred and do not reasonably expect to incur liability under Title IV of ERISA with respect to termination of, or withdrawal from, any "employee benefit plan"; and (iv) each "employee benefit plan" for which the

Company and each of its subsidiaries or any of their ERISA Affiliates would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification; except, each case, as would not reasonably be expected to have a Material Adverse Effect. "ERISA Affiliate" means, with respect to the Company, the Operating Partnership or any of their subsidiaries, any member of any group of organizations described in Sections 414(b), (c) or (m) of the Code or Section 4001(b)(1) of ERISA of which the Operating Partnership, the Company or such subsidiary is a member.

(gg) Compliance with Labor Laws. No labor dispute with the employees of the Company, the Operating Partnership or any of their subsidiaries exists or, to the knowledge of the Company and the Operating Partnership, is imminent, which in either case would result in a Material Adverse Effect.

(hh) Related Party Transactions. No relationship, direct or indirect, exists between or among any of the Company, the Operating Partnership, or any affiliate of the Company or the Operating Partnership, on the one hand, and any director, officer, member, stockholder, partner, customer, or supplier of the Company, the Operating Partnership, or any affiliate of the Company or the Operating Partnership, on the other hand, which is required to be disclosed in the Registration Statement and the Prospectus which is not so disclosed.

(ii) Unlawful Payments. Neither the Company, the Operating Partnership, nor any of their subsidiaries or affiliates, nor any director, officer, or employee, nor, to the Company's or the Operating Partnership's knowledge, any agent or representative of the Company, the Operating Partnership or of any of their subsidiaries or affiliates, is aware of or has taken or will take any action directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), and the rules and regulations thereunder, or any other applicable law or regulation implementing the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or committed an offense under the Bribery Act of 2010 of the United Kingdom, or any other applicable anti-corruption or anti-bribery laws, including without limitation any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any "foreign official" (as such term is defined in the FCPA) or government official (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper advantage; and the Company, the Operating Partnership and their subsidiaries and affiliates have conducted their businesses in compliance with applicable anti-corruption laws and have instituted and maintain and will continue to maintain policies and procedures designed to promote and achieve compliance with such laws and with the representation and warranty contained herein.

(jj) Anti-Money Laundering Laws. The operations of the Company, the Operating Partnership and their subsidiaries are and have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements, including those of the Currency and Foreign Transactions Reporting Act of 1970, as amended and the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where the Company, the Operating Partnership and their subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "Anti-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, the Operating Partnership or any of their subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the best knowledge of the Company and the Operating Partnership, threatened.

(kk) OFAC, etc.

(i) Neither the Company, the Operating Partnership nor any of their subsidiaries (collectively, the "Entity") or, to the knowledge of the Entity, any director, officer, employee, agent, affiliate or representative of the Entity, is an individual or entity ("Person") that is, or is owned or controlled by a Person that is: (A) the subject of any sanctions administered or enforced by the government of the United States (including, without limitation, the U.S. Department of Treasury's Office of Foreign Assets Control), the United Nations Security Council, the European Union, His Majesty's Treasury, or other relevant sanctions authority (collectively, "Sanctions"), nor (B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Cuba, Iran, North Korea, the Crimea region of Ukraine, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, and the non-government controlled areas of Zaporizhzhia and Kherson regions of Ukraine or any other "Covered Region" of Ukraine as defined in and identified pursuant to Executive Order 14065 of the United States, and Syria).

(ii) The Company represents and covenants that it will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person: (A) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or (B) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as sales agent or principal, advisor, investor or otherwise).

(iii) Each of the Company and the Operating Partnership represents and covenants that since April 24, 2019, the Entity has not knowingly engaged in, is not now knowingly engaged in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(ll) No Commissions. Neither the Company, the Operating Partnership nor any of their subsidiaries is a party to any contract, agreement or understanding with any person (other than as contemplated by this Agreement and the Alternative Equity Distribution Agreements) that would give rise to a valid claim against the Company, the Operating Partnership or any of its subsidiaries or the Agent for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Securities or the shares of Common Stock to be issued in connection with any Forward Contract or any Warrant Contract.

(mm) Actively-Traded Security. The Common Stock is an "actively-traded security" exempted from the requirements of Rule 101 of Regulation M under the 1934 Act by subsection (c)(1) of such rule.

(nn) Statistical and Market-Related Data. Any statistical and market-related data included in the Registration Statement and the Prospectus are based on or derived from sources that the Company and the Operating Partnership believe to be reliable and accurate in all material respects, and, to the extent necessary, the Company has obtained the written consent to the use of such data from such sources.

(oo) IT Systems and Data. With such exceptions as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (i) there has been no security breach or other compromise of or relating to any of the Company's, the Operating Partnership's or their subsidiaries' information technology and computer systems, networks, hardware, software, data (including the data of their respective tenants, employees, suppliers, vendors and any third party data maintained by or on behalf of them), equipment or technology (collectively, "IT Systems and Data") and (ii) the Company, the Operating Partnership and their subsidiaries have not been notified of, and have no knowledge of any event or condition that would reasonably be expected to result in, any security breach or other compromise to their IT Systems and Data.

(pp) Outbound Investment Rules. None of the Company, the Operating Partnership or their subsidiaries is a "covered foreign person" as that term is used in the regulations administered and enforced, together

with any related public guidance issued, by the United States Treasury Department under U.S. Executive Order 14105 of August 9, 2023, or any similar law or regulation (which, as of the date of this Agreement, are codified at 31 C.F.R. § 850.101 et seq.) (the "Outbound Investment Rules"). None of the Company, the Operating Partnership or their subsidiaries currently engages, or has any present intention to engage in the future, directly or indirectly, in (i) a "covered activity" or a "covered transaction," as each such term is defined in the Outbound Investment Rules, (ii) any activity or transaction that would constitute a "covered activity" or a "covered transaction," as each such term is defined in the Outbound Investment Rules, if the Company were a U.S. person or (iii) any other activity that would cause the Agent, the Forward Seller or the Forward Purchaser to be in violation of the Outbound Investment Rules or cause the Agent, the Forward Seller or the Forward Purchaser to be legally prohibited by the Outbound Investment Rules from performing under this Agreement.

(qq) Deemed Representation. Any certificate signed by any officer of the Company or the Operating Partnership and delivered to the Agent, the Forward Seller and the Forward Purchaser or their counsel shall be deemed a representation and warranty by the Company and the Operating Partnership, as the case may be, to the Agent, the Forward Seller and the Forward Purchaser, as the case may be, as to the matters covered thereby as of the date or dates indicated in such certificate.

Section 2. Placements.

(a) Upon the terms and subject to the conditions of this Agreement, on any Trading Day as provided in Section 2(c) hereof during the Commitment Period on which (i) the conditions set forth in Section 9 hereof have been satisfied and (ii) with respect to any Forward, no event described in clause (i) or clause (ii) of the proviso contained in the definition of Forward Hedge Selling Period shall have occurred, the Company may issue (in the case of an Issuance) and sell or cause to be sold the Securities hereunder (each, a "Placement"), by delivery of an email notice (or other method mutually agreed to in writing by the parties) to the Agent (in the case of an Issuance) or the Forward Seller and the Forward Purchaser (in the case of a Forward) containing the parameters in accordance with which it desires the Securities to be sold, which shall at a minimum specify whether it relates to an "Issuance" or a "Forward" and include the maximum number of Securities to be sold (the "Placement Securities"), the Issuance Amount, the time period during which sales are requested to be made, any limitation on the number of Securities that may be sold in any one (1) day, any minimum price below which sales may not be made or a formula pursuant to which such minimum price shall be determined and, as applicable, certain specified terms of the Forward (a "Placement Notice"), a form of which containing such minimum sales parameters necessary with respect to Issuances and Forwards is attached hereto as Annex I.

(b) If the Agent or the Forward Seller and the Forward Purchaser, as applicable, wish to accept such proposed terms included in the Placement Notice (which they may decline to do for any reason in their sole discretion) or, following discussion with the Company, wish to accept amended terms, the Agent or the Forward Seller and the Forward Purchaser, as applicable, will, prior to 4:30 p.m. (New York City Time) on the business day following the business day on which such Placement Notice is delivered to the Agent or the Forward Seller and the Forward Purchaser, as applicable, issue to the Company a notice by email (or other method mutually agreed to in writing by the parties) addressed to the Company and the Agent or the Forward Seller and the Forward Purchaser, as applicable, setting forth an acceptance of terms in the Placement Notice or such amended or other terms that the Agent or the Forward Seller and the Forward Purchaser, as applicable, are willing to accept. Where the terms provided in the Placement Notice are amended as provided for in the immediately preceding sentence, such terms will not be binding on the Company or the Agent or the Forward Seller and the Forward Purchaser, as applicable, until the Company delivers to the Agent or the Forward Seller and the Forward Purchaser, as applicable, an acceptance by email (or other method mutually agreed to in writing by the parties) of all of the terms of such Placement Notice, as amended (the "Acceptance"), which email shall be addressed to the Company and the Agent or the Forward Seller and the Forward Purchaser, as applicable. The Placement Notice (as amended by the corresponding Acceptance, if applicable) shall be effective upon receipt by the Company of the Agent's or the Forward Seller's and the Forward Purchaser's, as applicable, acceptance of the terms of the Placement

Notice or upon receipt by the Agent or the Forward Seller and the Forward Purchaser, as applicable, of the Acceptance, as the case may be, unless and until (i) the entire amount of the Placement Securities has been sold, (ii) in accordance with the notice requirements set forth herein, the Company terminates the Placement Notice, (iii) the Company issues a subsequent Placement Notice with parameters superseding those on the earlier dated Placement Notice and such Placement Notice (as amended by the corresponding Acceptance, if applicable) has been accepted in accordance with the requirements set forth above, (iv) this Agreement has been terminated under the provisions of Section 13 or (v) any party shall have suspended the sale of the Placement Securities in accordance with Section 4 below. The termination of the effectiveness of a Placement Notice as set forth in the prior sentence shall not affect or impair any party's obligations with respect to any Securities sold hereunder prior to such termination or any Securities sold under any Alternative Equity Distribution Agreement (including, in the case of any Forward Hedge Securities or Warrant Hedge Securities, the obligation to enter into the resulting Forward Contract or Warrant Contract). It is expressly acknowledged and agreed that neither the Company nor the Agent will have any obligation whatsoever with respect to a Placement or any Placement Securities unless and until the Company delivers a Placement Notice to the Agent and either (i) the Agent accepts the terms of such Placement Notice or (ii) where the terms of such Placement Notice are amended, the Company accepts such amended terms by means of an Acceptance pursuant to the terms set forth above, and then only upon the terms specified in the Placement Notice (as amended by the corresponding Acceptance, if applicable) and herein. It is expressly acknowledged and agreed that the Company, the Forward Seller and the Forward Purchaser will have no obligation whatsoever with respect to a Placement or any Placement Securities unless and until the Company delivers a Placement Notice to the Forward Seller and the Forward Purchaser and either (i) the Forward Seller and the Forward Purchaser accept the terms of such Placement Notice or (ii) where the terms of such Placement Notice are amended, the Company accepts such amended terms by means of an Acceptance pursuant to the terms set forth above, and then only upon the terms specified in the Placement Notice (as amended by the corresponding Acceptance, if applicable), this Agreement and the Master Forward Confirmation. In the event of a conflict between the terms of this Agreement and the terms of a Placement Notice (as amended by the corresponding Acceptance, if applicable), the terms of the Placement Notice (as amended by the corresponding Acceptance, if applicable) will control.

(c) No Placement Notice may be delivered hereunder other than on a Trading Day during the Commitment Period; no Placement Notice may be delivered hereunder if the Selling Period specified therein may overlap in whole or in part with any Selling Period specified in a Placement Notice (as amended by the corresponding Acceptance, if applicable) delivered hereunder or under any Alternative Equity Distribution Agreement unless the Securities to be sold under all such previously delivered Placement Notices have all been sold or all such previously delivered Placement Notices are no longer effective; no Placement Notice may be delivered hereunder or under any Alternative Equity Distribution Agreement if any Selling Period specified therein may overlap in whole or in part with any Unwind Date under any Forward Contract or Warrant Contract, as applicable, entered into between the Company and the Forward Purchaser or any Alternative Agent; and no Placement Notice specifying that it relates to a "Forward" may be delivered if either (i) an ex-dividend date or ex-date, as applicable, for any dividend or distribution payable by the Company on the Common Stock is scheduled to occur during the period from, and including, the first scheduled Trading Day of the related Forward Hedge Selling Period or the related Warrant Hedge Selling Period, as applicable, to, and including, the last scheduled Trading Day of such Forward Hedge Selling Period or such Warrant Hedge Selling Period, as applicable, or (ii) such Placement Notice, together with all prior Placement Notices (as amended by the corresponding Acceptance, if applicable) delivered by the Company relating to a "Forward" hereunder and a "Forward" or a "Warrant" under any Alternative Equity Distribution Agreements, would result in the sum of the number of shares of Common Stock issued under all Forward Contracts (whether with a Forward Purchaser or any Alternative Agent) and under all Warrant Contracts with the Warrant Purchaser that have settled, plus the Capped Numbers under all Forward Contracts then outstanding or to be entered into between the Company and the Forward Purchaser and any Forward Contracts then outstanding between the Company and any Alternative Agent, plus the Maximum Number of Shares under all Warrant Contracts then outstanding or to be entered into between the Company and the Warrant Purchaser, exceeding 19.99% of the number of shares of Common Stock outstanding as of the date of this Agreement.

(d) Notwithstanding any other provision of this Agreement, any notice required to be delivered by the Company or by an Agent (in the case of an Issuance) or the Forward Seller and the Forward Purchaser (in the case of a Forward) pursuant to this Section 2 may be delivered by telephone (confirmed promptly by facsimile or email to the Company and the Agent (in the case of an Issuance) or the Forward Seller and the Forward Purchaser (in the case of a Forward), which confirmation will be promptly acknowledged by the receiving party) or other method mutually agreed to in writing by the parties.

Section 3. Sale of Securities.

(a) Subject to the provisions of Sections 2(b) and 5(a), upon the delivery of a Placement Notice (as amended by the corresponding Acceptance, if applicable) specifying that it relates to an "Issuance," the Agent will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell the Issuance Securities at market prevailing prices up to the amount specified, and otherwise in accordance with the terms of such Placement Notice (as amended by the corresponding Acceptance, if applicable). The Agent will provide written confirmation by email to the Company no later than the opening of the Trading Day immediately following each Trading Day on which it has made sales of Issuance Securities hereunder setting forth the number of Issuance Securities sold on such day, the corresponding Aggregate Sales Price, the compensation payable by the Company to the Agent pursuant to this Section 3(a) with respect to such sales, and the Net Proceeds (as defined below) payable to the Company, with an itemization of the amounts set forth in Section 5(b) used to determine the amount of the Net Proceeds from the Gross Proceeds (as defined in Section 5(b)) that the Agent receives from such sales. The amount of any commission, discount or other compensation to be paid by the Company to the Agent, when the Agent is acting as agent, in connection with the sale of the Issuance Securities shall be a rate mutually agreed to between the Company and the Agent and recorded in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable), not to exceed 1.5% of the gross sales price of the Issuance Securities sold pursuant to this Agreement. From time to time, the Company may also offer to sell shares of Common Stock directly to an Agent, as principal (each such transaction, a "Principal Transaction"), in which event such parties shall enter into a separate agreement. The amount of any commission, discount or other compensation to be paid by the Company to the Agent in a Principal Transaction shall be as separately agreed among the parties hereto at the time of any such sales.

(b) Subject to the provisions of Sections 2(b), 5(d) and the Master Forward Confirmation, upon the delivery of a Placement Notice (as amended by the corresponding Acceptance, if applicable) specifying that it relates to a "Forward," the Forward Purchaser (or its affiliate) will use commercially reasonable efforts to borrow, offer and sell Forward Hedge Securities through the Forward Seller to hedge the Forward, and the Forward Seller will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell the Forward Hedge Securities at market prevailing prices up to the Forward Hedge Amount specified in such Placement Notice (as amended by the corresponding Acceptance, if applicable), and otherwise in accordance with the terms of such Placement Notice (as amended by the corresponding Acceptance, if applicable). The Forward Seller will provide written confirmation by email to the Company and to the Forward Purchaser no later than the opening of the Trading Day immediately following each Trading Day on which it has made sales of Forward Hedge Securities hereunder setting forth the number of Forward Hedge Securities sold on such day, the Forward Hedge Selling Commission in respect of such Forward Hedge Securities, the corresponding Aggregate Sales Price and the Aggregate Forward Hedge Price payable to the Forward Purchaser in respect thereof.

(c) No later than the opening of the Trading Day immediately following the last Trading Day of each Forward Hedge Selling Period (or, if earlier, no later than the opening of the Trading Day immediately following the date on which any Forward Hedge Selling Period is suspended or terminated pursuant to Section 4 or the Forward Contract or this Agreement is terminated pursuant to Section 13 hereof), the Forward Purchaser shall execute and deliver to the Company, and the Company shall promptly execute and return to the Forward Purchaser, a Supplemental Confirmation in respect of the Forward for such Forward Hedge Selling Period, which Supplemental Confirmation shall set forth the "Trade Date" for such Forward (which shall, subject to the terms of the Master Forward Confirmation, be the last Trading Day of such

Forward Hedge Selling Period), the "Effective Date" for such Forward (which shall, subject to the terms of the Master Forward Confirmation, be the date one Settlement Cycle (as such term is defined in the Master Forward Confirmation) immediately following the last Trading Day of such Forward Hedge Selling Period), the initial "Number of Shares" for such Forward (which shall be the Actual Sold Forward Amount for such Forward Hedge Selling Period), the "Maturity Date" for such Forward (which shall, subject to the terms of the Master Forward Confirmation, be the date that follows the last Trading Day of such Forward Hedge Selling Period by the number of days or months set forth opposite the caption "Term" in the Placement Notice (as amended by the corresponding Acceptance, if applicable) for such Forward, which number of days or months shall in no event be less than three (3) months nor more than two (2) years), the "Initial Forward Price" for such Forward, the "Spread" for such Forward (as set forth in the related Placement Notice (as amended by the corresponding Acceptance, if applicable)), the "Volume-Weighted Hedge Price" for such Forward, the "Threshold Price" for such Forward, the "Initial Stock Loan Rate" for such Forward (as set forth in the related Placement Notice (as amended by the corresponding Acceptance, if applicable)), the "Maximum Stock Loan Rate" for such Forward (as set forth in the related Placement Notice (as amended by the corresponding Acceptance, if applicable)), the "Threshold Number of Shares" for such Forward, the "Forward Price Reduction Dates" for such Forward (which shall be each of the dates set forth below the caption "Forward Price Reduction Dates" in the Placement Notice (as amended by the corresponding Acceptance, if applicable) for such Forward) and the "Forward Price Reduction Amounts" corresponding to such Forward Price Reduction Dates (which shall be each amount set forth opposite each "Forward Price Reduction Date" and below the caption "Forward Price Reduction Amounts" in the Placement Notice (as amended by the corresponding Acceptance, if applicable) for such Forward) and the "Regular Dividend Amounts" for such Forward (which shall be each of the amount(s) set forth below the caption "Regular Dividend Amounts" in the Placement Notice (as amended by the corresponding Acceptance, if applicable) for such Forward).

(d) Notwithstanding anything herein to the contrary, the Forward Purchaser's obligation to use its commercially reasonable efforts to borrow all or any portion of the Forward Hedge Securities (and the Forward Seller's obligation to use its commercially reasonable efforts to sell such portion of the Forward Hedge Securities) for any Forward hereunder shall be subject in all respects to the last paragraph of Section 3 of the Master Forward Confirmation.

(e) The Securities may be offered and sold by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 under the 1933 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, or subject to the terms of the Placement Notice (as amended by the corresponding Acceptance, if applicable), by any other method permitted by law, including but not limited to, privately negotiated transactions, which may include block trades.

Section 4. Suspension of Sales. The Company, the Agent, the Forward Seller or the Forward Purchaser may, upon notice to the other parties in writing (including by email correspondence) or by telephone (confirmed immediately by verifiable facsimile transmission or email correspondence), suspend any sale of Securities, and the applicable Selling Period shall immediately terminate; provided, however, that such suspension and termination shall not affect or impair any party's obligations with respect to any Securities sold hereunder prior to the receipt of such notice or any Securities sold under any Alternative Equity Distribution Agreement (including, in the case of any Forward Hedge Securities or Warrant Hedge Securities, the obligation to enter into the resulting Forward Contract or Warrant Contracts); provided, further, that the failure by the Agent, the Forward Seller or the Forward Purchaser to deliver such notice shall in no way effect such party's right to suspend the sale of Securities hereunder.

Section 5. Sale and Delivery; Settlement.

(a) Sale of Issuance Securities. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, upon the Agent's acceptance of the terms of a Placement Notice specifying that it relates to an "Issuance" or upon receipt by the Agent of an Acceptance, as the case may be, and unless the sale of the Issuance Securities described therein has been declined,

suspended, or otherwise terminated in accordance with the terms of this Agreement, the Agent will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Issuance Securities at market prevailing prices up to the amount specified, and otherwise in accordance with the terms of such Placement Notice (as amended by the corresponding Acceptance, if applicable). Each of the Company and the Operating Partnership acknowledges and agrees that (i) there can be no assurance the Agent will be successful in selling Issuance Securities, (ii) the Agent will incur no liability or obligation to the Company, the Operating Partnership or any other person or entity if it does not sell Issuance Securities for any reason other than a failure by the Agent to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Issuance Securities as required under this Section 5 and (iii) the Agent shall be under no obligation to purchase Issuance Securities on a principal basis pursuant to this Agreement.

(b) Settlement of Issuance Securities. Unless otherwise specified in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable), settlement for sales of Issuance Securities will occur on the first (1st) Trading Day following the date on which such sales are made (each, an "Issuance Settlement Date"). The amount of proceeds to be delivered to the Company on an Issuance Settlement Date against receipt of the Issuance Securities sold will be equal to (i) the aggregate gross sales price received by the Agent at which such Issuance Securities were sold (the "Gross Proceeds"), after deduction for (A) the Agent's commission, discount or other compensation for such sales payable by the Company pursuant to Section 3 hereof, (B) any other amounts due and payable by the Company to the Agent hereunder pursuant to Section 8(a) hereof and (C) any transaction fees, transfer taxes or similar taxes or fees imposed by any governmental, regulatory or self-regulatory organization in respect of such sales (the "Net Proceeds") or (ii) the Gross Proceeds. In the event that the Agent delivers the Gross Proceeds to the Company at an Issuance Settlement Date, the amounts set forth in clauses (i)(A), (B) and (C) of the preceding sentence shall be set forth and invoiced in a periodic statement from the Agent to the Company and payment of such amounts shall be made promptly by the Company after its receipt thereof.

(c) Delivery of Issuance Securities. On or before each Issuance Settlement Date, the Company will, or will cause its transfer agent to, electronically transfer the Issuance Securities being sold by crediting the Agent's or its designee's account (provided that the Agent shall have given the Company written notice of such designee prior to the Issuance Settlement Date) at The Depository Trust Company through its Deposit and Withdrawal at Custodian System 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 in good deliverable form. On each Issuance Settlement Date, the Agent will deliver the related Net Proceeds or Gross Proceeds, as applicable, in same day funds to an account designated by the Company prior to the Issuance Settlement Date. The Company agrees that if the Company, or its transfer agent (if applicable), defaults in its obligation to deliver Issuance Securities on an Issuance Settlement Date, the Company agrees that in addition to and in no way limiting the rights and obligations set forth in Sections 10(a) and 10(d) hereto, it will (i) hold the Agent harmless against any loss, liability, claim, damage, or expense whatsoever (including reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company or its transfer agent (if applicable) and (ii) pay to the Agent any commission, discount, or other compensation to which it would otherwise have been entitled absent such default.

(d) Sale of Forward Hedge Securities. On the basis of the representations and warranties herein contained and subject to the terms and conditions in this Agreement and the Master Forward Confirmation, upon the Forward Purchaser's and the Forward Seller's acceptance of the terms of a Placement Notice specifying that it relates to a "Forward" or upon receipt by the Forward Purchaser and Forward Seller of an Acceptance, as the case may be, and unless the sale of the Forward Hedge Securities described therein has been declined, suspended or otherwise terminated in accordance with the terms of this Agreement or the Master Forward Confirmation (including without limitation as a result of any event described in clause (i) or (ii) of the proviso contained in the definition of Forward Hedge Selling Period), the Forward Purchaser will use its commercially reasonable efforts to borrow a number of Forward Hedge Securities sufficient to have an Aggregate Sales Price as close as reasonably practicable to the Forward Hedge Amount specified in the Placement Notice (as amended by the corresponding Acceptance, if applicable) and the Forward

Seller will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Forward Hedge Securities at market prevailing prices, and otherwise in accordance with the terms of such Placement Notice (as amended by the corresponding Acceptance, if applicable). Each of the Company and the Forward Purchaser acknowledges and agrees that (i) there can be no assurance that the Forward Purchaser (or its affiliate) will be successful in borrowing or that the Forward Seller will be successful in selling Forward Hedge Securities, (ii) the Forward Seller will incur no liability or obligation to the Company, the Forward Purchaser or any other person or entity if it does not sell Forward Hedge Securities borrowed by the Forward Purchaser (or its affiliate) for any reason other than a failure by the Forward Seller to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Forward Hedge Securities as required under this Section 5 and (iii) the Forward Purchaser will incur no liability or obligation to the Company, the Forward Seller or any other person or entity if it does not borrow Forward Hedge Securities for any reason other than a failure by the Forward Purchaser to use its commercially reasonable efforts to borrow such Forward Hedge Securities as required under this Section 5. In acting hereunder, the Forward Seller will be acting as agent for the Forward Purchaser and not as principal.

(e) Delivery of Forward Hedge Securities. Unless otherwise specified in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable), settlement for sales of Forward Hedge Securities will occur on the first (1st) Trading Day following the date on which such sales are made (each, a "Forward Hedge Settlement Date"). On or before each Forward Hedge Settlement Date, the Forward Purchaser will, or will cause its transfer agent to, electronically transfer the Forward Hedge Securities being sold by crediting the Forward Seller or its designee's account (provided that the Forward Seller shall have given the Forward Purchaser written notice of such designee prior to the Forward Hedge Settlement Date) at The Depository Trust Company through its Deposit and Withdrawal at Custodian System 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 in good deliverable form. On each Forward Hedge Settlement Date, the Forward Seller will deliver the related Aggregate Forward Hedge Price to the Forward Purchaser in same day funds to an account designated by the Forward Purchaser prior to the relevant Forward Hedge Settlement Date.

(f) The Securities shall be in such denominations and registered in such names as the Agent or the Forward Seller, as applicable, may request in writing at least one (1) full business day before the Settlement Date. The Company or the Forward Purchaser, as the case may be, shall deliver the Securities, if any, through the facilities of The Depository Trust Company as described in the preceding paragraphs unless the Agent or the Forward Seller, as applicable, shall otherwise instruct.

(g) Under no circumstances shall the Company cause or request the offer or sale of any Securities, if after giving effect to the sale of such Securities, the aggregate gross sales price of the Securities sold pursuant to this Agreement would exceed the lesser of (i) together with (A) all sales of Issuance Securities under this Agreement and each of the Alternative Equity Distribution Agreements and (B) all Forward Hedge Securities and Warrant Hedge Securities sold under this Agreement and each of the Alternative Equity Distribution Agreements, the Maximum Amount, (ii) the amount available for offer and sale under the currently effective Registration Statement and (iii) the amount authorized from time to time to be issued or sold under this Agreement by the Company and notified to the Agent, the Forward Seller and the Forward Purchaser in writing. Under no circumstances shall the Company cause or request the offer or sale of any Securities pursuant to this Agreement at a price lower than the minimum price authorized from time to time by the Company and notified to the Agent or the Forward Seller, as applicable, in writing. Further, under no circumstances shall the aggregate gross sales price of Securities sold pursuant to this Agreement and the Alternative Equity Distribution Agreements, including any separate underwriting or similar agreement covering principal transactions and the Alternative Equity Distribution Agreements, exceed the Maximum Amount.

(h) The Company agrees that any offer to sell, any solicitation of an offer to buy or any sales of Securities shall only be effected by or through only one of the Agent or the Forward Seller, as the case may

be, or the respective Alternative Agent on any single given day, but in no event more than one, and the Company shall in no event request that the Agent or the Forward Seller, as the case may be, and one or more of the Alternative Agents sell Securities on the same day; provided, however, that (i) the foregoing limitation shall not apply to (A) exercise of any option, warrant, right or any conversion privilege set forth in the instrument governing such security, or (B) sales solely to employees or security holders of the Company or its subsidiaries, or to a trustee or other person acquiring such securities for the accounts of such persons, (ii) such limitation shall not apply on any day during which no sales are made pursuant to this Agreement and (iii) such limitation shall not apply if, prior to any such request to sell Securities, all Securities the Company has previously requested the Agent, the Forward Seller or any Alternative Agents to sell have been sold. For the avoidance of doubt, the foregoing limitation shall not apply to sales solely to employees or security holders of the Company or its subsidiaries, or to a trustee or other person acquiring such securities for the accounts of such persons in which any of [•], [•], [•], [•], [•], [•] or [•] is acting for the Company in a capacity other than as Agent, Forward Seller or Warrant Hedge Seller, as applicable, under this Agreement or any Alternative Equity Distribution Agreement.

(i) If the Company, the Agent or the Forward Seller, as applicable, believes that the exemptive provisions set forth in Rule 101(c)(1) of Regulation M under the 1934 Act (applicable to securities with an average daily trading volume of $1,000,000 that are issued by an issuer whose common equity securities have a public float value of at least $150,000,000) are not satisfied with respect to the Company or the Securities, it shall promptly notify the other parties and sales of Securities under this Agreement shall be suspended until that or other exemptive provisions have been satisfied in the judgment of each party.

(j) Notwithstanding any other provision of this Agreement, the Company shall not offer, sell or deliver, or request the offer or sale, any Securities and, by notice to the Agent (in the case of an Issuance) or the Forward Seller and the Forward Purchaser (in the case of a Forward) given by telephone (confirmed promptly by telecopy or email), shall cancel any instructions for the offer or sale of any Securities, and the Agent (in the case of an Issuance) or the Forward Seller and the Forward Purchaser (in the case of a Forward) shall not be obligated to offer or sell any Securities, (i) during the fourteen (14) calendar days prior to the first date (each, an "Announcement Date") on which the Company shall issue a press release containing, or shall otherwise publicly announce, its earnings, revenues or other results of operations for a completed fiscal year or quarter (each, an "Earnings Announcement"), (ii) except as provided in Section 5(k) below, at any time from and including the Announcement Date through and including the time that is 24 hours after the time that the Company files (a "Filing Time") a Quarterly Report on Form 10-Q or an Annual Report on Form 10-K that includes consolidated financial statements as of and for the same period or periods, as the case may be, covered by such Earnings Announcement, or (iii) during any other period in which the Company is in possession of material non-public information; provided that, unless otherwise agreed between the Company and Agent (in the case of an Issuance) or the Forward Seller and the Forward Purchaser (in the case of a Forward), for purposes of (i) and (ii) above, such period shall be deemed to end 24 hours after the relevant Filing Time.

(k) If the Company wishes to offer, sell or deliver Securities at any time during the period from and including an Announcement Date through and including the corresponding Filing Time, the Company shall (i) prepare and deliver to the Agent (in the case of an Issuance) or the Forward Seller and the Forward Purchaser (in the case of a Forward) (with a copy to their counsel) a Current Report on Form 8-K which shall include substantially the same financial and related information as was set forth in the relevant Earnings Announcement (other than any earnings projections, similar forward-looking data and officers' quotations) (each, an "Earnings 8-K"), in form and substance reasonably satisfactory to the Agent or the Forward Seller and the Forward Purchaser, as the case may be, and obtain the consent of the Agent or the Forward Seller and the Forward Purchaser, as the case may be, to the filing thereof (such consent not to be unreasonably withheld), (ii) provide the Agent or the Forward Seller and the Forward Purchaser, as the case may be, with the officers' certificate, opinions and letters of counsel and accountants' letter called for by Sections (6)(j), (k) and (l) hereof; respectively, (iii) afford the Agent or the Forward Seller and the Forward Purchaser, as the case may be, the opportunity to conduct a due diligence review in accordance with Section 6(o) hereof and (iv) file such Earnings 8-K with the Commission, then the provisions of clause (iii)

of Section 5(j) shall not be applicable for the period from and after the time at which the foregoing conditions shall have been satisfied (or, if later, the time that is 24 hours after the time that the relevant Earnings Announcement was first publicly released) through and including the time that is 24 hours after the Filing Time of the relevant Quarterly Report on Form 10-Q or Annual Report on Form 10-K, as the case may be. For purposes of clarity, the parties hereto agree that (A) the delivery of any officers' certificate, accountants' letter and opinions and letters of counsel pursuant to this Section 5(k) shall not relieve the Company from any of its obligations under this Agreement with respect to any Quarterly Report on Form 10-Q or Annual Report on Form 10-K, as the case may be, including, without limitation, the obligation to deliver officers' certificates, accountants' letters and legal opinions and letters as provided in Section 6 hereof and (B) this Section 5(k) shall in no way affect or limit the operation of the provisions of clauses (i) and (ii) of Section 5(j), which shall have independent application.

(l) Any obligation of the Agent, the Forward Seller and the Forward Purchaser hereunder with respect to a Placement shall be subject to the continuing accuracy of the representations and warranties of the Company and the Operating Partnership herein, to the performance by the Company and the Operating Partnership of their obligations hereunder and to the continuing satisfaction of the additional conditions specified in Section 9 of this Agreement.

Section 6. Covenants. Each of the Company and the Operating Partnership jointly and severally agrees with the Agent, the Forward Seller and the Forward Purchaser:

(a) During any Selling Period or period when the delivery of a prospectus is required in connection with the offering or sale of Securities (whether physically or through compliance with Rule 153 or 172, or in lieu thereof, a notice referred to in Rule 173(a) under the 1933 Act), (i) to make no further amendment or any supplement to the Registration Statement or the Prospectus prior to the applicable Settlement Date which shall be disapproved by the Agent, the Forward Seller or the Forward Purchaser promptly after reasonable notice thereof and to advise the Agent, the Forward Seller and the Forward Purchaser, promptly after receiving notice thereof, of the time when any amendment to the Registration Statement has been filed or becomes effective or any amendment or supplement to the Prospectus has been filed and to furnish the Representatives with copies thereof, (ii) to file promptly all other material required to be filed by the Company or the Operating Partnership with the Commission pursuant to Rule 433(d) under the 1933 Act, (iii) to file promptly all reports and any definitive proxy or information statements required to be filed by the Company or the Operating Partnership with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the 1934 Act, (iv) to advise the Agent, the Forward Seller and the Forward Purchaser, promptly after they receive notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of the Prospectus or other prospectus in respect of the Securities, of any notice of objection of the Commission to the use of the form of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the 1933 Act, of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the form of the Registration Statement or the Prospectus or for additional information, and (v) in the event of the issuance of any such stop order or of any such order preventing or suspending the use of the Prospectus in respect of the Securities or suspending any such qualification, to promptly use its commercially reasonable efforts to obtain the withdrawal of such order; and in the event of any such issuance of a notice of objection, promptly to take such reasonable steps as may be necessary to permit offers and sales of the Securities by the Agent, the Forward Seller and the Forward Purchaser, as the case may be, which may include, without limitation, amending the Registration Statement or filing a new registration statement, at the Company's expense (references herein to the Registration Statement shall include any such amendment or new registration statement).

(b) Promptly from time to time to take such action as the Agent, the Forward Seller and the Forward Purchaser, as the case may be, may reasonably request to qualify the Securities for offering and sale under the securities laws of such jurisdictions as the Agent, the Forward Seller and the Forward Purchaser may request and to comply with such laws so as to permit the continuance of sales and dealings therein in such

jurisdictions for as long as may be necessary to complete the sale of the Securities, provided that in connection therewith neither the Company nor the Operating Partnership shall be required to qualify as a foreign corporation or foreign partnership or to file a general consent to service of process in any jurisdiction; and to promptly advise the Agent, the Forward Seller and the Forward Purchaser of the receipt by the Company or the Operating Partnership of any notification with respect to the suspension of the qualification of the Securities for offer or sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose.

(c) During any period when the delivery of a prospectus is required (whether physically or through compliance with Rules 153 or 172, or in lieu thereof, a notice referred to in Rule 173(a) under the 1933 Act) in connection with the offering or sale of Securities, the Company will make available to the Agent, the Forward Seller and the Forward Purchaser, as soon as practicable after the execution of this Agreement, and thereafter from time to time furnish to the Agent, copies of the most recent Prospectus in such quantities and at such locations as the Agent, the Forward Seller and the Forward Purchaser may reasonably request for the purposes contemplated by the 1933 Act. During any period when the delivery of a prospectus is required (whether physically or through compliance with Rules 153 or 172, or in lieu thereof, a notice referred to in Rule 173(a) under the 1933 Act) in connection with the offering or sale of Securities, and if at such time any event shall have occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it shall be necessary during such same period to amend or supplement the Prospectus or to file under the 1934 Act any document incorporated by reference in the Prospectus in order to comply with the 1933 Act or the 1934 Act, to notify the Agent, the Forward Seller and the Forward Purchaser and to file such document and to prepare and furnish without charge to the Agent, the Forward Seller and the Forward Purchaser as many written and electronic copies as the Agent, the Forward Seller and the Forward Purchaser may from time to time reasonably request of an amended Prospectus or a supplement to the Prospectus which will correct such statement or omission or effect such compliance.

(d) To make generally available to its securityholders as soon as practicable, but in any event not later than sixteen months after the effective date of the Registration Statement (as defined in Rule 158(c) under the 1933 Act), an earnings statement of the Company and its subsidiaries (which need not be audited) complying with Section 11(a) of the 1933 Act and the rules and regulations of the Commission thereunder (including, at the option of the Company, Rule 158).

(e) To pay the required Commission filing fees relating to the Securities within the time required by Rule 456(b)(1) under the 1933 Act without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) under the 1933 Act.

(f) To use the Net Proceeds from the sale of the Securities in the manner specified in the Registration Statement and the Prospectus.

(g) In connection with the offering and sale of the Securities, the Company will file with the NYSE all documents and notices, and make all certifications, required by the NYSE of companies that have securities that are listed on the NYSE and will maintain such listing.

(h) To not take, directly or indirectly, any action designed to cause or result in, or that has constituted or might reasonably be expected to constitute, under the 1934 Act or otherwise, the stabilization or manipulation of the price of any securities of the Company or the Operating Partnership to facilitate the sale or resale of the Securities.

(i) In each Annual Report on Form 10-K or Quarterly Report on Form 10-Q filed by the Company in respect of any quarter in which sales of Securities under this Agreement or any Alternative Equity Distribution Agreement (each date on which any such document is filed, and any date on which an

amendment to any such document is filed, a "Company Periodic Report Date"), the Company shall set forth with regard to such quarter the aggregate number of Securities sold under this Agreement, and any Alternative Equity Distribution Agreement, the Net Proceeds to the Company and the compensation payable by the Company with respect to such sales.

(j) Upon commencement of the offering of Securities under this Agreement and each time Securities are delivered to the Agent as principal on a Settlement Date and promptly after each (i) date the Registration Statement or the Prospectus shall be amended or supplemented (other than (1) by an amendment or supplement providing solely for the determination of the terms of the Securities, (2) in connection with the filing of a prospectus supplement that contains solely the information set forth in Section 6(i), (3) in connection with the filing of any current reports on Form 8-K (other than an Earnings 8-K and any other current reports on Form 8-K which contain capsule financial information, financial statements, supporting schedules or other financial data, including any current report on Form 8 K under Item 2.02 of such form that is considered "filed" under the 1934 Act) or (4) by a prospectus supplement relating to the offering of other securities (including, without limitation, other shares of Common Stock)) (each such date, a "Registration Statement Amendment Date"), (ii) date on which an Earnings 8-K shall be filed with the Commission as contemplated by Section 5(j) hereof (a "Company Earnings Report Date") and (iii) Company Periodic Report Date, and promptly after each reasonable request by the Agent (each date of any such request by the Agent, a "Request Date") (each of the date of the commencement of the offering of Securities under this Agreement, each such Settlement Date and each Registration Statement Amendment Date, Company Earnings Report Date, Company Periodic Report Date and Request Date is hereinafter called a "Representation Date"), the Company will furnish or cause to be furnished to the Agent, the Forward Seller and the Forward Purchaser (with a copy to their counsel) a certificate dated the date of delivery thereof to the Agent, the Forward Seller and the Forward Purchaser (or, in the case of an amendment or supplement to the Registration Statement or the Prospectus (including, without limitation, by the filing of any document under the 1934 Act that is incorporated by reference therein), the date of the effectiveness of such amendment to the Registration Statement or the date of filing with the Commission of such supplement or incorporated document, as the case may be), in form and substance reasonably satisfactory to the Agent, the Forward Seller and the Forward Purchaser and their counsel, to the effect that the statements contained in the certificate referred to in Section 9(e) of this Agreement which was last furnished to the Agent, the Forward Seller and the Forward Purchaser are true and correct as of the date of such certificate as though made at and as of the date of such certificate (except that such statements shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented to the date of such certificate) or, in lieu of such certificate, a certificate of the same tenor as the certificate referred to in Section 9(e), but modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the date of such certificate. As used in this paragraph, to the extent there shall be an Applicable Time on or following the applicable Representation Date, "promptly" shall be deemed to be prior to the next succeeding Applicable Time. The requirement to provide a certificate under this Section 6(j) shall be waived for any Representation Date occurring at a time at which the Company has instructed that no sales of Securities may be made hereunder, which waiver shall continue until the earlier to occur of the date the Company delivers a Placement Notice hereunder (which for such calendar quarter shall be considered a Representation Date) and the next occurring Representation Date; *provided, however*, that such waiver shall not apply for any Representation Date on which the Company files its annual report on Form 10-K. Notwithstanding the foregoing, if the Company subsequently delivers a Placement Notice hereunder following a Representation Date when the Company relied on such waiver and did not provide the Agent, the Forward Seller and the Forward Purchaser with a certificate under this Section 6(j), then before the Company delivers a Placement Notice or the Agent sells any Securities, the Company shall provide the Agent, the Forward Seller and the Forward Purchaser with a certificate referred to in Section 9(e) and a certificate under this Section 6(j).

(k) Upon commencement of the offering of Securities under this Agreement and each time the Securities are delivered to the Agent as principal on a Settlement Date, and promptly after each other Representation Date with respect to which the Company is obligated to deliver a certificate referred to in Section 9(e) of this Agreement for which no waiver is applicable, the Company will furnish or cause to be

furnished to the Agent, the Forward Seller and the Forward Purchaser (with a copy to their counsel) the written opinion of Jeffrey D. Miller, Esq., general counsel of the Company, the written opinion and 10b-5 letter of Paul Hastings LLP, counsel to the Company and the Operating Partnership, the written opinion of Paul Hastings LLP, tax counsel to the Company and the Operating Partnership, and the written opinion of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., North Carolina counsel to the Operating Partnership, or, in each case, such other counsel to the Company and the Operating Partnership reasonably acceptable to the Agent, the Forward Seller and the Forward Purchaser, dated the date that such opinions and letters are required to be delivered, in the forms set forth in Exhibit A, Exhibit B-1, Exhibit B-2, Exhibit B-3 and Exhibit C, respectively, hereto, but modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the date of such opinions or letter or, in lieu of any such opinion or letter, the counsel last furnishing such opinion or letter to the Agent, the Forward Seller and the Forward Purchaser shall furnish the Agent, the Forward Seller and the Forward Purchaser (with a copy to their counsel) with a letter substantially to the effect that the Agent, the Forward Seller and the Forward Purchaser may rely on such counsel's last opinion or 10b-5 letter, as applicable, to the same extent as though each were dated the date of such letter authorizing reliance (except that statements in such last opinion and letter shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented to the date of such letter authorizing reliance). As used in this paragraph, to the extent there shall be an Applicable Time on or following the applicable Representation Date, "promptly" shall be deemed to be on or prior to the next succeeding Applicable Time.

(l) Upon commencement of the offering of Securities under this Agreement, and at the time Securities are delivered to the Agent as principal on a Settlement Date, and promptly after each other Representation Date with respect to which the Company is obligated to deliver a certificate referred to in Section 9(e) of this Agreement for which no waiver is applicable, the Company will cause Deloitte & Touche LLP, or other independent accountants reasonably satisfactory to the Agent, the Forward Seller and the Forward Purchaser, to furnish to the Agent, the Forward Seller and the Forward Purchaser a letter, dated the date of effectiveness of such amendment or the date of filing of such supplement or other document with the Commission, as the case may be, in form reasonably satisfactory to the Agent and its counsel, of the same tenor as the letter referred to in Section 9(d) hereof, but modified as necessary to relate to the Registration Statement and the Prospectus, as amended and supplemented, or to the document incorporated by reference into the Prospectus, to the date of such letter. As used in this paragraph, to the extent there shall be an Applicable Time on or following the applicable Representation Date, "promptly" shall be deemed to be on or prior to the next succeeding Applicable Time.

(m) The Company consents to the Agent, the Forward Seller and the Forward Purchaser trading in the Common Stock for its own account and for the account of its clients at the same time as sales of Securities occur pursuant to this Agreement.

(n) If, to the knowledge of the Company, all filings required by Rule 424 in connection with this offering shall not have been made or the representations in Section 1(a) shall not be true and correct on the applicable Settlement Date, the Company will offer to any person who has agreed to purchase Securities from the Company as the result of an offer to purchase solicited by the Agent the right to refuse to purchase and pay for such Securities.

(o) The Company and the Operating Partnership will cooperate timely with any reasonable due diligence review conducted by the Agent, the Forward Seller and the Forward Purchaser or their counsel from time to time in connection with the transactions contemplated hereby, including, without limitation, and upon reasonable notice providing information and making available documents and appropriate corporate officers, during regular business hours and at the Company's principal offices, as the Agent, the Forward Seller and the Forward Purchaser may reasonably request.

(p) The Company will not, for any period during which the Company has instructed the Agent, the Forward Seller or the Forward Purchaser to sell Securities pursuant to Section 5 until the issuance of such Securities, without (i) giving the Agent, the Forward Seller and the Forward Purchaser at least three (3)

business days' prior written notice specifying the nature of the proposed sale and the date of such proposed sale and (ii) the Agent, the Forward Seller or the Forward Purchaser's suspending activity under this program for such period of time as requested by the Company or as deemed appropriate by the Agent, the Forward Seller and the Forward Purchaser in light of the proposed sale, (A) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, lend or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or securities convertible into or exchangeable or exercisable for or repayable with Common Stock, or file any registration statement under the 1933 Act with respect to any of the foregoing (other than a shelf registration statement under Rule 415 under the 1933 Act, a registration statement on Form S-8 or post-effective amendment to the Registration Statement) or (B) enter into any swap or other agreement or any transaction that transfers in whole or in part, directly or indirectly, any of the economic consequence of ownership of the Common Stock, or any securities convertible into or exchangeable or exercisable for or repayable with Common Stock, whether any such swap or transaction described in clause (A) or (B) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (v) the issuance of up to one million units of limited partnership interest in the Operating Partnership issued in connection with the acquisition of property or assets, (w) the issuance of Common Stock upon redemption of units of limited partnership interest in the Operating Partnership or upon the exercise of any option or warrant or the conversion or exchange of a convertible or exchangeable security previously outstanding, including, without limitation, the issuance of shares of Common Stock in exchange for equity interests in a subsidiary or joint venture entity pursuant to a pre-existing right to effectuate such exchange, (x) the Securities to be offered and sold pursuant to this Agreement or the Alternative Equity Distribution Agreements, as applicable, (y) Common Stock issuable pursuant to the Company's dividend reinvestment plan as it may be amended or replaced from time to time and (z) the issuance, grant or sale of Common Stock, options to purchase shares of Common Stock or shares of Common Stock issuable upon the exercise of options or other equity incentive awards approved by the board of directors of the Company or the compensation committee thereof or the issuance of Common Stock upon exercise thereof. The Company agrees that any offer to sell, any solicitation of an offer to buy, or any sales of, Securities under this Agreement, any Alternative Equity Distribution Agreement, the Master Forward Confirmation or the Master Warrant Confirmation shall be effected by or through only one of the Agent or the Forward Seller, as the case may be, or the respective Alternative Agents on any single given day, but in no event more than one, and the Company shall in no event request that the Agent or the Forward Seller, as the case may be, and one or more of the Alternative Agents sell Securities on the same day.

