

Section 1: 10-Q (10-Q)

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549
FORM 10-Q

(Mark One)

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

For the quarterly period ended **September 30, 2019**

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

For the transition period from _____ to _____

Commission file number **001-36041**

INDEPENDENCE REALTY TRUST, INC.

(Exact Name of Registrant as Specified in Its Charter)

Maryland
(State or Other Jurisdiction of
Incorporation or Organization)
1835 Market Street, Suite 2601
Philadelphia, PA
(Address of Principal Executive Offices)

26-4567130
(I.R.S. Employer
Identification No.)

19103
(Zip Code)

(267) 270-4800

(Registrant's Telephone Number, Including Area Code)

N/A

(Former name, former address and former fiscal year, if changed since last report)

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	IRT	NYSE

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large Accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-Accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
Emerging growth company	<input type="checkbox"/>		

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.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of October 28, 2019 there were 90,894,656 shares of the Registrant's common stock issued and outstanding.



INDEPENDENCE REALTY TRUST, INC.

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PART I—FINANCIAL INFORMATION

Item 1. Financial Statements

Independence Realty Trust, Inc. and Subsidiaries

Condensed Consolidated Balance Sheets
(Unaudited and dollars in thousands, except share and per share data)

	As of September 30, 2019	As of December 31, 2018
ASSETS:		
Investments in real estate:		
Investments in real estate, at cost	\$ 1,732,392	\$ 1,660,423
Accumulated depreciation	(145,075)	(112,270)
Investments in real estate, net	1,587,317	1,548,153
Real estate held for sale	32,381	77,285
Cash and cash equivalents	6,587	9,316
Restricted cash	8,960	6,729
Other assets	16,439	8,802
Derivative assets	982	8,307
Intangible assets, net of accumulated amortization of \$412 and \$787, respectively	351	744
Total Assets	<u>\$ 1,653,017</u>	<u>\$ 1,659,336</u>
LIABILITIES AND EQUITY:		
Indebtedness, net of unamortized deferred financing costs of \$5,686 and \$5,927, respectively	\$ 979,330	\$ 985,488
Accounts payable and accrued expenses	32,249	22,815
Accrued interest payable	794	719
Dividends payable	16,460	16,162
Derivative liabilities	12,415	—
Other liabilities	7,399	4,107
Total Liabilities	1,048,647	1,029,291
Equity:		
Stockholders' equity:		
Preferred stock, \$0.01 par value; 50,000,000 shares authorized, 0 and 0 shares issued and outstanding, respectively	—	—
Common stock, \$0.01 par value; 300,000,000 shares authorized, 90,894,656 and 89,184,443 shares issued and outstanding, including 328,875 and 303,819 unvested restricted common share awards, respectively	909	892
Additional paid-in capital	762,933	742,429
Accumulated other comprehensive income (loss)	(17,097)	2,016
Retained earnings (accumulated deficit)	(148,977)	(122,342)
Total stockholders' equity	597,768	622,995
Noncontrolling interests	6,602	7,050
Total Equity	604,370	630,045
Total Liabilities and Equity	<u>\$ 1,653,017</u>	<u>\$ 1,659,336</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

Independence Realty Trust, Inc. and Subsidiaries

Condensed Consolidated Statements of Operations
(Unaudited and dollars in thousands, except share and per share data)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2019	2018	2019	2018
REVENUE:				
Rental and other property revenue	\$ 51,057	\$ 48,644	\$ 151,370	\$ 140,994
Other revenue	242	135	425	429
Total revenue	51,299	48,779	151,795	141,423
EXPENSES:				
Property operating expenses	20,546	19,792	60,504	56,913
Property management expenses	1,901	1,661	5,776	4,936
General and administrative expenses	3,113	2,578	9,758	8,184
Depreciation and amortization expense	13,434	10,783	38,602	33,590
Total expenses	38,994	34,814	114,640	103,623
Interest expense	(9,783)	(9,129)	(29,353)	(26,063)
Other income	—	—	—	144
Gain on sale of assets	2,390	—	14,532	—
Net income:	4,912	4,836	22,334	11,881
Income allocated to noncontrolling interest	(49)	(49)	(222)	(173)
Net income allocable to common shares	<u>\$ 4,863</u>	<u>\$ 4,787</u>	<u>\$ 22,112</u>	<u>\$ 11,708</u>
Earnings per share:				
Basic	<u>\$ 0.05</u>	<u>\$ 0.05</u>	<u>\$ 0.25</u>	<u>\$ 0.14</u>
Diluted	<u>\$ 0.05</u>	<u>\$ 0.05</u>	<u>\$ 0.25</u>	<u>\$ 0.13</u>
Weighted-average shares:				
Basic	<u>90,027,540</u>	<u>87,702,078</u>	<u>89,513,834</u>	<u>86,559,294</u>
Diluted	<u>90,691,368</u>	<u>88,046,311</u>	<u>90,234,840</u>	<u>86,818,337</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