(q) If immediately prior to the third anniversary (the "Renewal Deadline") of the initial effective date of the Registration Statement,this Agreement has not terminated and a prospectus is required to be delivered or made available by the Agent, the Forward Seller and the Forward Purchaser under the 1933 Act or the 1934 Act in connection with the sale of the Securities, the Company will, prior to the Renewal Deadline file, if it has not already done so and is eligible to do so, a new automatic shelf registration statement relating to the Securities, in a form satisfactory to the Agent, the Forward Seller and the Forward Purchaser. If the Company is no longer 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 Securities, in a form satisfactory to the Agent, the Forward Seller and the Forward Purchaser, and will use its best efforts to cause such registration statement to be declared effective within sixty (60) days after the Renewal Deadline. The Company will take all other reasonable actions necessary or appropriate to permit the issuance and sale of the Securities to continue as contemplated in the expired registration statement relating to the Securities. References herein to the Registration Statement shall include such new automatic shelf registration statement or such new shelf registration statement, as the case may be.

Section 7. Free Writing Prospectus.

(a) The Company represents and agrees that without the prior consent of the Agent, the Forward Seller and the Forward Purchaser, it has not made and will not make any offer relating to the Securities that would constitute a "free writing prospectus" as defined in Rule 405 under the 1933 Act.

(b) Each of the Agent, the Forward Seller and the Forward Purchaser represent and agree that, without the prior consent of the Company they have not made and will not make any offer relating to the Securities that would constitute a free writing prospectus required to be filed with the Commission.

(c) The Company has complied and will comply with the requirements of Rule 433 under the 1933 Act applicable to any Issuer Free Writing Prospectus (including any free writing prospectus identified in Section 4(a) hereof), including timely filing with the Commission or retention where required and legending.

Section 8. Payment of Expenses.

(a) The Company covenants and agrees with the Agent, the Forward Seller and the Forward Purchaser that the Company will pay or cause to be paid the following: (i) the fees, disbursements and expenses of the counsel, accountants and other advisors to the Company and the Operating Partnership in connection with the registration of the Securities under the 1933 Act and all other expenses in connection with the preparation, printing and filing of the Registration Statement, the Basic Prospectus, Prospectus Supplement, any Issuer Free Writing Prospectus and the Prospectus and amendments and supplements thereto and the mailing and delivering of copies thereof to the Agent, the Forward Seller and the Forward Purchaser; (ii) the cost of printing or producing this Agreement, any Blue Sky and Legal Investment Memoranda, closing documents (including any compilations thereof) and any other documents in connection with the offering, purchase, sale and delivery of the Securities; (iii) all expenses in connection with the qualification of the Securities for offering and sale under state securities laws as provided in Section 6(b) hereof; (iv) any filing fees incident to any required review by FINRA of the terms of the sale of the Securities; (v) all fees and expenses in connection with listing the Securities on the NYSE; (vi) all expenses in connection with the preparation, issuance and delivery of the Securities to the Agent, the Forward Seller and the Forward Purchaser, including any stock, transfer or other taxes and any stamp or other duties payable upon the sale, issuance or delivery of the Securities to the Agent, the Forward Seller and the Forward Purchaser; (vii) the costs and charges of any transfer agent or registrar or any dividend distribution agent; and (viii) all other costs and expenses incident to the performance of its obligations hereunder which are not otherwise specifically provided for in this Section. It is understood, however, that, except as provided in this Section 8(a) and Section 10 hereof, each of the Agent, the Forward Seller and the Forward Purchaser will pay all of their own costs and expenses, including the fees of their counsel, transfer taxes on resale of any of the Securities by it, and any advertising expenses connected with any offers it may make.

(b) If Securities having an aggregate gross sales price of $10,000,000 have not been offered and sold under this Agreement and/or the Alternative Equity Distribution Agreements within eighteen (18) months after the date of this Agreement (or such earlier date on which the Company terminates this Agreement), the Company shall reimburse the Agent, the Forward Seller, the Forward Purchaser and the Alternative Agents for all of their reasonable out-of-pocket expenses, including the reasonable fees and disbursements of a single counsel to the Agent, the Forward Seller and the Forward Purchaser, who shall be the same counsel used by the Alternative Agents, incurred by them in connection with the offering contemplated by this Agreement and the Alternative Equity Distribution Agreements and ongoing services in connection with the transactions contemplated thereunder; provided that such reimbursement shall not exceed an aggregate under this Agreement and the Alternative Agreements of $200,000.

Section 9. Conditions of the Obligations of the Agent, the Forward Seller and the Forward Purchaser. The obligations each of the Agent, the Forward Seller and the Forward Purchaser hereunder shall be subject, in its discretion, to the condition that all representations and warranties and other statements of the Company and the

Operating Partnership herein and in certificates of any officer of the Company or the Operating Partnership delivered pursuant to the provisions hereof are true and correct as of the time of the execution of this Agreement and as of each Representation Date, Applicable Time and Settlement Date, to the condition that the Company and the Operating Partnership shall have performed all of their obligations hereunder theretofore to be performed, and the following additional conditions:

(a) The Prospectus Supplement shall have been filed with the Commission pursuant to Rule 424(b) under the 1933 Act on or prior to the date hereof and in accordance with Section 6(a) hereof, any other material required to be filed by the Company pursuant to Rule 433(d) under the 1933 Act shall have been filed with the Commission within the applicable time periods prescribed for such filings by Rule 433; no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission and no notice of objection of the Commission to the use of the form of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the 1933 Act shall have been received; no stop order suspending or preventing the use of the Prospectus or any Issuer Free Writing Prospectus shall have been initiated or threatened by the Commission; and all requests for additional information on the part of the Commission shall have been complied with to the reasonable satisfaction of the Representatives.

(b) On every date specified in Section 6(k) hereof (including, without limitation, on every Request Date), Baker Botts L.L.P., counsel for the Agent, the Forward Seller and the Forward Purchaser, shall have furnished to the Agent, the Forward Seller and the Forward Purchaser such written opinion or opinions, dated as of such date, with respect to such matters as the Agent may reasonably request, and such counsel shall have received such papers and information as they may reasonably request to enable them to pass upon such matters.

(c) On every date specified in Section 6(k) hereof (including, without limitation, on every Request Date), each of Jeffrey D. Miller, Esq., general counsel of the Company, Paul Hastings LLP, counsel to the Company and the Operating Partnership, Paul Hastings LLP, tax counsel to the Company and the Operating Partnership and Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., North Carolina counsel to the Operating Partnership, shall each have furnished to the Agent, the Forward Seller and the Forward Purchaser a written opinion or 10b-5 letter, as applicable, dated as of such date, in the forms set forth in Exhibit A, Exhibit B-1, Exhibit B-2, Exhibit B-3 and Exhibit C, respectively, hereto.

(d) At the dates specified in Section 6(l) hereof (including, without limitation, on every Request Date), the independent accountants of the Company who have certified the financial statements of the Company and its subsidiaries included or incorporated by reference in the Registration Statement and the Prospectus shall have furnished to the Agent, the Forward Seller and the Forward Purchaser a letter dated as of the date of delivery thereof and addressed to the Agent, the Forward Seller and the Forward Purchaser in form and substance reasonably satisfactory to the Agent, the Forward Seller and the Forward Purchaser and their counsel, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements of the Company and its subsidiaries included or incorporated by reference in the Registration Statement and the Prospectus.

(e) (i) Upon commencement of the offering of Securities under this Agreement and on such other dates as reasonably requested by the Agent, the Forward Seller or the Forward Purchaser, the Company will furnish or cause to be furnished promptly to the Agent, the Forward Seller and the Forward Purchaser a certificate of an officer in a form satisfactory to the Agent, the Forward Seller and the Forward Purchaser stating the minimum gross sales price per share for the sale of such Securities pursuant to this Agreement and the maximum number of Securities that may be issued and sold pursuant to this Agreement or, alternatively, maximum gross proceeds from such sales, as authorized from time to time by the Company's board of directors or a duly authorized committee thereof, and the number of Securities that have been approved for listing on the NYSE or, in connection with any amendment, revision or modification of such minimum price or maximum Share number or amount, a new certificate with respect thereto and (ii) on each date specified in Section 6(j) (including, without limitation, on every Request Date), the Agent, the

Forward Seller and the Forward Purchaser shall have received a certificate of executive officers of the Company, one of whom shall be the Chief Financial Officer, Chief Accounting Officer, Treasurer, or Executive Vice President in the area of capital markets and investments, dated as of the date thereof, to the effect that (A) there has been no Material Adverse Effect since the date as of which information is given in the Prospectus as then amended or supplemented, (B) the representations and warranties in Section 1 hereof are true and correct as of such date and (C) the Company and the Operating Partnership have complied with all of the agreements entered into in connection with the transactions contemplated herein and satisfied all conditions on their part to be performed or satisfied.

(f) Since the date of the latest audited financial statements then included or incorporated by reference in the Registration Statement and the Prospectus, no Material Adverse Effect shall have occurred.

(g) The Company shall have complied with the provisions of Section 6(c) hereof with respect to the timely furnishing of prospectuses.

(h) On such dates as reasonably requested by the Agent, the Forward Seller and the Forward Purchaser, the Company shall have conducted due diligence sessions, in form and substance satisfactory to the Agent, the Forward Seller and the Forward Purchaser.

(i) All filings with the Commission required by Rule 424 under the 1933 Act to have been filed by each Applicable Time or related Settlement Date shall have been made within the applicable time period prescribed for such filing by Rule 424 (without reliance on Rule 424(b)(8)).

(j) The Securities shall have received approval for listing on the NYSE prior to the first Settlement Date.

(k) Counsel for the Agent, the Forward Seller and the Forward Purchaser shall have been furnished with such documents and opinions as they may require in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, contained herein; and all proceedings taken by the Company and the Operating Partnership in connection with the issuance and sale of the Securities as contemplated herein and in connection with the other transactions contemplated by this Agreement shall be reasonably satisfactory in form and substance to the Agent, the Forward Seller and the Forward Purchaser and counsel for the Agent, the Forward Seller and the Forward Purchaser.

(l) In respect of any Placement Notice delivered in respect of any Forward, the Master Forward Confirmation shall be in full force and effect.

Section 10. Indemnification.

(a) The Company and the Operating Partnership, jointly and severally, will indemnify and hold harmless each of the Agent, the Forward Seller and the Forward Purchaser against any losses, claims, damages or liabilities, joint or several, to which the Agent, the Forward Seller and the Forward Purchaser may become subject, under the 1933 Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Basic Prospectus, the Prospectus Supplement or the Prospectus or any amendment or supplement thereto, any Issuer Free Writing Prospectus or any "issuer information" filed or required to be filed pursuant to Rule 433(d) under the 1933 Act, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse the Agent, the Forward Seller and the Forward Purchaser for any legal or other expenses reasonably incurred by the Agent, the Forward Seller and the Forward Purchaser in connection with investigating or defending any such action or claim as such expenses are incurred; provided, however, that the Company and the Operating Partnership shall not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged

omission made in the Registration Statement, the Basic Prospectus, the Prospectus Supplement or the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus, in reliance upon and in conformity with the Counterparty Information furnished to the Company by the Agent, the Forward Seller or the Forward Purchaser expressly for use therein.

(b) Each of the Agent, the Forward Seller and the Forward Purchaser, severally and not jointly, will indemnify and hold harmless the Company and the Operating Partnership against any losses, claims, damages or liabilities to which the Company and the Operating Partnership may become subject, under the 1933 Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Basic Prospectus, the Prospectus Supplement or the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, the Basic Prospectus, the Prospectus Supplement or the Prospectus, or any such amendment or supplement thereto, or any Issuer Free Writing Prospectus, in reliance upon and in conformity with the Counterparty Information furnished to the Company by the Agent, the Forward Seller or the Forward Purchaser expressly for use therein; and will reimburse the Company and the Operating Partnership for any legal or other expenses reasonably incurred by the Company and the Operating Partnership in connection with investigating or defending any such action or claim as such expenses are incurred.

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party otherwise than under such subsection except and then only to the extent such indemnifying party is materially prejudiced thereby. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under this Section 10 for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section 10 is unavailable to hold harmless an indemnified party under subsection (a) or (b) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Operating Partnership on the one hand and the Agent, the Forward Seller or the Forward Purchaser on the other from the offering of the Securities pursuant to this Agreement to which such loss, claim, damage or liability (or action in respect thereof) relates. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then each indemnifying

party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company and the Operating Partnership on the one hand and the Agent, the Forward Seller or the Forward Purchaser on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company and the Operating Partnership, on the one hand, and the Agent, the Forward Seller or the Forward Purchaser, on the other, shall be deemed to be in the same respective proportion as (i) in the case of the Company and the Operating Partnership, (A) the total net proceeds from the offering of the Issuance Securities for each Issuance under this Agreement (before deducting expenses) received by the Company and the Operating Partnership bear to the Aggregate Sales Price of the Issuance Securities or (B) the Actual Sold Forward Amount for each Forward under this Agreement, multiplied by the Forward Hedge Price for such Forward (the "Net Forward Proceeds"), bear to the sum of the Net Forward Proceeds and the Actual Forward Commission (as defined below) (such sum, the "Gross Forward Amount"), (ii) in the case of the Agent, the total commissions received by the Agent bear to the aggregate gross sales price of the Issuance Securities, (iii) in the case of the Forward Seller, the Actual Sold Forward Amount for each Forward under this Agreement, multiplied by the Forward Hedge Selling Commission for such Forward (the "Actual Forward Commission"), bear to the Gross Forward Amount, and (iv) in the case of the Forward Purchaser, the net Spread (as such term is defined in the Master Forward Confirmation and net of any related stock borrow costs or other costs or expenses actually incurred) for all Forward Contracts executed in connection with this Agreement, bear to the Gross Forward Amount. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or the Agent, the Forward Seller or the Forward Purchaser on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company, the Operating Partnership and the Agent, the Forward Seller and the Forward Purchaser agree that it would not be just and equitable if contribution pursuant to this subsection (d) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d), the Agent, the Forward Seller and the Forward Purchaser shall not be required to contribute any amount in excess of the amount by which the total discounts and commissions received by the Agent, the Forward Seller and the Forward Purchaser with respect to the offering of the Securities exceeds the amount of any damages which the Agent, the Forward Seller and the Forward Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) The obligations of the Company and the Operating Partnership under this Section 10 shall be in addition to any liability which the Company and the Operating Partnership may otherwise have and shall extend, upon the same terms and conditions, to the directors and officers of the Agent, the Forward Seller and the Forward Purchaser and to each person, if any, who controls the Agent, the Forward Seller and the Forward Purchaser within the meaning of the 1933 Act and each broker dealer affiliate of the Agent, the Forward Seller and the Forward Purchaser; and the obligations of the Agent, the Forward Seller and the Forward Purchaser under this Section 10 shall be in addition to any liability which the Agent, the Forward Seller and the Forward Purchaser may otherwise have and shall extend, upon the same terms and conditions, to each officer and director of the Company and to each person, if any, who controls the Company or the Operating Partnership within the meaning of the 1933 Act.

Section 11. Representations, Warranties and Agreements to Survive Delivery. The respective indemnities, agreements, representations, warranties and other statements of the Company, the Operating Partnership and the Agent, the Forward Seller and the Forward Purchaser, as set forth in this Agreement or made by or on behalf of

them, respectively, pursuant to this Agreement, shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of the Agent, the Forward Seller and the Forward Purchaser or any controlling person of the Agent, the Forward Seller and the Forward Purchaser, or the Company, or the Operating Partnership or any officer or director or controlling person of the Company or the Operating Partnership, and shall survive delivery of and payment for the Securities and the settlement of any Forward Contract or any termination of this Agreement or the Master Forward Confirmation and any Supplemental Confirmation executed in connection with the Master Forward Confirmation.

Section 12. No Advisory or Fiduciary Relationship. The Company and the Operating Partnership acknowledge and agree that (i) each of the Agent, the Forward Seller and the Forward Purchaser is acting solely in the capacity of an arm's length contractual counterparty to the Company and the Operating Partnership with respect to the offering of Securities contemplated hereby (including in connection with determining the terms of such offering) and (ii) the Agent, the Forward Seller and the Forward Purchaser have not assumed an advisory or fiduciary responsibility in favor of the Company and the Operating Partnership with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether the Agent, the Forward Seller and the Forward Purchaser has advised or is currently advising the Company or the Operating Partnership on other matters) or any other obligation to the Company or the Operating Partnership except the obligations expressly set forth in this Agreement and (iii) the Company and the Operating Partnership have consulted their own legal and financial advisors to the extent they deemed appropriate. The Company and the Operating Partnership agree that they will not claim that the Agent, the Forward Seller and the Forward Purchaser has rendered advisory services of any nature or respect, or owe a fiduciary or similar duty to the Company or the Operating Partnership, in connection with such transaction or the process leading thereto.

Section 13. Termination.

(a) The Company shall have the right, by giving written notice as hereinafter specified, to terminate this Agreement in its sole discretion at any time. Any such termination shall be without liability of any party to any other party, except that (i) with respect to any pending sale through the Agent, the Forward Seller and the Forward Purchaser for the Company, the obligations of the Company and the Operating Partnership, including in respect of compensation of the Agent, the Forward Seller and the Forward Purchaser, shall remain in full force and effect notwithstanding such termination; and (ii) the provisions of Section 1, Section 8(b), Section 10 and Section 11 of this Agreement shall remain in full force and effect notwithstanding such termination.

(b) Each of the Agent, the Forward Seller and the Forward Purchaser, as applicable, shall have the right, by giving written notice as hereinafter specified, to terminate this Agreement 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 Section 1, Section 8(b), Section 10 and Section 11 of this Agreement shall remain in full force and effect notwithstanding such termination.

(c) Unless earlier terminated pursuant to this Section 13, this Agreement shall automatically terminate upon the issuance and sale of Securities through the Agent, the Forward Seller or the Alternative Agents on the terms and subject to the conditions set forth herein or in any Alternative Distribution Agreement, as applicable, with an aggregate gross sale price equal to the Maximum Amount.

(d) This Agreement shall remain in full force and effect until and unless terminated pursuant to Section 13(a), (b) or (c) above or otherwise by mutual agreement of the parties; provided that any such termination by mutual agreement or pursuant to this clause (d) shall in all cases be deemed to provide that Section 1, Section 8(b), Section 10 and Section 11 of this Agreement shall remain in full force and effect notwithstanding such termination.

(e) 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 Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller

and the Warrant Purchaser or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of Securities, such sale shall settle in accordance with the provisions of Section 5 hereof. Notwithstanding anything to the contrary contained herein, the obligation to enter into any Forward Contract pursuant to Section 3(c) hereof or Warrant Contract pursuant to the Separate Equity Distribution Agreement by and among the Company, the Operating Partnership and [•] as a result of sales of Forward Hedge Securities or Warrant Hedge Securities occurring prior to such termination shall survive such termination and remain in full force and effect. For the avoidance of doubt, any such termination shall not affect or impair any party's obligations with respect to any Securities sold hereunder prior to the occurrence thereof or any Securities sold under any Alternative Distribution Agreement (including, in the case of any Forward Hedge Securities or Warrant Hedge Securities, the obligation to enter into the resulting Forward Contract or Warrant Contract).

(f) In the case of any purchase of Issuance Shares by the Agent in a Principal Transaction pursuant to a separate agreement or an amendment to this Agreement providing for such Principal Transaction, the Agent may terminate such Principal Transaction at any time at or prior to the settlement thereof (i) if there has been, since the time of execution of the Agreement or since the respective dates as of which information is given in the Registration Statement or the Prospectus, any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company, the Operating Partnership and their subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Agent, impracticable or inadvisable to market the Securities or to enforce contracts for the sale of Securities, or (iii) if trading in any securities of the Company or the Operating Partnership has been suspended or materially limited by the Commission or the NYSE, or if trading generally on the NYSE, NYSE American, LLC or the Nasdaq Global Market has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by such system or by order of the Commission, the FINRA or any other governmental authority, or (iv) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States, or (v) if a banking moratorium has been declared by either Federal or New York authorities.

Section 14. Notices. All statements, requests, notices and agreements hereunder shall be in writing, and if to the Agent or the Forward Seller shall be delivered or sent by mail, telex or facsimile transmission to:

[•]
[•]
[•]
[•]

with copy to (which shall not constitute notice):

Baker Botts L.L.P.
700 K Street NW
Washington, DC 20001
Fax. No.: (202) 585-1088
Attention: Catherine S. Gallagher, Esq.

and if to the Forward Purchaser to:

[•]
[•]
[•]

[•]

with copy to (which shall not constitute notice):

Baker Botts L.L.P.
700 K Street NW
Washington, DC 20001
Fax. No.: (202) 585-1088
Attention: Catherine S. Gallagher, Esq.

and if to the Company or the Operating Partnership to:

Highwoods Properties, Inc.
150 Fayetteville Street, Suite 1400
Raleigh, North Carolina 27601
Fax. No.: (919) 876-6929
Attention: Jeffrey D. Miller, Esq.

with copy to (which shall not constitute notice):

Paul Hastings LLP
71 South Wacker Drive, Suite 4500
Chicago, Illinois 60606
Fax. No. (312) 499-6118
Attention: Kerry E. Johnson, Esq.

Any such statements, requests, notices or agreements shall take effect upon receipt thereof.

Section 15. Parties. This Agreement shall be binding upon, and inure solely to the benefit of, the Agent, the Forward Seller and the Forward Purchaser and the Company and the Operating Partnership and, to the extent provided in Sections 10 and 11 hereof, the officers and directors of the Company and the Agent, the Forward Seller and the Forward Purchaser and each person who controls the Company and the Operating Partnership or the Agent, the Forward Seller and the Forward Purchaser, and their respective heirs, executors, administrators, successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. No purchaser of Securities through the Agent or Forward Seller shall be deemed a successor or assign by reason merely of such purchase.

Section 16. Time of the Essence. Time shall be of the essence of this Agreement. As used herein, the term "business day" shall mean any day when the Commission's office in Washington, D.C. is open for business.

Section 17. Submission to Jurisdiction; Waiver of Jury Trial. No proceeding related to this Agreement or any transactions contemplated hereby or thereby 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 parties consent to the jurisdiction of such courts and personal service with respect thereto. The parties waive all right to trial by jury in any proceeding (whether based upon contract, tort or otherwise) in any way arising out of or relating to this Agreement. The parties agree that a final judgment in any such proceeding brought in any such court shall be conclusive and binding upon the parties and may be enforced in any other courts to whose jurisdiction the parties are or may be subject, by suit upon such judgment.

Section 18. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO ITS PRINCIPLES OF CONFLICTS OF LAW.

Section 19. Counterparts. This Agreement may be executed by any one or more of the parties hereto and thereto in any number of counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall be an original and all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement and/or any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement and/or the transactions contemplated hereby (each an "Ancillary Document") that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, provided that nothing herein shall require any party hereto to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it. For purposes hereof, "Electronic Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

Section 20. Severability. The invalidity or unenforceability of any Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof or thereof, as the case may be. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

Section 21. Recognition of the U.S. Special Resolution Regimes.

(a) In the event that the Agent, the Forward Seller or the Forward Purchaser that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from the Agent, the Forward Seller or the Forward Purchaser of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that the Agent, the Forward Seller or the Forward Purchaser that is a Covered Entity or a BHC Act Affiliate of the Agent, the Forward Seller or the Forward Purchaser becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against the Agent, the Forward Seller or the Forward Purchaser are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

(c) For the purposes of this Section 21, capitalized terms shall have the definitions set forth below:

"BHC Act Affiliate" has the meaning assigned to the term "affiliate" in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

"Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"U.S. Special Resolution Regime" means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

[*Signature pages follow*]

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company and the Operating Partnership a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement between the Agent, the Forward Seller and the Forward Purchaser and the Company and the Operating Partnership in accordance with its terms.

Very truly yours,

Highwoods Properties, Inc.

By: _____
Name: Brendan C. Maiorana
Title: Executive Vice President and Chief Financial Officer

Highwoods Realty Limited Partnership

By: Highwoods Properties, Inc., its sole general partner

By: _____
Name: Brendan C. Maiorana
Title: Executive Vice President and Chief Financial Officer

Accepted as of the date hereof:

[•] , as Agent and Forward Seller

By: __

Name:

Title:

[•], as Forward Purchaser

By: __

Name:

Title:

[Signature Page to Equity Distribution Agreement]

Exhibit A

Form of Opinion of Jeffrey D. Miller, Esq.
General Counsel of the Company

EXHIBIT B-1

Form of Corporate Opinion of Paul Hastings LLP,
Counsel for the Company and the Operating Partnership

EXHIBIT B-2

Form of 10b-5 Statement of Paul Hastings LLP,
Counsel for the Company and the Operating Partnership

EXHIBIT B-3

Form of Tax Opinion of Paul Hastings LLP,
Tax Counsel for the Company and the Operating Partnership

EXHIBIT C

Form of Opinion of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.,
North Carolina Counsel for the Operating Partnership

Annex I

Highwoods Properties, Inc.
Common Stock
($0.01 par value)

FORM OF PLACEMENT NOTICE

[_____], [____]

[_]
[_]
[_]
[_]

Ladies and Gentlemen:

Reference is made to the Equity Distribution Agreement among Highwoods Properties, Inc., a Maryland corporation (the "Company"), Highwoods Realty Limited Partnership, a North Carolina limited partnership (the "Operating Partnership"), **[•]** (the "Forward Purchaser") and **[•]** (in its capacity as agent for the Company in connection with the offering and sale of any Issuance Securities thereunder, "Agent[,]" [and in its capacity as agent for the Forward Purchaser in connection with the offering and sale of any Forward Hedge Securities thereunder, the "Forward Seller"]), dated as of February 11, 2026 (the "Equity Distribution Agreement"). Capitalized terms used in this Placement Notice without definition shall have the respective definitions ascribed to them in the Equity Distribution Agreement. This Placement Notice relates to [an "Issuance"]([1]) [a "Forward"]([2]). The Company confirms that all conditions to the delivery of this Placement Notice are satisfied as of the date hereof.

[The Company confirms that it has not declared and will not declare any dividend, or caused or cause there to be any distribution, on the Common Stock if the ex-dividend date or ex-date, as applicable, for such dividend or distribution will occur during the period from, and including, the first Trading Day of the Forward Hedge Selling Period to, and including, the last Trading Day of the Forward Hedge Selling Period.]([3])

The Company represents and warrants that each representation, warranty, covenant and other agreement of the Company contained in the Equity Distribution Agreement [and the Master Forward Confirmation]([4]) is true and correct on the date hereof, and that the Prospectus, including the documents incorporated by reference therein, and any applicable Issuer Free Writing Prospectus, as of the date hereof, do not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

Number of Days in [Issuance]([5]) [Forward Hedge]([6]) Selling Period:([7])

First Date of [Issuance]([8]) [Forward Hedge]([9]) Selling Period:

Maximum Number of Securities to be Sold:

[Issuance]([1]) [Forward Hedge]([2]) Amount: $

[Forward Hedge Selling Commission Rate:] %

Forward Price Reduction Dates	**Forward Price Reduction Amounts**
	$
	$

Spread:

Initial Stock Loan Rate: basis points

Maximum Stock Loan Rate: basis points

Regular Dividend Amounts:

For any calendar month ending on or prior to [December 31, 20[ ]]:	$ [ ]
For any calendar month ending after [December 31, 20[ ]]:	$ [ ] ([3])

[Term: [Days][Months]]([4]):

Floor Price (Adjustable by Company during the [Issuance]([5]) [Forward Hedge]([6]) Selling Period, and in no event less than $[1.00] per share): $ per share

[There shall be no limitation on the number of Securities that may be sold on any one (1) day, subject to the maximum number of Securities to be sold above.] [No more than [ ] Securities may be sold on any one (1) day.][other sales parameters]

Very truly yours,

HIGHWOODS PROPERTIES, INC.

By: __

Name:

Title:

Accepted as of the date hereof:

[_], as Agent and Forward Seller

By: __

Name:

Title:

[_], as Forward Purchaser

By: __

Name:

Title:

Exhibit 1.2

Highwoods Properties, Inc.

Common Stock
($0.01 par value)

EQUITY DISTRIBUTION AGREEMENT

February 11, 2026

[•]
[•]
[•]
[•]

Ladies and Gentlemen:

Highwoods Properties, Inc., a Maryland corporation (the "Company"), and Highwoods Realty Limited Partnership, a North Carolina limited partnership (the "Operating Partnership"), propose, subject to the terms and conditions stated herein, to issue and sell from time to time to or through [•] (in its capacity as purchaser under any Forward Contract (as defined below), the "Forward Purchaser" and in its capacity as purchaser under any Warrant Contract (as defined below), the "Warrant Purchaser") and [•] (in its capacity as agent for the Company and/or principal in connection with the offering and sale of any Issuance Securities (as defined below) hereunder, "Agent," and in its capacity as agent for the Forward Purchaser in connection with the offering and sale of any Forward Hedge Securities (as defined below) hereunder, the "Forward Seller" and in its capacity as agent for the Warrant Purchaser in connection with the offering and sale of any Warrant Hedge Securities (as defined below) hereunder, the "Warrant Hedge Seller"), shares of the Company's common stock, $0.01 par value per share (the "Common Stock"), having an aggregate gross sales price of up to $300,000,000 (the "Maximum Amount") on the terms set forth in Section 5 of this Equity Distribution Agreement (this "Agreement").

The Company and the Operating Partnership, have also entered into separate equity distribution agreements (the "Separate Equity Distribution Agreements"), dated of even date herewith, with each of [•], [•], [•], [•], [•], [•] and [•] (and, as applicable, their respective affiliates) (collectively, in the capacity as agent and/or principal, forward seller and forward purchaser thereunder, as applicable, the "Separate Agents"), for the issuance (in the case of the Issuance Securities) or borrowing (in the case of Forward Hedge Securities and Warrant Hedge Securities (as defined below)) and sale from time to time of shares of Common Stock through the applicable Separate Agents on the terms set forth in the applicable Separate Equity Distribution Agreements. The Company and the Operating Partnership may also in the future enter into additional equity distribution agreements (if any, together with the Separate Equity Distribution Agreements, the "Alternative Equity Distribution Agreements") with one or more additional agents and/or principals, forward sellers and forward purchasers (if any, together with the Separate Agents, the "Alternative Agents"). The aggregate gross sales price of the Securities that may be sold pursuant to this Agreement and the Alternative Equity Distribution Agreements shall not exceed the Maximum Amount.

As used in this Agreement, the following terms have the respective meanings set forth below:

"Actual Sold Forward Amount" means, for any Forward Hedge Selling Period for any Forward, the number of Forward Hedge Securities that the Forward Seller has sold during such Forward Hedge Selling Period.

"Actual Sold Warrant Amount" means, for any Warrant Hedge Selling Period for any Warrant, the number of Warrant Hedge Securities that the Warrant Hedge Seller has sold during such Warrant Hedge Selling Period.

"Aggregate Forward Hedge Price" means, with respect to a period, the product of the Actual Sold Forward Amount during such period and the Forward Hedge Price during such period.

"Aggregate Sales Price" means, with respect to a period, the sum of the Sales Prices for all Issuance Securities or Forward Hedge Securities or Warrant Hedge Securities, as applicable, sold during such period.

"Applicable Time" means the time of each sale of any Securities pursuant to this Agreement.

"Capped Number" with respect to any Forward Contract has the meaning set forth in such Forward Contract.

"Commitment Period" means the period commencing on the date of this Agreement and expiring on the date this Agreement is terminated pursuant to Section 13.

"Forward" means the transaction resulting from each Placement Notice (as defined below) (as amended by the corresponding Acceptance (as defined below), if applicable) specifying that it relates to a "Forward" and requiring the Forward Seller to use commercially reasonable efforts to sell, as specified in such Placement Notice and subject to the terms and conditions of this Agreement and the applicable Forward Contract, the Forward Hedge Securities.

"Forward Contract" means, for each Forward, the contract evidencing such Forward between the Company and the Forward Purchaser, which shall be comprised of the Master Forward Confirmation and the related Supplemental Confirmation (as defined in the Master Forward Confirmation, a "Supplemental Confirmation") for such Forward.

"Forward Hedge Amount" means, for any Forward, the amount specified as such in the Placement Notice for such Forward (as amended by the corresponding Acceptance, if applicable), which amount shall be the target Aggregate Sales Price of the Forward Hedge Securities to be sold by the Forward Seller in respect of such Forward, subject to the terms and conditions of this Agreement.

"Forward Hedge Price" means, for any Forward Contract, the product of (x) an amount equal to one (1) minus the Forward Hedge Selling Commission Rate for such Forward Contract; and (y) the Volume-Weighted Hedge Price.

"Forward Hedge Securities" means all Common Stock borrowed by the Forward Purchaser (or its affiliate) and offered and sold by the Forward Seller in connection with any Forward that has occurred or may occur in accordance with the terms and conditions of this Agreement. Where the context requires, the term "Forward Hedge Securities" as used herein shall include the definition of the same under the Alternative Equity Distribution Agreements.

"Forward Hedge Selling Commission" means, for any Forward Contract, the product of (x) the Forward Hedge Selling Commission Rate for such Forward Contract and (y) the Volume-Weighted Hedge Price.

"Forward Hedge Selling Commission Rate" means, for any Forward Contract, a rate mutually agreed to between the Company and the Forward Seller and recorded in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable), not to exceed 1.5%.

"Forward Hedge Selling Period" means, subject to Section 2(c) hereof, the period of one (1) to twenty (20) consecutive Trading Days (as determined by the Company in the Company's sole discretion and specified in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable) specifying that it relates to a "Forward") beginning on the date specified in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable) or, if such date is not a Trading Day, the next Trading Day following such date and ending on the last such Trading Day or such earlier date on which the Forward Seller shall have completed the sale of Forward Hedge Securities in connection with the applicable Forward; provided that if, prior to the

scheduled end of any Forward Hedge Selling Period (i) any event occurs that would permit the Forward Purchaser to designate a "Scheduled Trading Day" as an "Early Valuation Date" (as each such term is defined in the Master Forward Confirmation) under, and pursuant to the provisions opposite the caption "Early Valuation" in Section 2 of the Master Forward Confirmation or (ii) a "Bankruptcy Termination Event" (as such term is defined in the Master Forward Confirmation) occurs, then the Forward Hedge Selling Period shall, upon the Forward Seller or the Forward Purchaser becoming aware of such occurrence, immediately terminate as of the first such occurrence. Any Forward Hedge Selling Period then in effect shall immediately terminate upon the termination of this Agreement pursuant to Section 13 hereof and as set forth in Sections 2(b) and 4 hereof.

"Forward Purchaser" has the meaning set forth in the introductory paragraph of this Agreement. If a Forward Purchaser has not been identified in the introductory paragraph of this Agreement, the Company agrees that all provisions of this Agreement related to the Forward Purchaser are not applicable hereunder.

"Forward Seller" has the meaning set forth in the introductory paragraph of this Agreement. If a Forward Seller has not been identified in the introductory paragraph of this Agreement, the Company agrees that all provisions of this Agreement related to the Forward Seller are not applicable hereunder.

"Issuance" means each occasion the Company elects to exercise its right to deliver a Placement Notice that does not involve a Forward or a Warrant and that specifies that it relates to an "Issuance" and requires the Agent to use commercially reasonable efforts to sell the Issuance Securities as specified in such Placement Notice, subject to the terms and conditions of this Agreement.

"Issuance Amount" means the maximum Aggregate Sales Price of the Issuance Securities to be sold by the Agent with respect to any Issuance as specified in the Placement Notice for such Issuance.

"Issuance Securities" means all shares of Common Stock issued or issuable pursuant to an Issuance that has occurred or may occur in accordance with the terms and conditions of this Agreement. Where the context requires, the term "Issuance Securities" as used herein, shall include the definition of the same under the Alternative Equity Distribution Agreements.

"Issuance Selling Period" means the period of one (1) to twenty (20) consecutive Trading Days (as determined by the Company in the Company's sole discretion and specified in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable) specifying that it relates to an "Issuance") beginning on the date specified in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable) or, if such date is not a Trading Day, the next Trading Day following such date.

"Master Forward Confirmation" means the Master Confirmation for Issuer Share Forward Sale Transactions, dated as of the date hereof, by and among the Company, the Operating Partnership and the Forward Purchaser, including all provisions incorporated by reference therein.

"Master Warrant Confirmation" means the Master Confirmation for Equity Warrant Transactions, dated as of the date hereof, by and among the Company and the Warrant Purchaser, including all provisions incorporated by reference therein.

"Maximum Number of Shares" with respect to any Warrant Contract has the meaning set forth in such Warrant Contract.

"NYSE" means the New York Stock Exchange.

"Sales Price" means, for each Forward or each Issuance hereunder, the actual sale execution price of each Forward Hedge Security or Issuance Security, as the case may be, sold by the Forward Seller or the Agent on the NYSE hereunder in the case of ordinary brokers' transactions, or as otherwise agreed by the parties in other methods of sale. Where the context requires, the term "Sales Price" as used herein shall include the definition of the same under the Alternative Equity Distribution Agreements.

"Securities" means Issuance Securities, Forward Hedge Securities and Warrant Hedge Securities, as applicable. Where the context requires, the term "Securities" as used herein shall include the definition of the same under the Alternative Equity Distribution Agreements.

"Selling Period" means any Forward Hedge Selling Period, any Warrant Hedge Selling Period or any Issuance Selling Period.

"Settlement Date" means, unless the Company and the applicable parties shall otherwise agree, any Forward Hedge Settlement Date (as defined below), any Warrant Hedge Settlement Date (as defined below) or any Issuance Settlement Date (as defined below), as applicable.

"Trading Day" means any day which is a trading day on the NYSE.

"Unwind Date" shall have the meaning set forth in the Master Forward Confirmation.

"Volume-Weighted Hedge Price" has the meaning set forth in the Master Forward Confirmation; provided that, for purposes of determining the Aggregate Forward Hedge Price payable to the Forward Purchaser in respect of a Trading Day on which the Forward Seller has made sales of Forward Hedge Securities hereunder pursuant to Sections 3(b) and 5(e), the Volume-Weighted Hedge Price shall be determined solely with respect to the Forward Hedge Securities sold by the Forward Seller on such Trading Day.

"Warrant" means the transaction resulting from each Placement Notice (as defined below) (as amended by the corresponding Acceptance (as defined below), if applicable) specifying that it relates to a "Warrant" and requiring the Warrant Hedge Seller to use commercially reasonable efforts to sell, as specified in such Placement Notice and subject to the terms and conditions of this Agreement and the applicable Warrant Contract, the Warrant Hedge Securities.

"Warrant Contract" means, for each Warrant, the contract evidencing such Warrant between the Company and the Warrant Purchaser, which shall be comprised of the Master Warrant Confirmation and the related Supplemental Confirmation (as defined in the Master Warrant Confirmation, "Warrant Supplemental Confirmation") for such Warrant.

"Warrant Hedge Securities" means all Common Stock borrowed by the Warrant Purchaser (or its affiliate) and offered and sold by the Warrant Hedge Seller in connection with any Warrant that has occurred or may occur in accordance with the terms and conditions of this Agreement.

"Warrant Hedge Selling Period" means, subject to Section 2(c) hereof, the period of consecutive Trading Days agreed between the Company and the Warrant Purchaser following delivery of the Warrant Quote Request beginning on the Trading Day agreed between such parties and ending on the last such Trading Day or such earlier date on which the Warrant Hedge Seller shall have completed the sale of Warrant Hedge Securities in connection with the applicable Warrant; provided that if, prior to the scheduled end of any Warrant Hedge Selling Period any "Event of Default," "Termination Event" or "Extraordinary Event" (as each such term is defined in the Master Warrant Confirmation) occurs, then the Warrant Hedge Selling Period shall, upon the Warrant Purchaser electing to terminate the Warrant Hedge Selling Period, immediately terminate as of such election, which shall be promptly notified to the Company. Any Warrant Hedge Selling Period then in effect shall immediately terminate upon the termination of this Agreement pursuant to Section 13 and as set forth in Sections 2(b) and 4 hereof.

"Warrant Hedge Seller" has the meaning set forth in the introductory paragraph of this Agreement.

"Warrant Purchaser" has the meaning set forth in the introductory paragraph of this Agreement.

The Agent has been appointed by the Company as its agent to sell the Issuance Securities and agrees to use commercially reasonable efforts to sell the Issuance Securities offered by the Company upon the terms and subject to the conditions contained herein. The Forward Seller agrees with the Company and the Forward Purchaser to use

commercially reasonable efforts to sell the Forward Hedge Securities to be borrowed by the Forward Purchaser (or its affiliate) upon the terms and subject to the conditions contained herein. Notwithstanding any other provision of this Agreement, if a Forward Seller and Forward Purchaser have not been identified in the introductory paragraph of this Agreement and have not executed this Agreement, the Company agrees that all provisions of this Agreement related to the Forward Seller, the Forward Purchaser and Forwards are not applicable hereunder and no sales of Warrant Hedge Securities shall take place pursuant to this Agreement. The Warrant Hedge Seller agrees with the Company and the Warrant Purchaser to use commercially reasonable efforts to sell the Warrant Hedge Securities to be borrowed by the Warrant Purchaser (or its affiliate) upon the terms and subject to the conditions contained herein.

Section 1. Representations and Warranties. Each of the Company and the Operating Partnership jointly and severally represents and warrants to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser that as of the date of this Agreement, as of each date on which Issuance Securities are delivered to the Agent pursuant to any Principal Transaction (as defined below), as of each Representation Date (as defined in Section 6 below) on which a certificate is required to be delivered pursuant to Section 9(e) of this Agreement, as of each Applicable Time, as of the date each Placement Notice is effective and as of each Settlement Date (as defined in Section 5 below):

(a) Compliance with Registration Requirements. The Company and the Operating Partnership have filed with the Securities and Exchange Commission (the "Commission") an "automatic shelf registration statement" as defined under Rule 405 under the Securities Act of 1933, as amended (the "1933 Act"), on Form S-3 (File Nos. 333-293352 and 333-293352-01), in respect of securities of the Company and the Operating Partnership, including the Common Stock (including the Securities) not earlier than three years prior to the date hereof; such registration statement, and any post-effective amendment thereto, became effective on filing; and no stop order suspending the effectiveness of such registration statement or any part thereof has been issued and no proceeding for that purpose has been initiated or, to the knowledge of the Company or Operating Partnership, threatened by the Commission, and no notice of objection of the Commission to the use of such form of registration statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the 1933 Act has been received by the Company or the Operating Partnership (the base prospectus filed as part of such registration statement, in the form in which it has most recently been filed with the Commission on or prior to the date of this Agreement, is hereinafter called the "Basic Prospectus"); the various parts of such registration statement, excluding any Form T-1 but including all other exhibits thereto and any prospectus supplement or prospectus relating to the Securities that is filed with the Commission and deemed by virtue of Rule 430B under the 1933 Act to be part of such registration statement, each as amended at the time such part of the registration statement became effective, are hereinafter collectively called the "Registration Statement"; the prospectus supplement specifically relating to the Securities prepared and filed with the Commission pursuant to Rule 424(b) under the 1933 Act is hereinafter called the "Prospectus Supplement"; the Basic Prospectus, as amended and supplemented by the Prospectus Supplement, is hereinafter called the "Prospectus"; any reference herein to the Basic Prospectus, the Prospectus Supplement or the Prospectus shall be deemed to refer to and include the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the 1933 Act; provided, however, that no representation or warranty included in any exhibit to any such incorporated document, other than the representations and warranties contained herein, is deemed to be made to you; any reference to any amendment or supplement to the Basic Prospectus, the Prospectus Supplement or the Prospectus shall be deemed to refer to and include any post-effective amendment to the Registration Statement, any prospectus supplement or base prospectus relating to the Securities filed with the Commission pursuant to Rule 424(b) under the 1933 Act and any documents filed under the Securities Exchange Act of 1934, as amended (the "1934 Act"), and incorporated therein, in each case after the date of the Basic Prospectus, the Prospectus Supplement or the Prospectus, as the case may be; any reference to any amendment to the Registration Statement shall be deemed to refer to and include any annual report of the Company filed pursuant to Section 13(a) or 15(d) of the 1934 Act after the effective date of the Registration Statement that is incorporated by reference in the Registration Statement; and any "issuer free writing prospectus" as defined in Rule 433 under the 1933 Act relating to the Securities is hereinafter called an "Issuer Free Writing Prospectus." For purposes of this Agreement, all references to the Registration Statement, the Prospectus Supplement, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to

include the copy filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system ("EDGAR").

No order preventing or suspending the use of the Registration Statement, the Basic Prospectus, the Prospectus Supplement, the Prospectus or any Issuer Free Writing Prospectus has been issued by the Commission, and the Basic Prospectus and the Prospectus Supplement, at the time of filing thereof, conformed in all material respects to the requirements of the 1933 Act and the rules and regulations of the Commission thereunder (the "1933 Act Regulations") and did 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, in the light of the circumstances under which they were made, not misleading.

At the respective times the Registration Statement and any post-effective amendments thereto became effective and at each deemed effective date with respect to the Agent, the Forward Seller and the Warrant Hedge Seller pursuant to Rule 430B(f)(2), the Registration Statement and any amendments and supplements thereto complied in all material respects with the requirements under the 1933 Act, and did 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.

The Prospectus and any Issuer Free Writing Prospectus (when considered together with the Prospectus), and any amendment or supplement thereto, as of each Applicable Time and at each Settlement Date, will not include any 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 each applicable Issuer Free Writing Prospectus will not conflict with the information contained in the Registration Statement, the Prospectus Supplement or the Prospectus.

The documents incorporated or deemed to be incorporated by reference in the Registration Statement and the Prospectus, when they became effective or were filed with the Commission, as the case may be, complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the Commission thereunder, and, when read together with the other information in the Prospectus, (a) at the time the Registration Statement became effective, (b) at the time the Prospectus was issued and (c) on the date of this Agreement, did 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, in the light of the circumstances under which they were made, not misleading.

The representations and warranties in this Section 1(a) shall not apply to any statements in or omissions from the Registration Statement, the Basic Prospectus or the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus, made in reliance upon and in conformity with written information furnished to the Company or the Operating Partnership by the Agent, the Forward Seller or the Warrant Hedge Seller, as applicable, expressly for use therein. For all purposes of this Agreement (including, without limitation, the provisions of this Section 1(a) and of Section 10 of this Agreement), the Company, the Operating Partnership and the Agent, the Forward Seller or the Warrant Hedge Seller, as applicable, agree that the only information furnished to the Company or the Operating Partnership by the Agent, the Forward Seller or the Warrant Hedge Seller, as applicable, expressly for use in the Registration Statement, the Basic Prospectus, the Prospectus or any Issuer Free Writing Prospectus or any amendment or supplement to any of the foregoing is the name of the Agent (the "Counterparty Information"). In the event that, at a later date, the parties hereto agree in writing that any additional information shall constitute Counterparty Information, such information shall automatically be incorporated into Section 1(a) of this Agreement as Counterparty Information.

(b) Well-Known Seasoned Issuer. (A)(i) At the time of filing 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 1933 Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the 1934 Act or form of prospectus), and (iii) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) of the 1933 Act Regulations)

made any offer relating to the Securities in reliance on the exemption of Rule 163 under the 1933 Act Regulations, the Company was a "well-known seasoned issuer" as defined in Rule 405 of the 1933 Act Regulations; and (B) at the earliest time after the filing of the Registration Statement that the Company or any other offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) of the 1933 Act Regulations) of the Securities, the Company was not an "ineligible issuer" as defined in Rule 405 of the 1933 Act Regulations.

(c) Independent Accountants. The accountants who certified the financial statements and supporting schedules included in the Registration Statement are independent public accountants as required by the 1933 Act and the 1933 Act Regulations.

(d) Financial Statements. The financial statements included or incorporated by reference in the Registration Statement and the Prospectus, together with the related schedules and notes, present fairly in all material respects the financial position of the Company and its consolidated subsidiaries at the dates indicated and the statement of operations, equity, capital and cash flows of the Company and its consolidated subsidiaries for the periods specified; said financial statements have been prepared in conformity with generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods involved. The supporting schedules, if any, present fairly in all material respects in accordance with GAAP the information required to be stated therein. The pro forma financial statements and the related notes thereto included or incorporated by reference in the Registration Statement and the Prospectus, if any, present fairly the information shown therein, have been prepared in accordance with the Commission's rules and guidelines with respect to pro forma financial statements and have been properly compiled on the bases described therein, and the assumptions used in the preparation thereof are reasonable and the adjustments used therein are appropriate to give effect to the transactions and circumstances referred to therein. All disclosures contained in the Registration Statement, the Prospectus or any Issuer Free Writing Prospectus, or incorporated by reference therein, regarding "non-GAAP financial measures" (as such term is defined by the rules and regulations of the Commission) comply, in all material respects, with Regulation G of the 1934 Act and Item 10 of Regulation S-K of the 1933 Act, to the extent applicable. The interactive data in eXtensible Business Reporting Language incorporated by reference in the Registration Statement and the Prospectus fairly presents the information called for in all material respects and has been prepared in all material respects in accordance with the Commission's rules and guidelines applicable thereto.

(e) Real Estate Investment Trust. With respect to all tax periods in respect of which the Internal Revenue Service is or will be entitled to any claim, the Company has been organized and operated in conformity with the requirements for qualification and taxation as a real estate investment trust (a "REIT") under the Internal Revenue Code of 1986, as amended (the "Code," which term, as used herein, includes the regulations and published interpretations thereunder), and the Company's present and proposed method of operation will enable it to continue to meet the requirements for taxation as a REIT under the Code.

(f) No Material Adverse Change in Business. Since the respective dates as of which information is given in the Registration Statement or the Prospectus, except as otherwise stated therein, (A) there has been no material adverse change in the condition (financial or otherwise), or in the earnings, business affairs or business prospects of the Company, the Operating Partnership and their subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business (a "Material Adverse Effect"), (B) there have been no transactions entered into by the Company, the Operating Partnership or any of their subsidiaries, other than those in the ordinary course of business, which are material with respect to the Company, the Operating Partnership and their subsidiaries considered as one enterprise, and (C) except for quarterly dividends on the Common Stock or the Company's preferred stock or the Operating Partnership's units or any special dividends on the Common Stock and the Operating Partnership's units that are the subject of a press release (whether in cash, Common Stock or a combination of both), there has been no dividend or distribution of any kind declared, paid or made by the Company, the Operating Partnership on any class of capital stock or partnership interests.

(g) Good Standing of the Company and the Operating Partnership. Each of the Company and the Operating Partnership has been duly incorporated or formed, as applicable, and is validly existing as a corporation or limited partnership, as applicable, in good standing under the laws of the jurisdiction of its incorporation or formation, as applicable, and has the corporate or limited partnership power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus and to enter into and perform its obligations under this Agreement, the Master Forward Confirmation, any Supplemental Confirmation under the Master Forward Confirmation, the Master Warrant Confirmation and any Warrant Supplemental Confirmation under the Master Warrant Confirmation, as applicable. Each of the Company and the Operating Partnership is duly qualified as a foreign corporation or limited partnership, as applicable, to transact business and is in good standing or equivalent status in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except for such jurisdictions where the failure to so qualify or to be in good standing would not, individually or in the aggregate, result in a Material Adverse Effect.

(h) Good Standing of Subsidiaries. Each subsidiary of the Company and the Operating Partnership has been duly incorporated or formed, as applicable, and is validly existing as a corporation, limited partnership or limited liability company, as applicable, in good standing under the laws of the jurisdiction of its incorporation or formation, as applicable, and has the corporate, limited partnership or limited liability company power and authority to own, lease and operate its properties and to conduct its business as described in the Prospectus, except in any case in which the failure to be in good standing would not, individually or in the aggregate, result in a Material Adverse Effect. Each subsidiary is duly qualified as a foreign corporation, limited partnership or limited liability company, as applicable, to transact business and is in good standing or equivalent status in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except for such jurisdictions where the failure to so qualify or to be in good standing would not, individually or in the aggregate, result in a Material Adverse Effect. The Company does not own or control, directly or indirectly, any corporation, association or other entity that would be deemed a Significant Subsidiary (as such term is defined in Rule 405 under the 1933 Act) other than the Operating Partnership and the subsidiaries identified as "Significant Subsidiaries," if any, on Exhibit 21 to the Company's Annual Report on Form 10-K for the most recently ended fiscal year and other than those Significant Subsidiaries, if any, formed since the last day of the most recently completed fiscal year.

(i) Ownership of the Operating Partnership and Subsidiaries. All of the issued and outstanding capital stock (or similar equity interests) of each subsidiary of the Company and the Operating Partnership has been duly authorized and validly issued, is fully paid and nonassessable and such capital stock (or similar equity interests) owned by the Company is owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance or claim ("Liens"), except as disclosed in the Registration Statement and the Prospectus or as would not, singly or in the aggregate, result in a Material Adverse Effect. All of the issued and outstanding units of limited partnership ("Units") of the Operating Partnership have been duly and validly authorized and issued by the Operating Partnership. None of the Units was issued in violation of the preemptive or other similar rights of any security holder of the Operating Partnership or any other person or entity. Except as set forth in the Registration Statement and the Prospectus, there are no outstanding options, warrants or other rights to purchase, agreements or other obligations to issue, or rights to convert any obligations into or exchange any securities or interests for, Units or other ownership interests of the Operating Partnership (in each case, except for subsequent issuances, if any, pursuant to (i) this Agreement, (ii) reservations, agreements, employee benefit plans, dividend reinvestment plans or stock purchase plans referred to in the Prospectus, (iii) the exercise, redemption or exchange of convertible or exchangeable securities, options or warrants referred to in the Prospectus or (iv) unregistered issuances not required to be disclosed pursuant to the 1934 Act, the 1933 Act or any regulation promulgated thereunder). The Company is the sole general partner of the Operating Partnership. The Units owned by the Company are owned directly by the Company, free and clear of all Liens, except as disclosed in the Registration Statement and the Prospectus. The common Units to be issued by the Operating Partnership in connection with the contribution of the net proceeds from the sale of the Securities to the Operating Partnership (the "New Common Units") have been duly authorized, and,

when issued and delivered by the Operating Partnership, the New Common Units will be validly issued and fully paid. The New Common Units will be exempt from registration or qualification under the 1933 Act and applicable state securities laws. None of the New Common Units will be issued in violation of the preemptive or other similar rights of any security holder of the Operating Partnership or any other person or entity.

(j) Capitalization. The shares of issued and outstanding Common Stock have been duly authorized and validly issued and are fully paid and non-assessable; none of the outstanding shares of capital stock was issued in violation of the preemptive or other similar rights of any securityholder of the Company and the authorized, issued and outstanding capital stock of the Company is as set forth in the Prospectus (except for subsequent issuances, if any, pursuant to (i) this Agreement or the Alternative Equity Distribution Agreements, the Master Forward Confirmation, any Supplemental Confirmation under the Master Forward Confirmation, the Master Warrant Confirmation and any Warrant Supplemental Confirmation under the Master Warrant Confirmation, as applicable, (ii) reservations, agreements, employee benefit plans, dividend reinvestment plans or stock purchase plans referred to in the Prospectus, (iii) the exercise, redemption or exchange of convertible or exchangeable securities, options or warrants referred to in the Prospectus or (iv) unregistered issuances not required to be disclosed pursuant to the 1934 Act, the 1933 Act or any regulation promulgated thereunder). The Company's Common Stock has been registered pursuant to Section 12(b) of the 1934 Act and is listed on the NYSE and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Common Stock from the NYSE, nor has the Company received any notification that the Commission or the NYSE is contemplating terminating such registration or listing.

(k) Authorization of Agreements. This Agreement has been duly authorized, executed and delivered by the Company and the Operating Partnership. The Master Forward Confirmation has been duly authorized, executed and delivered by the Company and the Operating Partnership and the Master Warrant Confirmation has been duly authorized, executed and delivered by the Company and, assuming the authorization, execution and delivery thereof by the Forward Purchaser or by the Warrant Purchaser, as applicable, constitutes a valid and binding agreement of the Company, with respect to the Master Forward Confirmation and Master Warrant Confirmation, and the Operating Partnership, with respect to the Master Forward Confirmation, enforceable against the Company, with respect to the Master Forward Confirmation and Master Warrant Confirmation, and the Operating Partnership, with respect to the Master Forward Confirmation, in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws relating to or affecting creditors' rights and remedies generally or general principles of equity and except as rights to indemnity and contribution thereunder may be limited by applicable law or policies underlying such law. Each Supplemental Confirmation and Warrant Supplemental Confirmation (if any) will have been, as of its date, duly authorized, executed and delivered by the Company and, assuming the due authorization, execution and delivery thereof by the Forward Purchaser or the Warrant Purchaser, as applicable, will constitute a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium or other similar laws relating to or affecting creditors' rights and remedies generally or general principles of equity and except as rights to indemnity and contribution thereunder may be limited by applicable law or policies underlying such law.

(l) Authorization and Description of Securities. The Securities and the shares of Common Stock to be issued in connection with any Forward Contract and any Warrant Contract have been duly authorized for issuance and sale pursuant to this Agreement and, in the case of any Forward and any Warrant, the Forward Contract or the Warrant Contract, as applicable, and, when issued and delivered by the Company pursuant to this Agreement, and, in the case of any Forward and any Warrant, the related Forward Contract or the related Warrant Contract, against payment of the consideration set forth herein or therein (which may include net share settlement), will be validly issued and fully paid and non-assessable; the Common Stock conforms in all material respects to all statements relating thereto contained in the Prospectus and such description conforms in all material respects to the rights set forth in the instruments defining the same; no

holder of the Common Stock will be subject to personal liability solely by reason of being such a holder; and the issuance of the Securities and the shares of Common Stock to be issued in connection with any Forward Contract or any Warrant Contract is not or will not be, as applicable, subject to the preemptive or other similar rights of any securityholder of the Company.

(m) Partnership Agreement. The Agreement of Limited Partnership of the Operating Partnership (the "Partnership Agreement") has been duly and validly authorized, executed and delivered by the Company and is a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or by general principles of equity.

(n) Non-Contravention of Existing Instruments; No Further Authorizations or Approvals Required. None of the Company, the Operating Partnership, nor any of their subsidiaries is in violation of its partnership agreement, charter, bylaws, or limited liability company agreement or is in default (or, with the giving of notice or lapse of time, would be in default) ("Default") under any indenture, mortgage, loan or credit agreement, note, contract, franchise, lease or other instrument to which the Company, the Operating Partnership or any of their subsidiaries is a party or by which the Company, the Operating Partnership or any of their subsidiaries may be bound, or to which any of the property or assets of the Company, the Operating Partnership or any of their subsidiaries is subject (each, an "Existing Instrument"), except for such Defaults as would not, individually or in the aggregate, result in a Material Adverse Effect. The execution, delivery and performance by the Company and the Operating Partnership of this Agreement, the execution, delivery and performance by the Company and the Operating Partnership of the Master Forward Confirmation and any Supplemental Confirmation, and the execution, delivery and performance by the Company of the Master Warrant Confirmation and any Warrant Supplemental Confirmation, and the consummation of the transactions contemplated by this Agreement, the Master Forward Confirmation, the Master Warrant Confirmation, any Supplemental Confirmation, any Warrant Supplemental Confirmation and the Prospectus (including the Company's issuance and sale of the Securities from time to time pursuant to this Agreement or the Alternative Equity Distribution Agreements and the shares of Common Stock to be issued in connection with any Forward Contract and any Warrant Contract, as applicable), (i) have been or will be duly authorized by all necessary partnership or corporate action, as applicable, and will not result in any violation of the provisions of the partnership agreement, charter, bylaws or limited liability company agreement of the Company, the Operating Partnership or any of their subsidiaries, (ii) will not conflict with or constitute a breach of, or Default or a Debt Repayment Triggering Event (as defined below) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company, the Operating Partnership or any of their subsidiaries pursuant to, or require the consent of any other party to, any Existing Instrument, except in the case of this clause (ii) for such conflicts, breaches, Defaults or Debt Repayment Triggering Events, or liens, charges or encumbrances that would not result in a Material Adverse Effect, and (iii) will not result in any violation of any law, statute, administrative regulation or administrative or court decree applicable to the Company, the Operating Partnership or any subsidiary, except in the case of this clause (iii) for such violations that would not result in a Material Adverse Effect. As used herein, a "Debt Repayment Triggering Event" means any event or condition which gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder's behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company, the Operating Partnership, or any of their subsidiaries.

(o) No Material Actions or Proceedings. Except as disclosed in the Registration Statement and the Prospectus, there are no legal or governmental actions, suits or proceedings pending or, to the best of the Company's and the Operating Partnership's knowledge, threatened (i) against the Company, the Operating Partnership, or any of their subsidiaries that, if determined adversely to the Company, the Operating Partnership, or such subsidiary, would reasonably be expected to result in a Material Adverse Effect or adversely affect the consummation of the transactions contemplated by this Agreement, the Master Forward Confirmation, any Supplemental Confirmation under the Master Forward Confirmation, the Master Warrant Confirmation, or any Warrant Supplemental Confirmation under the Master Warrant

Confirmation, as applicable, or (ii) that are required to be described in the Registration Statement or the Prospectus and are not so described.

(p) Accuracy of Exhibits. There are no contracts or other documents that are required to be described in the Registration Statement or the Prospectus or to be filed as exhibits to the Registration Statement that are not described or filed as required.

(q) Intellectual Property Rights. Except as disclosed in the Registration Statement and the Prospectus, the Company, the Operating Partnership and their subsidiaries own or possess sufficient trademarks, trade names, patent rights, copyrights, licenses, domain names, approvals, trade secrets and other similar rights (collectively, "Intellectual Property Rights") reasonably necessary to conduct their businesses as now conducted, other than those the failure to own or possess would not have a Material Adverse Effect. Neither the Company, the Operating Partnership, nor any of their subsidiaries has received any notice of infringement or conflict with asserted Intellectual Property Rights of others, which infringement or conflict, if the subject of an unfavorable decision, would result in a Material Adverse Effect.

(r) Absence of Further Requirements. No filing with, or authorization, approval, consent, license, order, registration, qualification or decree of, any court or governmental authority or agency is necessary or required for the execution and delivery by the Company and the Operating Partnership of this Agreement, the execution and delivery by the Company of the Master Forward Confirmation, as supplemented by each Supplemental Confirmation and the Master Warrant Confirmation, as supplemented by each Warrant Supplemental Confirmation, or the performance by the Company or the Operating Partnership of their respective obligations under this Agreement, the Master Forward Confirmation, as supplemented by each Supplemental Confirmation and the Master Warrant Confirmation, as supplemented by each Warrant Supplemental Confirmation, as applicable, in connection with the offering, issuance or sale of the Securities under this Agreement, the shares of Common Stock to be issued in connection with any Forward Contract, under the Master Forward Confirmation, as supplemented by each Supplemental Confirmation, or shares of Common Stock to be issued in connection with any Warrant Contract under the Master Warrant Confirmation, as supplemented by each Warrant Supplemental Confirmation, or the consummation of the transactions contemplated by this Agreement, the Master Forward Confirmation, as supplemented by each Supplemental Confirmation or the Master Warrant Confirmation, as supplemented by each Warrant Supplemental Confirmation, and by the Registration Statement and the Prospectus (including the Company's issuance and sale of the Securities from time to time pursuant to this Agreement or the Alternative Equity Distribution Agreements and the shares of Common Stock to be issued in connection with any Forward Contract or any Warrant Contract, as applicable), except (i) such as have been already obtained or as may be required under the 1933 Act or the 1933 Act Regulations or state securities laws, (ii) such as have been obtained or as may be required under the laws and regulations of jurisdictions outside of the United States in which the Securities and the shares of Common Stock to be issued in connection with any Forward Contract and any Warrant Contract are offered, (iii) such as have been, or will be, obtained, as of each Settlement Date in connection with the approval of the listing of the Securities and the shares of Common Stock to be issued in connection with any Forward Contract and any Warrant Contract, on the NYSE, or (iv) such as may be required by the Financial Industry Regulatory Authority, Inc. ("FINRA").

(s) Absence of Manipulation. Neither the Company, the Operating Partnership nor any of their affiliates have taken, nor will the Company, the Operating Partnership or any affiliate take, directly or indirectly, any action which is designed to or which has constituted or which would be expected to cause or result in stabilization or manipulation of the price of any security of the Company or the Operating Partnership to facilitate the sale or resale of the Securities.

(t) All Necessary Permits, etc. The Company, the Operating Partnership and each of their subsidiaries possess such valid and current certificates, authorizations, permits, licenses, approvals, consents and other authorizations issued by the appropriate state, federal or foreign regulatory agencies or bodies necessary to conduct their respective businesses ("Permits"), except for those for which the failure to obtain would not result in a Material Adverse Effect. None of the Company, the Operating Partnership,

nor any subsidiary has received any notice of proceedings relating to the revocation or modification of, or non-compliance with, or renewal of any such Permit which, individually or in the aggregate, if the subject of an unfavorable decision, ruling or finding, would result in a Material Adverse Effect.

(u) Title to Properties. Except as disclosed in the Registration Statement and the Prospectus, each of the Company, the Operating Partnership and their subsidiaries has good and marketable fee simple title to or valid and enforceable leasehold title in all the properties and assets that are reflected as owned in the financial statements referred to in Section 1(d) hereof, in each case free and clear of any security interests, mortgages, liens, encumbrances, equities, claims and other defects, except for such security interests, mortgages, liens, encumbrances, equities, claims and other defects that would not have a Material Adverse Effect.

(v) Mortgages, Deeds of Trust and Ground Leases. Except as disclosed in the Registration Statement and the Prospectus, the mortgages and deeds of trust encumbering the properties and assets described in the Registration Statement and the Prospectus (i) are not convertible (in the absence of foreclosure) into an equity interest in the property or asset described therein or in the Company, the Operating Partnership or any of their subsidiaries, nor does the Company, the Operating Partnership nor any of their subsidiaries hold a participating interest therein, (ii) are not cross-defaulted to any indebtedness other than indebtedness of the Company, the Operating Partnership or any of their subsidiaries and (iii) are not cross-collateralized to any property not owned by the Company, the Operating Partnership or any of their subsidiaries. Except as disclosed in the Registration Statement and the Prospectus or would not cause a Material Adverse Effect, all ground leases affecting any of the properties, development projects or development land owned by the Company, the Operating Partnership or any of their subsidiaries are in full force and effect, and none of the Company, the Operating Partnership or any of their subsidiaries has notice of any material claim of any sort that has been asserted by a ground lessor under a ground lease threatening the rights of the Company, the Operating Partnership or any their subsidiaries to the continued possession of the leased premises under any such ground lease.

(w) Tax Law Compliance. Each of the Company and the Operating Partnership has filed all federal, state, local and foreign income tax returns which have been required to be filed (except in any case in which the failure to so file would not have a Material Adverse Effect) and has paid all taxes required to be paid and any other assessment, fine or penalty levied against it, to the extent that any of the foregoing is due and payable, except, in all cases, for any such tax, assessment, fine or penalty that is being contested in good faith or as would not have, individually or in the aggregate, a Material Adverse Effect.

(x) Not an Investment Company. None of the Company, the Operating Partnership, or any of their subsidiaries is or, after giving effect to the offering and sale of the Securities or the shares of Common Stock to be issued in connection with any Forward Contract and any Warrant Contract and the application of the proceeds thereof as described in the Prospectus and the consummation of the transactions contemplated by the Master Forward Confirmation and each Supplemental Confirmation under the Master Forward Confirmation and the Master Warrant Confirmation and each Warrant Supplemental Confirmation under the Master Warrant Confirmation, will be, required to register as an "investment company" under the Investment Company Act of 1940, as amended.

(y) Insurance. Each of the Company, the Operating Partnership, and their subsidiaries are insured by recognized, financially sound institutions with policies in such amounts and with such deductibles and covering such risks as are generally deemed adequate and customary for their businesses. Neither the Company nor the Operating Partnership has any reason to believe that it or any subsidiary will not be able to (i) renew its existing insurance coverage as and when such policies expire or (ii) obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Effect.

(z) Title Insurance. Each of the Company, the Operating Partnership, and their subsidiaries has title insurance or binding commitments for title insurance on all material properties and assets owned by them,

except where the failure to maintain such title insurance would not reasonably be expected to have a Material Adverse Effect.

(aa) No Registration Rights. There are no contracts, agreements or understandings between the Company and any person granting such person the right to require the Company to include any securities of the Company with the Securities and the shares of Common Stock to be issued in connection with any Forward Contract or any Warrant Contract registered pursuant to the Registration Statement other than as disclosed in the Registration Statement and the Prospectus.

(bb) Compliance with Sarbanes-Oxley. Except as disclosed in the Registration Statement and the Prospectus, there is and has been no failure on the part of the Company, the Operating Partnership, or their subsidiaries or their respective officers and directors to comply in all material respects with the applicable provisions of the Sarbanes-Oxley Act of 2002, including the rules and regulations of the Commission promulgated thereunder.

(cc) Accounting System. Except as disclosed in the Registration Statement and the Prospectus, the Company and its subsidiaries maintain a system of internal accounting controls that is sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP 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.

(dd) Disclosure Controls and Procedures. Each of the Company and the Operating Partnership has established and maintains disclosure controls and procedures (as such term is defined in Rules 13a-15 and 15d-14 under the 1934 Act); such disclosure controls and procedures are designed to ensure that material information required to be disclosed by the Company and the Operating Partnership in the reports that they file or submit under the 1934 Act is made known to the chief executive officer and chief financial officer of the Company by others within the Company, the Operating Partnership, or any of their subsidiaries. The auditors of the Company and the Operating Partnership and the Audit Committee of the Board of Directors of the Company have been advised of: (i) any significant deficiencies or material weaknesses in the design or operation of internal controls which could adversely affect the ability of the Company and the Operating Partnership to record, process, summarize, and report financial data; and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls over financial reporting of the Company and the Operating Partnership. Except as disclosed in the Registration Statement and the Prospectus, since the date of the most recent evaluation of such disclosure controls and procedures, 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.

(ee) Compliance with Environmental Laws. Except as disclosed in the Registration Statement and the Prospectus or as would not, individually or in the aggregate, result in a Material Adverse Effect: (i) neither the Company, the Operating Partnership, nor any of their subsidiaries is in violation of any federal, state, local or foreign law or regulation relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including, without limitation, laws, regulations, judgments or orders relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum and petroleum products (collectively, "Materials of Environmental Concern"), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of Environmental Concern (collectively, "Environmental Laws"), which violation includes, without limitation, noncompliance with any Permits required for the ownership or operation of the business of the Company, the Operating Partnership, or their subsidiaries under applicable Environmental Laws, or noncompliance with the terms and conditions thereof, nor has the

Company, the Operating Partnership, or any of their subsidiaries received any written communication from a governmental authority that alleges that the Company, the Operating Partnership, or any of their subsidiaries is in violation of any Environmental Law or Permit; (ii) there is no claim, action or cause of action filed with a court or governmental authority, no investigation with respect to which the Company or the Operating Partnership has received written notice, and no written notice by any person or entity alleging potential liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, injunctive relief, property damages, personal injuries, attorneys' fees or fines or penalties arising out of, based on or resulting from a violation of Environmental Laws or a Permit issued thereunder, or the presence, or release into the environment, of any Material of Environmental Concern at any location owned, leased or operated by the Company, the Operating Partnership, or any of their subsidiaries, now or in the past (collectively, "Environmental Claims"), pending or, to the best of the knowledge of the Company and the Operating Partnership, threatened against the Company, the Operating Partnership, or any of their subsidiaries or any person or entity whose liability for any Environmental Claim the Company, the Operating Partnership, or any of their subsidiaries has retained or assumed either contractually or by operation of law; and (iii) to the best of the knowledge of the Company and the Operating Partnership, there are no past or present actions, activities, circumstances, conditions, events or incidents, including, without limitation, the release, emission, discharge, presence or disposal of any Material of Environmental Concern, that would reasonably be expected to result in a violation of any Environmental Law or Permit issued thereunder, or form the basis of a potential Environmental Claim against the Company, the Operating Partnership, or any of their subsidiaries or against any person or entity whose liability for any Environmental Claim the Company, the Operating Partnership, or any of their subsidiaries has retained or assumed either contractually or by operation of law.

(ff) ERISA Compliance. (i) The Company, the Operating Partnership and each of their subsidiaries or their "ERISA Affiliates" (as defined below) are in compliance in all material respects with all applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("ERISA"); (ii) no "reportable event" (as defined in ERISA) has occurred with respect to any "employee benefit plan" (as defined in ERISA) for which the Company, the Operating Partnership or any of their subsidiaries or ERISA Affiliates would have any liability; (iii) the Company, the Operating Partnership and each of their subsidiaries or their ERISA Affiliates have not incurred and do not reasonably expect to incur liability under Title IV of ERISA with respect to termination of, or withdrawal from, any "employee benefit plan"; and (iv) each "employee benefit plan" for which the Company and each of its subsidiaries or any of their ERISA Affiliates would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification; except, each case, as would not reasonably be expected to have a Material Adverse Effect. "ERISA Affiliate" means, with respect to the Company, the Operating Partnership or any of their subsidiaries, any member of any group of organizations described in Sections 414(b), (c) or (m) of the Code or Section 4001(b)(1) of ERISA of which the Operating Partnership, the Company or such subsidiary is a member.

(gg) Compliance with Labor Laws. No labor dispute with the employees of the Company, the Operating Partnership or any of their subsidiaries exists or, to the knowledge of the Company and the Operating Partnership, is imminent, which in either case would result in a Material Adverse Effect.

(hh) Related Party Transactions. No relationship, direct or indirect, exists between or among any of the Company, the Operating Partnership, or any affiliate of the Company or the Operating Partnership, on the one hand, and any director, officer, member, stockholder, partner, customer, or supplier of the Company, the Operating Partnership, or any affiliate of the Company or the Operating Partnership, on the other hand, which is required to be disclosed in the Registration Statement and the Prospectus which is not so disclosed.

(ii) Unlawful Payments. Neither the Company, the Operating Partnership, nor any of their subsidiaries or affiliates, nor any director, officer, or employee, nor, to the Company's or the Operating Partnership's knowledge, any agent or representative of the Company, the Operating Partnership or of any

of their subsidiaries or affiliates, is aware of or has taken or will take any action directly or indirectly, that would result in a violation by such persons of the Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), and the rules and regulations thereunder, or any other applicable law or regulation implementing the Organization for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, or committed an offense under the Bribery Act of 2010 of the United Kingdom, or any other applicable anti-corruption or anti-bribery laws, including without limitation any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any "foreign official" (as such term is defined in the FCPA) or government official (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper advantage; and the Company, the Operating Partnership and their subsidiaries and affiliates have conducted their businesses in compliance with applicable anti-corruption laws and have instituted and maintain and will continue to maintain policies and procedures designed to promote and achieve compliance with such laws and with the representation and warranty contained herein.

(jj) Anti-Money Laundering Laws. The operations of the Company, the Operating Partnership and their subsidiaries are and have been conducted at all times in material compliance with all applicable financial recordkeeping and reporting requirements, including those of the Currency and Foreign Transactions Reporting Act of 1970, as amended and the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the applicable anti-money laundering statutes of jurisdictions where the Company, the Operating Partnership and their subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental agency (collectively, the "Anti-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, the Operating Partnership or any of their subsidiaries with respect to the Anti-Money Laundering Laws is pending or, to the best knowledge of the Company and the Operating Partnership, threatened.

(kk) OFAC, etc.

(i) Neither the Company, the Operating Partnership nor any of their subsidiaries (collectively, the "Entity") or, to the knowledge of the Entity, any director, officer, employee, agent, affiliate or representative of the Entity, is an individual or entity ("Person") that is, or is owned or controlled by a Person that is: (A) the subject of any sanctions administered or enforced by the government of the United States (including, without limitation, the U.S. Department of Treasury's Office of Foreign Assets Control), the United Nations Security Council, the European Union, His Majesty's Treasury, or other relevant sanctions authority (collectively, "Sanctions"); nor (B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Cuba, Iran, North Korea, the Crimea region of Ukraine, the so-called Donetsk People's Republic, the so-called Luhansk People's Republic, and the non-government controlled areas of Zaporizhzhia and Kherson regions of Ukraine or any other "Covered Region" of Ukraine as defined in and identified pursuant to Executive Order 14065 of the United States, and Syria).

(ii) The Company represents and covenants that it will not, directly or indirectly, use the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person: (A) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or (B) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as sales agent or principal, advisor, investor or otherwise).

(iii) Each of the Company and the Operating Partnership represents and covenants that since April 24, 2019, the Entity has not knowingly engaged in, is not now knowingly engaged in, and will not engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(ll) No Commissions. Neither the Company, the Operating Partnership nor any of their subsidiaries is a party to any contract, agreement or understanding with any person (other than as contemplated by this Agreement and the Alternative Equity Distribution Agreements) that would give rise to a valid claim against the Company, the Operating Partnership or any of its subsidiaries or the Agent for a brokerage commission, finder's fee or like payment in connection with the offering and sale of the Securities or the shares of Common Stock to be issued in connection with any Forward Contract or any Warrant Contract.

(mm) Actively-Traded Security. The Common Stock is an "actively-traded security" exempted from the requirements of Rule 101 of Regulation M under the 1934 Act by subsection (c)(1) of such rule.

(nn) Statistical and Market-Related Data. Any statistical and market-related data included in the Registration Statement and the Prospectus are based on or derived from sources that the Company and the Operating Partnership believe to be reliable and accurate in all material respects, and, to the extent necessary, the Company has obtained the written consent to the use of such data from such sources.

(oo) IT Systems and Data. With such exceptions as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect: (i) there has been no security breach or other compromise of or relating to any of the Company's, the Operating Partnership's or their subsidiaries' information technology and computer systems, networks, hardware, software, data (including the data of their respective tenants, employees, suppliers, vendors and any third party data maintained by or on behalf of them), equipment or technology (collectively, "IT Systems and Data") and (ii) the Company, the Operating Partnership and their subsidiaries have not been notified of, and have no knowledge of any event or condition that would reasonably be expected to result in, any security breach or other compromise to their IT Systems and Data.

(pp) Outbound Investment Rules. None of the Company, the Operating Partnership or their subsidiaries is a "covered foreign person" as that term is used in the regulations administered and enforced, together with any related public guidance issued, by the United States Treasury Department under U.S. Executive Order 14105 of August 9, 2023, or any similar law or regulation (which, as of the date of this Agreement, are codified at 31 C.F.R. § 850.101 et seq.) (the "Outbound Investment Rules"). None of the Company, the Operating Partnership or their subsidiaries currently engages, or has any present intention to engage in the future, directly or indirectly, in (i) a "covered activity" or a "covered transaction," as each such term is defined in the Outbound Investment Rules, (ii) any activity or transaction that would constitute a "covered activity" or a "covered transaction," as each such term is defined in the Outbound Investment Rules, if the Company were a U.S. person or (iii) any other activity that would cause the Agent, the Forward Seller or the Forward Purchaser to be in violation of the Outbound Investment Rules or cause the Agent, the Forward Seller or the Forward Purchaser to be legally prohibited by the Outbound Investment Rules from performing under this Agreement.

(qq) Deemed Representation. Any certificate signed by any officer of the Company or the Operating Partnership and delivered to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser or their counsel shall be deemed a representation and warranty by the Company and the Operating Partnership, as the case may be, to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, as the case may be, as to the matters covered thereby as of the date or dates indicated in such certificate.

Section 2. Placements.

(a) Upon the terms and subject to the conditions of this Agreement, on any Trading Day as provided in Section 2(c) hereof during the Commitment Period on which (i) the conditions set forth in Section 9 hereof have been satisfied, (ii) with respect to any Forward, no event described in clause (i) or clause (ii) of the proviso contained in the definition of Forward Hedge Selling Period shall have occurred and (iii) with respect to any Warrant, no event described in the proviso contained in the definition of Warrant Hedge Selling Period shall have occurred, the Company may issue (in the case of an Issuance) and sell or cause to be sold the Securities hereunder (each, a "Placement"), by delivery of an email notice (or other method mutually agreed to in writing by the parties) to the Agent (in the case of an Issuance), the Forward Seller and the Forward Purchaser (in the case of a Forward) or the Warrant Hedge Seller and the Warrant Purchaser (in the case of a Warrant) containing (A), in the case of an Issuance or a Forward, the parameters in accordance with which it desires the Securities to be sold, which shall at a minimum specify whether it relates to an "Issuance" or a "Forward" and include the maximum number of Securities to be sold (the "Placement Securities"), the Issuance Amount, the time period during which sales are requested to be made, any limitation on the number of Securities that may be sold in any one (1) day, any minimum price below which sales may not be made or a formula pursuant to which such minimum price shall be determined and, as applicable, certain specified terms of the Forward (a "Placement Notice"), a form of which containing such minimum sales parameters necessary with respect to Issuances and Forwards is attached hereto as Annex I or (B) in the case of a Warrant, request to quote specified terms of potential Warrants and the parameters in accordance with which it desires the Securities to be sold in connection with establishing the Warrant Purchaser's initial hedge positions with respect to such Warrant, such as a minimum price below which such may sales not be made (a "Warrant Quote Request", which, together with the related Warrant Quote (as defined below), shall be deemed to constitute a Placement Notice with respect to such Warrant for purposes of this Agreement), in which case if the Warrant Purchaser wishes to do so, quote, on the same Trading Day such Warrant Quote Request is received, non-binding, indicative terms of such potential Warrants (a "Warrant Quote"), including the reference price, strike price, reference premium, reference initial "delta", maximum number of Securities underlying such potential Warrant, expiration schedule, dividend schedule, settlement price percentage and any other relevant term.

(b) In the case of an Issuance or a Forward, if the Agent or the Forward Seller and the Forward Purchaser, as applicable, wish to accept such proposed terms included in the Placement Notice (which they may decline to do for any reason in their sole discretion) or, following discussion with the Company, wish to accept amended terms, the Agent or the Forward Seller and the Forward Purchaser, as applicable, will, prior to 4:30 p.m. (New York City Time) on the business day following the business day on which such Placement Notice is delivered to the Agent or the Forward Seller and the Forward Purchaser, as applicable, issue to the Company a notice by email (or other method mutually agreed to in writing by the parties) addressed to the Company and the Agent or the Forward Seller and the Forward Purchaser, as applicable, setting forth an acceptance of terms in the Placement Notice or such amended or other terms that the Agent or the Forward Seller and the Forward Purchaser, as applicable, are willing to accept. Where the terms provided in the Placement Notice for such Issuance or Forward are amended as provided for in the immediately preceding sentence, such terms will not be binding on the Company or the Agent or the Forward Seller and the Forward Purchaser, as applicable, until the Company delivers to the Agent or the Forward Seller and the Forward Purchaser, as applicable, an acceptance by email (or other method mutually agreed to in writing by the parties) of all of the terms of such Placement Notice, as amended (the "Acceptance"), which email shall be addressed to the Company and the Agent or the Forward Seller and the Forward Purchaser, as applicable. The Placement Notice for such Issuance or Forward (as amended by the corresponding Acceptance, if applicable) shall be effective upon receipt by the Company of the Agent's or the Forward Seller's and the Forward Purchaser's, as applicable, acceptance of the terms of the Placement Notice or upon receipt by the Agent or the Forward Seller and the Forward Purchaser, as applicable, of the Acceptance, as the case may be, unless and until (i) the entire amount of the Placement Securities has been sold, (ii) in accordance with the notice requirements set forth herein, the Company terminates the Placement Notice, (iii) the Company issues a subsequent Placement Notice with parameters superseding those on the earlier dated Placement Notice and such Placement Notice (as amended by the

corresponding Acceptance, if applicable) has been accepted in accordance with the requirements set forth above, (iv) this Agreement has been terminated under the provisions of Section 13 or (v) any party shall have suspended the sale of the Placement Securities in accordance with Section 4 below. The termination of the effectiveness of a Placement Notice as set forth in the prior sentence shall not affect or impair any party's obligations with respect to any Securities sold hereunder prior to such termination or any Securities sold under any Alternative Equity Distribution Agreement (including, in the case of any Forward Hedge Securities, the obligation to enter into the resulting Forward Contract). It is expressly acknowledged and agreed that neither the Company nor the Agent will have any obligation whatsoever with respect to a Placement or any Placement Securities unless and until the Company delivers a Placement Notice to the Agent and either (i) the Agent accepts the terms of such Placement Notice or (ii) where the terms of such Placement Notice are amended, the Company accepts such amended terms by means of an Acceptance pursuant to the terms set forth above, and then only upon the terms specified in the Placement Notice (as amended by the corresponding Acceptance, if applicable) and herein. It is expressly acknowledged and agreed that the Company, the Forward Seller and the Forward Purchaser will have no obligation whatsoever with respect to a Placement or any Placement Securities unless and until the Company delivers a Placement Notice to the Forward Seller and the Forward Purchaser and either (i) the Forward Seller and the Forward Purchaser accept the terms of such Placement Notice or (ii) where the terms of such Placement Notice are amended, the Company accepts such amended terms by means of an Acceptance pursuant to the terms set forth above, and then only upon the terms specified in the Placement Notice (as amended by the corresponding Acceptance, if applicable), this Agreement and the Master Forward Confirmation. In the event of a conflict between the terms of this Agreement and the terms of a Placement Notice (as amended by the corresponding Acceptance, if applicable), the terms of the Placement Notice (as amended by the corresponding Acceptance, if applicable) will control. In the case of a Warrant, following delivery of the related Warrant Quote, the Company and the Warrant Purchaser, if both parties wish to do so, will discuss the terms of such potential Warrant and such terms will not be binding on the Company, the Warrant Hedge Seller and the Warrant Purchaser, as applicable, until the Company delivers, in its sole discretion, to the Warrant Purchaser an acceptance of such terms by email (or other method mutually agreed to in writing by the parties) and the Warrant Purchaser acknowledges, in its sole discretion, such acceptance of such terms by email (or other method mutually agreed to in writing by the parties) (such acceptance by the Company as so acknowledged by the Warrant Purchaser shall be deemed to constitute an Acceptance for purposes of this Agreement). The Placement Notice for such Warrant (as amended by the corresponding Acceptance) shall be effective upon such acknowledgment by the Warrant Purchaser, unless and until (i) the date on which the Warrant Hedge Seller shall have completed the sale of Warrant Hedge Securities in connection with such Warrant, (ii) in accordance with the notice requirements set forth herein, the Company terminates the Placement Notice, (iii) this Agreement has been terminated under the provisions of Section 13 or (iv) any party shall have suspended the sale of the Warrant Hedge Securities in accordance with Section 4 below. The termination of the effectiveness of a Placement Notice as set forth in the prior sentence shall not affect or impair any party's obligations with respect to any Securities sold hereunder prior to such termination or any Securities sold under any Alternative Equity Distribution Agreement (including, in the case of any Warrant Hedge Securities, the obligation to enter into the resulting Warrant Contract). It is expressly acknowledged and agreed that the Company, the Warrant Hedge Seller and the Warrant Purchaser will have no obligation whatsoever with respect to a Placement or any Warrant Hedge Securities unless and until the Company delivers a Warrant Quote Request to the Warrant Hedge Seller and the Warrant Purchaser, and the Warrant Purchaser delivers a Warrant Quote and the Company delivers, in its sole discretion, to the Warrant Purchaser an acceptance of such terms by email (or other method mutually agreed to in writing by the parties) and the Warrant Purchaser acknowledges, in its sole discretion, such acceptance of such terms by email (or other method mutually agreed to in writing by the parties) pursuant to the terms set forth above, and then only upon the terms specified in the Placement Notice (as amended by the corresponding Acceptance), this Agreement and the Master Warrant Confirmation.

(c) No Placement Notice may be delivered hereunder other than on a Trading Day during the Commitment Period; no Placement Notice may be delivered hereunder if the Selling Period specified therein may overlap in whole or in part with any Selling Period specified in a Placement Notice (as amended by the corresponding Acceptance, if applicable) delivered hereunder or under any Alternative

Equity Distribution Agreement unless the Securities to be sold under all such previously delivered Placement Notices have all been sold or all such previously delivered Placement Notices are no longer effective; no Placement Notice may be delivered hereunder or under any Alternative Equity Distribution Agreement if any Selling Period specified therein may overlap in whole or in part with any Unwind Date under any Forward Contract entered into between the Company and the Forward Purchaser or any Alternative Agent; and no Placement Notice specifying that it relates to a "Forward" or a "Warrant" may be delivered if either (i) an ex-dividend date or ex-date, as applicable, for any dividend or distribution payable by the Company on the Common Stock is scheduled to occur during the period from, and including, the first scheduled Trading Day of the related Forward Hedge Selling Period or the related Warrant Hedge Selling Period, as applicable, to, and including, the last scheduled Trading Day of such Forward Hedge Selling Period or such Warrant Hedge Selling Period, as applicable, or (ii) such Placement Notice, together with all prior Placement Notices (as amended by the corresponding Acceptance, if applicable) delivered by the Company relating to a "Forward" or a "Warrant" hereunder and "Forward" under any Alternative Equity Distribution Agreements, would result in the sum of the number of shares of Common Stock issued under all Forward Contracts (whether with a Forward Purchaser or any Alternative Agent) and under all Warrant Contracts with the Warrant Purchaser that have settled, plus the Capped Numbers under all Forward Contracts then outstanding or to be entered into between the Company and the Forward Purchaser and any Forward Contracts then outstanding between the Company and any Alternative Agent, plus the Maximum Number of Shares under all Warrant Contracts then outstanding or to be entered into between the Company and the Warrant Purchaser, exceeding 19.99% of the number of shares of Common Stock outstanding as of the date of this Agreement.

(d) Notwithstanding any other provision of this Agreement, any notice required to be delivered by the Company or by an Agent (in the case of an Issuance) or the Forward Seller and the Forward Purchaser (in the case of a Forward) or the Warrant Hedge Seller and the Warrant Purchaser (in the case of a Warrant) pursuant to this Section 2 may be delivered by telephone (confirmed promptly by facsimile or email to the Company and the Agent (in the case of an Issuance) or the Forward Seller and the Forward Purchaser (in the case of a Forward) or the Warrant Hedge Seller and the Warrant Purchaser (in the case of a Warrant), which confirmation will be promptly acknowledged by the receiving party) or other method mutually agreed to in writing by the parties.

(e) The Company (or any of its "affiliated purchaser" as defined in Rule 10b-18 under the Exchange Act ("Rule 10b-18")) shall not, without the prior written consent of the Warrant Purchaser, directly or indirectly (including, without limitation, by means of a derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or commence any tender offer relating to, any shares of Common Stock (or equivalent interest, including, without limitation, a unit of beneficial interest in a trust or limited partnership or a depository share) (including, without limitation, any Rule 10b-18 purchases of blocks (as defined in Rule 10b-18)) during any Warrant Hedge Selling Period. Notwithstanding the foregoing, nothing herein shall (i) limit the Company's ability, pursuant to its employee incentive plans, to re-acquire shares of Common Stock in connection with the related equity transactions, (ii) limit the Company's ability to withhold shares to cover tax liabilities associated with such equity transactions, (iii) limit the Company's ability to grant stock, restricted stock units and options to "affiliated purchasers" (as defined in Rule 10b-18) or the ability of such affiliated purchasers to acquire such stock, restricted stock units or options, in connection with the Company's compensation policies for directors, officers and employees, (iv) limit the ability of an agent independent of the Company to purchase shares of Common Stock effected by or for an issuer plan of Company in accordance with the requirements of Section 10b-18(a)(13)(ii) under the Exchange Act (with "issuer plan" and "agent independent of the Company" each being used herein as defined in Rule 10b-18) or (v) limit the ability of the Company or any of its "affiliated purchaser" (as defined in Rule 10b-18) to purchase shares of Common Stock in (x) unsolicited transactions or (y) privately negotiated (off-market) transactions, in each case, that are not "Rule 10b-18 purchases" (as defined in Rule 10b-18) and are not expected to result in market purchases, in each case, without the Warrant Purchaser's consent.

Section 3. Sale of Securities.

(a) Subject to the provisions of Sections 2(b) and 5(a), upon the delivery of a Placement Notice (as amended by the corresponding Acceptance, if applicable) specifying that it relates to an "Issuance," the Agent will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell the Issuance Securities at market prevailing prices up to the amount specified, and otherwise in accordance with the terms of such Placement Notice (as amended by the corresponding Acceptance, if applicable). The Agent will provide written confirmation by email to the Company no later than the opening of the Trading Day immediately following each Trading Day on which it has made sales of Issuance Securities hereunder setting forth the number of Issuance Securities sold on such day, the corresponding Aggregate Sales Price, the compensation payable by the Company to the Agent pursuant to this Section 3(a) with respect to such sales, and the Net Proceeds (as defined below) payable to the Company, with an itemization of the amounts set forth in Section 5(b) used to determine the amount of the Net Proceeds from the Gross Proceeds (as defined in Section 5(b)) that the Agent receives from such sales. The amount of any commission, discount or other compensation to be paid by the Company to the Agent, when the Agent is acting as agent, in connection with the sale of the Issuance Securities shall be a rate mutually agreed to between the Company and the Agent and recorded in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable), not to exceed 1.5% of the gross sales price of the Issuance Securities sold pursuant to this Agreement. From time to time, the Company may also offer to sell shares of Common Stock directly to an Agent, as principal (each such transaction, a "Principal Transaction"), in which event such parties shall enter into a separate agreement. The amount of any commission, discount or other compensation to be paid by the Company to the Agent in a Principal Transaction shall be as separately agreed among the parties hereto at the time of any such sales.

(b) Subject to the provisions of Sections 2(b), 5(d) and the Master Forward Confirmation, upon the delivery of a Placement Notice (as amended by the corresponding Acceptance, if applicable) specifying that it relates to a "Forward," the Forward Purchaser (or its affiliate) will use commercially reasonable efforts to borrow, offer and sell Forward Hedge Securities through the Forward Seller to hedge the Forward, and the Forward Seller will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell the Forward Hedge Securities at market prevailing prices up to the Forward Hedge Amount specified in such Placement Notice (as amended by the corresponding Acceptance, if applicable), and otherwise in accordance with the terms of such Placement Notice (as amended by the corresponding Acceptance, if applicable). The Forward Seller will provide written confirmation by email to the Company and to the Forward Purchaser no later than the opening of the Trading Day immediately following each Trading Day on which it has made sales of Forward Hedge Securities hereunder setting forth the number of Forward Hedge Securities sold on such day, the Forward Hedge Selling Commission in respect of such Forward Hedge Securities, the corresponding Aggregate Sales Price and the Aggregate Forward Hedge Price payable to the Forward Purchaser in respect thereof.

(c) No later than the opening of the Trading Day immediately following the last Trading Day of each Forward Hedge Selling Period (or, if earlier, no later than the opening of the Trading Day immediately following the date on which any Forward Hedge Selling Period is suspended or terminated pursuant to Section 4 or the Forward Contract or this Agreement is terminated pursuant to Section 13 hereof), the Forward Purchaser shall execute and deliver to the Company, and the Company shall promptly execute and return to the Forward Purchaser, a Supplemental Confirmation in respect of the Forward for such Forward Hedge Selling Period, which Supplemental Confirmation shall set forth the "Trade Date" for such Forward (which shall, subject to the terms of the Master Forward Confirmation, be the last Trading Day of such Forward Hedge Selling Period), the "Effective Date" for such Forward (which shall, subject to the terms of the Master Forward Confirmation, be the date one Settlement Cycle (as such term is defined in the Master Forward Confirmation) immediately following the last Trading Day of such Forward Hedge Selling Period), the initial "Number of Shares" for such Forward (which shall be the Actual Sold Forward Amount for such Forward Hedge Selling Period), the "Maturity Date" for such Forward (which shall, subject to the terms of the Master Forward Confirmation, be the date that follows the last Trading Day of such Forward Hedge Selling Period by the number of days or months set forth opposite the caption "Term" in the

Placement Notice (as amended by the corresponding Acceptance, if applicable) for such Forward, which number of days or months shall in no event be less than three (3) months nor more than two (2) years), the "Initial Forward Price" for such Forward, the "Spread" for such Forward (as set forth in the related Placement Notice (as amended by the corresponding Acceptance, if applicable)), the "Volume-Weighted Hedge Price" for such Forward, the "Threshold Price" for such Forward, the "Initial Stock Loan Rate" for such Forward (as set forth in the related Placement Notice (as amended by the corresponding Acceptance, if applicable)), the "Maximum Stock Loan Rate" for such Forward (as set forth in the related Placement Notice (as amended by the corresponding Acceptance, if applicable)), the "Threshold Number of Shares" for such Forward, the "Forward Price Reduction Dates" for such Forward (which shall be each of the dates set forth below the caption "Forward Price Reduction Dates" in the Placement Notice (as amended by the corresponding Acceptance, if applicable) for such Forward) and the "Forward Price Reduction Amounts" corresponding to such Forward Price Reduction Dates (which shall be each amount set forth opposite each "Forward Price Reduction Date" and below the caption "Forward Price Reduction Amounts" in the Placement Notice (as amended by the corresponding Acceptance, if applicable) for such Forward) and the "Regular Dividend Amounts" for such Forward (which shall be each of the amount(s) set forth below the caption "Regular Dividend Amounts" in the Placement Notice (as amended by the corresponding Acceptance, if applicable) for such Forward).