Independence Realty Trust, Inc. and Subsidiaries

Condensed Consolidated Statements of Comprehensive Income (Loss)
(Unaudited and dollars in thousands)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2019	2018	2019	2018
Net income	\$ 4,912	\$ 4,836	\$ 22,334	\$ 11,881
Other comprehensive income (loss):				
Change in fair value of interest rate hedges	(5,633)	1,072	(20,583)	5,959
Realized (gains) losses on interest rate hedges reclassified to earnings	251	(382)	1,277	(862)
Total other comprehensive income (loss)	(5,382)	690	(19,306)	5,097
Comprehensive income (loss) before allocation to noncontrolling interests	(470)	5,526	3,028	16,978
Allocation to noncontrolling interests	5	(54)	(29)	(108)
Comprehensive income (loss)	\$ (465)	\$ 5,472	\$ 2,999	\$ 16,870

The accompanying notes are an integral part of these condensed consolidated financial statements.

Independence Realty Trust, Inc. and Subsidiaries

Condensed Consolidated Statements of Changes in Equity
(Unaudited and dollars in thousands, except share information)

	Common Shares	Par Value Common Shares	Additional Paid In Capital	Accumulated Other Comprehensive Income (loss)	Retained Earnings (Deficit)	Total Stockholders' Equity	Noncontrolling Interests	Total Equity
Balance, December 31, 2018	89,184,443	\$ 892	\$ 742,429	\$ 2,016	\$ (122,342)	\$ 622,995	\$ 7,050	\$ 630,045
Net income	—	—	—	—	2,540	2,540	26	2,566
Other comprehensive income	—	—	—	(4,324)	—	(4,324)	(44)	(4,368)
Stock compensation expense	189,986	1	633	—	—	634	—	634
Issuance of common shares	510,000	5	5,304	—	—	5,309	—	5,309
Repurchase of shares related to equity award tax withholding	(49,636)	—	(635)	—	—	(635)	—	(635)
Common dividends declared (\$0.18 per share)	—	—	—	—	(16,318)	(16,318)	—	(16,318)
Distribution to noncontrolling interest declared (\$0.18 per unit)	—	—	—	—	—	—	(159)	(159)
Balance, March 31, 2019	<u>89,834,793</u>	<u>\$ 898</u>	<u>\$ 747,731</u>	<u>\$ (2,308)</u>	<u>\$ (136,120)</u>	<u>\$ 610,201</u>	<u>\$ 6,873</u>	<u>\$ 617,074</u>
Net income	—	—	—	—	14,709	14,709	147	14,856
Other comprehensive income	—	—	—	(9,461)	—	(9,461)	(95)	(9,556)
Stock compensation expense	32,155	—	1,099	—	—	1,099	—	1,099
Issuance of common shares	65,704	1	722	—	—	723	—	723
Repurchase of shares related to equity award tax withholding	(234)	—	—	—	—	—	—	—
Common dividends declared (\$0.18 per share)	—	—	—	—	(16,128)	(16,128)	—	(16,128)
Distribution to noncontrolling interest declared (\$0.18 per unit)	—	—	—	—	—	—	(159)	(159)
Balance, June 30, 2019	<u>89,932,418</u>	<u>\$ 899</u>	<u>\$ 749,552</u>	<u>\$ (11,769)</u>	<u>\$ (137,539)</u>	<u>\$ 601,143</u>	<u>\$ 6,766</u>	<u>\$ 607,909</u>
Net income	—	—	—	—	4,863	4,863	49	4,912
Other comprehensive income	—	—	—	(5,328)	—	(5,328)	(54)	(5,382)
Stock compensation expense	(10,591)	—	704	—	—	704	—	704
Issuance of common shares	972,887	10	12,684	—	—	12,694	—	12,694
Repurchase of shares related to equity award tax withholding	(58)	—	(7)	—	—	(7)	—	(7)
Common dividends declared (\$0.18 per share)	—	—	—	—	(16,301)	(16,301)	—	(16,301)
Distribution to noncontrolling interest declared (\$0.18 per unit)	—	—	—	—	—	—	(159)	(159)
Balance, September 30, 2019	<u>90,894,656</u>	<u>\$ 909</u>	<u>\$ 762,933</u>	<u>\$ (17,097)</u>	<u>\$ (148,977)</u>	<u>\$ 597,768</u>	<u>\$ 6,602</u>	<u>\$ 604,370</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