(d) Notwithstanding anything herein to the contrary, the Forward Purchaser's obligation to use its commercially reasonable efforts to borrow all or any portion of the Forward Hedge Securities (and the Forward Seller's obligation to use its commercially reasonable efforts to sell such portion of the Forward Hedge Securities) for any Forward hereunder shall be subject in all respects to the last paragraph of Section 3 of the Master Forward Confirmation.

(e) Subject to the provisions of Sections 2(b), 5(d) and the Master Warrant Confirmation, upon the effectiveness of a Placement Notice (as amended by the corresponding Acceptance) relating to a Warrant, the Warrant Purchaser (or its affiliate) will use commercially reasonable efforts to borrow, offer and sell Warrant Hedge Securities through the Warrant Hedge Seller to hedge the Warrant, and the Warrant Hedge Seller will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell the Warrant Hedge Securities at market prevailing prices up to the maximum number of Securities underlying such Warrant, and otherwise in accordance with the terms of such Placement Notice (as amended by the corresponding Acceptance). The Warrant Hedge Seller will provide written confirmation by email to the Company and to the Warrant Purchaser no later than the opening of the Trading Day immediately following each Trading Day on which it has made sales of Warrant Hedge Securities hereunder setting forth the number of Warrant Hedge Securities sold on such day, the corresponding Aggregate Sales Price payable to the Warrant Purchaser in respect thereof.

(f) No later than the opening of the Trading Day immediately following the date on which the Warrant Purchaser has established, through the Warrant Hedge Seller, its initial hedge positions with respect to the maximum number of Securities underlying such Warrant (or, if earlier, the date on which any Warrant Hedge Selling Period is suspended or terminated pursuant to Section 4 or the Warrant Contract or this Agreement is terminated pursuant to Section 13 hereof) (such date, the "Warrant Initial Hedge End Date"), the Warrant Purchaser shall execute and deliver to the Company a Warrant Supplemental Confirmation in respect of the related Warrant, which Warrant Supplemental Confirmation shall set forth the "Trade Date" for such Warrant (which shall, subject to the terms of the Master Warrant Confirmation, be the Warrant Initial Hedge End Date), the initial "Transaction Number of Warrants" for such Warrant (which shall, subject to the terms of the Master Warrant Confirmation, be the number of shares of Common Stock underlying such Warrant), the initial "Strike Price" for such Warrant (which shall, subject to the terms of the Master Warrant Confirmation, be, unless otherwise agreed between the Company and the Warrant Purchaser, the agreed strike price set forth in the related Placement Notice (as amended by the corresponding Acceptance)), the "Initial Share Price" for such Warrant (which shall be, the volume-weighted average price per share of Common Stock at which the Warrant Purchaser established its initial hedge positions with respect to such Warrant), the "Premium" for such Warrant (which shall, subject to the terms of the Master Warrant Confirmation, be, unless otherwise agreed between the Company and the

Warrant Purchaser, the amount determined by the Warrant Purchaser in accordance with the methodology agreed between the Company and the Warrant Purchaser based on the reference price, reference premium and reference initial "delta" set forth in the related Placement Notice (as amended by the corresponding Acceptance) and such "Initial Share Price" and actual "delta" of such Warrant as of the Warrant Initial Hedge End Date), the "Settlement Price Percentage" for such Warrant (which shall be, unless otherwise agreed between the Company and the Warrant Purchaser, the agreed settlement price percentage set forth in the related Placement Notice (as amended by the corresponding Acceptance); provided that such "Settlement Price Percentage" shall not exceed 1.5%), the "Sales Period Outside Date" (which shall be the final scheduled Trading Day of the related Warrant Hedge Selling Period), the "Regular Dividend" for such Warrant (which shall, subject to the terms of the Master Warrant Confirmation, be, unless otherwise agreed between the Company and the Warrant Purchaser, completed based on the dividend schedule set forth in the related Placement Notice (as amended by the corresponding Acceptance)), the "Number of Warrants" and "Expiration Date" for each "Component" for such Warrant (which shall, subject to the terms of the Master Warrant Confirmation, be, unless otherwise agreed between the Company and the Warrant Purchaser, completed based on the expiration schedule set forth in the related Placement Notice (as amended by the corresponding Acceptance) and such "Transaction Number of Warrants").

(g) The Securities may be offered and sold by any method permitted by law deemed to be an "at the market" offering as defined in Rule 415 under the 1933 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, or subject to the terms of the Placement Notice (as amended by the corresponding Acceptance, if applicable), by any other method permitted by law, including but not limited to, privately negotiated transactions, which may include block trades.

Section 4. Suspension of Sales. The Company, the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller or the Warrant Purchaser may, upon notice to the other parties in writing (including by email correspondence) or by telephone (confirmed immediately by verifiable facsimile transmission or email correspondence), suspend any sale of Securities, and the applicable Selling Period shall immediately terminate; provided, however, that such suspension and termination shall not affect or impair any party's obligations with respect to any Securities sold hereunder prior to the receipt of such notice or any Securities sold under any Alternative Equity Distribution Agreement (including, in the case of any Forward Hedge Securities or any Warrant Hedge Securities, the obligation to enter into the resulting Forward Contract or Warrant Contract, as applicable), provided, further, that the failure by the Agent, the Forward Seller or the Forward Purchaser to deliver such notice shall in no way effect such party's right to suspend the sale of Securities hereunder.

Section 5. Sale and Delivery; Settlement.

(a) Sale of Issuance Securities. On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, upon the Agent's acceptance of the terms of a Placement Notice specifying that it relates to an "Issuance" or upon receipt by the Agent of an Acceptance, as the case may be, and unless the sale of the Issuance Securities described therein has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement, the Agent will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Issuance Securities at market prevailing prices up to the amount specified, and otherwise in accordance with the terms of such Placement Notice (as amended by the corresponding Acceptance, if applicable). Each of the Company and the Operating Partnership acknowledges and agrees that (i) there can be no assurance the Agent will be successful in selling Issuance Securities, (ii) the Agent will incur no liability or obligation to the Company, the Operating Partnership or any other person or entity if it does not sell Issuance Securities for any reason other than a failure by the Agent to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Issuance Securities as required under this Section 5 and (iii) the Agent shall be under no obligation to purchase Issuance Securities on a principal basis pursuant to this Agreement.

(b) Settlement of Issuance Securities. Unless otherwise specified in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable), settlement for sales of Issuance Securities will occur on the first (1st) Trading Day following the date on which such sales are made (each, an "Issuance Settlement Date"). The amount of proceeds to be delivered to the Company on an Issuance Settlement Date against receipt of the Issuance Securities sold will be equal to (i) the aggregate gross sales price received by the Agent at which such Issuance Securities were sold (the "Gross Proceeds"), after deduction for (A) the Agent's commission, discount or other compensation for such sales payable by the Company pursuant to Section 3 hereof, (B) any other amounts due and payable by the Company to the Agent hereunder pursuant to Section 8(a) hereof and (C) any transaction fees, transfer taxes or similar taxes or fees imposed by any governmental, regulatory or self-regulatory organization in respect of such sales (the "Net Proceeds") or (ii) the Gross Proceeds. In the event that the Agent delivers the Gross Proceeds to the Company at an Issuance Settlement Date, the amounts set forth in clauses (i)(A), (B) and (C) of the preceding sentence shall be set forth and invoiced in a periodic statement from the Agent to the Company and payment of such amounts shall be made promptly by the Company after its receipt thereof.

(c) Delivery of Issuance Securities. On or before each Issuance Settlement Date, the Company will, or will cause its transfer agent to, electronically transfer the Issuance Securities being sold by crediting the Agent's or its designee's account (provided that the Agent shall have given the Company written notice of such designee prior to the Issuance Settlement Date) at The Depository Trust Company through its Deposit and Withdrawal at Custodian System 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 in good deliverable form. On each Issuance Settlement Date, the Agent will deliver the related Net Proceeds or Gross Proceeds, as applicable, in same day funds to an account designated by the Company prior to the Issuance Settlement Date. The Company agrees that if the Company, or its transfer agent (if applicable), defaults in its obligation to deliver Issuance Securities on an Issuance Settlement Date, the Company agrees that in addition to and in no way limiting the rights and obligations set forth in Sections 10(a) and 10(d) hereto, it will (i) hold the Agent harmless against any loss, liability, claim, damage, or expense whatsoever (including reasonable legal fees and expenses), as incurred, arising out of or in connection with such default by the Company or its transfer agent (if applicable) and (ii) pay to the Agent any commission, discount, or other compensation to which it would otherwise have been entitled absent such default.

(d) Sale of Forward Hedge Securities and Warrant Hedge Securities. On the basis of the representations and warranties herein contained and subject to the terms and conditions in this Agreement and the Master Forward Confirmation, upon the Forward Purchaser's and the Forward Seller's acceptance of the terms of a Placement Notice specifying that it relates to a "Forward" or upon receipt by the Forward Purchaser and Forward Seller of an Acceptance, as the case may be, and unless the sale of the Forward Hedge Securities described therein has been declined, suspended or otherwise terminated in accordance with the terms of this Agreement or the Master Forward Confirmation (including without limitation as a result of any event described in clause (i) or (ii) of the proviso contained in the definition of Forward Hedge Selling Period), the Forward Purchaser will use its commercially reasonable efforts to borrow a number of Forward Hedge Securities sufficient to have an Aggregate Sales Price as close as reasonably practicable to the Forward Hedge Amount specified in the Placement Notice (as amended by the corresponding Acceptance, if applicable) and the Forward Seller will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Forward Hedge Securities at market prevailing prices, and otherwise in accordance with the terms of such Placement Notice (as amended by the corresponding Acceptance, if applicable). Each of the Company and the Forward Purchaser acknowledges and agrees that (i) there can be no assurance that the Forward Purchaser (or its affiliate) will be successful in borrowing or that the Forward Seller will be successful in selling Forward Hedge Securities, (ii) the Forward Seller will incur no liability or obligation to the Company, the Forward Purchaser or any other person or entity if it does not sell Forward Hedge Securities borrowed by the Forward Purchaser (or its affiliate) for any reason other than a failure by the Forward Seller to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Forward Hedge Securities as required under this Section 5 and (iii) the Forward Purchaser will incur no liability or obligation to the Company, the Forward Seller or any other person or entity if it does not borrow Forward Hedge Securities for any reason

other than a failure by the Forward Purchaser to use its commercially reasonable efforts to borrow such Forward Hedge Securities as required under this Section 5. In acting hereunder, the Forward Seller will be acting as agent for the Forward Purchaser and not as principal. On the basis of the representations and warranties herein contained and subject to the terms and conditions in this Agreement and the Master Warrant Confirmation, upon the Placement Notice for a Warrant (as amended by the corresponding Acceptance) becoming effective, and unless the sale of the Warrant Hedge Securities described therein has been declined, suspended or otherwise terminated in accordance with the terms of this Agreement or the Master Warrant Confirmation (including without limitation as a result of any event described in the proviso contained in the definition of Warrant Hedge Selling Period), the Warrant Purchaser will use its commercially reasonable efforts to borrow a number of Warrant Hedge Securities equal to the number of shares underlying such Warrant and the Warrant Hedge Seller will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Warrant Hedge Securities at market prevailing prices, and otherwise in accordance with the terms of such Placement Notice (as amended by the corresponding Acceptance, if applicable). Each of the Company and the Warrant Purchaser acknowledges and agrees that (i) there can be no assurance that the Warrant Purchaser (or its affiliate) will be successful in borrowing or that the Warrant Hedge Seller will be successful in selling Warrant Hedge Securities, (ii) the Warrant Hedge Seller will incur no liability or obligation to the Company, the Warrant Purchaser or any other person or entity if it does not sell Warrant Hedge Securities borrowed by the Warrant Purchaser (or its affiliate) for any reason other than a failure by the Warrant Hedge Seller to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Warrant Hedge Securities as required under this Section 5 and (iii) the Warrant Purchaser will incur no liability or obligation to the Company, the Warrant Hedge Seller or any other person or entity if it does not borrow Warrant Hedge Securities for any reason other than a failure by the Warrant Purchaser to use its commercially reasonable efforts to borrow such Warrant Hedge Securities as required under this Section 5. In acting hereunder, the Warrant Hedge Seller will be acting as agent for the Warrant Purchaser and not as principal.

(e) Delivery of Forward Hedge Securities and Warrant Hedge Securities. Unless otherwise specified in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable), settlement for sales of Forward Hedge Securities or Warrant Hedge Securities, as applicable, will occur on the first (1st) Trading Day following the date on which such sales are made (each, a "Forward Hedge Settlement Date" or a "Warrant Hedge Settlement Date", as applicable). On or before each Forward Hedge Settlement Date or Warrant Hedge Settlement Date, the Forward Purchaser or the Warrant Purchaser, as applicable, will, or will cause its transfer agent to, electronically transfer the Forward Hedge Securities or Warrant Hedge Securities, as applicable, being sold by crediting the Forward Seller or the Warrant Hedge Seller, as applicable, or its respective designee's account, as applicable (provided that the Forward Seller or Warrant Hedge Seller, as applicable, shall have given the Forward Purchaser or Warrant Purchaser, as applicable, written notice of such designee prior to the Forward Hedge Settlement Date or the Warrant Hedge Settlement Date, as applicable) at The Depository Trust Company through its Deposit and Withdrawal at Custodian System 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 in good deliverable form. On each Forward Hedge Settlement Date or each Warrant Hedge Settlement Date, as applicable, the Forward Seller or the Warrant Hedge Seller, as applicable, will deliver the related Aggregate Forward Hedge Price or the related Aggregate Sales Price, as applicable, to the Forward Purchaser or the Warrant Purchaser, as applicable, in same day funds to an account designated by the Forward Purchaser or the Warrant Purchaser, as applicable, prior to the relevant Forward Hedge Settlement Date or the Warrant Hedge Settlement Date, as applicable.

(f) The Securities shall be in such denominations and registered in such names as the Agent, the Forward Seller or the Warrant Hedge Seller, as applicable, may request in writing at least one (1) full business day before the Settlement Date. The Company, the Forward Purchaser or the Warrant Purchaser, as the case may be, shall deliver the Securities, if any, through the facilities of The Depository Trust Company as described in the preceding paragraphs unless the Agent, the Forward Seller or the Warrant Hedge Seller, as applicable, shall otherwise instruct.

(g) Under no circumstances shall the Company cause or request the offer or sale of any Securities, if after giving effect to the sale of such Securities, the aggregate gross sales price of the Securities sold pursuant to this Agreement would exceed the lesser of (i) together with (A) all sales of Issuance Securities under this Agreement and each of the Alternative Equity Distribution Agreements and (B) all Forward Hedge Securities and Warrant Hedge Securities sold under this Agreement and each of the Alternative Equity Distribution Agreements, the Maximum Amount, (ii) the amount available for offer and sale under the currently effective Registration Statement and (iii) the amount authorized from time to time to be issued or sold under this Agreement by the Company and notified the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser in writing. Under no circumstances shall the Company cause or request the offer or sale of any Securities pursuant to this Agreement at a price lower than the minimum price authorized from time to time by the Company and notified the Agent or the Forward Seller, as applicable, in writing. Further, under no circumstances shall the aggregate gross sales price of Securities sold pursuant to this Agreement and the Alternative Equity Distribution Agreements, including any separate underwriting or similar agreement covering principal transactions and the Alternative Equity Distribution Agreements, exceed the Maximum Amount.

(h) The Company agrees that any offer to sell, any solicitation of an offer to buy or any sales of Securities shall only be effected by or through only one of the Agent, the Forward Seller or the Warrant Hedge Seller, as the case may be, or the respective Alternative Agent on any single given day, but in no event more than one, and the Company shall in no event request that the Agent, the Forward Seller or the Warrant Hedge Seller, as the case may be, and one or more of the Alternative Agents sell Securities on the same day; provided, however, that (i) the foregoing limitation shall not apply to (A) exercise of any option, warrant, right or any conversion privilege set forth in the instrument governing such security, (B) sales solely to employees or security holders of the Company or its subsidiaries, or to a trustee or other person acquiring such securities for the accounts of such persons or (C) sales by the Warrant Hedge Seller and the Agent on the same day so long as such sale of Issuance Securities occurs on or after the closing auction on NYSE on such day, unless otherwise agreed between the Company and the Warrant Purchaser, (ii) such limitation shall not apply on any day during which no sales are made pursuant to this Agreement and (iii) such limitation shall not apply if, prior to any such request to sell Securities, all Securities the Company has previously requested the Agent, the Forward Seller, the Warrant Hedge Seller or any Alternative Agents to sell have been sold. For the avoidance of doubt, the foregoing limitation shall not apply to sales solely to employees or security holders of the Company or its subsidiaries, or to a trustee or other person acquiring such securities for the accounts of such persons in which any of [•], [•], [•], [•], [•] or [•] is acting for the Company in a capacity other than as Agent under this Agreement or any Alternative Equity Distribution Agreement.

(i) If the Company or the Agent, Forward Seller or Warrant Hedge Seller, as applicable, believes that the exemptive provisions set forth in Rule 101(c)(1) of Regulation M under the 1934 Act (applicable to securities with an average daily trading volume of $1,000,000 that are issued by an issuer whose common equity securities have a public float value of at least $150,000,000) are not satisfied with respect to the Company or the Securities, it shall promptly notify the other parties and sales of Securities under this Agreement shall be suspended until that or other exemptive provisions have been satisfied in the judgment of each party.

(j) Notwithstanding any other provision of this Agreement, the Company shall not offer, sell or deliver, or request the offer or sale, any Securities and, by notice to the Agent (in the case of an Issuance), the Forward Seller and the Forward Purchaser (in the case of a Forward) or the Warrant Hedge Seller and the Warrant Purchaser (in the case of a Warrant) given by telephone (confirmed promptly by telecopy or email), shall cancel any instructions for the offer or sale of any Securities, and the Agent (in the case of an Issuance), the Forward Seller and the Forward Purchaser (in the case of a Forward) or the Warrant Hedge Seller and the Warrant Purchaser (in the case of a Warrant) shall not be obligated to offer or sell any Securities, (i) during the fourteen (14) calendar days prior to the first date (each, an "Announcement Date") on which the Company shall issue a press release containing, or shall otherwise publicly announce, its earnings, revenues or other results of operations for a completed fiscal year or quarter (each, an "Earnings

Announcement"), (ii) except as provided in Section 5(k) below, at any time from and including the Announcement Date through and including the time that is 24 hours after the time that the Company files (a "Filing Time") a Quarterly Report on Form 10-Q or an Annual Report on Form 10-K that includes consolidated financial statements as of and for the same period or periods, as the case may be, covered by such Earnings Announcement, or (iii) during any other period in which the Company is in possession of material non-public information; provided that, unless otherwise agreed between the Company and Agent (in the case of an Issuance), the Forward Seller and the Forward Purchaser (in the case of a Forward) or the Warrant Hedge Seller and the Warrant Purchaser (in the case of a Warrant), for purposes of (i) and (ii) above, such period shall be deemed to end 24 hours after the relevant Filing Time.

(k) If the Company wishes to offer, sell or deliver Securities at any time during the period from and including an Announcement Date through and including the corresponding Filing Time, the Company shall (i) prepare and deliver to the Agent (in the case of an Issuance), the Forward Seller and the Forward Purchaser (in the case of a Forward) or the Warrant Hedge Seller and the Warrant Purchaser (in the case of a Warrant) (with a copy to their counsel) a Current Report on Form 8-K which shall include substantially the same financial and related information as was set forth in the relevant Earnings Announcement (other than any earnings projections, similar forward-looking data and officers' quotations) (each, an "Earnings 8-K"), in form and substance reasonably satisfactory to the Agent, the Forward Seller and the Forward Purchaser or the Warrant Hedge Seller and the Warrant Purchaser, as the case may be, and obtain the consent of the Agent, the Forward Seller and the Forward Purchaser or the Warrant Hedge Seller and the Warrant Purchaser, as the case may be, to the filing thereof (such consent not to be unreasonably withheld), (ii) provide the Agent, the Forward Seller and the Forward Purchaser or the Warrant Hedge Seller and the Warrant Purchaser, as the case may be, with the officers' certificate, opinions and letters of counsel and accountants' letter called for by Sections (6)(j), (k) and (l) hereof; respectively, (iii) afford the Agent, the Forward Seller and the Forward Purchaser or the Warrant Hedge Seller and the Warrant Purchaser, as the case may be, the opportunity to conduct a due diligence review in accordance with Section 6(o) hereof and (iv) file such Earnings 8-K with the Commission, then the provisions of clause (iii) of Section 5(j) shall not be applicable for the period from and after the time at which the foregoing conditions shall have been satisfied (or, if later, the time that is 24 hours after the time that the relevant Earnings Announcement was first publicly released) through and including the time that is 24 hours after the Filing Time of the relevant Quarterly Report on Form 10-Q or Annual Report on Form 10-K, as the case may be. For purposes of clarity, the parties hereto agree that (A) the delivery of any officers' certificate, accountants' letter and opinions and letters of counsel pursuant to this Section 5(k) shall not relieve the Company from any of its obligations under this Agreement with respect to any Quarterly Report on Form 10-Q or Annual Report on Form 10-K, as the case may be, including, without limitation, the obligation to deliver officers' certificates, accountants' letters and legal opinions and letters as provided in Section 6 hereof and (B) this Section 5(k) shall in no way affect or limit the operation of the provisions of clauses (i) and (ii) of Section 5(j), which shall have independent application.

(l) Any obligation of the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser hereunder with respect to a Placement shall be subject to the continuing accuracy of the representations and warranties of the Company and the Operating Partnership herein, to the performance by the Company and the Operating Partnership of their obligations hereunder and to the continuing satisfaction of the additional conditions specified in Section 9 of this Agreement.

Section 6. Covenants. Each of the Company and the Operating Partnership jointly and severally agrees with the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser:

(a) During any Selling Period or period when the delivery of a prospectus is required in connection with the offering or sale of Securities (whether physically or through compliance with Rule 153 or 172, or in lieu thereof, a notice referred to in Rule 173(a) under the 1933 Act), (i) to make no further amendment or any supplement to the Registration Statement or the Prospectus prior to the applicable Settlement Date which shall be disapproved by the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller or the Warrant Purchaser promptly after reasonable notice thereof and to advise the Agent, the

Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, promptly after receiving notice thereof, of the time when any amendment to the Registration Statement has been filed or becomes effective or any amendment or supplement to the Prospectus has been filed and to furnish the Representatives with copies thereof, (ii) to file promptly all other material required to be filed by the Company or the Operating Partnership with the Commission pursuant to Rule 433(d) under the 1933 Act, (iii) to file promptly all reports and any definitive proxy or information statements required to be filed by the Company or the Operating Partnership with the Commission pursuant to Section 13(a), 13(c), 14 or 15(d) of the 1934 Act, (iv) to advise the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, promptly after they receive notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of the Prospectus or other prospectus in respect of the Securities, of any notice of objection of the Commission to the use of the form of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the 1933 Act, of the suspension of the qualification of the Securities for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the form of the Registration Statement or the Prospectus or for additional information, and (v) in the event of the issuance of any such stop order or of any such order preventing or suspending the use of the Prospectus in respect of the Securities or suspending any such qualification, to promptly use its commercially reasonable efforts to obtain the withdrawal of such order; and in the event of any such issuance of a notice of objection, promptly to take such reasonable steps as may be necessary to permit offers and sales of the Securities by the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, as the case may be, which may include, without limitation, amending the Registration Statement or filing a new registration statement, at the Company's expense (references herein to the Registration Statement shall include any such amendment or new registration statement).

(b) Promptly from time to time to take such action as the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, as the case may be, may reasonably request to qualify the Securities for offering and sale under the securities laws of such jurisdictions as the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser may request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the sale of the Securities, provided that in connection therewith neither the Company nor the Operating Partnership shall be required to qualify as a foreign corporation or foreign partnership or to file a general consent to service of process in any jurisdiction; and to promptly advise the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser of the receipt by the Company or the Operating Partnership of any notification with respect to the suspension of the qualification of the Securities for offer or sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose.

(c) During any period when the delivery of a prospectus is required (whether physically or through compliance with Rules 153 or 172, or in lieu thereof, a notice referred to in Rule 173(a) under the 1933 Act) in connection with the offering or sale of Securities, the Company will make available to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, as soon as practicable after the execution of this Agreement, and thereafter from time to time furnish to the Agent, copies of the most recent Prospectus in such quantities and at such locations as the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser may reasonably request for the purposes contemplated by the 1933 Act. During any period when the delivery of a prospectus is required (whether physically or through compliance with Rules 153 or 172, or in lieu thereof, a notice referred to in Rule 173(a) under the 1933 Act) in connection with the offering or sale of Securities, and if at such time any event shall have occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it shall be necessary during such same period to amend or supplement the Prospectus or to file under the 1934 Act any document incorporated by reference in the Prospectus in order to comply with the 1933 Act or the 1934

Act, to notify the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser and to file such document and to prepare and furnish without charge to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser as many written and electronic copies as the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser may from time to time reasonably request of an amended Prospectus or a supplement to the Prospectus which will correct such statement or omission or effect such compliance.

(d) To make generally available to its securityholders as soon as practicable, but in any event not later than sixteen months after the effective date of the Registration Statement (as defined in Rule 158(c) under the 1933 Act), an earnings statement of the Company and its subsidiaries (which need not be audited) complying with Section 11(a) of the 1933 Act and the rules and regulations of the Commission thereunder (including, at the option of the Company, Rule 158).

(e) To pay the required Commission filing fees relating to the Securities within the time required by Rule 456(b)(1) under the 1933 Act without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r) under the 1933 Act.

(f) To use the Net Proceeds from the sale of the Securities in the manner specified in the Registration Statement and the Prospectus.

(g) In connection with the offering and sale of the Securities, the Company will file with the NYSE all documents and notices, and make all certifications, required by the NYSE of companies that have securities that are listed on the NYSE and will maintain such listing.

(h) To not take, directly or indirectly, any action designed to cause or result in, or that has constituted or might reasonably be expected to constitute, under the 1934 Act or otherwise, the stabilization or manipulation of the price of any securities of the Company or the Operating Partnership to facilitate the sale or resale of the Securities.

(i) In each Annual Report on Form 10-K or Quarterly Report on Form 10-Q filed by the Company in respect of any quarter in which sales of Securities under this Agreement or any Alternative Equity Distribution Agreement (each date on which any such document is filed, and any date on which an amendment to any such document is filed, a "Company Periodic Report Date"), the Company shall set forth with regard to such quarter the aggregate number of Securities sold under this Agreement and any Alternative Equity Distribution Agreement, the Net Proceeds to the Company and the compensation payable by the Company with respect to such sales.

(j) Upon commencement of the offering of Securities under this Agreement and each time Securities are delivered to the Agent as principal on a Settlement Date and promptly after each (i) date the Registration Statement or the Prospectus shall be amended or supplemented (other than (1) by an amendment or supplement providing solely for the determination of the terms of the Securities, (2) in connection with the filing of a prospectus supplement that contains solely the information set forth in Section 6(i), (3) in connection with the filing of any current reports on Form 8-K (other than an Earnings 8-K and any other current reports on Form 8-K which contain capsule financial information, financial statements, supporting schedules or other financial data, including any current report on Form 8 K under Item 2.02 of such form that is considered "filed" under the 1934 Act) or (4) by a prospectus supplement relating to the offering of other securities (including, without limitation, other shares of Common Stock)) (each such date, a "Registration Statement Amendment Date"), (ii) date on which an Earnings 8-K shall be filed with the Commission as contemplated by Section 5(j) hereof (a "Company Earnings Report Date") and (iii) Company Periodic Report Date, and promptly after each reasonable request by the Agent (each date of any such request by the Agent, a "Request Date") (each of the date of the commencement of the offering of Securities under this Agreement, each such Settlement Date and each Registration Statement Amendment Date, Company Earnings Report Date, Company Periodic Report Date and Request Date is hereinafter called a "Representation Date"), the Company will furnish or cause to be furnished to the

Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser (with a copy to their counsel) a certificate dated the date of delivery thereof to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser (or, in the case of an amendment or supplement to the Registration Statement or the Prospectus (including, without limitation, by the filing of any document under the 1934 Act that is incorporated by reference therein), the date of the effectiveness of such amendment to the Registration Statement or the date of filing with the Commission of such supplement or incorporated document, as the case may be), in form and substance reasonably satisfactory to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser and their counsel, to the effect that the statements contained in the certificate referred to in Section 9(e) of this Agreement which was last furnished to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser are true and correct as of the date of such certificate as though made at and as of the date of such certificate (except that such statements shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented to the date of such certificate) or, in lieu of such certificate, a certificate of the same tenor as the certificate referred to in Section 9(e), but modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the date of such certificate. As used in this paragraph, to the extent there shall be an Applicable Time on or following the applicable Representation Date, "promptly" shall be deemed to be prior to the next succeeding Applicable Time. The requirement to provide a certificate under this Section 6(j) shall be waived for any Representation Date occurring at a time at which the Company has instructed that no sales of Securities may be made hereunder, which waiver shall continue until the earlier to occur of the date the Company delivers a Placement Notice hereunder (which for such calendar quarter shall be considered a Representation Date) and the next occurring Representation Date; provided, however, that such waiver shall not apply for any Representation Date on which the Company files its annual report on Form 10-K. Notwithstanding the foregoing, if the Company subsequently delivers a Placement Notice hereunder following a Representation Date when the Company relied on such waiver and did not provide the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser with a certificate under this Section 6(j), then before the Company delivers a Placement Notice or the Agent sells any Securities, the Company shall provide the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser with a certificate referred to in Section 9(e) and a certificate under this Section 6(j).

(k) Upon commencement of the offering of Securities under this Agreement and each time the Securities are delivered to the Agent as principal on a Settlement Date, and promptly after each other Representation Date with respect to which the Company is obligated to deliver a certificate referred to in Section 9(e) of this Agreement for which no waiver is applicable, the Company will furnish or cause to be furnished to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser (with a copy to their counsel) the written opinion of Jeffrey D. Miller, Esq., general counsel of the Company, the written opinion and 10b-5 letter of Paul Hastings LLP, counsel to the Company and the Operating Partnership, the written opinion of Paul Hastings LLP, tax counsel to the Company and the Operating Partnership, and the written opinion of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., North Carolina counsel to the Operating Partnership, or, in each case, such other counsel to the Company and the Operating Partnership reasonably acceptable to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, dated the date that such opinions and letters are required to be delivered, in the forms set forth in Exhibit A, Exhibit B-1, Exhibit B-2, Exhibit B-3 and Exhibit C, respectively, hereto, but modified as necessary to relate to the Registration Statement and the Prospectus as amended and supplemented to the date of such opinions or letter or, in lieu of any such opinion or letter, the counsel last furnishing such opinion or letter to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser shall furnish the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser (with a copy to their counsel) with a letter substantially to the effect that the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser may rely on such counsel's last opinion or 10b-5 letter, as applicable, to the same extent as though each were dated the date of such letter authorizing reliance (except that statements in such last opinion and letter shall be deemed to relate to the Registration Statement and the Prospectus as amended and supplemented to the date of such

letter authorizing reliance). As used in this paragraph, to the extent there shall be an Applicable Time on or following the applicable Representation Date, "promptly" shall be deemed to be on or prior to the next succeeding Applicable Time.

(l) Upon commencement of the offering of Securities under this Agreement, and at the time Securities are delivered to the Agent as principal on a Settlement Date, and promptly after each other Representation Date with respect to which the Company is obligated to deliver a certificate referred to in Section 9(e) of this Agreement for which no waiver is applicable, the Company will cause Deloitte & Touche LLP, or other independent accountants reasonably satisfactory to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser to furnish to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser a letter, dated the date of effectiveness of such amendment or the date of filing of such supplement or other document with the Commission, as the case may be, in form reasonably satisfactory to the Agent and its counsel, of the same tenor as the letter referred to in Section 9(d) hereof, but modified as necessary to relate to the Registration Statement and the Prospectus, as amended and supplemented, or to the document incorporated by reference into the Prospectus, to the date of such letter. As used in this paragraph, to the extent there shall be an Applicable Time on or following the applicable Representation Date, "promptly" shall be deemed to be on or prior to the next succeeding Applicable Time.

(m) The Company consents to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser trading in the Common Stock for its own account and for the account of its clients at the same time as sales of Securities occur pursuant to this Agreement.

(n) If, to the knowledge of the Company, all filings required by Rule 424 in connection with this offering shall not have been made or the representations in Section 1(a) shall not be true and correct on the applicable Settlement Date, the Company will offer to any person who has agreed to purchase Securities from the Company as the result of an offer to purchase solicited by the Agent the right to refuse to purchase and pay for such Securities.

(o) The Company and the Operating Partnership will cooperate timely with any reasonable due diligence review conducted by the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser or their counsel from time to time in connection with the transactions contemplated hereby, including, without limitation, and upon reasonable notice providing information and making available documents and appropriate corporate officers, during regular business hours and at the Company's principal offices, as the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser may reasonably request.

(p) The Company will not, for any period during which the Company has instructed the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser to sell Securities pursuant to Section 5 until the issuance of such Securities, without (i) giving the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser at least three (3) business days' prior written notice specifying the nature of the proposed sale and the date of such proposed sale and (ii) the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser's suspending activity under this program for such period of time as requested by the Company or as deemed appropriate by the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser in light of the proposed sale, (A) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, lend or otherwise transfer or dispose of, directly or indirectly, any shares of Common Stock or securities convertible into or exchangeable or exercisable for or repayable with Common Stock, or file any registration statement under the 1933 Act with respect to any of the foregoing (other than a shelf registration statement under Rule 415 under the 1933 Act, a registration statement on Form S-8 or post-effective amendment to the Registration Statement) or (B) enter into any swap or other agreement or any transaction that transfers in whole or in part, directly or indirectly, any of the economic consequence of ownership of the Common Stock, or any securities

convertible into or exchangeable or exercisable for or repayable with Common Stock, whether any such swap or transaction described in clause (A) or (B) above is to be settled by delivery of Common Stock or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (v) the issuance of up to one million units of limited partnership interest in the Operating Partnership issued in connection with the acquisition of property or assets, (w) the issuance of Common Stock upon redemption of units of limited partnership interest in the Operating Partnership or upon the exercise of any option or warrant or the conversion or exchange of a convertible or exchangeable security previously outstanding, including, without limitation, the issuance of shares of Common Stock in exchange for equity interests in a subsidiary or joint venture entity pursuant to a pre-existing right to effectuate such exchange, (x) the Securities to be offered and sold pursuant to this Agreement or the Alternative Equity Distribution Agreements, as applicable, (y) Common Stock issuable pursuant to the Company's dividend reinvestment plan as it may be amended or replaced from time to time and (z) the issuance, grant or sale of Common Stock, options to purchase shares of Common Stock or shares of Common Stock issuable upon the exercise of options or other equity incentive awards approved by the board of directors of the Company or the compensation committee thereof or the issuance of Common Stock upon exercise thereof. The Company agrees that any offer to sell, any solicitation of an offer to buy, or any sales of, Securities under this Agreement, any Alternative Equity Distribution Agreement, the Master Forward Confirmation or the Master Warrant Confirmation shall be effected by or through only one of the Agent, the Forward Seller or the Warrant Hedge Seller, as the case may be, or the respective Alternative Agents on any single given day, but in no event more than one, and the Company shall in no event request that the Agent, the Forward Seller or the Warrant Hedge Seller, as the case may be, and one or more of the Alternative Agents sell Securities on the same day.

(q) If immediately prior to the third anniversary (the "Renewal Deadline") of the initial effective date of the Registration Statement, this Agreement has not terminated and a prospectus is required to be delivered or made available by the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser under the 1933 Act or the 1934 Act in connection with the sale of the Securities, the Company will, prior to the Renewal Deadline file, if it has not already done so and is eligible to do so, a new automatic shelf registration statement relating to the Securities, in a form satisfactory to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser. If the Company is no longer 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 Securities, in a form satisfactory to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, and will use its best efforts to cause such registration statement to be declared effective within sixty (60) days after the Renewal Deadline. The Company will take all other reasonable actions necessary or appropriate to permit the issuance and sale of the Securities to continue as contemplated in the expired registration statement relating to the Securities. References herein to the Registration Statement shall include such new automatic shelf registration statement or such new shelf registration statement, as the case may be.

Section 7. Free Writing Prospectus.

(a) The Company represents and agrees that without the prior consent of the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser it has not made and will not make any offer relating to the Securities that would constitute a "free writing prospectus" as defined in Rule 405 under the 1933 Act.

(b) Each of the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser represent and agree that, without the prior consent of the Company they have not made and will not make any offer relating to the Securities that would constitute a free writing prospectus required to be filed with the Commission.

(c) The Company has complied and will comply with the requirements of Rule 433 under the 1933 Act applicable to any Issuer Free Writing Prospectus (including any free writing prospectus identified in

Section 4(a) hereof), including timely filing with the Commission or retention where required and legending.

Section 8. Payment of Expenses.

(a) The Company covenants and agrees with the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser that the Company will pay or cause to be paid the following: (i) the fees, disbursements and expenses of the counsel, accountants and other advisors to the Company and the Operating Partnership in connection with the registration of the Securities under the 1933 Act and all other expenses in connection with the preparation, printing and filing of the Registration Statement, the Basic Prospectus, Prospectus Supplement, any Issuer Free Writing Prospectus and the Prospectus and amendments and supplements thereto and the mailing and delivering of copies thereof to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser; (ii) the cost of printing or producing this Agreement, any Blue Sky and Legal Investment Memoranda, closing documents (including any compilations thereof) and any other documents in connection with the offering, purchase, sale and delivery of the Securities; (iii) all expenses in connection with the qualification of the Securities for offering and sale under state securities laws as provided in Section 6(b) hereof; (iv) any filing fees incident to any required review by FINRA of the terms of the sale of the Securities; (v) all fees and expenses in connection with listing the Securities on the NYSE; (vi) all expenses in connection with the preparation, issuance and delivery of the Securities to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, including any stock, transfer or other taxes and any stamp or other duties payable upon the sale, issuance or delivery of the Securities to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser; (vii) the costs and charges of any transfer agent or registrar or any dividend distribution agent; and (viii) all other costs and expenses incident to the performance of its obligations hereunder which are not otherwise specifically provided for in this Section. It is understood, however, that, except as provided in this Section 8(a) and Section 10 hereof, each of the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser will pay all of their own costs and expenses, including the fees of their counsel, transfer taxes on resale of any of the Securities by it, and any advertising expenses connected with any offers it may make.

(b) If Securities having an aggregate gross sales price of $10,000,000 have not been offered and sold under this Agreement and/or the Alternative Equity Distribution Agreements within eighteen (18) months after the date of this Agreement (or such earlier date on which the Company terminates this Agreement), the Company shall reimburse the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser and the Alternative Agents for all of their reasonable out-of-pocket expenses, including the reasonable fees and disbursements of a single counsel to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, who shall be the same counsel used by the Alternative Agents, incurred by them in connection with the offering contemplated by this Agreement and the Alternative Equity Distribution Agreements and ongoing services in connection with the transactions contemplated thereunder; provided that such reimbursement shall not exceed an aggregate under this Agreement and the Alternative Agreements of $200,000.

Section 9. Conditions of the Obligations of the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser. The obligations each of the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser hereunder shall be subject, in its discretion, to the condition that all representations and warranties and other statements of the Company and the Operating Partnership herein and in certificates of any officer of the Company or the Operating Partnership delivered pursuant to the provisions hereof are true and correct as of the time of the execution of this Agreement and as of each Representation Date, Applicable Time and Settlement Date, to the condition that the Company and the Operating Partnership shall have performed all of their obligations hereunder theretofore to be performed, and the following additional conditions:

(a) The Prospectus Supplement shall have been filed with the Commission pursuant to Rule 424(b) under the 1933 Act on or prior to the date hereof and in accordance with Section 6(a) hereof, any other material required to be filed by the Company pursuant to Rule 433(d) under the 1933 Act shall have been filed with the Commission within the applicable time periods prescribed for such filings by Rule 433; no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission and no notice of objection of the Commission to the use of the form of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the 1933 Act shall have been received; no stop order suspending or preventing the use of the Prospectus or any Issuer Free Writing Prospectus shall have been initiated or threatened by the Commission; and all requests for additional information on the part of the Commission shall have been complied with to the reasonable satisfaction of the Representatives.

(b) On every date specified in Section 6(k) hereof (including, without limitation, on every Request Date), Baker Botts L.L.P., counsel for the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, shall have furnished to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser such written opinion or opinions, dated as of such date, with respect to such matters as the Agent may reasonably request, and such counsel shall have received such papers and information as they may reasonably request to enable them to pass upon such matters.

(c) On every date specified in Section 6(k) hereof (including, without limitation, on every Request Date), each of Jeffrey D. Miller, Esq., general counsel of the Company, Paul Hastings LLP, counsel to the Company and the Operating Partnership, Paul Hastings LLP, tax counsel to the Company and the Operating Partnership, and Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P., North Carolina counsel to the Operating Partnership, shall each have furnished to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser a written opinion or 10b-5 letter, as applicable, dated as of such date, in the forms set forth in Exhibit A, Exhibit B-1, Exhibit B-2, Exhibit B-3 and Exhibit C, respectively, hereto.

(d) At the dates specified in Section 6(l) hereof (including, without limitation, on every Request Date), the independent accountants of the Company who have certified the financial statements of the Company and its subsidiaries included or incorporated by reference in the Registration Statement and the Prospectus shall have furnished to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser a letter dated as of the date of delivery thereof and addressed to the Agent, the Forward Seller, the Forward Purchaser the Warrant Hedge Seller and the Warrant Purchaser in form and substance reasonably satisfactory to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser and their counsel, containing statements and information of the type ordinarily included in accountants' "comfort letters" to underwriters with respect to the financial statements of the Company and its subsidiaries included or incorporated by reference in the Registration Statement and the Prospectus.

(e) (i) Upon commencement of the offering of Securities under this Agreement and on such other dates as reasonably requested by the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, the Company will furnish or cause to be furnished promptly to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser a certificate of an officer in a form satisfactory to the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser stating the minimum gross sales price per share for the sale of such Securities pursuant to this Agreement and the maximum number of Securities that may be issued and sold pursuant to this Agreement or, alternatively, maximum gross proceeds from such sales, as authorized from time to time by the Company's board of directors or a duly authorized committee thereof, and the number of Securities that have been approved for listing on the NYSE or, in connection with any amendment, revision or modification of such minimum price or maximum Share number or amount, a new certificate with respect thereto and (ii) on each date specified in Section 6(j) (including, without limitation, on every Request Date), the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller

and the Warrant Purchaser shall have received a certificate of executive officers of the Company, one of whom shall be the Chief Financial Officer, Chief Accounting Officer, Treasurer, or Executive Vice President in the area of capital markets and investments, dated as of the date thereof, to the effect that (A) there has been no Material Adverse Effect since the date as of which information is given in the Prospectus as then amended or supplemented, (B) the representations and warranties in Section 1 hereof are true and correct as of such date and (C) the Company and the Operating Partnership have complied with all of the agreements entered into in connection with the transactions contemplated herein and satisfied all conditions on their part to be performed or satisfied.

(f) Since the date of the latest audited financial statements then included or incorporated by reference in the Registration Statement and the Prospectus, no Material Adverse Effect shall have occurred.

(g) The Company shall have complied with the provisions of Section 6(c) hereof with respect to the timely furnishing of prospectuses.

(h) On such dates as reasonably requested by the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, the Company shall have conducted due diligence sessions, in form and substance satisfactory to the Agent, the Forward Seller and the Forward Purchaser.

(i) All filings with the Commission required by Rule 424 under the 1933 Act to have been filed by each Applicable Time or related Settlement Date shall have been made within the applicable time period prescribed for such filing by Rule 424 (without reliance on Rule 424(b)(8)).

(j) The Securities shall have received approval for listing on the NYSE prior to the first Settlement Date.

(k) Counsel for the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser shall have been furnished with such documents and opinions as they may require in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, contained herein; and all proceedings taken by the Company and the Operating Partnership in connection with the issuance and sale of the Securities as contemplated herein and in connection with the other transactions contemplated by this Agreement shall be reasonably satisfactory in form and substance to the Agent, the Forward Sellers, the Forward Purchasers, the Warrant Hedge Seller and the Warrant Purchaser and counsel for the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser.

(l) In respect of any Placement Notice delivered in respect of any Forward, the Master Forward Confirmation shall be in full force and effect.

Section 10. Indemnification.

(a) The Company and the Operating Partnership, jointly and severally, will indemnify and hold harmless each of the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser against any losses, claims, damages or liabilities, joint or several, to which the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser may become subject, under the 1933 Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Basic Prospectus, the Prospectus Supplement or the Prospectus or any amendment or supplement thereto, any Issuer Free Writing Prospectus or any "issuer information" filed or required to be filed pursuant to Rule 433(d) under the 1933 Act, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, and will reimburse the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser for any legal or other expenses reasonably incurred by the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and

the Warrant Purchaser in connection with investigating or defending any such action or claim as such expenses are incurred; provided, however, that the Company and the Operating Partnership shall not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement or omission or alleged omission made in the Registration Statement, the Basic Prospectus, the Prospectus Supplement or the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus, in reliance upon and in conformity with the Counterparty Information furnished to the Company by the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller or the Warrant Purchaser expressly for use therein.

(b) Each of the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, severally and not jointly, will indemnify and hold harmless the Company and the Operating Partnership against any losses, claims, damages or liabilities to which the Company and the Operating Partnership may become subject, under the 1933 Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon an untrue statement or alleged untrue statement of a material fact contained in the Registration Statement, the Basic Prospectus, the Prospectus Supplement or the Prospectus, or any amendment or supplement thereto, or any Issuer Free Writing Prospectus, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the Registration Statement, the Basic Prospectus, the Prospectus Supplement or the Prospectus, or any such amendment or supplement thereto, or any Issuer Free Writing Prospectus, in reliance upon and in conformity with the Counterparty Information furnished to the Company by the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller or the Warrant Purchaser expressly for use therein; and will reimburse the Company and the Operating Partnership for any legal or other expenses reasonably incurred by the Company and the Operating Partnership in connection with investigating or defending any such action or claim as such expenses are incurred.

(c) Promptly after receipt by an indemnified party under subsection (a) or (b) above of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against the indemnifying party under such subsection, notify the indemnifying party in writing of the commencement thereof; but the omission so to notify the indemnifying party shall not relieve it from any liability which it may have to any indemnified party otherwise than under such subsection except and then only to the extent such indemnifying party is materially prejudiced thereby. In case any such action shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and, after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party shall not be liable to such indemnified party under this Section 10 for any legal expenses of other counsel or any other expenses, in each case subsequently incurred by such indemnified party, in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to the entry of any judgment with respect to, any pending or threatened action or claim in respect of which indemnification or contribution may be sought hereunder (whether or not the indemnified party is an actual or potential party to such action or claim) unless such settlement, compromise or judgment (i) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party.

(d) If the indemnification provided for in this Section 10 is unavailable to hold harmless an indemnified party under subsection (a) or (b) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the

amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Operating Partnership on the one hand and the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller or the Warrant Purchaser on the other from the offering of the Securities pursuant to this Agreement to which such loss, claim, damage or liability (or action in respect thereof) relates. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company and the Operating Partnership on the one hand and the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller or the Warrant Purchaser on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company and the Operating Partnership on the one hand and the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller or the Warrant Purchaser on the other shall be deemed to be in the same respective proportion as (i) in the case of the Company and the Operating Partnership, (A) the total net proceeds from the offering of the Issuance Securities for each Issuance under this Agreement (before deducting expenses) received by the Company and the Operating Partnership bear to the Aggregate Sales Price of the Issuance Securities, (B) the Actual Sold Forward Amount for each Forward under this Agreement, multiplied by the Forward Hedge Price for such Forward (the "Net Forward Proceeds"), bear to the sum of the Net Forward Proceeds and the Actual Forward Commission (as defined below) (such sum, the "Gross Forward Amount") or (C) the Actual Sold Warrant Amount for each Warrant under this Agreement, multiplied by the Settlement Price (as such term is defined in the Master Warrant Confirmation) (such sum, the "Gross Warrant Amount"), (ii) in the case of the Agent, the total commissions received by the Agent bear to the aggregate gross sales price of the Issuance Securities, (iii) in the case of the Forward Seller, the Actual Sold Forward Amount for each Forward under this Agreement, multiplied by the Forward Hedge Selling Commission for such Forward (the "Actual Forward Commission"), bear to the Gross Forward Amount, (iv) in the case of the Forward Purchaser, the net Spread (as such term is defined in the Master Forward Confirmation and net of any related stock borrow costs or other costs or expenses actually incurred) for all Forward Contracts executed in connection with this Agreement, bear to the Gross Forward Amount, and (v) in the case of the Warrant Hedge Seller and the Warrant Purchaser, the Settlement Price Percentage multiplied by the Strike Price (as such terms are defined in the Master Warrant Confirmation and net of any related stock borrow costs or other costs or expenses actually incurred) for all Warrant Contracts executed in connection with this Agreement, bear to the Gross Warrant Amount. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand or the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller or the Warrant Purchaser on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company, the Operating Partnership and the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser agree that it would not be just and equitable if contribution pursuant to this subsection (d) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d), the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser shall not be required to contribute any amount in excess of the amount by which the total discounts and commissions received by the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser with respect to the offering of the Securities exceeds the amount of any damages which the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of

Section 11(f) of the 1933 Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) The obligations of the Company and the Operating Partnership under this Section 10 shall be in addition to any liability which the Company and the Operating Partnership may otherwise have and shall extend, upon the same terms and conditions, to the directors and officers of the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser and to each person, if any, who controls the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser within the meaning of the 1933 Act and each broker dealer affiliate of the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser; and the obligations of the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser under this Section 10 shall be in addition to any liability which the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser may otherwise have and shall extend, upon the same terms and conditions, to each officer and director of the Company and to each person, if any, who controls the Company or the Operating Partnership within the meaning of the 1933 Act.

Section 11. Representations, Warranties and Agreements to Survive Delivery. The respective indemnities, agreements, representations, warranties and other statements of the Company, the Operating Partnership and the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, as set forth in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser or any controlling person of the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, or the Company, or the Operating Partnership or any officer or director or controlling person of the Company or the Operating Partnership, and shall survive delivery of and payment for the Securities and the settlement of any Forward Contract or any Warrant Contract or any termination of this Agreement, the Master Forward Confirmation and any Supplemental Confirmation executed in connection with the Master Forward Confirmation or the Master Warrant Confirmation and any Warrant Supplemental Confirmation executed in connection with the Master Warrant Confirmation.

Section 12. No Advisory or Fiduciary Relationship. The Company and the Operating Partnership acknowledge and agree that (i) each of the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser is acting solely in the capacity of an arm's length contractual counterparty to the Company and the Operating Partnership with respect to the offering of Securities contemplated hereby (including in connection with determining the terms of such offering) and (ii) the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser have not assumed an advisory or fiduciary responsibility in favor of the Company and the Operating Partnership with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser has advised or is currently advising the Company or the Operating Partnership on other matters) or any other obligation to the Company or the Operating Partnership except the obligations expressly set forth in this Agreement and (iii) the Company and the Operating Partnership have consulted their own legal and financial advisors to the extent they deemed appropriate. The Company and the Operating Partnership agree that they will not claim that the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser has rendered advisory services of any nature or respect, or owe a fiduciary or similar duty to the Company or the Operating Partnership, in connection with such transaction or the process leading thereto.

Section 13. Termination.

(a) The Company shall have the right, by giving written notice as hereinafter specified, to terminate this Agreement in its sole discretion at any time. Any such termination shall be without liability of any party to any other party, except that (i) with respect to any pending sale through the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser for the Company, the

obligations of the Company and the Operating Partnership, including in respect of compensation of the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, shall remain in full force and effect notwithstanding such termination; and (ii) the provisions of Section 1, Section 8(b), Section 10 and Section 11 of this Agreement shall remain in full force and effect notwithstanding such termination.

(b) Each of the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, as applicable, shall have the right, by giving written notice as hereinafter specified, to terminate this Agreement 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 Section 1, Section 8(b), Section 10 and Section 11 of this Agreement shall remain in full force and effect notwithstanding such termination.

(c) Unless earlier terminated pursuant to this Section 13, this Agreement shall automatically terminate upon the issuance and sale of Securities through the Agent, the Forward Seller, the Warrant Hedge Seller or the Alternative Agents on the terms and subject to the conditions set forth herein or in any Alternative Distribution Agreement, as applicable, with an aggregate gross sale price equal to the Maximum Amount.

(d) This Agreement shall remain in full force and effect until and unless terminated pursuant to Section 13(a), (b) or (c) above or otherwise by mutual agreement of the parties; provided that any such termination by mutual agreement or pursuant to this clause (d) shall in all cases be deemed to provide that Section 1, Section 8(b), Section 10 and Section 11 of this Agreement shall remain in full force and effect notwithstanding such termination.

(e) 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 Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of Securities, such sale shall settle in accordance with the provisions of Section 5 hereof. Notwithstanding anything to the contrary contained herein, the obligation to enter into any Forward Contract pursuant to Section 3(c) hereof or Warrant Contract as a result of sales of Forward Hedge Securities or Warrant Hedge Securities occurring prior to such termination shall survive such termination and remain in full force and effect. For the avoidance of doubt, any such termination shall not affect or impair any party's obligations with respect to any Securities sold hereunder prior to the occurrence thereof or any Securities sold under any Alternative Distribution Agreement.

(f) In the case of any purchase of Issuance Shares by the Agent in a Principal Transaction pursuant to a separate agreement or an amendment to this Agreement providing for such Principal Transaction, the Agent may terminate such Principal Transaction at any time at or prior to the settlement thereof (i) if there has been, since the time of execution of the Agreement or since the respective dates as of which information is given in the Registration Statement or the Prospectus, any material adverse change in the condition, financial or otherwise, or in the earnings, business affairs or business prospects of the Company, the Operating Partnership and their subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Agent, impracticable or inadvisable to market the Securities or to enforce contracts for the sale of Securities, or (iii) if trading in any securities of the Company or the Operating Partnership has been suspended or materially limited by the Commission or the NYSE, or if trading generally on the NYSE, NYSE American, LLC or the Nasdaq Global Market has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by such system or by order of the Commission, the FINRA or any other governmental authority, or (iv) a material disruption has occurred in commercial

banking or securities settlement or clearance services in the United States, or (v) if a banking moratorium has been declared by either Federal or New York authorities.

Section 14. Notices. All statements, requests, notices and agreements hereunder shall be in writing, and if to the Agent, the Forward Seller or Warrant Hedge Seller shall be delivered or sent by mail, telex or facsimile transmission to:

[•]
[•]
[•]
[•]

with copy to (which shall not constitute notice):

Baker Botts L.L.P.
700 K Street NW
Washington, DC 20001
Fax. No.: (202) 585-1088
Attention: Catherine S. Gallagher, Esq.

and if to the Forward Purchaser to:

[•]
[•]
[•]
[•]

with copy to (which shall not constitute notice):

Baker Botts L.L.P.
700 K Street NW
Washington, DC 20001
Fax. No.: (202) 585-1088
Attention: Catherine S. Gallagher, Esq.

and if to the Warrant Purchaser to:

[•]
[•]
[•]
[•]

with copy to (which shall not constitute notice):

Baker Botts L.L.P.
700 K Street NW
Washington, DC 20001
Fax. No.: (202) 585-1088
Attention: Catherine S. Gallagher, Esq.

and if to the Company or the Operating Partnership to:

Highwoods Properties, Inc.
150 Fayetteville Street, Suite 1400

Raleigh, North Carolina 27601
Fax. No.: (919) 876-6929
Attention: Jeffrey D. Miller, Esq.

with copy to (which shall not constitute notice):

Paul Hastings LLP
71 South Wacker Drive, Suite 4500
Chicago, Illinois 60606
Fax. No. (312) 499-6118
Attention: Kerry E. Johnson, Esq.

Any such statements, requests, notices or agreements shall take effect upon receipt thereof.

Section 15. Parties. This Agreement shall be binding upon, and inure solely to the benefit of, the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser and the Company and the Operating Partnership and, to the extent provided in Sections 10 and 11 hereof, the officers and directors of the Company and the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser and each person who controls the Company and the Operating Partnership or the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser, and their respective heirs, executors, administrators, successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement. No purchaser of Securities through the Agent, Forward Seller or Warrant Hedge Seller shall be deemed a successor or assign by reason merely of such purchase.

Section 16. Time of the Essence. Time shall be of the essence of this Agreement. As used herein, the term "business day" shall mean any day when the Commission's office in Washington, D.C. is open for business.

Section 17. Submission to Jurisdiction; Waiver of Jury Trial. No proceeding related to this Agreement or any transactions contemplated hereby or thereby 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 parties consent to the jurisdiction of such courts and personal service with respect thereto. The parties waive all right to trial by jury in any proceeding (whether based upon contract, tort or otherwise) in any way arising out of or relating to this Agreement. The parties agree that a final judgment in any such proceeding brought in any such court shall be conclusive and binding upon the parties and may be enforced in any other courts to whose jurisdiction the parties are or may be subject, by suit upon such judgment.

Section 18. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO ITS PRINCIPLES OF CONFLICTS OF LAW.

Section 19. Counterparts. This Agreement may be executed by any one or more of the parties hereto and thereto in any number of counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall be an original and all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement and/or any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement and/or the transactions contemplated hereby (each an "Ancillary Document") that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery

thereof or the use of a paper-based recordkeeping system, as the case may be, provided that nothing herein shall require any party hereto to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it. For purposes hereof, "Electronic Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

Section 20. Severability. The invalidity or unenforceability of any Section, paragraph or provision of this Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof or thereof, as the case may be. If any Section, paragraph or provision of this Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

Section 21. Recognition of the U.S. Special Resolution Regimes.

(a) In the event that the Agent, the Forward Seller or the Forward Purchaser that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer from the Agent, the Forward Seller or the Forward Purchaser of this Agreement, and any interest and obligation in or under this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any such interest and obligation, were governed by the laws of the United States or a state of the United States.

(b) In the event that the Agent, the Forward Seller or the Forward Purchaser that is a Covered Entity or a BHC Act Affiliate of the Agent, the Forward Seller or the Forward Purchaser becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under this Agreement that may be exercised against the Agent, the Forward Seller or the Forward Purchaser are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

(c) For the purposes of this Section 21, capitalized terms shall have the definitions set forth below:

"BHC Act Affiliate" has the meaning assigned to the term "affiliate" in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

"Covered Entity" means any of the following: (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"U.S. Special Resolution Regime" means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

[*Signature pages follow*]

If the foregoing is in accordance with your understanding of our agreement, please sign and return to the Company and the Operating Partnership a counterpart hereof, whereupon this instrument, along with all counterparts, will become a binding agreement between the Agent, the Forward Seller, the Forward Purchaser, the Warrant Hedge Seller and the Warrant Purchaser and the Company and the Operating Partnership in accordance with its terms.

Very truly yours,

Highwoods Properties, Inc.

By: _____
Name: Brendan C. Maiorana
Title: Executive Vice President and Chief Financial Officer

Highwoods Realty Limited Partnership

By: Highwoods Properties, Inc., its sole general partner

By: _____
Name: Brendan C. Maiorana
Title: Executive Vice President and Chief Financial Officer

Accepted as of the date hereof:

[•], as Agent, Forward Seller, Forward Purchaser, Warrant Purchaser and Warrant Hedge Seller

By: __

Name:

Title:

[Signature Page to Equity Distribution Agreement]

Exhibit A

Form of Opinion of Jeffrey D. Miller, Esq.
General Counsel of the Company

EXHIBIT B-1

Form of Corporate Opinion of Paul Hastings LLP,
Counsel for the Company and the Operating Partnership

EXHIBIT B-2

Form of 10b-5 Statement of Paul Hastings LLP,
Counsel for the Company and the Operating Partnership

EXHIBIT B-3

Form of Tax Opinion of Paul Hastings LLP,
Tax Counsel for the Company and the Operating Partnership

EXHIBIT C

Form of Opinion of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.,
North Carolina Counsel for the Operating Partnership

Annex I

Highwoods Properties, Inc.
Common Stock
($0.01 par value)

FORM OF PLACEMENT NOTICE

[_____], [____]

[_]
[_]
[_]
[_]

Ladies and Gentlemen:

Reference is made to the Equity Distribution Agreement among Highwoods Properties, Inc., a Maryland corporation (the "Company"), Highwoods Realty Limited Partnership, a North Carolina limited partnership (the "Operating Partnership"), **[•]** (the "Forward Purchaser") and **[•]** (in its capacity as agent for the Company in connection with the offering and sale of any Issuance Securities thereunder, "Agent[,]" [and in its capacity as agent for the Forward Purchaser in connection with the offering and sale of any Forward Hedge Securities thereunder, the "Forward Seller"]), dated as of February 11, 2026 (the "Equity Distribution Agreement"). Capitalized terms used in this Placement Notice without definition shall have the respective definitions ascribed to them in the Equity Distribution Agreement. This Placement Notice relates to [an "Issuance"]([1]) [a "Forward"]([2]). The Company confirms that all conditions to the delivery of this Placement Notice are satisfied as of the date hereof.

[The Company confirms that it has not declared and will not declare any dividend, or caused or cause there to be any distribution, on the Common Stock if the ex-dividend date or ex-date, as applicable, for such dividend or distribution will occur during the period from, and including, the first Trading Day of the Forward Hedge Selling Period to, and including, the last Trading Day of the Forward Hedge Selling Period.]([3])

The Company represents and warrants that each representation, warranty, covenant and other agreement of the Company contained in the Equity Distribution Agreement [and the Master Forward Confirmation]([4]) is true and correct on the date hereof, and that the Prospectus, including the documents incorporated by reference therein, and any applicable Issuer Free Writing Prospectus, as of the date hereof, do not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

Number of Days in [Issuance]([5]) [Forward Hedge]([6]) Selling Period:([7])

First Date of [Issuance]([8]) [Forward Hedge]([9]) Selling Period:

Maximum Number of Securities to be Sold:

[Issuance]([1]) [Forward Hedge]([2]) Amount: $

[Forward Hedge Selling Commission Rate:] %

Forward Price Reduction Dates	**Forward Price Reduction Amounts**
	$
	$

Spread:

Initial Stock Loan Rate: basis points

Maximum Stock Loan Rate: basis points

Regular Dividend Amounts:

For any calendar month ending on or prior to [December 31, 20[ ]]:	$ [ ]
For any calendar month ending after [December 31, 20[ ]]:	$ [ ] ([3])

[Term: [Days][Months]]([4]):

Floor Price (Adjustable by Company during the [Issuance]([5]) [Forward Hedge]([6]) Selling Period, and in no event less than $[1.00] per share): $ per share

[There shall be no limitation on the number of Securities that may be sold on any one (1) day, subject to the maximum number of Securities to be sold above.] [No more than [ ] Securities may be sold on any one (1) day.][other sales parameters]

Very truly yours,

HIGHWOODS PROPERTIES, INC.

By: __

Name:

Title:

Accepted as of the date hereof:

[_], as Agent and Forward Seller

By: __

Name:

Title:

[_], as Forward Purchaser

By: __

Name:

Title:

Exhibit 1.3

Opening Transaction

To:	Highwoods Properties, Inc.
From:	[*]
Re:	Issuer Share Forward Sale Transactions
Date:	February 11, 2026

Ladies and Gentlemen:

The purpose of this communication (this "**Master Confirmation**") is to set forth the terms and conditions of the transactions to be entered into from time to time between [*]("**Dealer**") and Highwoods Properties, Inc. ("**Counterparty**") in accordance with the terms of the Equity Distribution Agreement, dated as of February 11, 2026, among Dealer, [[*] [(the "**Agent**")],] Highwoods Realty Limited Partnership (the "**Operating Partnership**") and Counterparty (the "**Equity Distribution Agreement**") on the Trade Dates specified herein (collectively, the "**Transactions**" and each, a "**Transaction**"). [Dealer is acting as principal in each Transaction, and the Agent, its affiliate, is acting as agent for each Transaction solely in connection with Rule 15a-6 of the Exchange Act (as defined below).] This communication constitutes a "Confirmation" as referred to in the Agreement specified below. Each Transaction will be evidenced by a supplemental confirmation (each, a "**Supplemental Confirmation**", and each such Supplemental Confirmation, together with this Master Confirmation, a "**Confirmation**" for purposes of the Agreement specified below) substantially in the form of Exhibit A hereto.

1. Each Confirmation is subject to, and incorporates, the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**"). For purposes of the Equity Definitions, each Transaction will be deemed to be a Share Forward Transaction.

Each Confirmation shall supplement, form a part of and be subject to an agreement (the "**Agreement**") in the form of the ISDA 2002 Master Agreement (the "**ISDA Form**"), as published by ISDA, as if Dealer and Counterparty had executed the ISDA Form on the date hereof (but without any Schedule except for (i) the election of New York law (without regard to New York's choice of laws doctrine other than Title 14 of Article 5 of the New York General Obligations Law (the "**General Obligations Law**")) as the governing law and US Dollars ("**USD**") as the Termination Currency and (ii) the election that the "Cross Default" provisions of Section 5(a)(vi) of the Agreement shall apply to Dealer and Counterparty with a "Threshold Amount" in respect of Dealer of 3% of the [stockholders'][members'] equity of [Dealer][*] and a "Threshold Amount" in respect of Counterparty of USD 35,000,000 (including its equivalent in another currency); *provided* that (x) the words ", or becoming capable at such time of being declared," shall be deleted from clause (1) thereof, (y) "Specified Indebtedness" has the meaning specified in Section 14 of the Agreement, except that such term shall not include obligations in respect of deposits received in the ordinary course of Dealer's banking business and (z) the following language shall be added to the end of such Section 5(a)(vi): "Notwithstanding the foregoing, a default under subsection (2) hereof shall not constitute an Event of Default if (X) the default was caused solely by error or omission of an administrative or operational nature; (Y) funds were available to enable the party to make the payment when due; and (Z) the payment is made within two Local Business Days of such party's receipt of written notice of its failure to pay;".

All provisions contained in the Agreement are incorporated into and shall govern each Confirmation except as expressly modified below. Each Confirmation evidences a complete and binding agreement between Dealer and Counterparty as to the terms of the relevant Transaction and replaces any previous agreement between the parties with respect to the subject matter hereof.

The Transactions hereunder shall be the sole Transactions under the Agreement. If there exists any ISDA Master Agreement between Dealer or any of its Affiliates and Counterparty or any confirmation or other agreement between Dealer or any of its Affiliates and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer or any of its Affiliates and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer or such other Affiliates and Counterparty are parties, the Transactions shall not be considered Transactions under, or otherwise

governed by, such existing or deemed ISDA Master Agreement. In the event of any inconsistency among the Agreement, this Master Confirmation, any Supplemental Confirmation and the Equity Definitions, the following will prevail in the order of precedence indicated: (i) such Supplemental Confirmation; (ii) this Master Confirmation; (iii) the Equity Definitions; and (iv) the Agreement.

2. The terms of the particular Transactions to which this Master Confirmation relates are as follows:

General Terms:

Trade Date:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be, subject to the provisions opposite the caption "Early Valuation" below, the last Trading Day (as defined in the Equity Distribution Agreement) of the Forward Hedge Selling Period (as defined in the Equity Distribution Agreement) for such Transaction.
Effective Date:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the date that is one Settlement Cycle following the Trade Date for such Transaction, or such later date on which the conditions set forth in Section 3 of this Master Confirmation shall have been satisfied or waived by Dealer.
Buyer:	Dealer
Seller:	Counterparty
Maturity Date:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the date that follows the Trade Date for such Transaction by the number of days or months set forth in the Placement Notice (as defined in the Equity Distribution Agreement and amended by any corresponding Acceptance (as defined in the Equity Distribution Agreement), if applicable (the "**Accepted Placement Notice**")) for such Transaction (or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day).
Shares:	The shares of common stock, par value USD 0.01 per Share, of Counterparty (Ticker: "HIW")
Number of Shares:	For each Transaction, initially, as specified in the Supplemental Confirmation for such Transaction, to be the number of Shares equal to the Actual Sold Forward Amount (as defined in the Equity Distribution Agreement) for the Forward Hedge Selling Period for such Transaction, as reduced on each Relevant Settlement Date (as defined under "Settlement Terms" below) by the number of Settlement Shares (as defined below) to which the related Valuation Date relates.
Settlement Currency:	USD
Exchange:	The New York Stock Exchange
Related Exchange:	All Exchanges
Prepayment:	Not Applicable
Variable Obligation:	Not Applicable
Forward Price:	For each Transaction, on the Effective Date for such Transaction, the Initial Forward Price for such Transaction, and on any day thereafter, the product of the Forward Price for such Transaction on the immediately preceding calendar day and

	1 + the Daily Rate * (1/365); *provided* that the Forward Price for such Transaction on each Forward Price Reduction Date for such Transaction shall be the Forward Price for such Transaction otherwise in effect on such date *minus* the Forward Price Reduction Amount for such Forward Price Reduction Date. Notwithstanding the foregoing, to the extent Counterparty delivers Shares hereunder on or after a Forward Price Reduction Date and at or before the record date for an ordinary cash dividend with an ex-dividend date corresponding to such Forward Price Reduction Date (and, for the avoidance of doubt, the related dividend will be paid on such Shares), the Calculation Agent shall reverse the reduction to the Forward Price on such Forward Price Reduction Date for purposes of the related Settlement Date.
Initial Forward Price:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the product of (i) an amount equal to 1 *minus* the Forward Hedge Selling Commission Rate (as defined in the Equity Distribution Agreement) applicable to such Transaction; and (ii) the Volume-Weighted Hedge Price, subject to adjustment as set forth herein.
Volume-Weighted Hedge Price:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the volume-weighted average of the Sales Prices (as defined in the Equity Distribution Agreement) per share of Forward Hedge Securities (as defined in the Equity Distribution Agreement) sold on each Trading Day of the Forward Hedge Selling Period for such Transaction, as determined by the Calculation Agent; *provided* that, solely for the purposes of calculating the Initial Forward Price, each such Sales Price (other than, with respect to the application of the Daily Rate, the Sales Price for the last day of the relevant Forward Hedge Selling Period) shall be subject to adjustment by the Calculation Agent (including, for the avoidance of doubt, by application of the Daily Rate and any Forward Price Reduction Amount), in the same manner as the Forward Price pursuant to the definition thereof during the period from, and including, the date one Settlement Cycle immediately following the first Trading Day of the relevant Forward Hedge Selling Period on which the Forward Hedge Securities related to such Sales Price are sold to, and including, the Effective Date of such Transaction.
Daily Rate:	For any day, the Overnight Bank Rate (or if the Overnight Bank Rate is no longer available, a successor rate selected by the Calculation Agent in its commercially reasonable discretion) *minus* the Spread.
Spread:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction.
Overnight Bank Rate:	For any day, the rate set forth for such day opposite the caption "Overnight bank funding rate" as displayed on the page "OBFR01 <Index> <GO>" on the BLOOMBERG Professional Service, or any successor page; *provided* that, if no such rate appears for such day on such page, Overnight Bank Rate for such day shall be such rate for the immediately preceding day for which such a rate appears.

Forward Price Reduction Dates:	For each Transaction, as specified in Schedule I to the Supplemental Confirmation for such Transaction, to be each date after the last Scheduled Trading Day of the relevant Forward Hedge Selling Period set forth under the heading "Forward Price Reduction Dates" in the Accepted Placement Notice for such Transaction.
Forward Price Reduction Amount:	For each Forward Price Reduction Date of a Transaction, as specified in Schedule I to the Supplemental Confirmation for such Transaction, to be the Forward Price Reduction Amount set forth opposite such date in the Accepted Placement Notice for such Transaction.

Valuation:

Valuation Date:	For any Settlement (as defined below) with respect to any Transaction, if Physical Settlement is applicable, as designated in the relevant Settlement Notice (as defined below); or if Cash Settlement or Net Share Settlement is applicable, the last Unwind Date for such Settlement. Section 6.6 of the Equity Definitions shall not apply to any Valuation Date.
Unwind Dates:	For any Cash Settlement or Net Share Settlement with respect to any Settlement of any Transaction, each day on which Dealer (or its agent or affiliate) purchases Shares in the market in connection with unwinding its commercially reasonable hedge position in connection with such Settlement, starting on the First Unwind Date for such Settlement.
First Unwind Date:	For any Cash Settlement or Net Share Settlement with respect to any Settlement of any Transaction, as designated in the relevant Settlement Notice.
Unwind Period:	For any Cash Settlement or Net Share Settlement with respect to any Settlement of any Transaction, the period starting on the First Unwind Date for such Settlement and ending on the Valuation Date for such Settlement.

Cash Settlement Valuation Disruption:	If Cash Settlement is applicable with respect to any Transaction and any Unwind Date during the related Unwind Period is a Disrupted Day, the Calculation Agent shall determine (except in the case of a Disrupted Day that occurs as a result of a Regulatory Disruption (as defined below), which shall always be a Disrupted Day in full) whether (i) such Disrupted Day is a Disrupted Day in full, in which case the 10b-18 VWAP for such Disrupted Day shall not be included in the calculation of the Settlement Price, or (ii) such Disrupted Day is a Disrupted Day only in part, in which case the 10b-18 VWAP for such Disrupted Day shall be determined by the Calculation Agent based on Rule 10b-18 eligible transactions (as defined below) in the Shares on such Disrupted Day, taking into account the nature and duration of the relevant Market Disruption Event, and the weightings of the 10b-18 VWAP and the Forward Prices for each Unwind Date during such Unwind Period shall be adjusted in a commercially reasonable manner by the Calculation Agent for purposes of determining the Settlement Price and the Relevant Forward Price, as applicable, to account for the occurrence of such partially Disrupted Day, with such adjustments based on, among other factors, the duration of any Market Disruption Event and the volume, historical trading patterns and price of the Shares.
Market Disruption Event:	The definition of "Market Disruption Event" in Section 6.3(a) of the Equity Definitions is hereby amended by deleting the words "at any time during the one-hour period that ends at the relevant Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out Valuation Time, as the case may be" and inserting the words "at any time on any Exchange Business Day during the Unwind Period" after the word "material," in the third line thereof.
Early Closure:	Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term "Scheduled Closing Time" in the fourth line thereof.

Settlement Terms:

Settlement:	With respect to any Transaction, any Physical Settlement, Cash Settlement or Net Share Settlement of all or any portion of such Transaction.

Settlement Notice:	For any Transaction, subject to "Early Valuation" below, Counterparty may elect to effect a Settlement of all or any portion of such Transaction by designating one or more Scheduled Trading Days following the Effective Date for such Transaction and on or prior to the Maturity Date for such Transaction to be Valuation Dates (or, with respect to Cash Settlements or Net Share Settlements of such Transaction, First Unwind Dates, each of which First Unwind Dates shall occur no later than the 60th Scheduled Trading Day immediately preceding the Maturity Date for such Transaction) in a written notice to Dealer (a "**Settlement Notice**") delivered no later than the applicable Settlement Method Election Date for such Transaction, which notice shall also specify (i) the number of Shares (the "**Settlement Shares**") for such Settlement (not to exceed the number of Undesignated Shares for such Transaction as of the date of such Settlement Notice) and (ii) the Settlement Method applicable to such Settlement; *provided* that (A) Counterparty may not designate a First Unwind Date for a Cash Settlement or a Net Share Settlement of any Transaction if, as of the date of such Settlement Notice, any Shares have been designated as Settlement Shares for a Cash Settlement or a Net Share Settlement of such Transaction for which the related Relevant Settlement Date has not occurred; and (B) if the number of Undesignated Shares as of the Maturity Date for such Transaction is not zero, then the Maturity Date for such Transaction shall be a Valuation Date for a Physical Settlement of such Transaction and the number of Settlement Shares for such Settlement shall be the number of Undesignated Shares for such Transaction as of the Maturity Date for such Transaction (*provided* that if such Maturity Date occurs during the period from the time any Settlement Notice is given for a Cash Settlement or Net Share Settlement of such Transaction until the related Relevant Settlement Date, inclusive, then the provisions set forth below opposite "Early Valuation" shall apply to such Transaction as if the Maturity Date for such Transaction were the Early Valuation Date for such Transaction).
Undesignated Shares:	For any Transaction, as of any date, the Number of Shares for such Transaction *minus* the number of Shares designated as Settlement Shares for Settlements of such Transaction for which the related Relevant Settlement Date has not occurred.
Settlement Method Election:	For any Transaction, applicable; *provided* that: (i) Net Share Settlement shall be deemed to be included as an additional settlement method under Section 7.1 of the Equity Definitions;

(ii) Counterparty may elect Cash Settlement or Net Share Settlement for any Settlement only if Counterparty represents and warrants to Dealer in the Settlement Notice containing such election that, as of the date of such Settlement Notice: (A) Counterparty is not aware of any material nonpublic information concerning itself or the Shares; (B) Counterparty is electing the settlement method and designating the First Unwind Date specified in such Settlement Notice in good faith and not as part of a plan or scheme to evade compliance with Rule 10b-5 ("**Rule 10b-5**") under the Securities Exchange Act of 1934, as amended (the "**Exchange Act**"), or any other provision of the federal securities laws; (C) Counterparty is not "insolvent" (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**")); (D) Counterparty would be able to purchase a number of Shares equal to the greater of (x) the number of Settlement Shares designated in such Settlement Notice and (y) a number of Shares with a value as of the date of such Settlement Notice equal to the *product of* (I) such number of Settlement Shares and (II) the applicable Relevant Forward Price for such Cash Settlement or Net Share Settlement in compliance with the laws of Counterparty's jurisdiction of organization; (E) such election, and settlement in accordance therewith, does not and will not violate or conflict with any law or regulation applicable to Counterparty, or any order or judgment of any court or other agency of government applicable to it or any of its assets, and any governmental consents that are required to have been obtained by Counterparty with respect to such election or settlement have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and (F) neither Counterparty nor any of its subsidiaries has applied, and shall not until after the first date on which no portion of the Transaction remains outstanding following any final exercise and settlement, cancellation or early termination of the Transaction, apply, for a loan, loan guarantee, direct loan (as that term is defined in the Coronavirus Aid, Relief and Economic Security Act (the "**CARES Act**")) or other investment, or receive any financial assistance or relief under any program or facility (collectively "**Financial Assistance**") that (I) is established under applicable law (whether in existence as of the Trade Date or subsequently enacted, adopted or amended), including without limitation the CARES Act and the Federal Reserve Act, as amended, and (II) (X) requires under applicable law (or any regulation, guidance, interpretation or other pronouncement of a governmental authority with jurisdiction for such program or facility) as a condition of such Financial Assistance, that Counterparty comply with any requirement not to, or otherwise agree, attest, certify or warrant that it has not, as of the date specified in such condition, repurchased, or will not repurchase, any equity security of Issuer, and that it has not, as of the date specified in the condition, made a capital distribution or will make a capital distribution, or (Y)

where the terms of the Transaction would cause Counterparty under any circumstances to fail to satisfy any condition for application for or receipt or retention of the Financial Assistance (collectively "**Restricted Financial Assistance**"), other than any such applications for Restricted Financial Assistance with respect to which (x) Counterparty has determined based on the advice of outside counsel of national standing that the terms of the Transaction would not cause Counterparty or its subsidiary as applicable to fail to satisfy any condition for application for or receipt or retention of such Restricted Financial Assistance based on the terms of the program or facility as of the date of such advice or (y) Counterparty has delivered to Dealer evidence or other guidance from a governmental authority with jurisdiction for such program or facility that the Transaction is permitted under such program or facility (either by specific reference to the Transaction or by general reference to transactions with the attributes of the Transaction in all relevant respects); and

(iii) Notwithstanding any election to the contrary in any Settlement Notice, Physical Settlement shall be applicable for any Settlement of any Transaction:

(A) to all of the Settlement Shares designated in such Settlement Notice if, at any time from the date such Settlement Notice is received by Dealer until the related First Unwind Date, inclusive, (I) the trading price per Share on the Exchange (as determined by Dealer in a commercially reasonable manner) is below the Threshold Price or (II) Dealer determines, in its good faith and commercially reasonable judgment, that it would, after using commercially reasonable efforts, be unable to purchase a number of Shares in the market sufficient to unwind a commercially reasonable hedge position in respect of the portion of the Transaction represented by such Settlement Shares and satisfy its delivery obligation hereunder, if any, by the Maturity Date (x) in a manner that (A) would, if Dealer were Counterparty or an affiliated purchaser of Counterparty and taking into account any other Transactions hereunder with an overlapping Unwind Period, be in compliance with the safe harbor provided by Rule 10b-18(b) under the Exchange Act and (B) based on advice of counsel, would not raise material risks under applicable securities laws, other than as a result of activities by Dealer unrelated to any Transaction, or (y) due to the lack of sufficient liquidity in the Shares (each, a "**Trading Condition**"); or

(B) to all or a portion of the Settlement Shares designated in such Settlement Notice if, on any day during the relevant Unwind Period, (I) the trading price per Share on the Exchange (as determined by Dealer in a commercially reasonable manner) is below the Threshold Price or (II) Dealer determines, in its good faith and commercially reasonable judgment or based on advice of counsel, as applicable, that a Trading Condition has occurred with respect to such Transaction, in which case the provisions set forth below in the fourth paragraph opposite "Early Valuation" shall apply as if such day were the Early Valuation Date for such Transaction and (x) for purposes of clause (i) of such paragraph, such day shall be the last Unwind Date of such Unwind Period and the "Unwound Shares" shall be calculated to, and including, such day and (y) for purposes of clause (ii) of such paragraph, the "Remaining Shares" shall be equal to the number of Settlement Shares designated in such Settlement Notice *minus* the Unwound Shares determined in accordance with clause (x) of this sentence.

Threshold Price:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be 50% of the Initial Forward Price for such Transaction.
Electing Party:	Counterparty
Settlement Method Election Date:	With respect to any Settlement of any Transaction, the second Scheduled Trading Day immediately preceding (x) the Valuation Date for such Transaction, in the case of Physical Settlement, or (y) the First Unwind Date for such Transaction, in the case of Cash Settlement or Net Share Settlement.
Default Settlement Method:	Physical Settlement
Physical Settlement:	Notwithstanding Section 9.2(a)(i) of the Equity Definitions, on the Settlement Date for any Physical Settlement of any Transaction, Dealer shall pay to Counterparty an amount equal to the Forward Price for such Transaction on the relevant Settlement Date *multiplied by* the number of Settlement Shares for such Settlement, and Counterparty shall deliver to Dealer such Settlement Shares.
Settlement Date:	For any Settlement of any Transaction to which Physical Settlement is applicable, the Valuation Date for such Settlement.

Net Share Settlement:	On the Net Share Settlement Date for any Settlement of any Transaction to which Net Share Settlement is applicable, if the Net Share Settlement Amount for such Settlement is greater than zero, Counterparty shall deliver a number of Shares equal to such Net Share Settlement Amount (rounded down to the nearest integer) to Dealer, and if such Net Share Settlement Amount is less than zero, Dealer shall deliver a number of Shares equal to the absolute value of such Net Share Settlement Amount (rounded down to the nearest integer) to Counterparty, in either case, in accordance with Section 9.4 of the Equity Definitions, with such Net Share Settlement Date deemed to be a "Settlement Date" for purposes of such Section 9.4, and, in either case, plus cash in lieu of any fractional Shares included in such Net Share Settlement Amount but not delivered due to rounding required hereby, valued at the relevant Settlement Price.
Net Share Settlement Date:	For any Settlement of any Transaction to which Net Share Settlement is applicable, the date that follows the Valuation Date for such Settlement by one Settlement Cycle.
Net Share Settlement Amount:	For any Settlement of any Transaction to which Net Share Settlement is applicable, an amount equal to the Forward Cash Settlement Amount for such Settlement *divided by* the Settlement Price for such Settlement.
Forward Cash Settlement Amount:	Notwithstanding Section 8.5(c) of the Equity Definitions, the Forward Cash Settlement Amount for any Cash Settlement or Net Share Settlement of any Transaction shall be equal to (i) the number of Settlement Shares for such Settlement *multiplied by* (ii) an amount equal to (A) the Settlement Price for such Settlement *minus* (B) the Relevant Forward Price for such Settlement.
Relevant Forward Price:	For any Cash Settlement of any Transaction, subject to "Cash Settlement Valuation Disruption" above, the arithmetic average of the Forward Prices for such Transaction on each Unwind Date relating to such Settlement. For any Net Share Settlement of any Transaction, the weighted average of the Forward Prices for such Transaction on each Unwind Date relating to such Settlement (weighted based on the number of Shares purchased by Dealer or its agent or affiliate on each such Unwind Date in connection with unwinding its commercially reasonable hedge position in connection with such Settlement, as determined by the Calculation Agent).
Settlement Price:	For any Cash Settlement of any Transaction, subject to "Cash Settlement Valuation Disruption" above, the arithmetic average of the 10b-18 VWAP on each Unwind Date relating to such Settlement, plus a commercially reasonable amount determined by the Calculation Agent that in no event will exceed USD 0.05.

For any Net Share Settlement of any Transaction, the weighted average price of the purchases of Shares made by Dealer (or its agent or affiliate) during the Unwind Period for such Settlement in connection with unwinding its commercially reasonable hedge position relating to such Settlement (weighted based on the number of Shares purchased by Dealer or its agent or affiliate on each Unwind Date in connection with unwinding its commercially reasonable hedge position in connection with such Settlement, as determined by the Calculation Agent), plus a commercially reasonable amount determined by the Calculation Agent that in no event will exceed USD 0.03.

10b-18 VWAP: For any Exchange Business Day, as determined by the Calculation Agent based on the 10b-18 Volume Weighted Average Price per Share as reported in the composite transactions for United States exchanges and quotation systems for the regular trading session (including any extensions thereof) of the Exchange on such Exchange Business Day (without regard to pre-open or after hours trading outside of such regular trading session for such Exchange Business Day), as published by Bloomberg at 4:15 p.m. New York City time (or 15 minutes following the end of any extension of the regular trading session) on such Exchange Business Day, on Bloomberg page "HIW <Equity> AQR SEC" (or any successor thereto), or if such price is not so reported on such Exchange Business Day for any reason or is, in the Calculation Agent's reasonable determination, erroneous, such 10b-18 VWAP shall be as reasonably determined by the Calculation Agent. For purposes of calculating the 10b-18 VWAP for such Exchange Business Day, the Calculation Agent will include only those trades that are reported during the period of time during which Counterparty could purchase its own shares under Rule 10b-18(b)(2) and are effected pursuant to the conditions of Rule 10b-18(b)(3), each under the Exchange Act (such trades, "**Rule 10b-18 eligible transactions**").

Unwind Activities:	The times and prices at which Dealer (or its agent or affiliate) purchases any Shares during any Unwind Period in connection with unwinding its commercially reasonable hedge position in respect of each Transaction shall be determined by Dealer in a commercially reasonable manner. Without limiting the generality of the foregoing, in the event that Dealer concludes, in its reasonable discretion based on advice of counsel, that it is appropriate with respect to any legal, regulatory or self-regulatory requirements or related policies and procedures (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer) (a "**Regulatory Disruption**") for it to refrain from purchasing Shares in connection with unwinding its commercially reasonable hedge position in respect of such Transaction on any Scheduled Trading Day that would have been an Unwind Date but for the occurrence of a Regulatory Disruption, Dealer may (but shall not be required to) notify Counterparty in writing that a Regulatory Disruption has occurred on such Scheduled Trading Day with respect to such Transaction, in which case Dealer shall, to the extent practicable in its good faith discretion, specify the nature of such Regulatory Disruption. In such an instance, the Regulatory Disruption shall be deemed to be a Market Disruption Event and, for the avoidance of doubt, such Scheduled Trading Day shall be a Disrupted Day in full. Dealer may exercise its right in respect of any Regulatory Disruption only in good faith in relation to events or circumstances that are not the result of actions of it or any of its Affiliates that are taken with the intent to avoid its obligations under the Transactions.
Relevant Settlement Date:	For any Settlement of any Transaction, the Settlement Date, Cash Settlement Payment Date or Net Share Settlement Date for such Settlement, as the case may be.
Other Applicable Provisions:	To the extent Dealer is obligated to deliver Shares under any Transaction, the provisions of Sections 9.2 (last sentence only), 9.8, 9.9, 9.10, 9.11 and 9.12 of the Equity Definitions will be applicable as if "Physical Settlement" applied to such Transaction; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws that exist as a result of the fact that Counterparty is the issuer of the Shares.

Share Adjustments:

Potential Adjustment Events:	An Extraordinary Dividend shall not constitute a Potential Adjustment Event. For the avoidance of doubt, a cash dividend on the Shares that differs from expected dividends as of the first Trading Day of the Forward Hedge Selling Period for such Transaction shall not be a Potential Adjustment Event under Section 11.2(e)(vii) of the Equity Definitions with respect to such Transaction. Notwithstanding anything to the contrary in Section 11.2(e) of the Equity Definitions, no "Issuance" nor "Warrant" (in each case as defined in the EDA) under the EDA or any "Alternative Equity Distribution Agreement" (as defined in the EDA) shall constitute a Potential Adjustment Event.
Extraordinary Dividend:	For any Transaction, any dividend or distribution on the Shares with an ex-dividend date occurring on any day following the first Trading Day of the Forward Hedge Selling Period for such Transaction (other than (i) any dividend or distribution of the type described in Section 11.2(e)(i) or Section 11.2(e)(ii)(A) of the Equity Definitions or (ii) a regular, monthly cash dividend in an amount equal to or less than the Regular Dividend Amount for such calendar month for such Transaction that has an ex-dividend date no earlier than the Forward Price Reduction Date occurring in the relevant month for such Transaction).
Regular Dividend Amount:	For each Transaction and for each calendar month from and including the calendar month in which the first Trading Day of the Forward Hedge Selling Period for such Transaction occurs to and including the calendar month in which the Maturity Date occurs, the amount set forth under the heading "Regular Dividend Amounts" in the Accepted Placement Notice for such Transaction and for such calendar month (or, if no such amount is specified, zero), as specified in Schedule I to the Supplemental Confirmation for such Transaction. For the avoidance of doubt, Counterparty may not specify a Regular Dividend Amount in an Accepted Placement Notice for a particular calendar month that exceeds the Forward Price Reduction Amount for the Forward Price Reduction Date that occurs in such calendar month (or, if none, that exceeds zero).
Method of Adjustment:	Calculation Agent Adjustment

Extraordinary Events:

Extraordinary Events:	The consequences that would otherwise apply under Article 12 of the Equity Definitions (as modified herein) to any applicable Extraordinary Event (excluding any Failure to Deliver, Increased Cost of Hedging, Increased Cost of Stock Borrow, Loss of Stock Borrow or any Extraordinary Event that also constitutes a Bankruptcy Termination Event, but including, for the avoidance of doubt, any other applicable Additional Disruption Event) shall not apply.
Tender Offer:	Applicable; *provided* that Section 12.1(d) of the Equity Definitions shall be amended by replacing the reference therein to "10%" with a reference to "20%".
Delisting:	In addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it shall also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall be deemed to be the Exchange.

Additional Disruption Events:

Change in Law:	Applicable; *provided* that (A) any determination as to whether (i) the adoption of or any change in any applicable law or regulation (including, without limitation, any tax law) or (ii) the promulgation of or any change in or announcement or statement of the formal or informal interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), in each case, constitutes a "Change in Law" shall be made without regard to Section 739 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, (B) Section 12.9(a)(ii) of the Equity Definitions is hereby amended (i) by adding the words "(including, for the avoidance of doubt and without limitation, adoption or promulgation of new regulations authorized or mandated by existing statute)" after the word "regulation" in the second line thereof and (ii) by replacing the words "the interpretation" with the words "or announcement or statement of any formal or informal interpretation" in the third line thereof and (C) the words ", unless the illegality is due to an act or omission of the party seeking to elect termination of the Transaction with the intent to avoid its obligations under the terms of the Transaction" are added immediately following the word "Transaction" in the fifth line thereof; and *provided further* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by adding the phrase "and/or Hedge Position" after the word "Shares" in clause (X) thereof and (iii) by immediately following the word "Transaction" in clause (X) thereof, adding the phrase "in the manner contemplated by the Hedging Party on the Trade Date".
Failure to Deliver:	Applicable with respect to a Transaction if Dealer is required to deliver Shares under such Transaction; otherwise, Not Applicable.
Hedging Disruption:	Applicable
Increased Cost of Hedging:	Applicable; *provided* that Section 12.9(b)(vi) of the Equity Definitions shall be amended by (i) adding "or" before clause (B) of the second sentence thereof, (ii) deleting clause (C) of the second sentence thereof and (iii) deleting the third and fourth sentences thereof.

Increased Cost of Stock Borrow:	Applicable; *provided* that Section 12.9(b)(v) of the Equity Definitions shall be amended by (i) adding "or" before clause (B) of the second sentence thereof, (ii) deleting clause (C) of the second sentence thereof and (iii) deleting the third, fourth and fifth sentences thereof. For the avoidance of doubt, upon the announcement of any event that, if consummated, would result in a Merger Event or Tender Offer, the term "rate to borrow Shares" as used in Section 12.9(a)(viii) of the Equity Definitions shall include any commercially reasonable cost borne or amount payable by the Hedging Party in respect of maintaining or reestablishing its hedge position with respect to the relevant Transaction, including, but not limited to, any assessment or other amount payable by the Hedging Party to a lender of Shares in respect of any merger or tender offer premium, as applicable.
Initial Stock Loan Rate:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction.

Loss of Stock Borrow:	Applicable; *provided* that Section 12.9(b)(iv) of the Equity Definitions shall be amended by (i) deleting clause (A) of the first sentence thereof in its entirety and (ii) replacing the words "neither the Non-Hedging Party nor the Lending Party lends" with "the Lending Party does not lend" in the second sentence thereof. The Lending Party may not be the Issuer or an affiliate of the Issuer.
Maximum Stock Loan Rate:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction.
Hedging Party:	For all applicable Additional Disruption Events, Dealer.
Determining Party:	For all applicable Extraordinary Events, Dealer.

Early Valuation:

Early Valuation:	For any Transaction, notwithstanding anything to the contrary herein, in the Agreement, in any Supplemental Confirmation or in the Equity Definitions, at any time (x) following the occurrence of (1) a Hedging Event with respect to such Transaction, (2) the declaration by Issuer of an Extraordinary Dividend, or (3) an ISDA Event with respect to such Transaction or (y) if an Excess Section 13 Ownership Position, an Excess NYSE Ownership Position or an Excess Regulatory Ownership Position exists, Dealer (or, in the case of such an ISDA Event that is an Event of Default or Termination Event, the party entitled to designate an Early Termination Date in respect of such event pursuant to Section 6 of the Agreement) shall have the right to designate any Scheduled Trading Day to be the "**Early Valuation Date**" for such Transaction, in which case the provisions set forth in this "Early Valuation" section shall apply to such Transaction, which right shall be, other than in the case of an Event of Default under Section 5(a)(vii) of the Agreement with respect to which Dealer is the sole Defaulting Party, in lieu of those specified in Section 6 of the Agreement. For the avoidance of doubt, any amount calculated pursuant to this "Early Valuation" section as a result of an Extraordinary Dividend shall not be adjusted by the value associated with such Extraordinary Dividend.

Dealer represents and warrants to and agrees with Counterparty that (i) based upon advice of counsel, Dealer (A) does not know of the existence on the first Trading Day of the relevant Forward Hedge Selling Period of an Excess Section 13 Ownership Position, an Excess NYSE Ownership Position or an Excess Regulatory Ownership Position and (B) based on reasonable internal inquiry in the ordinary course of Dealer's business does not know on the first Trading Day of the relevant Forward Hedge Selling Period of any event or circumstance that will cause the occurrence of an Excess Section 13 Ownership Position, an Excess NYSE Ownership Position or an Excess Regulatory Ownership Position on any day during the term of such Transaction; and (ii) Dealer will not knowingly cause the occurrence of an Excess Section 13 Ownership Position, an Excess NYSE Ownership Position or an Excess Regulatory Ownership Position on any day during the term of any Transaction for the purpose, in whole or in part, of causing the occurrence of an Early Valuation Date.

If an Early Valuation Date for a Transaction occurs on a date that is not during an Unwind Period for such Transaction, then such Early Valuation Date shall be a Valuation Date for a Physical Settlement of such Transaction, and the number of Settlement Shares for such Settlement shall be the Number of Shares on such Early Valuation Date; *provided* that Dealer may in its sole discretion permit Counterparty to elect Cash Settlement or Net Share Settlement in respect of such Transaction. Notwithstanding anything to the contrary in this Master Confirmation, any Supplemental Confirmation, the Agreement or the Equity Definitions, if Dealer designates an Early Valuation Date with respect to a Transaction (1) following the occurrence of an ISDA Event and such Early Valuation Date is to occur before the date that is one Settlement Cycle after the last day of the Forward Hedge Selling Period for such Transaction or (2) prior to the Counterparty's execution of the Supplemental Confirmation relating to such Transaction, then, for purposes of such Early Valuation Date, (i) a Supplemental Confirmation relating to such Transaction reasonably completed by Dealer shall, notwithstanding the provisions under Section 3 below, be deemed to be effective; and (ii) in the case of (1), the Forward Price shall be deemed to be the Initial Forward Price (calculated assuming that the last Trading Day of such Forward Hedge Selling Period were the day immediately following the date Dealer so notifies Counterparty of such designation of an Early Valuation Date for purposes of such Early Valuation Date).

	If an Early Valuation Date for a Transaction occurs during an Unwind Period for such Transaction, then (i) (A) the last Unwind Date of such Unwind Period shall be deemed to be such Early Valuation Date, (B) a Settlement shall occur in respect of such Unwind Period, and the Settlement Method elected by Counterparty in respect of such Settlement shall apply, and (C) the number of Settlement Shares for such Settlement shall be the number of Unwound Shares for such Unwind Period on such Early Valuation Date, and (ii) (A) such Early Valuation Date shall be a Valuation Date for an additional Physical Settlement of such Transaction (*provided* that Dealer may in its sole discretion elect that the Settlement Method elected by Counterparty for the Settlement described in clause (i) of this sentence shall apply) and (B) the number of Settlement Shares for such additional Settlement shall be the number of Remaining Shares on such Early Valuation Date. Notwithstanding the foregoing, in the case of a Nationalization or Merger Event, if at the time of the related Relevant Settlement Date the Shares have changed into cash or any other property or the right to receive cash or any other property, the Calculation Agent shall adjust the nature of the Shares as it determines appropriate to account for such change such that the nature of the Shares is consistent with what shareholders receive in such event.
ISDA Event:	(i) Any Event of Default or Termination Event, other than an Event of Default or Termination Event that also constitutes a Bankruptcy Termination Event, that gives rise to the right of either party to designate an Early Termination Date pursuant to Section 6 of the Agreement or (ii) the announcement of any event or transaction on or after the first Trading Day of the Forward Hedge Selling Period for such Transaction that, if consummated, would result in a Merger Event, Tender Offer, Nationalization, Delisting or Change in Law, in each case, as determined by the Calculation Agent; *provided* that, in the case of a Merger Event, only an announcement of such event or transaction by Counterparty will constitute an ISDA Event.
Amendment to Merger Event:	Section 12.1(b) of the Equity Definitions is hereby amended by deleting the remainder of such Section beginning with the words “in each case if the Merger Date is on or before” in the fourth to last line thereof.

Hedging Event:	In respect of any Transaction, the occurrence or existence of any of the following events on or following the first Trading Day of the Forward Hedge Selling Period: (i) (x) a Loss of Stock Borrow in connection with which Counterparty does not refer the Hedging Party to a satisfactory Lending Party that lends Shares in the amount of the Hedging Shares within the required time period as provided in Section 12.9(b)(iv) of the Equity Definitions or (y) a Hedging Disruption, (ii) (A) an Increased Cost of Stock Borrow or (B) an Increased Cost of Hedging in connection with which, in the case of sub-clause (A) or (B), Counterparty does not elect, and so notify the Hedging Party of its election, in each case, within the required time period to either amend such Transaction pursuant to Section 12.9(b)(v)(A) or Section 12.9(b)(vi)(A) of the Equity Definitions, as applicable, or pay an amount determined by the Calculation Agent that corresponds to the relevant Price Adjustment pursuant to Section 12.9(b)(v)(B) or Section 12.9(b)(vi)(B) of the Equity Definitions, as applicable, or (iii) a Market Disruption Event during an Unwind Period for such Transaction and the continuance of such Market Disruption Event for at least eight Scheduled Trading Days. In respect of any Transaction, if a Hedging Event occurs or exists with respect to such Transaction on or after the first Trading Day of the Forward Hedge Selling Period (as each such term is defined in the Equity Distribution Agreement) for such Transaction and prior to the Trade Date for such Transaction, the Calculation Agent may reduce the Initial Forward Price to account for such Hedging Event and any costs or expenses reasonably incurred by Dealer as a result of such Hedging Event.
Remaining Shares:	For any Transaction, on any day, the Number of Shares for such Transaction as of such day (or, if such day occurs during an Unwind Period for such Transaction, the Number of Shares for such Transaction as of such day *minus* the Unwound Shares for such Transaction for such Unwind Period on such day).
Unwound Shares:	For any Transaction, for any Unwind Period in respect of such Transaction on any day, the aggregate number of Shares with respect to which Dealer has unwound its commercially reasonable hedge position in respect of such Transaction in connection with the related Settlement as of such day.

Acknowledgements:

Non-Reliance:	Applicable
Agreements and Acknowledgements Regarding Hedging Activities:	Applicable
Additional Acknowledgements:	Applicable

Transfer:	Notwithstanding anything to the contrary herein or in the Agreement, Dealer may assign, transfer and set over all rights, title and interest, powers, obligations, privileges and remedies of Dealer under any Transaction, in whole or in part, to an affiliate of Dealer, with the prior written consent of Counterparty, such consent not to be unreasonably withheld or delayed.
Calculation Agent:	Dealer; *provided* that, following the occurrence and during the continuation of an Event of Default pursuant to Section 5(a)(vii) of the Agreement with respect to which Dealer is the sole Defaulting Party, Counterparty shall have the right to select a leading dealer in the market for U.S. corporate equity derivatives reasonably acceptable to Dealer to replace Dealer as Calculation Agent, and the parties shall work in good faith to execute any appropriate documentation required by such replacement Calculation Agent. Following any determination or calculation by the Calculation Agent hereunder, upon a written request by Counterparty, the Calculation Agent will, within a commercially reasonable period of time following such request, provide to Counterparty by e-mail to the e-mail address provided by Counterparty in such written request a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation, as the case may be; *provided* that Dealer shall not be required to disclose any proprietary or confidential models of Dealer or any information that is proprietary or subject to contractual, legal or regulatory obligations to not disclose such information.
Counterparty Payment/Delivery Instructions:	To be provided by Counterparty.
Dealer Payment/Delivery Instructions:	To be provided by Dealer.
Counterparty's Contact Details for Purpose of Giving Notice:	To be provided by Counterparty.
Dealer's Contact Details for Purpose of Giving Notice:	[•] Attn: [•] Telephone: [•] Email: [•]
Offices:	The Office of Counterparty for each Transaction is: Inapplicable, Counterparty is not a Multibranch Party. The Office of Dealer for each Transaction is: [Atlanta] [New York] [Toronto][Charlotte]

3. Effectiveness.
The effectiveness of each Supplemental Confirmation and the related Transaction on the Effective Date for such Supplemental Confirmation shall be subject to the satisfaction (or waiver by Dealer) of the following conditions:

(a) the representations and warranties of Counterparty and the Operating Partnership contained in the Equity Distribution Agreement, and any certificate delivered pursuant thereto by Counterparty or the Operating Partnership shall be true and correct on such Effective Date as if made as of such Effective Date;

(b) Counterparty shall have performed all of the obligations required to be performed by it under the Equity Distribution Agreement on or prior to such Effective Date;

(c) all of the conditions set forth in Section 9 of the Equity Distribution Agreement shall have been satisfied;

(d) the effective date of the Accepted Placement Notice (the "**Placement Date**") shall have occurred as provided in the Equity Distribution Agreement;

(e) all of the representations and warranties of Counterparty hereunder and under the Agreement shall be true and correct on such Effective Date as if made as of such Effective Date;

(f) Counterparty shall have performed all of the obligations required to be performed by it hereunder and under the Agreement on or prior to such Effective Date, including without limitation its obligations under Section 6 hereof; and

(g) Counterparty shall, if requested by Dealer prior to the commencement of the Forward Hedge Selling Period, have delivered to Dealer an opinion of Maryland counsel in form and substance reasonably satisfactory to Dealer, with respect to the matters set forth in Section 3(a)(i)-(iv) of the Agreement and that the maximum number of Shares initially issuable under such Transaction have been duly authorized and, upon issuance pursuant to the terms of such Transaction, will be validly issued, fully paid and nonassessable.

Notwithstanding the foregoing or any other provision of this Master Confirmation or any Supplemental Confirmation, if in respect of any Transaction (x) on or prior to 9:00 a.m., New York City time, on any Settlement Date (as defined in the Equity Distribution Agreement), in connection with Dealer establishing Dealer's commercially reasonable hedge position in respect of such Transaction, in Dealer's sole judgment, Dealer is unable, after using commercially reasonable efforts, to borrow and deliver for sale the full number of Shares to be borrowed and sold pursuant to the Equity Distribution Agreement on such Settlement Date or (y) in Dealer's sole judgment, Dealer would incur a stock loan cost of more than a rate equal to the Maximum Stock Loan Rate for such Transaction with respect to all or any portion of such full number of Shares, the effectiveness of the related Supplemental Confirmation and such Transaction shall be limited to the number of Shares Dealer is so able to borrow in connection with establishing its commercially reasonable hedge position of such Transaction at a cost of not more than a rate equal to the Maximum Stock Loan Rate for such Transaction, which, for the avoidance of doubt, may be zero.

4. Additional Mutual Representations and Warranties. In addition to the representations and warranties in the Agreement, each party represents and warrants to the other party that it is an "eligible contract participant", as defined in the U.S. Commodity Exchange Act (as amended), and an "accredited investor" as defined in Section 2(a)(15)(ii) of the Securities Act of 1933, as amended (the "**Securities Act**"), and is entering into each Transaction hereunder as principal and not for the benefit of any third party.

5. Additional Representations and Warranties of Counterparty and the Operating Partnership. The representations and warranties of Counterparty and the Operating Partnership set forth in Section 1 of the Equity Distribution Agreement are true and correct as of the date hereof, each Placement Date, each Trade Date for any Transaction and each "Forward Hedge Settlement Date" (as defined in the Equity Distribution Agreement) and are hereby deemed to be repeated to Dealer as if set forth herein. In addition to the representations and warranties in Section 1 of the Equity Distribution Agreement, the Agreement and those contained elsewhere herein, Counterparty represents and warrants to Dealer, and agrees with Dealer, that:

(a) without limiting the generality of Section 13.1 of the Equity Definitions, it acknowledges that Dealer is not making any representations or warranties with respect to the treatment of any Transaction, including without limitation ASC Topic 260, *Earnings Per Share*, ASC Topic 815, *Derivatives and Hedging*, ASC Topic 480, *Distinguishing Liabilities from Equity*, ASC 815-40, *Derivatives and Hedging - Contracts in Entity's Own Equity* (or any successor issue statements) or under the Financial Accounting Standards Board's Liabilities & Equity Project;

(b) Counterparty shall not take any action to reduce or decrease the number of authorized and unissued Shares below the sum of (i) the aggregate Number of Shares across all Transactions hereunder *plus* (ii) the total number of Shares issuable upon settlement (whether by net share settlement or otherwise) of any other transaction or agreement to which it is a party;

(c) Counterparty will not repurchase any Shares if, immediately following such repurchase, the aggregate Number of Shares across all Transactions hereunder would be equal to or greater than 4.5% of the number of then-outstanding Shares and it will notify Dealer promptly upon the announcement or consummation of any repurchase of Shares in an amount that, taken together with the amount of all repurchases since the date of the last such notice exceeds 0.5% of the number of then-outstanding Shares (or, in the case of the first such notice would result in the aggregate Number of Shares across all Transactions hereunder being equal to or greater than 3.5% of the number of then-outstanding Shares);

(d) it is not entering into this Master Confirmation or any Supplemental Confirmation to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares), or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) for the purpose of inducing the purchase or sale of the Shares (or any security convertible into or exchangeable for Shares) by others;

(e) it is not aware of any material non-public information regarding itself or the Shares; it is entering into this Master Confirmation and each Supplemental Confirmation and will provide any Settlement Notice in good faith and not as part of a plan or scheme to evade compliance with Rule 10b-5 or any other provision of the federal securities laws; it has not entered into or altered any hedging transaction relating to the Shares corresponding to or offsetting any Transaction; and it has consulted with its own advisors as to the legal aspects of its adoption and implementation of this Master Confirmation and each Supplemental Confirmation under Rule 10b5-1 under the Exchange Act ("**Rule 10b5-1**");

(f) as of the date hereof and the Trade Date for each Transaction no state or local (including non-U.S. jurisdictions) law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) as a result of Dealer or its affiliates owning or holding (however defined) Shares; *provided* that Counterparty makes no such representation or warranty regarding any such requirement that is applicable generally to the ownership of equity securities by Dealer;

(g) as of the date hereof, the Trade Date for each Transaction and the date of any payment or delivery by Counterparty or Dealer under any Transaction, it is not and will not be "insolvent" (as such term is defined under Section 101(32) of the Bankruptcy Code);

(h) it is not as of the date hereof, and on the Trade Date for each Transaction and after giving effect to the transactions contemplated hereby and by each Supplemental Confirmation will not be, required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended;

(i) as of the date hereof and the Trade Date for each Transaction, it: (i) is an "institutional account" as defined in FINRA Rule 4512(c) and (ii) is capable of evaluating investment strategies involving a security or securities, and will exercise independent judgment in evaluating any recommendations of Dealer or its associated persons; and

(j) IT UNDERSTANDS AS OF THE DATE HEREOF AND AS OF THE TRADE DATE FOR EACH TRANSACTION THAT EACH TRANSACTION IS SUBJECT TO COMPLEX RISKS WHICH MAY ARISE WITHOUT WARNING AND MAY AT TIMES BE VOLATILE AND THAT LOSSES MAY OCCUR QUICKLY AND IN UNANTICIPATED MAGNITUDE AND IS WILLING TO ACCEPT SUCH TERMS AND CONDITIONS AND ASSUME (FINANCIALLY AND OTHERWISE) SUCH RISKS.

6. Additional Covenants of Counterparty.

(a) Counterparty acknowledges and agrees that any Shares delivered by Counterparty to Dealer on any Settlement Date or Net Share Settlement Date for any Transaction will be (i) newly issued, (ii) approved for listing or quotation on the Exchange, subject to official notice of issuance, and (iii) registered under the Exchange Act, and, when delivered by Dealer (or an affiliate of Dealer) to securities lenders from whom Dealer (or an affiliate of Dealer) borrowed Shares in connection with hedging its exposure to such Transaction, will be freely saleable without further registration or other restrictions under the Securities Act in the hands of those securities lenders, irrespective of whether any such stock loan is effected by Dealer or an affiliate of Dealer. Accordingly, Counterparty agrees that any Shares so delivered will not bear a restrictive legend and will be deposited in, and the delivery thereof shall be effected through the facilities of, the Clearance System. In addition, Counterparty represents and agrees that any such Shares shall be, upon such delivery, duly and validly authorized, issued and outstanding, fully paid and nonassessable, free of any lien, charge, claim or other encumbrance.

(b) Counterparty agrees that Counterparty shall not enter into or alter any hedging transaction relating to the Shares corresponding to or offsetting any Transaction. Without limiting the generality of the provisions set forth opposite the caption "Unwind Activities" in Section 2 of this Master Confirmation, Counterparty acknowledges that it has no right to, and agrees that it will not seek to, control or influence Dealer's decision to make any "purchases or sales" (within the meaning of Rule 10b5-1(c)(1)(i)(B)(3)) under the Exchange Act or in connection with any Transaction, including, without limitation, Dealer's decision to enter into any hedging transactions.

(c) Counterparty acknowledges and agrees that any amendment, modification or waiver of this Master Confirmation or any Supplemental Confirmation must be effected in accordance with the requirements for the amendment or termination of a "plan" as defined in Rule 10b5-1(c). Without limiting the generality of the foregoing, any such amendment, modification or waiver shall be made in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5, and no such amendment, modification or waiver shall be made at any time at which Counterparty is aware of any material non-public information regarding Counterparty or the Shares.

(d) Counterparty shall promptly provide notice thereof to Dealer (i) upon the occurrence of any event that would constitute an Event of Default or a Termination Event in respect of which Counterparty is a Defaulting Party or an Affected Party, as the case may be, and (ii) upon announcement of any event that, if consummated, would constitute an Extraordinary Event or Potential Adjustment Event.

(e) Neither Counterparty nor any of its "affiliated purchasers" (as defined by Rule 10b-18 under the Exchange Act ("**Rule 10b-18**")) shall take any action that would cause any purchases of Shares by Dealer or any of its Affiliates in connection with any Cash Settlement or Net Share Settlement of any Transaction not to meet the requirements of the safe harbor provided by Rule 10b-18 if such purchases were made by Counterparty. Without limiting the generality of the foregoing, during any Unwind Period for any Transaction, except with the prior written consent of Dealer, Counterparty will not, and will cause its affiliated purchasers (as defined in Rule 10b-18) not to, directly or indirectly (including, without limitation, by means of a derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or announce or commence any tender offer relating to, any Shares (or equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable for the Shares.

(f) Counterparty will not be subject to any "restricted period" (as such term is defined in Regulation M promulgated under the Exchange Act ("**Regulation M**")) in respect of Shares or any security with respect to which the Shares are a "reference security" (as such term is defined in Regulation M) during any Unwind Period for any Transaction.

(g) Counterparty shall: (i) not, during any Unwind Period, make, and will use its commercially reasonable efforts to not permit to be made to the extent within its control, any public announcement (as defined in Rule 165(f) under the Securities Act) of any Merger Transaction unless such public announcement is made prior to the opening or after the close of the regular trading session on the Exchange; (ii) promptly (but in any event prior to the next opening of the regular trading session on the Exchange) notify Dealer following any such announcement that such announcement has been made; (iii) promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide Dealer with written notice specifying (A) Counterparty's average daily Rule 10b-18 Purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date for the Merger Transaction that were not effected through Dealer or its affiliates and (B) the number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full calendar months preceding such announcement date. Such written notice shall be deemed to be a certification by Counterparty to Dealer that such information is true and correct. In addition, Counterparty shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. Counterparty acknowledges that any such notice may result in a Regulatory Disruption, a Trading Condition or, if such notice relates to an event that is also an ISDA Event, an Early Valuation, or may affect the length of any ongoing Unwind Period. Accordingly, Counterparty acknowledges that its delivery of such notice must comply with the standards set forth in Section 6(c) above. "**Merger Transaction**" means any merger, acquisition or similar transaction involving a recapitalization as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act. For the avoidance of doubt, a Merger Transaction or the announcement thereof shall not give either party the right to designate an Early Valuation Date for any Transaction and/or to accelerate or preclude an election by Counterparty of Physical Settlement for any Settlement of any Transaction, unless such Merger Transaction or the announcement thereof is also an ISDA Event.

(h) Counterparty will promptly execute each properly completed Supplemental Confirmation delivered to Counterparty by Dealer.

(i) Counterparty represents to Dealer that Dealer, solely in its capacity as "Forward Purchaser" or "Forward Seller" (each as defined in the Equity Distribution Agreement) and solely with respect to its entering into and consummating the transactions contemplated by this Master Confirmation and the Equity Distribution Agreement (including any "Forward Contract" thereunder) may, to the extent necessary to consummate the transactions contemplated by this Master Confirmation and the Equity Distribution Agreement (including any "Forward Contract" thereunder), "Beneficially Own" Shares in excess of the "Ownership Limit" (as defined in Counterparty's Amended and Restated Charter (the "**Charter**")).

(j) Counterparty represents to Dealer, in respect of any Transaction, that a number of Shares at least equal to the Capped Number (as defined below) will be reserved for issuance by the Counterparty's board of directors.

7. Termination on Bankruptcy. The parties hereto agree that, notwithstanding anything to the contrary in the Agreement or the Equity Definitions, each Transaction constitutes a contract to issue a security of Counterparty as contemplated by Section 365(c)(2) of the Bankruptcy Code and that a Transaction and the obligations and rights of Counterparty and Dealer (except for any liability as a result of breach of any of the representations or warranties provided by Counterparty in Section 4 or Section 5 above) shall immediately terminate, without the necessity of any notice, payment (whether directly, by netting or otherwise) or other action by Counterparty or Dealer, if, on or prior to the final Settlement Date, Cash Settlement Payment Date or Net Share Settlement Date, as the case may be, for such Transaction an Insolvency Filing occurs or any other proceeding commences with respect to Counterparty under the Bankruptcy Code (a "**Bankruptcy Termination Event**").

8. Additional Provisions.
(a) Dealer acknowledges and agrees that Counterparty's obligations under the Transactions are not secured by any collateral and that neither this Master Confirmation nor any Supplemental Confirmation is intended to convey to Dealer rights with respect to the transactions contemplated hereby and by any Supplemental Confirmation that are senior to the claims of common stockholders in any U.S. bankruptcy proceedings of Counterparty; *provided* that nothing herein shall limit or shall be deemed to limit Dealer's right to pursue remedies in the event of a breach by Counterparty of its obligations and agreements with respect to this Master Confirmation, any Supplemental

Confirmation or the Agreement; *provided further* that nothing herein shall limit or shall be deemed to limit Dealer's rights in respect of any transaction other than the Transactions.

(b) [Reserved]. [Each of Dealer and Counterparty acknowledges to and agrees with the other party hereto and to and with the Agent that (i) the Agent is acting as agent for Dealer under each Transaction pursuant to instructions from such party, (ii) the Agent is not a principal or party to any Transaction, and may transfer its rights and obligations with respect to the Transactions, (iii) the Agent shall have no responsibility, obligation or liability, by way of issuance, guaranty, endorsement or otherwise in any manner with respect to the performance of either party under the Transaction (including arising from any failure by Dealer or Counterparty to pay or perform any obligation under each Transaction), and (iv) each party agrees to proceed solely against the other party, and not the Agent, to collect or recover any money or securities owed to it in connection with each Transaction. Counterparty acknowledges that the Agent is an affiliate of Dealer. Dealer will be acting for its own account in respect of this Master Confirmation and the Transactions contemplated hereunder.][Counterparty represents and warrants that it has received, read and understands Dealer's "Risk Disclosure Statement Regarding OTC Derivatives Products" and acknowledges the terms thereof as if it had signed the Risk Disclosure Statement Verification contained therein as of the date hereof.][Dealer has appointed as its agent, its indirect wholly-owned subsidiary, the Agent, for purposes of conducting on Dealer's behalf, a business in privately negotiated transactions in options and other derivatives. You hereby are advised that Dealer, the principal and stated counterparty in such transactions, duly has authorized the Agent to market, structure, negotiate, document, price, execute and hedge transactions in over-the-counter derivative products. The Agent has full, complete and unconditional authority to undertake such activities on behalf of Dealer. The Agent acts solely as agent and has no obligation, by way of issuance, endorsement, guarantee or otherwise with respect to the performance of either party under each Transaction. No Transaction is insured or guaranteed by the Agent.]

(c) The parties hereto intend for:

(i) each Transaction to be a "securities contract" as defined in Section 741(7) of the Bankruptcy Code, and the parties hereto to be entitled to the protections afforded by, among other Sections, Sections 362(b)(6), 362(b)(27), 362(o), 546(e), 546(j), 555 and 561 of the Bankruptcy Code;

(ii) the rights given to Dealer pursuant to "Early Valuation" in Section 2 above to constitute "contractual rights" to cause the liquidation of a "securities contract" and to set off mutual debts and claims in connection with a "securities contract", as such terms are used in Sections 555 and 362(b)(6) of the Bankruptcy Code;

(iii) any cash, securities or other property provided as performance assurance, credit support or collateral with respect to the Transactions to constitute "margin payments" and "transfers" under a "securities contract" as defined in the Bankruptcy Code;

(iv) all payments for, under or in connection with the Transactions, all payments for Shares and the transfer of Shares to constitute "settlement payments" and "transfers" under a "securities contract" as defined in the Bankruptcy Code; and

(v) any or all obligations that either party has with respect to this Master Confirmation, any Supplemental Confirmation or the Agreement to constitute property held by or due from such party to margin, guaranty or settle obligations of the other party with respect to the transactions under the Agreement (including the Transactions) or any other agreement between such parties.

(d) Notwithstanding any other provision of the Agreement, this Master Confirmation or any Supplemental Confirmation, in no event will Counterparty be required to deliver in the aggregate in respect of all Settlement Dates, Net Share Settlement Dates or other dates on which Shares are delivered in respect of any amount owed under any Transaction a number of Shares greater than two times the Number of Shares for such Transaction as of the Trade Date for such Transaction (the "**Capped Number**"). The Capped Number shall be subject to adjustment only on account of (x) Potential Adjustment Events of the type specified in (1) Sections 11.2(e)(i) through (vi) of the

Equity Definitions or (2) Section 11.2(e)(vii) of the Equity Definitions so long as, in the case of this sub-clause (2), such event is within Issuer's control and (y) Merger Events requiring corporate action of Issuer (or any surviving entity of the Issuer hereunder in connection with any such Merger Event). Counterparty represents and warrants to Dealer (which representation and warranty shall be deemed to be repeated for all Transactions on each day that any Transaction is outstanding) that the aggregate Capped Number across all Transactions hereunder is equal to or less than the number of authorized but unissued Shares that are not reserved for future issuance in connection with transactions in the Shares (other than the Transactions) on the date of the determination of such aggregated Capped Number. In the event Counterparty shall not have delivered the full number of Shares otherwise deliverable under any Transaction as a result of this Section 8(d) (the resulting deficit for such Transaction, the "**Deficit Shares**"), Counterparty shall be continually obligated to deliver Shares, from time to time until the full number of Deficit Shares have been delivered pursuant to this paragraph, on a pro rata basis across all Transactions hereunder, when, and to the extent that, (A) Shares are repurchased, acquired or otherwise received by Counterparty or any of its subsidiaries after the date hereof (whether or not in exchange for cash, fair value or any other consideration), (B) authorized and unissued Shares reserved for issuance in respect of other transactions prior to such date which prior to the relevant date become no longer so reserved or (C) Counterparty additionally authorizes any unissued Shares that are not reserved for transactions other than the Transactions (such events as set forth in clauses (A), (B) and (C) above, collectively, the "**Share Issuance Events**"). Counterparty shall promptly notify Dealer of the occurrence of any of the Share Issuance Events (including the number of Shares subject to clause (A), (B) or (C) and the corresponding number of Shares to be delivered for each Transaction) and, as promptly as reasonably practicable, deliver such Shares thereafter. Counterparty shall not, until Counterparty's obligations under the Transactions have been satisfied in full, use any Shares that become available for potential delivery to Dealer as a result of any Share Issuance Event for the settlement or satisfaction of any transaction or obligation other than the Transactions or reserve any such Shares for future issuance for any purpose other than to satisfy Counterparty's obligations to Dealer under the Transactions.

(e) The parties intend for this Master Confirmation and each Supplemental Confirmation to constitute a "Contract" as described in the letter dated October 6, 2003 submitted on behalf of Goldman, Sachs & Co. to Paula Dubberly of the staff of the Securities and Exchange Commission (the "**Staff**") to which the Staff responded in an interpretive letter dated October 9, 2003.

(f) The parties intend for each Transaction (taking into account purchases of Shares in connection with any Cash Settlement or Net Share Settlement of any Transaction) to comply with the requirements of Rule 10b5-1(c)(1)(i)(A) under the Exchange Act and for this Master Confirmation and each Supplemental Confirmation to constitute a binding contract or instruction satisfying the requirements of 10b5-1(c) and to be interpreted to comply with the requirements of Rule 10b5-1(c).

(g) Counterparty acknowledges that:
(i) during the term of the Transactions, Dealer and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to establish, adjust or unwind its hedge position with respect to the Transactions;

(ii) Dealer and its affiliates may also be active in the market for the Shares and derivatives linked to the Shares other than in connection with hedging activities in relation to the Transactions, including acting as agent or as principal and for its own account or on behalf of customers;

(iii) Dealer shall make its own determination as to whether, when or in what manner any hedging or market activities in Counterparty's securities shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Forward Price and the Settlement Price for each Transaction;

(iv) any market activities of Dealer and its affiliates with respect to the Shares may affect the market price and volatility of the Shares, as well as the Forward Price and the Settlement Price for each Transaction, each in a manner that may be adverse to Counterparty; and

(v) each Transaction is a derivatives transaction; Dealer may purchase or sell shares for its own account at an average price that may be greater than, or less than, the price received by Counterparty under the terms of the relevant Transaction.

(h) Counterparty and Dealer agree and acknowledge that: (A) the Transactions contemplated by this Master Confirmation will be entered into in reliance on the fact that this Master Confirmation and each Supplemental Confirmation hereto form a single agreement between Counterparty and Dealer, and Dealer would not otherwise enter into such Transactions; (B) this Master Confirmation, together with each Supplemental Confirmation hereto, is a "qualified financial contract", as such term is defined in Section 5-701(b)(2) of the General Obligations Law; (C) each Supplemental Confirmation hereto, regardless of whether transmitted electronically or otherwise, constitutes a "confirmation in writing sufficient to indicate that a contract has been made between the parties" hereto, as set forth in Section 5-701(b)(3)(b) of the General Obligations Law; and (D) this Master Confirmation and each Supplemental Confirmation hereto constitute a prior "written contract", as set forth in Section 5-701(b)(1)(b) of the General Obligations Law, and each party hereto intends and agrees to be bound by this Master Confirmation and such Supplemental Confirmation.

(i) Counterparty and Dealer agree that, upon the effectiveness of any Accepted Placement Notice relating to a Forward (as such term is defined in the Equity Distribution Agreement), in respect of the Transaction to which such Accepted Placement Notice relates, each of the representations, warranties, covenants, agreements and other provisions of this Master Confirmation and the Supplemental Confirmation for such Transaction (including, without limitation, Dealer's right to designate an Early Valuation Date in respect of such Transaction pursuant to the provisions opposite the caption "Early Valuation" in Section 2 and the termination of such Transaction following a Bankruptcy Termination Event as described in Section 7) shall govern, and be applicable to, such Transaction as of the first Trading Day of the Forward Hedge Selling Period for such Transaction as if the Trade Date for such Transaction were such first Trading Day.

(j) Tax Matters.

(i) Payer Tax Representations. For the purpose of Section 3(e) of the Agreement, Dealer and Counterparty make the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 9(h) of the Agreement or amounts payable hereunder that may be considered to be interest for U.S. federal income tax purposes) to be made by it to the other party under the Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of the Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of the Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of the Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of the Agreement, except that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

(ii) Payee Tax Representations. For the purpose of Section 3(f) of the Agreement:

a. The Dealer makes the following representations:

i. [Dealer is a national banking association organized under the laws of the United States and its U.S. taxpayer identification number is 13-5266470. It is "exempt" within the meaning of sections 1.6041-3(p) and 1.6049-4(c) of the U.S. Treasury Regulations from information reporting on Form 1099 and backup withholding.] [Dealer is a national banking association organized or formed under the laws of the United States and is an exempt recipient section 1.6049-4(c)(1)(ii)(M) of the U.S. Treasury Regulations.][For the purpose of Section 3(f) of the Agreement, Dealer represents that (a) it is a "foreign person" (as that term is used in section 1.6041-4(a) of the United States Treasury Regulations) for U.S. federal income tax purposes, and (b) each payment received or to be received by it in connection with this Master Confirmation is effectively connected with its conduct of a trade or business in the United States.][Dealer is a limited liability company organized under the laws of the State of Delaware and is treated as a disregarded entity of a New York corporation for U.S. federal income tax purposes.] [Dealer is a "U.S. person" (as that term is used in section 7701(a)(30) of the Code (as defined below)).][(i) It is a bank organized under the laws of Canada and is a corporation for U.S. federal income tax purposes. (ii) Each payment received or to be received by it in connection with this Master Confirmation will be effectively connected with its conduct of a trade or business in the United States.] [It is a "U.S. person" as that term is used in section 7701(a)(30) of the Code (as defined below).][(i) It is a "U.S. person" (as that term is used in section 1.1441-4(a)(3)(ii) of the U.S. Treasury Regulations) for U.S. federal income tax purposes. (ii) It is a corporation organized and existing under the laws of the State of North Carolina. (iii) It is an exempt recipient within the meaning of section 1.6049-4(c)(1)(ii) of the U.S. Treasury Regulations.][(i) It is a corporation for U.S. federal income tax purposes. (ii) Each payment received or to be received by it in connection with this Master Confirmation and each Transaction will be effectively connected with its conduct of a trade or business in the United States.]

b. Counterparty makes the following representations:

i. Counterparty is a corporation for U.S. federal income tax purposes.

ii. Counterparty is a "U.S. person" (as that term is used in section 7701(a)(30) of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**")), and section 1.1441-4(a)(3)(ii) of the U.S. Treasury Regulations) for U.S. federal income tax purposes, and a corporation that is an exempt recipient under section 1.6049-4(c)(1)(ii)(A) of the U.S. Treasury Regulations.

(iii) Agreements to Deliver Documents. [For the purpose of Sections 4(a)(i) and 4(a)(ii) of the Agreement, Dealer and Counterparty each agrees to deliver, as applicable, (i) in the case of Dealer, a completed and accurate U.S. Internal Revenue Service Form W-9 or applicable Form W-8ECI (or successor thereto) and (ii) in the case of Counterparty, a complete and accurate U.S. Internal Revenue Service Form W-9 (or successor thereto), in each case (x) promptly upon execution of this Master Confirmation, (y) promptly upon reasonable demand by the other party and (z) promptly upon learning that any form previously provided has become obsolete or incorrect.][For the purpose of Sections 4(a)(i) and 4(a)(ii) of the Agreement, Dealer and Counterparty each agrees to deliver, as applicable, (i) in the case of Dealer, a completed and accurate U.S. Internal Revenue Service Form W-8ECI (or successor thereto) with the "corporation" box checked on line 4 thereof, (ii) in the case of Counterparty, a complete and accurate U.S. Internal Revenue Service Form W-9 (or successor thereto) with the "corporation" box checked on

line 3 thereof and (iii) in the case of Dealer and Counterparty, any other form or document that may be required by the other party in order to allow such party to make a payment under this Master Confirmation, including any Credit Support Document, without any deduction or withholding for or on account of any tax or with such deduction or withholding at a reduced rate. In each case, such form or document shall be completed in a manner reasonably acceptable to the other party and shall be delivered (x) in the case of (i) and (ii) above, promptly upon execution of this Master Confirmation, (y) promptly upon reasonable demand by the other party and (z) promptly upon learning that any form previously provided has become inaccurate or incorrect.][For purposes of Sections 4(a)(i) and 4(a)(ii) of the Agreement, (A) Counterparty shall provide to Dealer a valid U.S. Internal Revenue Service Form W-9, or any successor thereto, or applicable U.S. Internal Revenue Service Form W-8, or any successor thereto, as the case may be and (B) Dealer shall provide to Counterparty an Internal Revenue Service Form W-8ECI "Certificate of Foreign Person's Claim That Income Is Effectively Connected With the Conduct of a Trade or Business in the United States" (i) on or before the date of execution of this Master Confirmation, (ii) promptly upon learning that any such tax form previously provided by it has become obsolete or incorrect and (iii) promptly upon reasonable request of the other party. Additionally, each party shall, promptly upon request by the other party, provide such other tax forms and documents that may be required or reasonably requested by the other party.]

(iv) Change of Account. Section 2(b) of the Agreement is hereby amended by the addition of the following after the word "change" in the fourth line thereof: "; provided that if any new account of one party is not in the same tax jurisdiction as the original account, the other party shall not be obliged to pay, for tax reasons, any greater amount and shall not be obliged to accept any lesser amount as a result of such change than would have been the case if such change had not taken place."

(v) "Tax" and "Indemnifiable Tax", each as defined in Section 14 of the Agreement shall not include (A) any tax imposed or collected pursuant to Sections 1471 through 1474 of the Code, any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "**FATCA Withholding Tax**") and (B) any tax imposed or collected pursuant to Section 871(m) of the Code or any current or future regulations or official interpretation thereof (a "**Section 871(m) Withholding Tax**"). For the avoidance of doubt, each of a FATCA Withholding Tax and a Section 871(m) Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for purposes of Section 2(d) of the Agreement.

(vi) Deduction or Withholding for Tax. Sections 2(d)(i), 2(d)(i)(4) and 2(d)(ii)(1) of the Agreement and the definition of "Tax" in the Agreement are hereby amended by replacing the words "pay", "paid", "payment" or "payments" with the words "pay or deliver", "paid or delivered", "payment or delivery" or "payments or deliveries", respectively.

(vii) [The parties agree that the definitions and provisions contained in the ISDA 2012 FATCA Protocol as published by ISDA on August 15, 2012, are incorporated into and apply to the Agreement as if set forth in full therein.]

9. Indemnification. Counterparty and the Operating Partnership agree to indemnify and hold harmless Dealer, its affiliates and its assignees and their respective directors, officers, employees, agents and controlling persons (Dealer and each such person being an "**Indemnified Party**") from and against any and all losses (excluding, for the avoidance of doubt, financial losses resulting from the economic terms of the Transactions), claims, damages and liabilities (or actions in respect thereof), joint and several, incurred by or asserted against such Indemnified Party arising out of, in connection with, or relating to any breach of any covenant or representation made by Counterparty in this Master Confirmation, any Supplemental Confirmation or the Agreement. Counterparty and the Operating Partnership will not be liable under the foregoing indemnification provision to the extent that any loss, claim, damage, liability or expense is found in a nonappealable judgment by a court of competent jurisdiction to have resulted from Dealer's breach of any covenant or representation made by Dealer in this Master Confirmation, any Supplemental Confirmation or the Agreement or any willful misconduct, gross negligence or bad faith of any Indemnified Party. If for any reason the foregoing indemnification is unavailable to any Indemnified Party or

insufficient to hold harmless any Indemnified Party, then Counterparty and the Operating Partnership shall contribute, to the maximum extent permitted by law, to the amount paid or payable by the Indemnified Party as a result of such loss, claim, damage or liability. In addition, Counterparty and the Operating Partnership will reimburse any Indemnified Party for all reasonable expenses (including reasonable counsel fees and expenses) as they are incurred in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim covered by this Section 9 or any action, suit or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Counterparty or the Operating Partnership. Counterparty and the Operating Partnership also agree that no Indemnified Party shall have any liability to Counterparty, the Operating Partnership or any person asserting claims on behalf of or in right of Counterparty or the Operating Partnership in connection with or as a result of any matter referred to in this Master Confirmation and any Supplemental Confirmation except to the extent that any losses, claims, damages, liabilities or expenses incurred by Counterparty or the Operating Partnership result from the Dealer's breach of any covenant or representation made by the Dealer in this Master Confirmation, any Supplemental Confirmation or the Agreement or any willful misconduct, gross negligence or bad faith of any Indemnified Party. The provisions of this Section 9 shall survive the completion of the Transactions contemplated by this Master Confirmation and any Supplemental Confirmation and any assignment and/or delegation of the Transactions made pursuant to the Agreement, this Master Confirmation or any Supplemental Confirmation shall inure to the benefit of any permitted assignee of Dealer. For the avoidance of doubt, any payments due as a result of this provision may not be used to set off any obligation of Dealer upon settlement of the Transactions.

10. Beneficial Ownership. Notwithstanding anything to the contrary in the Agreement, this Master Confirmation or any Supplemental Confirmation, in no event shall Dealer be entitled to receive, or be deemed to receive, or, with respect to clause (y) below, have the "right to acquire" (within the meaning of NYSE Rule 312.04(g)), Shares to the extent that, upon such receipt of such Shares, (i) the "beneficial ownership" (within the meaning of Section 13 of the Exchange Act and the rules promulgated thereunder) of Shares by Dealer, any of its affiliates' business units subject to aggregation with Dealer for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act and all persons who may form a "group" (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer with respect to "beneficial ownership" of any Shares (collectively, "**Dealer Group**") would be equal to or greater than the lesser of (x) 4.5% of the outstanding Shares (such condition, an "**Excess Section 13 Ownership Position**"), and (y) 4.9% of the outstanding Shares as of the Trade Date for any Transaction, which shall be notified by Counterparty to Dealer on or promptly following the Trade Date and set forth in the Supplemental Confirmation (such number of Shares, the "**Threshold Number of Shares**" and such condition, the "**Excess NYSE Ownership Position**") or (ii) Dealer, Dealer Group or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (Dealer, Dealer Group or any such person, a "**Dealer Person**") under Sections 3-601 through 3-603 of the Maryland Code (Corporations and Associations) or any state or federal bank holding company or banking laws, or any federal, state or local laws, regulations or regulatory orders applicable to ownership of Shares ("**Applicable Laws**"), would own, beneficially own, constructively own, control, hold the power to vote or otherwise meet a relevant definition of ownership in excess of a number of Shares equal to (x) the lesser of (A) the maximum number of Shares that would be permitted under Applicable Laws and (B) the number of Shares that would give rise to reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Laws and with respect to which such requirements have not been met or the relevant approval has not been received or that would give rise to any consequences under the constitutive documents of Counterparty (including, without limitation, Section 6.3 of the Charter or any contract or agreement to which Counterparty is a party), in each case *minus* (y) 1% of the number of Shares outstanding on the date of determination (such condition described in clause (i), an "**Excess Regulatory Ownership Position**"). If any delivery owed to Dealer under any Transaction is not made, in whole or in part, as a result of this provision, (i) Counterparty's obligation to make such delivery shall not be extinguished and Counterparty shall make such delivery as promptly as practicable after, but in no event later than one Exchange Business Day after, Dealer gives notice to Counterparty that such delivery would not result in (x) Dealer Group directly or indirectly so beneficially owning in excess of the lesser of (A) 4.5% of the outstanding Shares and (B) the Threshold Number of Shares or (y) the occurrence of an Excess Regulatory Ownership Position and (ii) if such delivery relates to a Physical Settlement of any Transaction, notwithstanding anything to the contrary herein, Dealer shall not be obligated to satisfy the

portion of its payment obligation with respect to such Transaction corresponding to any Shares required to be so delivered until the date Counterparty makes such delivery.

11. Non-Confidentiality. The parties hereby agree that (i) effective from the date of commencement of discussions concerning the Transactions, Counterparty and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transactions and all materials of any kind, including opinions or other tax analyses, provided by Dealer and its affiliates to Counterparty relating to such tax treatment and tax structure; *provided* that the foregoing does not constitute an authorization to disclose the identity of Dealer or its affiliates, agents or advisers, or, except to the extent relating to such tax structure or tax treatment, any specific pricing terms or commercial or financial information, and (ii) Dealer does not assert any claim of proprietary ownership in respect of any description contained herein or therein relating to the use of any entities, plans or arrangements to give rise to a particular U.S. federal income tax treatment for Counterparty.

12. Restricted Shares. If Counterparty is unable to comply with the covenant of Counterparty contained in Section 6 above or Dealer otherwise determines in its reasonable opinion that any Shares to be delivered to Dealer by Counterparty under any Transaction may not be freely returned by Dealer to securities lenders as described in the covenant of Counterparty contained in Section 6 above, then delivery of any such Settlement Shares (the "**Unregistered Settlement Shares**") shall be effected pursuant to Annex A hereto, unless waived by Dealer.

13. Use of Shares. Dealer acknowledges and agrees that, except in the case of a Private Placement Settlement, Dealer shall use any Shares delivered by Counterparty to Dealer on any Settlement Date to return to securities lenders to close out borrowings created by Dealer in connection with Dealer's hedging activities related to exposure under the Transactions or otherwise in compliance with applicable law.

14. Rule 10b-18. In connection with bids and purchases of Shares in connection with any Net Share Settlement or Cash Settlement of any Transaction, Dealer shall use commercially reasonable efforts to conduct its activities, or cause its affiliates to conduct their activities, in a manner consistent with the requirements of the safe harbor provided by Rule 10b-18 under the Exchange Act, as if such provisions were applicable to such purchases and taking into account any applicable Securities and Exchange Commission no-action letters as appropriate, and subject to any delays between the execution and reporting of a trade of the Shares on the Exchange and other circumstances beyond Dealer's control.

15. Governing Law. Notwithstanding anything to the contrary in the Agreement, the Agreement, this Master Confirmation, any Supplemental Confirmation and all matters arising in connection with the Agreement this Master Confirmation and any Supplemental Confirmation shall be governed by, and construed and enforced in accordance with, the laws of the State of New York (without reference to its choice of laws doctrine other than Title 14 of Article 5 of the New York General Obligations Law).

16. Set-Off. Each party waives any and all rights it may have to set-off delivery or payment obligations it owes to the other party under any Transaction against any delivery or payment obligations owed to it by the other party, whether arising under the Agreement, under any other agreement between parties hereto, by operation of law or otherwise.

17. Staggered Settlement. Notwithstanding anything to the contrary herein, Dealer may, by prior notice to Counterparty, satisfy its obligation to deliver any Shares or other securities on any date due (an "**Original Delivery Date**") by making separate deliveries of Shares or such securities, as the case may be, at more than one time on or prior to such Original Delivery Date, so long as the aggregate number of Shares and other securities so delivered on or prior to such Original Delivery Date is equal to the number required to be delivered on such Original Delivery Date.

18. Waiver of Trial by Jury. EACH OF COUNTERPARTY AND DEALER HEREBY IRREVOCABLY WAIVES (ON ITS OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF ITS STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR

COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE TRANSACTION OR THE ACTIONS OF DEALER OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.

19. Jurisdiction. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS. NOTHING IN THIS PROVISION SHALL PROHIBIT A PARTY FROM BRINGING AN ACTION TO ENFORCE A MONEY JUDGMENT IN ANY OTHER JURISDICTION.

20. Counterparts.
(a) This Master Confirmation may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Master Confirmation by signing and delivering one or more counterparts. Counterparts may be delivered via facsimile, electronic mail (including any electronic signature covered by the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act, the Electronic Signatures and Records Act or other applicable law, e.g., DocuSign (any such signature, an "**Electronic Signature**")) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. The words "execution," "signed," "signature" and words of like import in this Master Confirmation or in any other certificate, agreement or document related to this Master Confirmation shall include any Electronic Signature, except to the extent electronic notices are expressly prohibited under this Master Confirmation or the Agreement.

(b) Notwithstanding anything to the contrary in the Agreement, either party may deliver to the other party a notice relating to any Event of Default or Termination Event under this Master Confirmation by e-mail.

21. Delivery of Cash. For the avoidance of doubt, nothing in this Master Confirmation or any Supplemental Confirmation shall be interpreted as requiring Counterparty to deliver cash in respect of the settlement of the Transactions, except in circumstances where the required cash settlement thereof is permitted for classification of the contract as equity by ASC 815-40, *Derivatives and Hedging - Contracts in Entity's Own Equity*, as in effect on the Trade Date (including, for the avoidance of doubt, where Counterparty elects Cash Settlement). For the avoidance of doubt, the preceding sentence shall not be construed as limiting Section 9 hereunder or any damages that may be payable by Counterparty as a result of a breach of this Master Confirmation or any Supplemental Confirmation.

22. Adjustments. For the avoidance of doubt, whenever the Calculation Agent, the Hedging Party or the Determining Party is called upon to make an adjustment pursuant to the terms of this Master Confirmation, any Supplemental Confirmation or the Equity Definitions to take into account the effect of an event, the Calculation Agent, the Hedging Party or the Determining Party, as applicable, shall make such adjustment by reference to the effect of such event on the Hedging Party, assuming that the Hedging Party maintains a commercially reasonable hedge position at the time of the event.

23. Other Forward Transactions. Counterparty agrees that (x) it shall not cause to occur, or permit to exist, any Forward Hedge Selling Period at any time there is (1) a "Forward Hedge Selling Period" (or equivalent term) relating to any other issuer forward sale or similar transaction (including, without limitation, any "Transaction" under (as and defined under) any substantially identical master forward confirmation) with any financial institution other than Dealer (an "**Other Forward Transaction**"), (2) any "Unwind Period" (or equivalent term) hereunder or under any Other Forward Transaction or (3) any other period in which Counterparty directly or indirectly issues and sells Shares pursuant to an underwriting agreement (or similar agreement including, without limitation, any equity distribution agreement) (such period, a "**Selling Period**") that Counterparty enters into with any financial institution other than Dealer, and (y) Counterparty shall not cause to occur, or permit to exist, an Unwind Period at any time there is an "Unwind Period" (or equivalent term) under any Other Forward Transaction, a "Forward Hedge Selling Period" (or equivalent term) relating to any Transaction or any Other Forward Transaction, or any Selling Period.

24. Designation by Dealer. Notwithstanding any other provision of this Master Confirmation or any Supplemental Confirmation to the contrary requiring or allowing Dealer to purchase, sell, receive or deliver any Shares or other securities to or from Counterparty, Dealer may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities and otherwise to perform Dealer's obligations in respect of any Transaction and any such designee may assume such obligations. Dealer shall be discharged of its obligations to Counterparty only to the extent of any such performance.

25. The 871(m) Protocol. To the extent that either party to the Agreement with respect to a Transaction is not an adhering party to the ISDA 2015 Section 871(m) Protocol published by the International Swaps and Derivatives Association, Inc. on November 2, 2015 and available at www.isda.org, as may be amended, supplemented, replaced or superseded from time to time (the "**871(m) Protocol**"), the parties agree that the provisions and amendments contained in the Attachment to the 871(m) Protocol are incorporated into and apply to the Agreement with respect to each Transaction as if set forth in full herein. The parties further agree that, solely for purposes of applying such provisions and amendments to the Agreement with respect to each Transaction, references to "each Covered Master Agreement" in the 871(m) Protocol will be deemed to be references to the Agreement with respect to each Transaction, and references to the "Implementation Date" in the 871(m) Protocol will be deemed to be references to the Trade Date of each Transaction. For greater certainty, if there is any inconsistency between this provision and the provisions contained in any other agreement between the parties with respect to each Transaction, this provision shall prevail unless such other agreement expressly overrides the provisions of the Attachment to the 871(m) Protocol.

26. [U.S. Stay Regulations. To the extent that the QFC Stay Rules are applicable hereto, then the parties agree that (i) to the extent that prior to the date hereof both parties have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the "**Protocol**"), the terms of the Protocol are incorporated into and form a part of this Master Confirmation, and for such purposes this Master Confirmation shall be deemed a Protocol Covered Agreement and each party shall be deemed to have the same status as "Regulated Entity" and/or "Adhering Party" as applicable to it under the Protocol; (ii) to the extent that prior to the date hereof the parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the "**Bilateral Agreement**"), the terms of the Bilateral Agreement are incorporated into and form a part of this Master Confirmation and each party shall be deemed to have the status of "Covered Entity" or "Counterparty Entity" (or other similar term) as applicable to it under the Bilateral Agreement; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the "**Bilateral Terms**") of the form of bilateral template entitled "Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)" published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at www.isda.org and, a copy of which is available upon request), the effect of which is to amend the qualified financial contracts between the parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of this Master Confirmation, and for such purposes this Master Confirmation shall be deemed a "Covered Agreement," Dealer shall be deemed a "Covered Entity" and Counterparty shall be deemed a "Counterparty Entity." In the event that, after the date of this Master Confirmation, both parties hereto become adhering parties to the Protocol, the terms of the Protocol will replace the terms of this paragraph. In the event of any inconsistencies between this Master Confirmation and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the "**QFC Stay Terms**"), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to "this Master Confirmation" include any related credit enhancements entered into between the parties or provided by one to the other. In addition, the parties agree that the terms of this paragraph shall be incorporated into any related covered affiliate credit enhancements, with all references to Dealer replaced by references to the covered affiliate support provider.

"**QFC Stay Rules**" mean the regulations codified at 12 C.F.R. 252.2, 252.81-8, 12 C.F.R. 382.1-7 and 12 C.F.R. 47.1-8, which, subject to limited exceptions, require an express recognition of the stay-and-transfer powers of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and the Orderly Liquidation Authority under Title II of the Dodd Frank Wall Street Reform and Consumer Protection Act and the override of

default rights related directly or indirectly to the entry of an affiliate into certain insolvency proceedings and any restrictions on the transfer of any covered affiliate credit enhancements.]

[Signature Page Follows]

Counterparty hereby agrees (a) to check this Master Confirmation carefully and promptly upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing (in the exact form provided by Dealer) correctly sets forth the terms of the agreement between Dealer and Counterparty hereunder, by manually signing this Master Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and promptly returning an executed copy to us.

Yours faithfully,

[Dealer]

By: _____
Name:
Title:

[Agent

By: _____
Name:
Title:]

[Signature Page to Master Confirmation]

Agreed and accepted by:
HIGHWOODS PROPERTIES, INC.

By: _____
Name:
Title:

Agreed and accepted with respect to Sections 5 and 9 hereof and Annex A hereto by:
HIGHWOODS REALTY LIMITED PARTNERHSIP

By: _____
Name:
Title:

On behalf of Highwoods Properties, Inc., as the sole general partner of Highwoods Realty Limited Partnership

ANNEX A

PRIVATE PLACEMENT PROCEDURES

If Counterparty delivers Unregistered Settlement Shares pursuant to Section 12 above (a "**Private Placement Settlement**"), then:

(a) all Unregistered Settlement Shares shall be delivered to Dealer (or any affiliate of Dealer designated by Dealer) pursuant to the exemption from the registration requirements of the Securities Act provided by Section 4(a)(2) thereof;

(b) as of or prior to the date of delivery, Dealer and any potential purchaser of any such shares from Dealer (or any affiliate of Dealer designated by Dealer) identified by Dealer shall be afforded a commercially reasonable opportunity to conduct a due diligence investigation with respect to Counterparty customary in scope for private placements of equity securities of similar size (including, without limitation, the right to have made available to them for inspection all financial and other records, pertinent corporate documents and other information reasonably requested by them); *provided* that prior to receiving or being granted access to any such information, Dealer, such affiliate of Dealer or such potential purchaser, as the case may be, may be required by Counterparty to enter into a customary nondisclosure agreement with Counterparty in respect of any such due diligence investigation;

(c) as of the date of delivery, Counterparty and the Operating Partnership shall enter into an agreement (a "**Private Placement Agreement**") with Dealer (or any affiliate of Dealer designated by Dealer) in connection with the private placement of such shares by Counterparty to Dealer (or any such affiliate) and the private resale of such shares by Dealer (or any such affiliate), substantially similar to private placement purchase agreements customary for private placements of equity securities of similar size, in form and substance commercially reasonably satisfactory to Dealer, which Private Placement Agreement shall include, without limitation, provisions substantially similar to those contained in such private placement purchase agreements relating, without limitation, to the indemnification of, and contribution in connection with the liability of, Dealer and its affiliates and obligations to use best efforts to obtain customary opinions, accountants' comfort letters and lawyers' negative assurance letters, and shall provide for the payment by Counterparty of all commercially reasonable fees and expenses in connection with such resale, including all commercially reasonable fees and expenses of counsel for Dealer, and shall contain representations, warranties, covenants and agreements of Counterparty reasonably necessary or advisable to establish and maintain the availability of an exemption from the registration requirements of the Securities Act for such resales; and

(d) in connection with the private placement of such shares by Counterparty to Dealer (or any such affiliate) and the private resale of such shares by Dealer (or any such affiliate), Counterparty shall, if so requested by Dealer, prepare, in cooperation with Dealer, a private placement memorandum in form and substance reasonably satisfactory to Dealer.

In the case of a Private Placement Settlement, Dealer shall, in its good faith discretion, adjust the amount of Unregistered Settlement Shares to be delivered to Dealer hereunder in a commercially reasonable manner to reflect the fact that such Unregistered Settlement Shares may not be freely returned to securities lenders by Dealer and may only be saleable by Dealer at a discount to reflect the lack of liquidity in Unregistered Settlement Shares.

If Counterparty delivers any Unregistered Settlement Shares in respect of a Transaction, Counterparty agrees that (i) such Shares may be transferred by and among Dealer and its affiliates and (ii) after the applicable "holding period" within the meaning of Rule 144(d) under the Securities Act has elapsed after the applicable Settlement Date, Counterparty shall promptly remove, or cause the transfer agent for the Shares to remove, any legends referring to any transfer restrictions from such Shares upon delivery by Dealer (or such affiliate of Dealer) to Counterparty or such transfer agent of any seller's and broker's representation letters customarily delivered by Dealer or its affiliates in connection with resales of restricted securities pursuant to Rule 144 under the Securities Act, each without any further requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by Dealer (or such affiliate of Dealer).

EXHIBIT A

SUPPLEMENTAL CONFIRMATION

To:	Highwoods Properties, Inc.
From:	[Dealer]
Re:	Issuer Share Forward Sale Transaction
Date:	[_____], 20[__]

Ladies and Gentlemen:

The purpose of this Supplemental Confirmation is to confirm the terms and conditions of the Transaction entered into between [•] ("**Dealer**") and Highwoods Properties, Inc. ("**Counterparty**") (together, the "**Contracting Parties**") on the Trade Date specified below. This Supplemental Confirmation is a binding contract between Dealer and Counterparty as of the relevant Trade Date for the Transaction referenced below.

1. This Supplemental Confirmation supplements, forms part of, and is subject to the Master Confirmation dated as of February 11, 2026 (the "**Master Confirmation**") between the Contracting Parties, as amended and supplemented from time to time. All provisions contained in the Master Confirmation govern this Supplemental Confirmation except as expressly modified below.

2. The terms of the Transaction to which this Supplemental Confirmation relates are as follows:

Trade Date:	[_____], 20[__]
Effective Date:	[_____], 20[__]
Maturity Date:	[_____], 20[__]
Number of Shares:	[_____]
Initial Forward Price:	USD [___]
Spread:	[_.__]%
Volume-Weighted Hedge Price:	USD [___]
Threshold Price:	USD [___]
Initial Stock Loan Rate:	[__] basis points per annum
Maximum Stock Loan Rate:	[__] basis points per annum
Threshold Number of Shares:	[__]

[Signature Page Follows]

Counterparty hereby agrees (a) to check this Supplemental Confirmation carefully and promptly upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing (in the exact form provided by Dealer) correctly sets forth the terms of the agreement between Dealer and Counterparty hereunder, by manually signing this Supplemental Confirmation or this page hereof as evidence of agreement to such terms and providing the other information requested herein and promptly returning an executed copy to us.

Yours faithfully,

[Dealer]

By: _____
Name:
Title:

[Agent

By: _____
Name:
Title:]

Agreed and accepted by:
HIGHWOODS PROPERTIES, INC.

By: _____
Name:
Title:

Schedule I

FORWARD PRICE REDUCTION AMOUNTS

Forward Price Reduction Date:	**Forward Price Reduction Amount:**
Trade Date	USD0.00
[_____], 20[__]	USD[___]
[_____], 20[__]	USD[___]
……..	……..
[_____], 20[__]	USD[___]

REGULAR DIVIDEND AMOUNTS

[For any calendar month ending on or prior to [•]:	USD[___]
For any calendar month ending after [•]:	USD[___]]

Exhibit 1.4

Date: [•]

To: Highwoods Properties, Inc.

Re: Master Confirmation – Equity Warrants

The purpose of this letter agreement (including the terms set forth in Appendix 1, this "**Master Confirmation**") is to confirm the terms and conditions for one or more Warrants that Highwoods Properties, Inc. ("**Company**"), will issue to [•] from time to time. Each such transaction (a "**Transaction**") entered into between Company and [•] that is to be subject to this Master Confirmation shall be evidenced by a supplemental confirmation substantially in the form of Annex A hereto (a "**Supplemental Confirmation**"), with such modifications thereto as to which Company and [•] mutually agree. This Master Confirmation and a Supplemental Confirmation together shall constitute a "Confirmation" as referred to in the Agreement specified below. The time of any Transaction is available upon request.

The definitions and provisions contained in the 2002 ISDA Equity Derivatives Definitions (the "**Equity Definitions**"), as published by International Swaps and Derivatives Association, Inc. ("**ISDA**"), are incorporated into this Master Confirmation.

Each party is hereby advised, and each such party acknowledges, that the other party has engaged in, or refrained from engaging in, substantial financial transactions and has taken other material actions in reliance upon the parties' entry into the Transaction to which this Master Confirmation and a Supplemental Confirmation relate on the terms and conditions set forth below and therein.

1. Each Confirmation shall supplement, form a part of and be subject to an agreement (the "Agreement") in the form of the ISDA 2002 Master Agreement (the "ISDA Form"), as published by ISDA, as if [•] and Company had executed the ISDA Form on the date hereof (but without any Schedule except for (i) the election of New York law (without regard to New York's choice of laws doctrine other than Title 14 of Article 5 of the New York General Obligations Law (the "General Obligations Law")) as the governing law and US Dollars ("USD") as the Termination Currency and (ii) the election that the "Cross Default" provisions of Section 5(a)(vi) of the Agreement shall apply to [•] and Company with a "Threshold Amount" in respect of [•] of 3% of the stockholders' equity of [•] and a "Threshold Amount" in respect of Company of USD 35,000,000 million (including its equivalent in another currency); provided that (x) the words ", or becoming capable at such time of being declared," shall be deleted from clause (1) thereof, (y) "Specified Indebtedness" has the meaning specified in Section 14 of the Agreement, except that such term shall not include obligations in respect of deposits received in the ordinary course of [•]'s banking business and (z) the following language shall be added to the end of such Section 5(a)(vi): "Notwithstanding the foregoing, a default under subsection (2) hereof shall not constitute an Event of Default if (X) the default was caused solely by error or omission of an administrative or operational nature; (Y) funds were available to enable the party to make the payment when due; and (Z) the payment is made within two Local Business Days of such party's receipt of written notice of its failure to pay." All provisions contained in the Agreement govern this Master Confirmation and each Supplemental Confirmation except as expressly modified herein or in such Supplemental Confirmation.

If, in relation to any Transaction to which this Master Confirmation and a Supplemental Confirmation relate, there is any inconsistency between the Agreement, this Master Confirmation, such Supplemental Confirmation and the Equity Definitions, the following will prevail for purposes of such Transaction in the order of precedence indicated: (i) such Supplemental Confirmation; (ii) this Master Confirmation; (iii) the Equity Definitions; and (iv) the Agreement. The parties hereby agree that no Transaction other than the Transactions to which this Master Confirmation relate shall be governed by the Agreement. This Master Confirmation and the Agreement, together with the Supplemental Confirmation relating to a Transaction, shall constitute the written agreement between Company and [•] with respect to such Transaction.

The Transactions hereunder shall be the sole Transactions under the Agreement. If there exists any ISDA Master Agreement between [•] and Company or any confirmation or other agreement between [•] and Company pursuant to which an ISDA Master Agreement is deemed to exist between [•] and Company, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which [•] and Company are parties, none of the Transactions shall be considered a Transaction under, or otherwise governed by, such existing or deemed ISDA Master Agreement.

2. Each Transaction is a Warrant Transaction, which shall be considered a Share Option Transaction for purposes of the Equity Definitions. The terms of a particular Transaction to which this Master Confirmation and a Supplemental Confirmation relate are as follows:

General Terms:

Trade Date: For each Transaction, as set forth in the related Supplemental Confirmation.

Warrants: Equity call warrants, each giving the holder the right to purchase a number of Shares equal to the Warrant Entitlement at a price per Share equal to the Strike Price, subject to the terms set forth under the caption "Settlement Terms" below. For the purposes of the Equity Definitions, each reference to a Warrant herein shall be deemed to be a reference to a Call Option.

Warrant Style: American

Seller: Company

Buyer: [•]

Shares: The shares of common stock, par value USD 0.01 per Share, of Company (Ticker: "**HIW**")

Components: Each Transaction will be divided into a number of individual Components equal to the Number of Components for such Transaction, each with the terms set forth in this Master Confirmation and the related Supplemental Confirmation, and, in particular, with the Number of Warrants and Expiration Date set forth in the related Supplemental Confirmation. The payments and deliveries to be made upon settlement of each Transaction will be determined separately for each Component as if each Component were a separate Transaction under the Agreement.

Number of Components: For each Transaction, as set forth in the related Supplemental Confirmation.

Transaction Number of Warrants: For each Transaction, as set forth in the related Supplemental Confirmation. For the avoidance of doubt, the Transaction Number of Warrants shall, if applicable, be reduced by any Warrants exercised or deemed exercised hereunder.

Transaction Number of Shares: For each Transaction, the Transaction Number of Warrants *multiplied* by the Warrant Entitlement. For the avoidance of

doubt, the Transaction Number of Shares for any Transaction shall not exceed the number of Shares introduced into the public markets by Warrant Hedge Seller (as defined below) in connection with the Initial Hedge Position in respect of such Transaction pursuant to the EDA.

Number of Warrants: With respect to each Component of a Transaction, the Transaction Number of Warrants *divided* by the Number of Components (rounded using a rounding convention determined by the Calculation Agent, with any remainder allocated to the final Component of such Transaction), as specified in the related Supplemental Confirmation.

Warrant Entitlement: One Share per Warrant

Strike Price: For each Transaction, as set forth in the related Supplemental Confirmation.

Premium: For all Components comprising a Transaction, as set forth in the related Supplemental Confirmation.

Premium Payment Date: For each Transaction, the later of (i) the second Currency Business Day following the Trade Date for such Transaction and (ii) the first Currency Business Day following the date on which Company executes the related Supplemental Confirmation evidencing such Transaction.

It shall be a condition to [•]'s obligation to pay to Company the Premium on the Premium Payment Date that Company shall have satisfied (or caused to have satisfied) each of the conditions set forth in Section 8 of this Master Confirmation.

Initial Share Price: For each Transaction, unless otherwise agreed between the parties, the volume-weighted average price per Share at which Warrant Hedge Seller establishes the initial hedge of the equity price risk undertaken by [•] with respect to the Transaction Number of Warrants for such Transaction during the Warrant Hedge Selling Period (as defined in the EDA) by selling Shares in transactions effected under the Prospectus (as defined in the EDA) (as defined below)), net of any sales commissions or other discounts as set forth in the EDA, in amounts and at times determined by [•] (or Warrant Hedge Seller) but pursuant to commercially reasonable instructions or parameters (e.g., limit prices) as Company may notify [•] from time to time (and [•] will use good faith and commercially reasonable efforts to comply with any such instructions or parameters, subject to market conditions, and subject to applicable legal, regulatory or self-regulatory requirements or related policies and procedures (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by [•], so long as such requirements, policies or procedures are consistently applied across all similarly situated counterparties and transactions), and as set forth in the Supplemental Confirmation. The

number of Shares comprising [•]'s initial hedge is referred to herein as the "**Initial Hedge Position**".

EDA: The Equity Distribution Agreement, dated [•], by and among Company, as Company, and [•], as Agent, Warrant Purchaser and Warrant Hedge Seller ("**Warrant Hedge Seller**").

Exchange: The New York Stock Exchange

Related Exchange(s): All Exchanges

Clearance System: The Depository Trust Company ("**DTC**")

Procedures for Exercise:

In respect of any Component:

Commencement Date: The Trade Date.

Latest Exercise Time: 7:00 p.m. (New York City time)

Expiration Time: 7:00 p.m. (New York City time)

Expiration Dates: As set forth in the related Supplemental Confirmation (or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day that is not already an Expiration Date for another Component under any Transaction).

Valuation Date: Each Exercise Date. Section 3.1(f) of the Equity Definitions shall not apply to any Expiration Date and Section 6.6 of the Equity Definitions shall not apply to any Valuation Date.

Multiple Exercise: Applicable

Minimum Number of Warrants: One

Maximum Number of Warrants: The number of Warrants remaining unexercised

Integral Multiple: One

Automatic Exercise: Applicable; *provided* that "In-the-Money" shall mean that the Reference Price is greater than the Strike Price; *provided, further,* that Section 3.4(a) and (b) of the Equity Definitions is hereby amended by replacing "the Expiration Time on the Expiration Date" with "7:00 p.m. (New York City time) on the Expiration Date (or, to the extent Hedging Party's Hedge Positions includes positions with respect to any options referencing Shares with the same expiration date as such Component, 9:00 a.m. (New York City time) on the Scheduled Trading Day immediately following the Expiration Date)" in each place it appears therein.

Reference Price: The official closing price of a Share on the relevant Expiration Date published on Bloomberg Page "<HIW US EQUITY>

<HP>" (or any successor page thereto), or if such price is not so reported on such date for any reason or is manifestly erroneous, the Reference Price on such Expiration Date shall be determined by the Calculation Agent in good faith and in a commercially reasonable manner.

Market Disruption Event: The definition of "Market Disruption Event" in Section 6.3(a) of the Equity Definitions is hereby amended by deleting the words "at any time during the one-hour period that ends at the relevant Valuation Time, Latest Exercise Time, Knock-in Valuation Time or Knock-out Valuation Time, as the case may be" and replacing the words "or (iii) an Early Closure" with "(iii) an Early Closure that the Calculation Agent determines is material, or (iv) a Regulatory Disruption, in each case at any time on any Scheduled Trading Day during the period commencing on, and including, the Trade Date of the relevant Transaction to, and including, the Expiration Date of such Component (such period, the "**Term of a Component**")".

The definition of "Early Closure" in Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term "Scheduled Closing Time" in the fourth line thereof.

Notwithstanding the second and third sentences of Section 3.1(f) of the Equity Definitions, if any Scheduled Trading Day during the Term of a Component is a Disrupted Day, then [•] may postpone the Expiration Date specified in the related Supplemental Confirmation for such Transaction to a Scheduled Trading Day determined by [•], such Scheduled Trading Day not to occur later than the Scheduled Trading Day that is a number of Scheduled Trading Days equal to the number of Components for such Transaction following the originally scheduled Expiration Date of such Component.

Regulatory Disruption: Any event that [•], in its commercially reasonable discretion based on advice of counsel, determines makes it appropriate with regard to any legal, regulatory or self-regulatory requirements or related policies and procedures (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by [•] or its affiliates , so long as such requirements, policies or procedures are consistently applied across all similarly situated counterparties and transactions), for [•] to refrain from or decrease any market activity in connection with the relevant Transaction. Whenever a Regulatory Disruption occurs, [•] shall notify Company of such occurrence as soon as reasonably practicable under the circumstances; *provided* that [•] shall not be required to communicate to Company the reason for [•]'s exercise of its rights pursuant to this provision if [•] reasonably determines in good faith that disclosing such reason may result in a violation of any legal, regulatory, or self-regulatory requirements or related policies and procedures (whether or not such requirements, policies or procedures are imposed by law or

have been voluntarily adopted by [•], so long as such requirements, policies or procedures are consistently applied across all similarly situated counterparties and transactions). [•] may exercise its right in respect of any Regulatory Disruption only in good faith in relation to events or circumstances that are not the result of actions of it or any of its Affiliates that are taken with the intent to avoid its obligations under the Transactions.

Settlement Terms:

In respect of any Component:

Settlement Method: Physical Settlement

Settlement Price: The product of (a) the Strike Price and (b)(i) one (1) *minus* (ii) the Settlement Price Percentage.

Settlement Price Percentage: For each Transaction, as set forth in the related Supplemental Confirmation.

Settlement Date: With respect to any Exercise Date, the date that is one Settlement Cycle immediately following such Exercise Date.

Share Adjustments; Dividends:

Method of Adjustment: Calculation Agent Adjustment. For the avoidance of doubt, in making any adjustments under the Equity Definitions, the Calculation Agent may make commercially reasonable adjustments, if any, to any one or more of the Strike Price, the Number of Warrants and the Warrant Entitlement. Notwithstanding the foregoing, any cash dividends or distributions on the Shares, whether or not extraordinary, shall be governed by the provisions of "Dividend Payment" below in lieu of Article 10 or Section 11.2(c) of the Equity Definitions.

Dividend Adjustment: If at any time during the period from, and including, the Trade Date for a Transaction to, and including, the Expiration Date for the last Component of such Transaction, an ex-dividend date for any cash dividend occurs with respect to the Shares (an "**Ex-Dividend Date**"), and that dividend is greater than the Regular Dividend on a per Share basis then the Calculation Agent will adjust one or more of the Strike Price, Number of Warrants, the Warrant Entitlement or any other variable relevant to the valuation, exercise, settlement, payment or other terms of such Component to preserve the fair value of the Warrants to [•] after taking into account such dividend or lack thereof.

Regular Dividend: For each Transaction, as set forth in the related Supplemental Confirmation.

Extraordinary Events:

New Shares: Section 12.1(i) of the Equity Definitions is hereby amended (a) by deleting the text in clause (i) thereof in its entirety (including the word "and" following clause (i)) and replacing it with the phrase "publicly quoted, traded or listed (or whose related depositary receipts are publicly quoted, traded or listed) on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors)" and (b) by inserting immediately prior to the period the phrase "and (iii) of an entity or person that is a corporation organized under the laws of the United States, any State thereof or the District of Columbia that also becomes Company under the applicable Transaction following such Merger Event or Tender Offer".

Consequence of Merger Events:

Merger Event: Applicable

Share-for-Share: Modified Calculation Agent Adjustment

Share-for-Other: Modified Calculation Agent Adjustment or Cancellation and Payment (Calculation Agent Determination), at the election of [•]

Share-for-Combined: Modified Calculation Agent Adjustment or Cancellation and Payment (Calculation Agent Determination), at the election of [•]

Consequence of Tender Offers:

Tender Offer: Applicable; *provided* that the definition of "Tender Offer" in Section 12.1(d) of the Equity Definitions will be amended by replacing "10%" with "20%".

Share-for-Share: Modified Calculation Agent Adjustment

Share-for-Other: Modified Calculation Agent Adjustment or Cancellation and Payment (Calculation Agent Determination), at the election of [•]

Share-for-Combined: Modified Calculation Agent Adjustment or Cancellation and Payment (Calculation Agent Determination), at the election of [•]

Composition of Combined Consideration: Not Applicable; *provided* that, notwithstanding Sections 12.1 and 12.5(b) of the Equity Definitions, to the extent that the composition of the consideration for the relevant Shares pursuant to a Tender Offer or Merger Event could be determined by a holder of the Shares, the Calculation Agent will determine such composition.

Announcement Event: If (i) an Announcement Date occurs in respect of any event or transaction that would, if consummated, lead to a Merger Event (for purposes of this and related provisions, the definition of Merger Event shall be read with the references therein to "100%" being replaced by "15%" and references to "50%" being replaced by "75%" and without reference to the clause beginning immediately following the definition of Reverse Merger therein to the end of such definition), a Tender Offer, or other acquisition or disposition by Company or its subsidiaries where the aggregate consideration or value exceeds 20% of the market capitalization of Company as of the Announcement Date (such other acquisition or disposition, a "**Significant Transaction**") or (ii) there is a public announcement or statement by Company of an intention to solicit or enter into, or to explore strategic alternatives or other similar undertakings that may include, a Merger Event, Tender Offer or Significant Transaction, or any subsequent announcement or statement of a change to such intention (the occurrence of (i) or (ii), an "**Announcement Event**"), as determined by the Calculation Agent, then the "Consequences of Announcement Event" set forth below shall apply in respect of such Announcement Event. For purposes of any Transaction, a Significant Transaction shall be an Extraordinary Event.

Announcement Date: The definition of "Announcement Date" in Section 12.1(l) of the Equity Definitions is hereby amended by (i) adding the words "or a Significant Transaction" immediately following the words "Merger Event" in the second and third lines thereof, (ii) replacing the words "a firm" with the word "any" in the second and fourth lines thereof, (iii) replacing the word "leads to the" with the words "would, if consummated, lead to a" in the third and the fifth lines thereof, (iv) adding after the words "voting shares" in the fifth line thereof the words ", voting power or Shares", (v) inserting the words "by any Valid Third Party" after the word "announcement" in the second and the fourth lines thereof and (vi) inserting the words ", as determined by the Calculation Agent, or any subsequent public announcement of a change to such transaction or intention (including, without limitation, a new announcement, whether or not by the same party, relating to such a transaction or intention or the announcement of a withdrawal from, or the abandonment or discontinuance of, such a transaction or intention)" at the end of each of clauses (i) and (ii) thereof.

For the purposes hereof, "Valid Third Party" means any third party that has a bona fide intent to enter into or consummate such transaction or event and is capable of consummating such transaction or event (it being understood and agreed that in determining whether such third party has such a bona fide intent and is capable of consummating such transaction or event, the Calculation Agent shall take into consideration the effect of the relevant announcement by such third party on the Shares and/or options relating to the Shares).

Consequences of Announcement Event:	With respect to any Announcement Event, the Calculation Agent shall, in good faith and a commercially reasonable manner, determine the economic effect of such Announcement Event on the theoretical value of each Component of the Transaction (including without limitation any change in volatility, expected dividends, stock loan rate or liquidity relevant to the Shares or to the Transaction) (i) one or more times on or after the relevant Announcement Date or other date of announcement but no later than the final Expiration Date or any earlier date of termination or cancellation for such Component and (ii) on the Expiration Date or any earlier date of termination or cancellation for such Component and, in the case of clause (i) or (ii), the Calculation Agent shall adjust the terms of such Component to reflect such economic effect on the theoretical value of such Component and determine the effective date of such adjustment; *provided* that, if the Calculation Agent determines, acting in good faith and in a commercially reasonable manner, that no adjustment it could make pursuant to this provision is likely to produce a commercially reasonable result, it shall notify the parties that such Component will be terminated, in which case the amount payable upon such termination will be determined pursuant to the terms of this Master Confirmation as if such Announcement Event were an Extraordinary Event to which Cancellation and Payment (Calculation Agent Determination) were applicable. For the avoidance of doubt, any such adjustment shall be without prejudice to the application of the provisions set forth in the preceding sentence, "Consequences of Merger Events" or "Consequences of Tender Offers" with respect to any other Announcement Date in respect of the same event or transaction, or, if the related Merger Date or Tender Offer Date occurs on or prior to the Expiration Date or earlier date of termination or cancellation for such Component, with respect to the related Merger Event or Tender Offer; provided that any such adjustment shall be taken into account by the Calculation Agent or the Determining Party, as the case may be, in determining any subsequent adjustment to the terms of the Transaction, or in subsequently determining any payment amount, Cancellation Amount or Early Termination Amount, as the case may be, on account of any related Announcement Date, Merger Event or Tender Offer.
Nationalization, Insolvency or Delisting:	Cancellation and Payment (Calculation Agent Determination); *provided* that, in addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any of the New York Stock

Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or their respective successors), such exchange or quotation system shall thereafter be deemed to be the Exchange.

Limitation on Certain Adjustments: Notwithstanding any provision of the Equity Definitions or this Master Confirmation to the contrary, no adjustment as a result of a Potential Adjustment Event (other than a Potential Adjustment Event described in Section 11.2(e)(i) or (ii)(A) of the Equity Definitions) or an Extraordinary Event shall increase the Transaction Number of Shares. Notwithstanding any provision of the Equity Definitions or this Master Confirmation to the contrary, if the Calculation Agent determines that no such adjustment that it could make in accordance with the preceding sentence will produce a commercially reasonable result, then the Calculation Agent may notify the parties that the consequence of such event shall be the termination of such Transaction, in which case "Cancellation and Payment" will be deemed to apply and any payment to be made by one party to the other shall be calculated in accordance with Section 12.7 of the Equity Definitions.

Additional Disruption Events:

Change in Law: Applicable; provided that (A) any determination as to whether (i) the adoption of or any change in any applicable law or regulation (including, without limitation, any tax law) or (ii) the promulgation of or any change in or announcement or statement of the formal or informal interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), in each case, constitutes a "Change in Law" shall be made without regard to Section 739 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation enacted, or rule or regulation promulgated, on or after the Trade Date, (B) Section 12.9(a)(ii) of the Equity Definitions is hereby amended (i) by adding the words "(including, for the avoidance of doubt and without limitation, adoption or promulgation of new regulations authorized or mandated by existing statute)" after the word "regulation" in the second line thereof and (ii) by replacing the words "the interpretation" with the words "or announcement or statement of any formal or informal interpretation" in the third line thereof and (C) the words ", unless the illegality is due to an act or omission of the party seeking to elect termination of the Transaction with the intent to avoid its obligations under the terms of the Transaction" are added immediately following the word "Transaction" in the fifth line thereof; and provided further that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by adding the phrase "and/or Hedge Position" after the word "Shares" in clause (X) thereof and (iii) by immediately following the word "Transaction" in clause (X)

thereof, adding the phrase "in the manner contemplated by the Hedging Party on the Trade Date".

Failure to Deliver: Not Applicable

Insolvency Filing: Applicable

Hedging Disruption: Applicable; *provided* that:

(i) Section 12.9(a)(v) of the Equity Definitions is hereby amended by (a) inserting the following words at the end of clause (A) thereof: "in the manner contemplated by the Hedging Party on the Trade Date" and (b) inserting the following two phrases at the end of such Section:

"For the avoidance of doubt, the term "equity price risk" shall be deemed to include, but shall not be limited to, stock price and volatility risk. And, for the further avoidance of doubt, any such transactions or assets referred to in phrases (A) or (B) above must be available on commercially reasonable pricing terms."; and

(ii) Section 12.9(b)(iii) of the Equity Definitions is hereby amended by inserting in the third line thereof, after the words "to terminate the Transaction", the words "or a portion of the Transaction affected by such Hedging Disruption".

Increased Cost of Hedging: Not Applicable

Loss of Stock Borrow: Applicable

Maximum Stock Loan Rate: 200 basis points

Increased Cost of Stock Borrow: Applicable

Initial Stock Loan Rate: 20 basis points

Hedging Party: For all applicable Additional Disruption Events, [•].

Determining Party: For all applicable Extraordinary Events, [•]. For all applicable Extraordinary Events, [•]; all calculations and determinations made by the Determining Party shall be made in good faith and in a commercially reasonable manner; provided that, upon receipt of written request from Company (which may be by e-mail), the Determining Party shall promptly provide Company with a written explanation (which may be by e-mail) describing in reasonable detail any calculation, adjustment or determination made by it (including any quotations, market data or information from internal or external sources used in making such calculation, adjustment or determination, as the case may be, in a commonly used file format for the storage

and manipulation of financial data, but without disclosing Determining Party's proprietary models or other information that may be proprietary or subject to contractual, legal or regulatory obligations to not disclose such information), and shall use commercially reasonable efforts to provide such written explanation within five (5) Exchange Business Days from the receipt of such request.

Non-Reliance: Applicable

Agreements and Acknowledgments

Regarding Hedging Activities: Applicable

Additional Acknowledgments: Applicable

3. **Calculation Agent**.

[•], provided that, following the occurrence of an Event of Default of the type described in Section 5(a)(vii) of the Agreement with respect to which [•] is the sole Defaulting Party, Company shall have the right to designate a nationally recognized third-party dealer in over-the-counter corporate equity derivatives to act, during the period commencing on the date such Event of Default occurred and ending on the Early Termination Date with respect to such Event of Default, as the Calculation Agent.

All calculations, adjustments and determinations made by the Calculation Agent shall be made in good faith and in a commercially reasonable manner; provided that, upon receipt of written request from Company (which may be by e-mail), the Calculation Agent shall promptly provide Company with a written explanation (which may be by e-mail) describing in reasonable detail any calculation, adjustment or determination made by it (including any quotations, market data or information from internal or external sources used in making such calculation, adjustment or determination, as the case may be, but without disclosing [•]'s proprietary models or other information that may be proprietary or subject to contractual, legal or regulatory obligations to not disclose such information), and shall use commercially reasonable efforts to provide such written explanation within five (5) Exchange Business Days from the receipt of such request.

4. **Account Details**.

(a) Account for payments to Company:

To be advised.

Account for delivery of Shares from Company:

To be advised.

Account for delivery of Shares to Company:

To be advised.

(b) Account for payments to [•]:

Bank: [•]
ABA#: [•]
Acct No.: [•]
FFC: [•]

Account for delivery of Shares from [•]:

To be advised.

Account for delivery of Shares to [•]:

To be advised.

5. **Offices**.

(a) The Office of Company for the Transactions is: Inapplicable, Company is not a Multibranch Party.

(b) The Office of [•] for the Transactions is: [•].

6. **Notices**.

(a) Address for notices or communications to Company:

To be provided by Company.

(b) Address for notices or communications to [•]:

[•]
Address: [•]
[•]
Attention: [•]
Telephone: [•]
Email: [•]

With copies to:

[•]
Address: [•]
[•]
Attention: [•]
Tel: [•]
Email: [•]

7. **Representations and Warranties of Company**. Company hereby represents and warrants to, and agrees with, [•] on the Trade Date for each Transaction, any day on which it makes any election in respect of any Transaction (unless another date or dates are specified below) as follows:

(a) No filing with, or approval, authorization, consent, license, registration, qualification, order or decree of, any court or governmental authority or agency, domestic or foreign, is necessary or required for the execution, delivery and performance by Company of this Master Confirmation and each Supplemental Confirmation hereunder and the consummation of any Transaction (including, without limitation, the delivery of Shares on the Settlement Dates) except (i) such as have been obtained under the Securities Act of 1933, as amended (the "**Securities Act**"), and (ii) as may be required to be obtained under state securities laws.

(b) A number of Shares equal to the Transaction Number of Shares (the "**Warrant Shares**") for the Transaction have been reserved for issuance by all required corporate action of Company. The Warrant Shares have been duly authorized and, when delivered against payment therefor and otherwise as contemplated by the terms of the Warrants following the exercise of the Warrants in accordance with the terms and conditions of the Warrants, will be validly issued, fully-paid and non-assessable, and the issuance of the Warrant Shares will not be subject to any preemptive or similar rights.

(c) Company is not, and after giving effect to each Transaction will not be, required to register as an "investment company" as such term is defined in the Investment Company Act of 1940, as amended.

(d) Company is an "eligible contract participant" (as such term is defined in Section 1a(18) of the Commodity Exchange Act, as amended, other than a person that is an eligible contract participant under Section 1a(18)(C) of the Commodity Exchange Act).

(e) Company represents to [•] on the Trade Date for each Transaction and on any date Company makes any election pursuant to a Transaction that (A) Company is not aware of any material nonpublic information regarding Company or the Shares and (B) Company is not entering into such Transaction nor making any election thereunder to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Securities Exchange Act of 1934, as amended (the "**Exchange Act**").

(f) No federal, state or local (including non-U.S. jurisdictions) law, rule, regulation or regulatory order applicable to the Shares would give rise to any reporting, consent, registration or other requirement (including without limitation a requirement to obtain prior approval from any person or entity) as a result of [•] or its affiliates owning or holding (however defined) Shares.

(g) Company (A) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities; (B) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing; and (C) has total assets of at least $50 million.

(h) Company (A) has such knowledge and experience in financial and business affairs as to be capable of evaluating the merits and risks of entering into the Transactions; (B) has consulted with its own legal, financial, accounting and tax advisors in connection with the Transactions; and (C) is entering into the Transactions for a bona fide business purpose.

(i) The assets of Company do not constitute "plan assets" under the Employee Retirement Income Security Act of 1974, as amended, the Department of Labor Regulations promulgated thereunder or similar law.

(j) As of the date hereof and as of each Settlement Date for each Transaction, Company is not and will not be insolvent, nor will Company be rendered insolvent as a result of such Transaction or its performance of the terms hereof

(k) Company understands that no obligations of [•] to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any affiliate of [•] or any governmental agency.

(l) [•] is not acting as a fiduciary for or an adviser to Company in respect of any Transaction.

(m) As of (i) the date hereof and (ii) the Trade Date for each Transaction hereunder, Company is in compliance with its reporting obligations under the Exchange Act and its most recent Annual Report on Form 10-K, together with all reports subsequently filed by it pursuant to the Exchange Act, taken together and as amended and supplemented to the date of this representation, do not, as of their respective filing dates, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(n) In connection with this Master Confirmation and the Transactions, Company represents and warrants that it is an "accredited investor" as defined in Section 2(a)(15)(ii) of the Securities Act.

(o) COMPANY UNDERSTANDS THAT THE TRANSACTIONS HEREUNDER ARE SUBJECT TO COMPLEX RISKS WHICH MAY ARISE WITHOUT WARNING AND MAY AT TIMES BE VOLATILE AND THAT LOSSES MAY OCCUR QUICKLY AND IN UNANTICIPATED MAGNITUDE AND IS WILLING TO ACCEPT SUCH TERMS AND CONDITIONS AND ASSUME (FINANCIALLY AND OTHERWISE) SUCH RISKS.

(p) To the extent the parties have agreed (which for the avoidance of doubt may be agreed by phone call or email) to enter into a Transaction, Company shall execute a Supplemental Confirmation specifying such agreed terms and conditions of such Transaction as promptly as practicable following receipt of such Supplemental Confirmation from [•].

8. Other Provisions.

(a) *Conditions to [•]'s Obligations*. Notwithstanding anything to the contrary in this Master Confirmation or the Agreement, [•]'s obligations with respect to a Transaction shall be subject to the satisfaction or waiver by [•] of the following conditions:

(i) The representations and warranties of Company contained herein and in the Agreement (including as may be modified herein) shall be true and correct as of the Trade Date for such Transaction;

(ii) Company shall have performed all of the covenants and obligations to be performed by Company on or prior to the Trade Date for such Transaction under the Agreement (including as may be modified herein) and hereunder;

(iii) Company shall have executed the related Supplemental Confirmation for such Transaction;

(iv) The representations and warranties of Company contained in the EDA and any certificate delivered pursuant thereto by Company shall be true and correct as of the Trade Date for such Transaction;

(v) Company has performed all of the obligations required to be performed by it under the EDA on or prior to the Trade Date for such Transaction; and

(vi) all of the conditions set forth in Section 9 of the EDA shall have been satisfied.

(b) *Limitations*.

(i) If at any time on any day on or after the Trade Date for a Transaction, (i) [•] determines that the number of Shares [•] or its affiliates theoretically would be short in order to hedge the equity price risk of such Transaction (such number of Shares, the "**Theoretical Delta**") exceeds the total number of Shares then sold under the Prospectus as contemplated in the EDA and (ii) such day is a Suspension Day, then [•] shall notify Company of the existence of such excess delta and [•] shall have the right to adjust the

terms of the Transaction as it determines appropriate to preserve the fair value of the Transaction to the parties (including, without limitation, making any other adjustments to the terms of the Transaction that the Calculation Agent determines appropriate to account for the economic effect on the parties of such adjustment). A "**Suspension Day**" means any day (i) on which for any reason, the Prospectus contemplated by the EDA ceases to satisfy the requirements of the EDA, (ii) on which [•] has not received the deliverables contemplated by Section 9 of the EDA or with respect to which Company has not satisfied its obligations under Section 6 of the EDA, in each case in form and substance satisfactory to [•] and (iii) on which the Company, the Warrant Hedge Seller or the Warrant Purchaser suspended any sale of Shares pursuant to Section 4 of the EDA.

(ii) If, during the period from the Trade Date for a Transaction to the Sales Period Outside Date (as defined below) for such Transaction [•] or its affiliates have, in connection with such Transaction, sold a number of Shares under the Prospectus as contemplated by the EDA that is less than the Transaction Number of Shares (such number of Shares, the "**Sold Number of Shares**") for any reason, then [•] may notify Company that it will reduce the Transaction Number of Shares for such Transaction to the Sold Number of Shares (in which case the Number of Shares for each Component shall be proportionally reduced) and make any other adjustments to the terms of the Transaction as it determines appropriate to reflect such reduction (including, without limitation, to account for any losses or costs incurred by [•] or its affiliates as a result of its establishing, maintaining, terminating or liquidating any related Hedge Position or related trading position in connection with such reduction). "**Sales Period Outside Date**," with respect to a Transaction, has the meaning given to such term in the Supplemental Confirmation for such Transaction.

(c) *Warrant Exclusivity*. From and including the date of this Master Confirmation until, but excluding, the date specified as the Warrant Exclusivity End Date in the first Supplemental Confirmation executed under this Master Confirmation, Company shall not, without the prior written consent of [•], issue, offer, pledge, sell or contract to sell any call option or right or warrant to purchase Shares (any such call option or right or warrant, a "**Similar Warrant**") other than the Transactions hereunder; *provided* that the Company shall be permitted to issue or sell a Similar Warrant pursuant to an employee stock option plan, stock ownership plan or dividend reinvestment plan of Company in effect on the date of this Master Confirmation.

[Signature page follows.]

Please confirm by signing below that the foregoing correctly sets forth the terms of the agreement between [•] and Company with respect to any Transaction contemplated by this Master Confirmation and return to us.

Yours faithfully,

[•]

By: _____

Name:

Title:

Agreed and Accepted By:

HIGHWOODS PROPERTIES, INC.

By:

Name:
Title:

APPENDIX 1

ADDITIONAL PROVISIONS

(a) *Interpretive Letter*. The parties intend that this Master Confirmation and each Supplemental Confirmation hereunder constitute a "contract" as described in the letter dated October 6, 2003 submitted by Robert Reeder and Leslie Silverman to Paula Dubberly of the staff of the Securities and Exchange Commission (the "**Staff**") to which the Staff responded in an interpretive letter dated October 9, 2003 (the "**Interpretive Letter**").

(b) *Regulation M*. Company agrees that neither it nor any "affiliated purchaser" (as defined in Regulation M ("**Regulation M**") promulgated under the Exchange Act) will, directly or indirectly, bid for, purchase or attempt to induce any person to bid for or purchase, the Shares or securities that are convertible into, or exchangeable or exercisable for, Shares during any "restricted period" as such term is defined in Regulation M arising from transactions contemplated by the EDA and that neither it nor any affiliated purchaser will engage in any "distribution" (as defined in Regulation M) that would cause a "restricted period" (as defined in Regulation M) to occur on any Valuation Date. In addition, Company represents that it is eligible to conduct a primary offering of Shares on Form S-3, the offering contemplated by the EDA complies with Rule 415 under the Securities Act, and the Shares are "actively traded" as defined in Rule 101(c)(1) of Regulation M.

(c) *Agreements and Acknowledgments regarding Shares*. In addition to the representations in Section 9.11 of the Equity Definitions, Company agrees and acknowledges that, in respect of any Shares delivered to [•] hereunder, such Shares shall be newly issued (unless mutually agreed otherwise by the parties) and, upon such delivery, be duly and validly authorized, issued and outstanding, fully paid and nonassessable, free of any lien, charge, claim or other encumbrance and not subject to any preemptive or similar rights and shall, upon such issuance, be accepted for listing or quotation on the Exchange, and that such Shares will not bear a restrictive legend and that such Shares will be deposited in, and the delivery thereof shall be effected through the facilities of, the Clearance System.

(d) [Reserved.]

(e) *Designation*. Notwithstanding any provision of the Agreement to the contrary, [•] shall be entitled to assign its rights and obligations hereunder and under any Credit Support Documents to make or receive cash payments or deliveries and other related rights to any affiliate of [•] or any successor thereto (each, a "**[•] Affiliate**"); *provided* that Company shall have recourse to [•] in the event of the failure by a [•] Affiliate to perform any of such obligations hereunder. Notwithstanding the foregoing, recourse to [•] shall be limited to recoupment of Company's monetary damages and Company hereby waives any right to seek specific performance by [•] of its obligations hereunder.

(f) *Transfer or Assignment*. Company may not transfer any of its rights or obligations under the Transaction without the prior written consent of [•]. Notwithstanding any provision of the Agreement to the contrary, [•] shall be entitled to transfer or assign its rights and obligations hereunder and under any Credit Support Document to (i) [•] or any successor thereto, without the consent of Company and in connection therewith to effect necessary amendments to facilitate such transfer or assignment or (ii) any other [•] Affiliate (a "**Designated Transferee**"); *provided* that in the case of clause (ii), (1) the credit rating of the Designated Transferee or its guarantor (whichever is higher) is not lower than the rating of [•] (or any [•] guarantor) at the time of such transfer or assignment; (2) no Event of Default or Termination Event will occur as a result of such transfer or assignment; (3) as a result of any such transfer or assignment, Company will not (A) be required to pay the transferee or assignee of such rights or obligations on any payment date an amount under Section 2(d)(i)(4) of the Agreement greater than the amount, if any, that Company would have been required to pay [•] in the absence of such transfer or assignment, or (B) receive from the transferee or assignee on any payment date an amount under Section 2(d)(i)(4) of the Agreement that is less than the amount that Company would have received from [•] in the absence of such transfer or assignment. and (4) the transferee or assignee shall provide Company with a complete and accurate U.S. Internal Revenue Service Form W-9 or W-8 (as applicable) prior to becoming a party to the Transaction. If at any time at which (A) the Section 16 Percentage exceeds 4.5%, (B) the Warrant Equity Percentage exceeds 8.0%, or (C) the

Share Amount exceeds the Applicable Share Limit (if any applies) (any such condition described in clauses (A), (B) or (C), an "**Excess Ownership Position**"), [•] is unable after using its commercially reasonable efforts to effect a transfer or assignment of Warrants under any Transaction to a third party on pricing terms reasonably acceptable to [•] and within a time period reasonably acceptable to [•] such that no Excess Ownership Position exists, then [•] may designate any Exchange Business Day as an Early Termination Date with respect to a portion of any Transaction (the "**Terminated Portion**"), such that following such partial termination no Excess Ownership Position exists. In the event that [•] so designates an Early Termination Date with respect to a Terminated Portion, a payment shall be made pursuant to Section 6 of the Agreement as if (1) an Early Termination Date had been designated in respect of a Transaction having terms identical to the relevant Transaction and a Number of Warrants equal to the number of Warrants underlying the Terminated Portion, (2) Company were the sole Affected Party with respect to such partial termination and (3) the Terminated Portion were the sole Affected Transaction (and, for the avoidance of doubt, the provisions of Paragraph (k) below shall apply to any amount that is payable by Company to [•] pursuant to this sentence as if Company was not the Affected Party). The "**Section 16 Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Shares that [•] and any of its affiliates or any other person subject to aggregation with [•] for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, or any "group" (within the meaning of Section 13 of the Exchange Act) of which [•] is or may be deemed to be a part beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that for any reason the equivalent calculation under Section 16 of the Exchange Act and the rules and regulations thereunder results in a higher number, such higher number) and (B) the denominator of which is the number of Shares outstanding on such day. The "**Warrant Equity Percentage**" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the sum of (1) the aggregate of the Transaction Number of Shares for all Transactions outstanding under this Master Confirmation as of such day and (2) the aggregate number of Shares underlying any other warrants purchased by [•] from Company, and (B) the denominator of which is the number of Shares outstanding. The "**Share Amount**" as of any day is the number of Shares that [•] and any person whose ownership position would be aggregated with that of [•] ([•] or any such person, a "**[•] Person**") under any law, rule, regulation, regulatory order or organizational documents or contracts of Company that are, in each case, applicable to ownership of Shares ("**Applicable Restrictions**"), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by [•] in its reasonable discretion. The "**Applicable Share Limit**" means a number of Shares equal to (A) the minimum number of Shares that could give rise to reporting or registration obligations or other requirements (including obtaining prior approval from any person or entity) of a [•] Person, or could result in an adverse effect on a [•] Person, under any Applicable Restriction, as determined by [•] in its reasonable discretion, *minus* (B) 1% of the number of Shares outstanding.

(g) *Consent to Recording*. Each party (i) consents to the recording of the telephone conversations of trading and marketing personnel of the parties and their affiliates in connection with the Agreement, this Master Confirmation and each Supplemental Confirmation, and (ii) agrees to obtain any necessary consent of, and give notice of such recording to, such personnel of such party and such party's affiliates.

(h) *Severability; Illegality*. If compliance by either party with any provision of a Transaction would be unenforceable or illegal, (i) the parties shall negotiate in good faith to resolve such unenforceability or illegality in a manner that preserves the economic benefits of the transactions contemplated hereby and (ii) the other provisions of such Transaction shall not be invalidated, but shall remain in full force and effect.

(i) *Waiver of Trial by Jury*. EACH OF COMPANY AND [•] HEREBY IRREVOCABLY WAIVES (ON SUCH PARTY'S OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF SUCH PARTY'S STOCKHOLDERS OR OTHER EQUITY HOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THE AGREEMENT, THIS MASTER CONFIRMATION, ANY SUPPLEMENTAL CONFIRMATION OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR THE ACTIONS OF [•] OR ITS AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF OR THEREOF.

(j) *Governing Law*. THIS MASTER CONFIRMATION, EACH SUPPLEMENTAL CONFIRMATION AND THE AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND THERETO OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS. NOTHING IN THIS PROVISION SHALL PROHIBIT EITHER PARTY FROM BRINGING AN ACTION TO ENFORCE A MONEY JUDGMENT IN ANY OTHER JURISDICTION.

(k) *Alternative Calculations and Payment on Early Termination and on Certain Extraordinary Events*. If (a) an Early Termination Date (whether as a result of an Event of Default or a Termination Event) occurs or is designated with respect to any Transaction or (b) any Transaction is cancelled or terminated upon the occurrence of an Extraordinary Event (except as a result of (i) a Nationalization, Insolvency or Merger Event in which the consideration to be paid to all holders of Shares consists solely of cash, (ii) a Merger Event or Tender Offer that is within Company's control, or (iii) an Event of Default in which Company is the Defaulting Party or a Termination Event in which Company is the Affected Party other than an Event of Default of the type described in Section 5(a)(iii), (v), (vi), (vii) or (viii) of the Agreement or a Termination Event of the type described in Section 5(b) of the Agreement, in each case that resulted from an event or events outside Company's control), and if Company would owe any amount to [•] pursuant to Section 6(d)(ii) of the Agreement or any Cancellation Amount pursuant to Article 12 of the Equity Definitions (any such amount, a "**Payment Obligation**"), then Company shall satisfy the Payment Obligation by the Share Termination Alternative (as defined below), unless (a) Company gives irrevocable telephonic notice to [•], confirmed in writing within one (1) Scheduled Trading Day, no later than 12:00 p.m. (New York City time) on the Merger Date, Tender Offer Date, Announcement Date (in the case of a Nationalization, Insolvency or Delisting), Early Termination Date or date of cancellation, as applicable, of its election that the Share Termination Alternative shall not apply, (b) Company remakes the representations set forth in Section 7 of this Master Confirmation as of the date of such election and (c) [•] agrees to such election, in which case the provisions of Section 12.7 or Section 12.9 of the Equity Definitions, or the provisions of Section 6(d)(ii) of the Agreement, as the case may be, shall apply.

Share Termination Alternative: If applicable, Company shall deliver to [•] the Share Termination Delivery Property on the date (the "**Share Termination Payment Date**") on which the Payment Obligation would otherwise be due pursuant to Section 12.7 or Section 12.9 of the Equity Definitions or Section 6(d)(ii) of the Agreement, as applicable, subject to Paragraph (k)(i) below, in satisfaction, subject to Paragraph (k)(ii) below, of the relevant Payment Obligation, in the manner reasonably requested by [•] free of payment.

Share Termination Delivery Property: A number of Share Termination Delivery Units, as calculated by the Calculation Agent, equal to the relevant Payment Obligation *divided by* the Share Termination Unit Price. The Calculation Agent shall adjust the amount of Share Termination Delivery Property by replacing any fractional portion of a security therein with an amount of cash equal to the value of such fractional security based on the values used to calculate the Share Termination Unit Price (without giving effect to any discount pursuant to Paragraph (k)(i) below).

Share Termination Unit Price: The value to [•] of property contained in one Share Termination Delivery Unit on the date such Share Termination Delivery Units are to be delivered as Share Termination Delivery Property, as determined by the Calculation Agent in its discretion by commercially reasonable means. In the case of a Private Placement of Share Termination Delivery Units that are Restricted Shares (as defined below), as set forth in Paragraph (k)(i) below, the Share Termination Unit Price shall be determined by the discounted price applicable to such Share Termination Delivery Units. In the case of a Registration Settlement of Share Termination Delivery Units that are Restricted Shares (as defined below) as set forth in Paragraph (k)(ii) below, notwithstanding the foregoing, the Share Termination Unit Price shall be the Settlement Price on the Merger Date, Tender Offer Date, Announcement Date (in the case of a Nationalization, Insolvency or Delisting), Early Termination Date or date of cancellation, as applicable. The Calculation Agent shall notify Company of the Share Termination Unit Price at the time of notification of such Payment Obligation to Company or, if applicable, at the time the discounted price applicable to the relevant Share Termination Units is determined pursuant to Paragraph (k)(i).

Share Termination Delivery Unit: One Share or, if the Shares have changed into cash or any other property or the right to receive cash or any other property as the result of a Nationalization, Insolvency or Merger Event (any such cash or other property, the "**Exchange Property**"), a unit consisting of the type and amount of Exchange Property received by a holder of one Share (without consideration of any requirement to pay cash or other consideration in lieu of fractional amounts of any securities) in such Nationalization, Insolvency or Merger Event. If such Nationalization, Insolvency or Merger Event involves a choice of Exchange Property to be received by holders, such holder shall be deemed to have elected to receive the maximum possible amount of cash.

Failure to Deliver: Inapplicable

Other applicable provisions: If Share Termination Alternative is applicable, the provisions of Sections 9.8, 9.9, 9.11 and 9.12 (as modified above) of the Equity Definitions will be applicable, except that all references in such provisions to "Physically-settled" shall be read as references to "Share Termination Settled" and all references to "Shares" shall be read as references to "Share Termination Delivery Units". "Share

Termination Settled" in relation to a Transaction means that the Share Termination Alternative is applicable to such Transaction.

(l) *Registration/Private Placement Procedures*. If, in the reasonable opinion of [•], following any delivery of Shares or Share Termination Delivery Property to [•] hereunder, such Shares or Share Termination Delivery Property would be in the hands of [•] subject to any applicable restrictions with respect to any registration or qualification requirement or prospectus delivery requirement for such Shares or Share Termination Delivery Property pursuant to any applicable federal or state securities law (including, without limitation, any such requirement arising under Section 5 of the Securities Act as a result of such Shares or Share Termination Delivery Property being "restricted securities", as such term is defined in Rule 144 under the Securities Act, or as a result of the sale of such Shares or Share Termination Delivery Property being subject to paragraph (c) of Rule 145 under the Securities Act) (such Shares or Share Termination Delivery Property, "**Restricted Shares**"), then delivery of such Restricted Shares shall be effected pursuant to either clause (i) or (ii) below at the election of Company, unless [•] waives the need for registration/private placement procedures set forth in (i) and (ii) below. Notwithstanding the foregoing, solely in respect of any Number of Warrants exercised or deemed exercised on the Expiration Date for a Component, Company shall elect, prior to the Settlement Date for such Component, a Private Placement Settlement or Registration Settlement for all deliveries of Restricted Shares for the Expiration Dates for all Components and the procedures in clause (i) or clause (ii) below shall apply for all such delivered Restricted Shares on an aggregate basis commencing after the Settlement Date for such Component. The Calculation Agent shall make reasonable adjustments to settlement terms and provisions under this Master Confirmation and the applicable Supplemental Confirmation to reflect a single Private Placement or Registration Settlement for such aggregate Restricted Shares delivered hereunder.

(i) If Company elects to settle a Transaction pursuant to this clause (i) (a "**Private Placement Settlement**"), then delivery of Restricted Shares by Company shall be effected in customary private placement procedures with respect to such Restricted Shares reasonably acceptable to [•]; *provided* that Company may not elect a Private Placement Settlement if, on the date of its election, it has taken, or caused to be taken, any action that would make unavailable either the exemption pursuant to Section 4(a)(2) of the Securities Act for the sale by Company to [•] (or any affiliate designated by [•]) of the Restricted Shares or the exemption pursuant to Section 4(a)(1) or Section 4(a)(3) of the Securities Act for resales of the Restricted Shares by [•] (or any such affiliate of [•]). Company shall use its best efforts to cause the Private Placement Settlement of such Restricted Shares to include customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to [•], due diligence rights (for [•] or any designated buyer of the Restricted Shares by [•]), opinions and certificates, and such other documentation as is customary for private placement agreements, all reasonably acceptable to [•]. In the case of a Private Placement Settlement, [•] shall determine the appropriate discount to the Share Termination Unit Price (in the case of settlement of Share Termination Delivery Units pursuant to Paragraph (k) above) or premium to any Settlement Price (in the case of settlement of Shares pursuant to Section 2 of this Master Confirmation) applicable to such Restricted Shares in a commercially reasonable manner and appropriately adjust the number of such Restricted Shares to be delivered to [•] hereunder. Notwithstanding anything to the contrary in the Agreement or this Master Confirmation, the date of delivery of such Restricted Shares shall be the Exchange Business Day following notice by [•] to Company of such applicable discount or premium, as the case may be, and the number of Restricted Shares to be delivered pursuant to this clause (i). For the avoidance of doubt, delivery of Restricted Shares shall be due as set forth in the previous sentence and not be due on the Share Termination Payment Date (in the case of settlement of Share Termination Delivery Units pursuant to Paragraph (k) above) or on the Settlement Date for such Restricted Shares (in the case of settlement in Shares pursuant to Section 2 of this Master Confirmation).

(ii) If Company elects to settle a Transaction pursuant to this clause (ii) (a "**Registration Settlement**"), then Company shall promptly (but in any event no later than the beginning of the Resale Period) file and use its reasonable best efforts to make effective under the Securities Act a registration statement or supplement or amend an outstanding registration statement in form and substance reasonably

satisfactory to [•], to cover the resale of such Restricted Shares in accordance with customary resale registration procedures, including covenants, conditions, representations, underwriting discounts (if applicable), commissions (if applicable), indemnities, due diligence rights, opinions and certificates, and such other documentation as is customary for equity resale underwriting agreements, all reasonably acceptable to [•]. If [•], in its sole reasonable discretion, is not satisfied with such procedures and documentation Private Placement Settlement shall apply. If [•] is satisfied with such procedures and documentation, it shall sell the Restricted Shares pursuant to such registration statement during a period (the "**Resale Period**") commencing on the Exchange Business Day following delivery of such Restricted Shares (which, for the avoidance of doubt, shall be (x) the Share Termination Payment Date in case of settlement in Share Termination Delivery Units pursuant to (k) above or (y) the Settlement Date for all Components) and ending on the Exchange Business Day on which [•] completes the sale of all Restricted Shares or, in the case of settlement of Share Termination Delivery Units, a sufficient number of Restricted Shares so that the realized net proceeds of such sales equals or exceeds the Payment Obligation (as defined above). If the Payment Obligation exceeds the realized net proceeds from such resale, Company shall transfer to [•] by the open of the regular trading session on the Exchange on the Exchange Business Day immediately following such resale the amount of such excess (the "**Additional Amount**") in cash or in a number of Shares ("**Make-whole Shares**") in an amount that, based on the Settlement Price on such day (as if such day was the "Valuation Date" for purposes of computing such Settlement Price), has a dollar value equal to the Additional Amount. The Resale Period shall continue to enable the sale of the Make-whole Shares. If Company elects to pay the Additional Amount in Shares, the requirements and provisions for Registration Settlement shall apply. This provision shall be applied successively until the Additional Amount is equal to zero. In no event shall Company deliver a number of Restricted Shares under a Transaction greater than the Maximum Number of Shares (as defined below) for such Transaction.

(iii) Without limiting the generality of the foregoing, Company agrees that (A) any Restricted Shares delivered to [•] in connection with a Transaction may be transferred by and among [•] and its affiliates and Company shall effect such transfer without any further action by [•] and (B) after the period of six (6) months from the Trade Date of such Transaction (or one (1) year from the Trade Date of such Transaction if, at such time, informational requirements of Rule 144(c) under the Securities Act are not satisfied with respect to Company) has elapsed in respect of any Restricted Shares delivered to [•], Company shall promptly remove, or use its best efforts to cause the transfer agent for such Restricted Shares to remove, any legends referring to any such restrictions or requirements from such Restricted Shares upon request by [•] (or such affiliate of [•]) to Company or such transfer agent, without any requirement for the delivery of any certificate, consent, agreement, opinion of counsel, notice or any other document, any transfer tax stamps or payment of any other amount or any other action by [•] (or such affiliate of [•]). Notwithstanding anything to the contrary herein, to the extent the provisions of Rule 144 of the Securities Act or any successor rule are amended, or the applicable interpretation thereof by the Securities and Exchange Commission or any court change after the Trade Date for such Transaction, the agreements of Company herein shall be deemed modified to the extent necessary, in the opinion of outside counsel of Company, to comply with Rule 144 of the Securities Act, as in effect at the time of delivery of the relevant Shares or Share Termination Delivery Property.

(iv) If the Private Placement Settlement or the Registration Settlement shall not be effected as set forth in clauses (i) or (ii), as applicable, with respect to a Transaction, then failure to effect such Private Placement Settlement or such Registration Settlement shall constitute an Event of Default with respect to which Company shall be the Defaulting Party.

(m) *Tax Disclosure.* Effective from the date of commencement of discussions concerning the Transactions, Company and each of its employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transactions and all materials of any kind (including opinions or other tax analyses) that are provided to Company relating to such tax treatment and tax structure.

(n) *Status of Claims in Bankruptcy.* [•] acknowledges and agrees that this Master Confirmation is not intended to convey to [•] rights against Company with respect to any Transaction that are senior to the claims of common stockholders of Company in any United States bankruptcy proceedings of Company; *provided* that nothing herein shall limit or shall be deemed to limit [•]'s right to pursue remedies in the event of a breach by Company of its obligations and agreements with respect to any Transaction; *provided*, *further*, that nothing herein shall limit or shall be deemed to limit [•]'s rights in respect of any transactions other than the Transactions.

(o) *Acknowledgments*: The parties hereto agree and acknowledge that:

(i) [•] is a "swap participant" and "financial participant" within the meaning of Sections 101(53C) and 101(22A) of Title 11 of the United States Code (the "**Bankruptcy Code**").

(ii) This Master Confirmation and each Supplemental Confirmation is (i) a "securities contract," as such term is defined in Section 741(7) of the Bankruptcy Code, with respect to which each payment and delivery hereunder, thereunder or in connection herewith or therewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "settlement payment" and "transfer" within the meaning of Section 546 of the Bankruptcy Code and any cash, securities or other property provided as performance assurance, credit support or collateral with respect to each Transaction is a "margin payment" and "transfer" within the meaning of Section 546 of the Bankruptcy Code, (ii) a "swap agreement," as such term is defined in Section 101(53B) of the Bankruptcy Code, with respect to which each payment and delivery hereunder, thereunder or in connection herewith or therewith is a "termination value," "payment amount" or "other transfer obligation" within the meaning of Section 362 of the Bankruptcy Code and a "transfer," as such term is defined in Section 101(54) of the Bankruptcy Code and a "payment or other transfer of property" within the meaning of Sections 362 and 546 of the Bankruptcy Code and constitute "settlement payments" as defined in Section 741(8) of the Bankruptcy Code and (iii) a "master netting agreement" and each of the parties thereto is a "master netting agreement participant", each as defined in the Bankruptcy Code.

(iii) The rights given to [•] hereunder, under each Supplemental Confirmation, the Agreement and any Credit Support Document upon the occurrence of an Event of Default with respect to the other party constitute a "contractual right" to cause the liquidation, termination or acceleration of, and to offset or net out termination values, payment amounts and other transfer obligations under or in connection with a "securities contract" and a "swap agreement" and a "contractual right" under a security agreement or arrangement forming a part of or related to a "securities contract" and a "swap agreement," as such terms are used in Sections 555, 560, 561, 362(b)(6) and 362(b)(17) of the Bankruptcy Code.

(iv) [•] is entitled to the protections afforded by, among other sections, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 546(g), 546(j), 548(d)(2), 555, 560 and 561 of the Bankruptcy Code.

(p) *Agreements Regarding the Supplemental Confirmation*.

(i) Company accepts and agrees to be bound by the contractual terms and conditions as set forth in each Supplemental Confirmation.

(ii) Company and [•] agree and acknowledge that (X) the Transactions contemplated by this Master Confirmation and each Supplemental Confirmation will be entered into in reliance on the fact that this Master Confirmation and such Supplemental Confirmation form a single agreement between Company and [•], and [•] would not otherwise enter into such Transaction, (Y) this Master Confirmation, together with such Supplemental Confirmation, is a "qualified financial contract", as such term is defined in Section 5-701(b)(2) of the General Obligations Law of New York (the "**General Obligations Law**"); and (Z) this Master Confirmation constitutes a prior "written contract", as set forth in Section 5-701(b)(1)(b) of the General Obligations Law, and each party hereto intends and agrees to be bound by this Master Confirmation and such Supplemental Confirmation.

(iii) Company and [•] further agree and acknowledge that this Master Confirmation, together with each Supplemental Confirmation, constitutes a contract "for the sale or purchase of a security", as set forth in Section 8-113 of the Uniform Commercial Code of New York.

(q) *Wall Street Transparency and Accountability Act*. In connection with Section 739 of the Wall Street Transparency and Accountability Act of 2010 ("**WSTAA**"), the parties hereby agree that neither the enactment of WSTAA or any regulation under the WSTAA, nor any requirement under WSTAA or an amendment made by WSTAA, shall limit or otherwise impair either party's otherwise applicable rights to terminate, renegotiate, modify, amend or supplement this Master Confirmation, any Supplemental Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Master Confirmation, any Supplemental Confirmation, the Equity Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from Change in Law, Hedging Disruption, Increased Cost of Hedging, an Excess Ownership Position, or Illegality (as defined in the Agreement)).

(r) *Agreements and Acknowledgements Regarding Hedging*. Company understands, acknowledges and agrees that: (A) at any time on and prior to the last Expiration Date, [•] and its affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to adjust its hedge position with respect to the Transaction; (B) [•] and its affiliates also may be active in the market for Shares other than in connection with hedging activities in relation to the Transaction; (C) [•] shall make its own determination as to whether, when or in what manner any hedging or market activities in securities of Company shall be conducted and shall do so in a manner that it deems appropriate to hedge its price and market risk with respect to the Settlement Prices; and (D) any market activities of [•] and its affiliates with respect to Shares may affect the market price and volatility of Shares, as well as the Settlement Prices, each in a manner that may be adverse to Company.

(s) *Payment by [•]*. In the event that (i) an Early Termination Date occurs or is designated with respect to a Transaction as a result of a Termination Event or an Event of Default (other than an Event of Default arising under Section 5(a)(ii) or 5(a)(iv) of the Agreement or 5(a)(vii) of the Agreement) and, as a result, [•] owes to Company an amount calculated under Section 6(e) of the Agreement, or (ii) [•] owes to Company, pursuant to Section 12.7 or Section 12.9 of the Equity Definitions, an amount calculated under Section 12.8 of the Equity Definitions, such amount shall be deemed to be zero.

(t) *Listing of Warrant Shares*. Company shall have submitted an application for the listing of the Warrant Shares for each Transaction on the Exchange, and such application and listing shall have been approved by the Exchange, subject only to official notice of issuance, in each case, on or prior to the Premium Payment Date for each such Transaction. Company agrees and acknowledges that such submission and approval shall be a condition precedent for the purpose of Section 2(a)(iii) of the Agreement with respect to each obligation of [•] under Section 2(a)(i) of the Agreement.

(u) *Confidentiality*. [•] and Company agree that (i) Company is not obligated to [•] to keep confidential from any and all persons or otherwise limit the use of any element of [•]'s descriptions relating to tax aspects of the Transactions contemplated hereby and any part of the structure necessary to understand those tax aspects, and (ii) [•] does not assert any claim of proprietary ownership in respect of such descriptions contained herein of the use of any entities, plans or arrangements to give rise to significant U.S. federal income tax benefits for Company.

(v) *Conduct Rules*. Each party acknowledges and agrees to be bound by the Conduct Rules of the Financial Industry Regulatory Authority, Inc. applicable to transactions in options, and further agrees not to violate the position and exercise limits set forth therein.

(w) *Tax Matters*.

(i) *Withholding Tax under the United States Foreign Account Tax Compliance Act*. "Indemnifiable Tax", as defined in Section 14 of the Agreement, shall not include any U.S. federal

withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the Code, any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "**FATCA Withholding Tax**"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement.

(ii) *871(m)*. "Indemnifiable Tax", as defined in Section 14 of the Agreement, shall not include any tax imposed on payments treated as dividends from sources within the United States under Section 871(m) of the Code or any regulations issued thereunder. For the avoidance of doubt, any such tax imposed under Section 871(m) of the Code is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement.

(iii) *Stamp Tax*. Company shall pay and, within three Local Business Days of demand, indemnify [•] against any cost, loss or liability that [•] incurs in relation to all stamp, registration, documentation, transfer or similar tax (including interest, penalties and additions thereto) payable in respect of or in connection with the Agreement and the Transactions. [•] shall be under no obligation to make any payment under Section 4(e) of the Agreement.

(iv) *Payor Representations.* For the purpose of Section 3(e) of the Agreement, each party represents that it is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 9(h) of the Agreement or any other payments of interest or penalty charges for late payment) to be made by it to the other party under the Agreement. In making this representation, a party may rely on: (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of the Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of the Agreement, and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of the Agreement, and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of the Agreement; provided that it shall not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

(v) *Payee Representations*. For the purpose of Section 3(f) of the Agreement, [•] makes the following representations: (A) it is a limited liability company organized under the laws of the State of Delaware and is treated as a disregarded entity of a New York corporation for U.S. federal income tax purposes and (B) its first regarded owner for U.S. federal income tax purposes is a "U.S. person" (as that term is used in United States Treasury Regulations Section 1.1441-4(a)(3)(ii)) for U.S. federal income tax purposes that is an exempt recipient under United States Treasury Regulations Section 1.6049-4(c)(1)(ii); and Company makes the following representations: (A) it is a corporation for U.S. federal income tax purposes and (B) it is a "U.S. person" (as that term is used in section 7701(a)(30) of the U.S. Internal Revenue Code of 1986, as amended (the "**Code**")), and section 1.1441-4(a)(3)(ii) of the U.S. Treasury Regulations) for U.S. federal income tax purposes, and a corporation that is an exempt recipient under section 1.6049-4(c)(1)(ii)(A) of the U.S. Treasury Regulations.

(x) *Delivery or Receipt of Cash*. For the avoidance of doubt, other than receipt of the Premium by Company, nothing in this Master Confirmation shall be interpreted as requiring Company to cash settle any Transaction, except in circumstances where cash settlement is within Company's control (including, without limitation, where Company elects to deliver or receive cash, or where Company has made Private Placement Settlement unavailable due to the occurrence of events within its control) or in those circumstances in which holders of Shares would also receive cash.

(y) *Disclaimer*. [•] is not a member of the Securities Investor Protection Corporation ("**SIPC**"). Obligations of [•] hereunder are not protected by SIPC or any other organization or authority.

(z) [Reserved].

(aa) *Indemnity and Limitation on Liability*. Company agrees to indemnify and hold harmless [•], its affiliates and its assignees and their respective directors, officers, employees, agents and controlling persons ([•] and each such person being an "**Indemnified Party**") from and against any and all losses, claims, damages and liabilities, joint or several, to which such Indemnified Party may become subject, and relating to or arising out of any Transaction hereunder (other than any ordinary trading losses which may be incurred by [•] in connection with the Transaction), and will reimburse any Indemnified Party for all expenses (including reasonable counsel fees and expenses) as they are incurred in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim or any action, suit or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Company. Company will not be liable under the foregoing indemnification provision to the extent that any loss, claim, damage, liability or expense is found in a non-appealable judgment by a court of competent jurisdiction to have resulted from the Indemnified Party's breach of a material term of this Master Confirmation, any Supplemental Confirmation or the Agreement, willful misconduct or gross negligence. Company also agrees that no Indemnified Party shall have any liability to Company or any person asserting claims on behalf of or in right of Company in connection with or as a result of any matter referred to in this Master Confirmation, any Supplemental Confirmation or the Agreement except to the extent that any losses, claims, damages, liabilities or expenses incurred by Company result from the Indemnified Party's breach of a material term of this Master Confirmation, any Supplemental Confirmation or the Agreement, or the Indemnified Party's gross negligence or willful misconduct. The provisions of this Paragraph (aa) shall survive completion of each Transaction contemplated by this Master Confirmation and any assignment or transfer pursuant to this Master Confirmation and shall inure to the benefit of any permitted assignee of [•]. Notwithstanding any other provision herein, neither Company nor [•] will be liable for special, indirect, punitive, exemplary, or consequential damages, or incidental losses or damages of any kind, even if advised of the possibility of such losses or damages or if such losses or damages could have been reasonably foreseen.

(bb) *Risk Disclosure*. Company represents and warrants that it has received, read and understands [•]'s "Risk Disclosure Statement Regarding OTC Derivatives Products" and acknowledges the terms thereof as if it had signed the Risk Disclosure Statement Verification contained therein as of the date hereof.

(cc) Amendments to the Equity Definitions.

(i) Section 11.2(a) of the Equity Definitions is hereby amended by deleting the words "a diluting or concentrative" and replacing them with the word "an"; and adding the phrase "or Warrants" at the end of the sentence.

(ii) Section 11.2(c) of the Equity Definitions is hereby amended by (v) replacing the words "a diluting or concentrative" with "a material economic" in the fifth line thereof, (w) adding the phrase "or Warrants" after the words "the relevant Shares" in the same sentence, (x) deleting the second appearance of the word "will" in the same sentence and replacing it with the word "may", (y) deleting the words "diluting or concentrative" in the sixth to last line thereof and (z) deleting the phrase "(provided that no adjustments will be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)" and replacing it with the phrase "(and, for the avoidance of doubt, adjustments may be made to account solely for changes in volatility, expected dividends, stock loan rate or liquidity relative to the relevant Shares)."

(iii) Section 11.2(e)(vii) of the Equity Definitions is hereby amended by deleting the words "a diluting or concentrative", replacing the same with "a material economic" and adding the phrase "or Warrants" at the end of the sentence; *provided* that it shall also constitute a Potential Adjustment Event if a

Disrupted Day occurs or is continuing on or following the Trade Date and prior to the Expiration Date for the final Component of a Transaction.

(iv) Notwithstanding anything to the contrary in Section 11.2(e) of the Equity Definitions, no "Issuance" nor "Forward" (in each case as defined in the EDA) under the EDA or any "Alternative Equity Distribution Agreement" (as defined in the EDA) shall constitute a Potential Adjustment Event.

(v) [Reserved].

(vi) Section 12.6(a)(ii) of the Equity Definitions is hereby amended by (1) inserting "(1)" immediately following the word "means" in the first line thereof and (2) inserting immediately prior to the semi-colon at the end of subsection (B) thereof the following words: "or (2) the occurrence of any of the events specified in Section 5(a)(vii)(1) through (9) of the Agreement with respect to that Issuer".

(vii) Section 12.9(b)(iv) of the Equity Definitions is hereby amended by:

(A) deleting (1) subsection (A) in its entirety, (2) the phrase "or (B)" following subsection (A) and (3) the phrase "in each case" in subsection (B); and

(B) replacing the phrase "neither the Non-Hedging Party nor the Lending Party lends Shares" with the phrase "such Lending Party does not lend Shares" in the penultimate sentence.

(viii) Section 12.9(b)(v) of the Equity Definitions is hereby amended by:

(A) adding the word "or" immediately before subsection "(B)" and deleting the comma at the end of subsection (A); and

(B) (1) deleting subsection (C) in its entirety, (2) deleting the word "or" immediately preceding subsection (C), (3) deleting the penultimate sentence in its entirety and replacing it with the sentence "The Hedging Party will determine the Cancellation Amount payable by one party to the other." and (4) deleting clause (X) in the final sentence.

(ix) Section 12.9(b)(vi) of the Equity Definitions is hereby amended by:

(A) adding the word "or" immediately before subsection "(B)" and deleting the comma at the end of subsection (A); and

(B) (1) deleting subsection (C) in its entirety, (2) deleting the word "or" immediately preceding subsection (C) and (3) deleting the final sentence in its entirety and replacing it with the sentence "The Hedging Party will determine the Cancellation Amount payable by one party to the other."

(dd) *Limit on Beneficial Ownership*. Notwithstanding any other provisions hereof, [•] may not exercise any Warrant hereunder or be entitled to take delivery of any Shares deliverable hereunder, and Automatic Exercise shall not apply with respect to any Warrant hereunder, to the extent (but only to the extent) that, after such receipt of any Shares upon the exercise of such Warrant or otherwise hereunder, (i) the Section 16 Percentage would exceed 4.5%, or (ii) the Share Amount would exceed the Applicable Share Limit. Any purported delivery hereunder shall be void and have no effect to the extent (but only to the extent) that, after such delivery, (i) the Section 16 Percentage would exceed 4.5%, or (ii) the Share Amount would exceed the Applicable Share Limit. If any delivery owed to [•] hereunder is not made, in whole or in part, as a result of this provision, Company's obligation to make such delivery shall not be extinguished and Company shall make such delivery as promptly as practicable after, but in no event later than one Business Day after, [•] gives notice to Company that, after such delivery, (i) the Section 16 Percentage would not exceed 4.5%, and (ii) the Share Amount would not exceed the Applicable Share Limit.

(ee) *Maximum Share Delivery*.

(i) Notwithstanding any other provision of this Master Confirmation, the Agreement or the Equity Definitions, in no event will Company at any time be required to deliver to [•] a number of Shares greater than the Maximum Number of Shares for a Transaction in connection with such Transaction. "**Maximum Number of Shares**," with respect to a Transaction, means a number of Shares equal to two *multiplied by* the Transaction Number of Shares for such Transaction.

(ii) In the event Company shall not have delivered to [•] the full number of Shares or Restricted Shares otherwise deliverable by Company to [•] pursuant to the terms of a Transaction because Company has insufficient authorized but unissued Shares that are not reserved for other transactions (such deficit, the "**Deficit Shares**"), Company shall be continually obligated to deliver, from time to time, Shares or Restricted Shares, as the case may be, to [•] until the full number of Deficit Shares have been delivered pursuant to this Paragraph 8(ee)(ii), when, and to the extent that, (A) Shares are repurchased, acquired or otherwise received by Company or any of its subsidiaries after the Trade Date for the applicable Transaction (whether or not in exchange for cash, fair value or any other consideration), (B) authorized and unissued Shares previously reserved for issuance in respect of other transactions become no longer so reserved or (C) Company additionally authorizes any unissued Shares that are not reserved for other transactions; *provided* that in no event shall Company deliver any Shares or Restricted Shares to [•] pursuant to this Paragraph 8(ee)(ii) to the extent that such delivery would cause the aggregate number of Shares and Restricted Shares delivered to [•] to exceed the Maximum Number of Shares for such Transaction.

(ff) *Right to Extend*. [•] may postpone or add, in whole or in part, any Expiration Date or any other date of valuation, payment or delivery with respect to some or all of the relevant Warrants hereunder (in which event the Calculation Agent shall make appropriate adjustments to the Number of Warrants with respect to one or more Components) if [•] determines, in its reasonable discretion, that such extension is necessary or appropriate to preserve [•]'s hedging or hedge unwind activity hereunder in light of existing liquidity conditions or to enable [•] or one of its affiliates to effect transactions with respect to Shares in connection with its hedging, hedge unwind or settlement activity hereunder in a manner that would, if [•] or such an affiliate were Issuer or an affiliated purchaser of Issuer, be in compliance with applicable legal, regulatory or self-regulatory requirements, or with related policies and procedures applicable to [•]; provided that no such Expiration Date or other date of valuation, payment or delivery may be postponed or added more than a number of Scheduled Trading Days equal to 1.25 times the number of Components (rounded to the nearest whole number) for such Transaction after the originally scheduled Expiration Date or other date of valuation, payment or delivery, as the case may be.

(gg) *10b5-1 Plan*.

(i) Company is entering into this Master Confirmation and each Transaction hereunder in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b5-1 under the Exchange Act ("**Rule 10b5-1**") or any other antifraud or anti-manipulation provisions of the federal or applicable state securities laws and that it has not entered into or altered and will not enter into or alter any corresponding or hedging transaction or position with respect to the Shares. Company acknowledges that it is the intent of the parties that each Transaction entered into under this Master Confirmation comply with the requirements of paragraphs (c)(1)(i)(A) and (B) of Rule 10b5-1 and each Transaction entered into under this Master Confirmation shall be interpreted to comply with the requirements of Rule 10b5-1(c).

(ii) During the term of any Transaction and in connection with the delivery of any Share Termination Delivery Property for any Transaction, [•] (or its agent or affiliate) may effect transactions in Shares in connection with such Transaction. The timing of such transactions by [•], the price paid or received per Share pursuant to such transactions and the manner in which such transactions are made, including, without limitation, whether such transactions are made on any securities exchange or privately, shall be within the sole judgment of [•]. Company acknowledges and agrees that all such transactions shall be made in [•]'s sole judgment and for [•]'s own account.

(iii) Company does not have, and shall not attempt to exercise, any control or influence over how, when or whether [•] (or its agent or affiliate) makes any "purchases or sales" (within the meaning of Rule 10b5-1(c)(1)(i)(B)(3)) in connection with any Transaction, including, without limitation, the price paid per Share pursuant to such purchases, whether such purchases are made on any securities exchange or privately and how, when or whether [•] (or its agent or affiliate) enters into any hedging transactions. [•] represents and warrants that it has consulted with its own advisors as to the legal aspects of its adoption and implementation of this Master Confirmation and each Supplemental Confirmation under Rule 10b5-1.

(iv) Company acknowledges and agrees that any amendment, modification, waiver or termination of this Master Confirmation or any Supplemental Confirmation must be effected in accordance with the requirements for the amendment or termination of a "plan" as defined in Rule 10b5-1(c). Without limiting the generality of the foregoing, any such amendment, modification, waiver or termination shall be made in good faith and not as part of a plan or scheme to evade the prohibitions of Rule 10b-5, and no such amendment, modification or waiver shall be made at any time at which Company or any officer, director, manager or similar person of Company is aware of any material non-public information regarding Company or the Shares.

(v) Company shall not, directly or indirectly, communicate any information regarding Company or the Shares to any employee of [•] or its affiliates who is directly involved with the hedging of and trading with respect to each Transaction and whose name is set forth on a list to be provided by [•], which list may be updated by [•] from time to time.

(hh) *Counterparts*. This Master Confirmation and any Supplemental Confirmation may be executed in any number of counterparts, all of which shall constitute one and the same instrument, and any party hereto may execute this Master Confirmation or any Supplemental Confirmation by signing and delivering one or more counterparts. The words "execution," "signed," "signature," and words of like import in the Agreement, this Master Confirmation, any Supplemental Confirmation or in any other certificate, agreement or document related to the Agreement, this Master Confirmation or any Supplemental Confirmation, if any, shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf", "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

ANNEX A

FORM OF SUPPLEMENTAL CONFIRMATION

Date: [___], 20[___]

From: **[•]**

To: Highwoods Properties, Inc.

The purpose of this Supplemental Confirmation is to confirm the terms and conditions of the Transaction entered into between **[•]** ("**[•]**"), through **[•]**, as its agent (the "**Agent**"), and Highwoods Properties, Inc. ("**Company**"), on the Trade Date specified below. This Supplemental Confirmation is a binding contract between [•] and Company as of the relevant Trade Date for the Transaction referenced below.

1. This Supplemental Confirmation supplements, forms part of, and is subject to the Master Confirmation – Equity Warrants dated as of **[•]** between [•] and Company (as amended and supplemented from time to time, the "**Master Confirmation**"). All provisions contained in the Agreement (as modified and as defined in the Master Confirmation) shall govern this Supplemental Confirmation, except as expressly modified below, and capitalized terms used but not defined herein shall have the meanings specified in the Master Confirmation.

2. The terms of the Transaction to which this Supplemental Confirmation relates are as follows:

Trade Date:	[___], 20[___]
Transaction Number of Warrants:	[___] Warrants
Strike Price:	USD [___]
Premium:	USD [___]
Initial Share Price:	USD [___]
Settlement Price Percentage:	[____]%
Sales Period Outside Date:	[___], 20[___]
Regular Dividend:	USD [___] per Share per quarter
[Warrant Exclusivity End Date:	[___], 20[___]][1]

For each Component of the Transaction and subject to "Number of Warrants" above, the Number of Warrants and the Scheduled Expiration Dates are as set forth below.

[1] NTD: Include in the first Supplemental Confirmation, to be 18-months following the Trade Date for such Supplemental Confirmation.

Component Number	Number of Warrants	Expiration Date
1	[___]	[___], 20[___]
2	[___]	[___], 20[___]
3	[___]	[___], 20[___]
…	[___]	[___], 20[___]

[*Signature Page Follows.*]

Company hereby agrees (a) to check this Supplemental Confirmation carefully and immediately upon receipt so that errors or discrepancies can be promptly identified and rectified and (b) to confirm that the foregoing correctly sets forth the terms of the agreement between us with respect to the particular Transaction to which this Supplemental Confirmation relates by manually signing this Supplemental Confirmation and providing any other information requested herein or in the Master Confirmation and immediately sending an executed copy to us.

Yours sincerely,

[•]

By: _____

Name:

Title:

Confirmed as of the date first above written:

HIGHWOODS PROPERTIES, INC.

By: __

Name:

Title:

PAUL
HASTINGS

Exhibit 5

February 11, 2026

Board of Directors
Highwoods Properties, Inc.
150 Fayetteville Street, Suite 1400
Raleigh, North Carolina 27601

Re: Highwoods Properties, Inc. - Offering of up to $300,000,000 of Shares of Common Stock

Ladies and Gentlemen:

We have acted as counsel to Highwoods Properties, Inc., a Maryland corporation (the "Company"), in connection with the sale from time to time of shares of common stock, par value $0.01 per share, of the Company ("Common Stock") having an aggregate offering price of up to $300,000,000 (the "Securities") pursuant to the terms of separate Equity Distribution Agreements, each dated as of February 11, 2026 (collectively, the "Equity Distribution Agreements"), by and among the Company, Highwoods Realty Limited Partnership, a North Carolina limited partnership, and each of Wells Fargo Securities, LLC, BofA Securities, Inc., BTIG, LLC, Jefferies LLC, J.P. Morgan Securities LLC, TD Securities (USA) LLC and Truist Securities, Inc. (and certain of their respective affiliates or agents), acting in their capacity as agents, forward sellers and/or forward purchasers and, in the case of Jefferies LLC (and its affiliate), also acting in its capacity as warrant hedge seller and/or warrant purchaser, as applicable. The Securities have been registered on a Registration Statement on Form S-3 (File No. 333-293352), which became effective upon filing with the Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "Securities Act"), on February 10, 2026 (the "Registration Statement"), including the base prospectus, dated February 10, 2026, included therein (the "Base Prospectus"), as supplemented by the prospectus supplement dated February 11, 2026, filed with the Commission pursuant to Rule 424(b)(5) under the Securities Act on February 11, 2026 (together with the Base Prospectus, the "Prospectus").

This opinion letter is being furnished in accordance with the requirements of Item 601(b)(5) of Regulation S-K under the Securities Act and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement or the Prospectus, other than as expressly stated herein with respect to the issuance of the Securities.

In rendering the opinion stated herein, we have examined and relied upon the following:

(i) the Registration Statement and the Prospectus;

(ii) executed copies of the Equity Distribution Agreements;

(iii) the Articles of Restatement of the Company, together with all amendments and articles supplementary filed to date with respect thereto, as certified by the State Department of Assessments and Taxation of the State of Maryland as of October 29, 2025, and by an officer of the Company as of the date hereof (collectively, the "Charter"), and the Amended and Restated Bylaws of the Company, as presently in effect, as certified by an officer of the Company as of the date hereof;

(iv) a certificate of status (good standing) of the State Department of Assessments and Taxation of the State of Maryland certifying as to the incorporation and good standing of the Company under the laws of the State of Maryland, dated as of February 2, 2026 (the "Good Standing Certificate"); and

(v) resolutions adopted by the Board of Directors of the Company (the "Board"), or a committee thereof, certified by an officer of the Company, as of the date hereof (collectively, the "Resolutions"), relating to, among other things, the delegation to certain officers of the Company of the power to determine, among other things, the number of Securities and the offering price of the Securities to be sold from time to time pursuant to the Equity Distribution Agreements, in each case, subject to certain parameters.

We have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of the Company and such agreements, certificates and receipts of public officials, certificates of officers or other representatives of the Company and others, and such other documents as we have deemed necessary or appropriate as a basis for the opinions stated below. In addition to the foregoing, we have made such investigations of law as we have deemed necessary or appropriate as a basis for the opinion set forth herein.

In such examination and in rendering the opinion expressed below, we have assumed: (i) the due and valid authorization, execution (including without limitation, via DocuSign eSignature or similar technology) and delivery of the Equity Distribution Agreements and all other agreements, instruments and other documents by all the parties thereto; (ii) the genuineness of all signatures on all documents submitted to us; (iii) the authenticity and completeness of all documents, corporate records, certificates and other instruments reviewed by us; (iv) that photocopy, electronic, certified, conformed, facsimile and other copies submitted to us of original documents, corporate records, certificates and other instruments conform to the original documents, records, certificates and other instruments, and that all such original documents, records, certificates and other instruments were authentic and complete; (v) the legal capacity, competency and authority of all individuals executing documents; (vi) that the Equity Distribution Agreements and all other documents are the valid and binding obligations of each of the parties thereto, enforceable against such parties in accordance with their respective terms, and that no such documents have been amended or terminated orally or in writing except as has been disclosed to us in writing; (vii) that there are no agreements or understandings between or among the parties to the Equity Distribution Agreements or third parties that would expand, modify or otherwise affect the terms of the Equity Distribution Agreements or the respective rights or obligations of the parties thereunder; and (viii) that the statements contained in the certificates and comparable documents of public officials, officers and representatives of the Company and other persons on which we have relied for the purposes of this opinion letter are true and correct on and as of the date hereof, and that there has not been any change in the good standing status of the Company from that reported in the Good Standing Certificate. In addition, we have assumed, without independent investigation or verification, that (i) none of the Securities will be issued or sold in violation of Article VI of the Charter, (ii) upon issuance of the Securities, the total number of shares of Common Stock issued and outstanding will not exceed the total number of shares of Common Stock that the Company is then authorized to issue under the Charter, (iii) the aggregate gross sales price for the Securities issued pursuant to the Equity Distribution Agreements will not exceed $300,000,000, and (iv) prior to the issuance of the Securities, the Board, or a duly authorized committee thereof, or a duly authorized officer of the Company will determine the price and certain other terms of issuance of such Securities in accordance with the Resolutions or any subsequent resolutions duly adopted by the Board (the "Corporate Proceedings").

Based upon the foregoing, and in reliance thereon, and subject to the limitations, qualifications, assumptions and exceptions set forth herein, we are of the opinion that the Securities to be issued by the Company pursuant to the Equity Distribution Agreements are duly authorized and, upon issuance and delivery of the Securities and receipt by

the Company of payment of the purchase price therefor in accordance with the Resolutions, the Corporate Proceedings and the terms of the Equity Distribution Agreements, will be validly issued, fully paid and non-assessable. Without limiting any of the other limitations, exceptions, assumptions and qualifications stated elsewhere herein, we express no opinion with regard to the applicability or effect of the law of any jurisdiction other than, as in effect on the date of this opinion letter, the Maryland General Corporation Law. We are not rendering any opinion as to compliance with any federal or state antifraud law, rule or regulation relating to securities, or to the sale or issuance thereof.

This opinion letter deals only with the specified legal issues expressly addressed herein, and you should not infer any opinion that is not explicitly addressed herein from any matter stated in this letter. This opinion letter is rendered as of the date hereof, and we assume no obligation to advise you or any other person hereafter with regard to any change after the date hereof in the circumstances or the law that may bear on the matters set forth herein even though the change may affect the legal analysis or a legal conclusion or other matters in this opinion letter.

We hereby consent to the filing of this opinion letter with the Commission as Exhibit 5 to the Company's Current Report on Form 8-K, which is incorporated by reference in the Registration Statement in accordance with the requirements of Form S-3 and the rules and regulations promulgated under the Securities Act, and to the reference to our Firm under the heading "Legal Matters" in the Prospectus. In giving such consent, we do not hereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the Commission promulgated thereunder.

Very truly yours,

/s/ Paul Hastings LLP