Independence Realty Trust, Inc. and Subsidiaries

Condensed Consolidated Statements of Changes in Equity
(Unaudited and dollars in thousands, except share information)

	<u>Common Shares</u>	<u>Par Value Common Shares</u>	<u>Additional Paid In Capital</u>	<u>Accumulated Other Comprehensive Income</u>	<u>Retained Earnings (Deficit)</u>	<u>Total Stockholders' Equity</u>	<u>Noncontrolling Interests</u>	<u>Total Equity</u>
Balance, December 31, 2017	84,708,551	\$ 846	\$ 703,849	\$ 4,626	\$ (85,221)	\$ 624,100	\$ 22,019	\$ 646,119
Net income	—	—	—	—	3,412	3,412	88	3,500
Other comprehensive income	—	—	—	3,264	—	3,264	(83)	3,181
Stock compensation expense	194,622	1	469	—	—	470	—	470
Repurchase of shares related to equity award tax withholding	(41,912)	-	(345)	—	—	(345)	—	(345)
Conversion of noncontrolling interest to common shares	2,112,136	21	14,287	—	—	14,308	(14,308)	—
Common dividends declared (\$0.18 per share)	—	—	—	—	(15,772)	(15,772)	—	(15,772)
Distribution to noncontrolling interest declared (\$0.18 per unit)	—	—	—	—	—	—	(163)	(163)
Balance, March 31, 2018	<u>86,973,397</u>	<u>\$ 868</u>	<u>\$ 718,260</u>	<u>\$ 7,890</u>	<u>\$ (97,581)</u>	<u>\$ 629,437</u>	<u>\$ 7,553</u>	<u>\$ 636,990</u>
Net income (loss)	—	—	—	—	3,509	3,509	36	3,545
Other comprehensive income	—	—	—	1,213	—	1,213	13	1,226
Stock compensation expense	5,868	1	933	—	—	934	—	934
Issuance of common shares	61,656	1	455	—	—	456	—	456
Repurchase of shares related to equity award tax withholding	3,200	—	8	—	—	8	—	8
Common dividends declared (\$0.18 per share)	—	—	—	—	(15,690)	(15,690)	—	(15,690)
Distribution to noncontrolling interest declared (\$0.18 per unit)	—	—	—	—	—	—	(162)	(162)
Balance, June 30, 2018	<u>87,044,121</u>	<u>\$ 870</u>	<u>\$ 719,656</u>	<u>\$ 9,103</u>	<u>\$ (109,762)</u>	<u>\$ 619,867</u>	<u>\$ 7,440</u>	<u>\$ 627,307</u>
Net income (loss)	—	—	—	—	4,787	4,787	49	4,836
Other comprehensive income	—	—	—	685	—	685	5	690
Stock compensation expense	(2,858)	—	586	—	—	586	—	586
Issuance of common shares	1,861,508	19	18,729	—	—	18,748	—	18,748
Repurchase of shares related to equity award tax withholding	—	—	(17)	—	—	(17)	—	(17)
Conversion of noncontrolling interest to common shares	18,108	—	198	—	—	198	(198)	—
Common dividends declared	—	—	—	—	(15,949)	(15,949)	—	(15,949)
Distribution to noncontrolling interest declared	—	—	—	—	—	—	(158)	(158)
Balance, September 30, 2018	<u>88,920,879</u>	<u>889</u>	<u>739,152</u>	<u>9,788</u>	<u>(120,924)</u>	<u>628,905</u>	<u>7,138</u>	<u>636,043</u>

The accompanying notes are an integral part of these condensed consolidated financial statements

Independence Realty Trust, Inc. and Subsidiaries

Condensed Consolidated Statements of Cash Flows
(Unaudited and dollars in thousands)

	For the Nine Months Ended September 30,	
	2019	2018
Cash flows from operating activities:		
Net income	\$ 22,334	\$ 11,881
Adjustments to reconcile net income to cash flow from operating activities:		
Depreciation and amortization	38,602	33,590
Amortization of deferred financing costs	1,052	1,078
Stock compensation expense	2,400	1,966
Gain on sale of assets	(14,532)	—
Amortization related to derivative instruments	495	(52)
Changes in assets and liabilities:		
Other assets	460	59
Accounts payable and accrued expenses	8,476	8,659
Accrued interest payable	63	291
Other liabilities	7	(157)
Net cash provided by (used in) operating activities	<u>59,357</u>	<u>57,315</u>
Cash flows from investing activities:		
Acquisition of real estate properties	(80,079)	(154,082)
Disposition of real estate properties	38,731	—
Capital expenditures	(33,825)	(28,348)
Cash flow (used in) provided by investing activities	<u>(75,173)</u>	<u>(182,430)</u>
Cash flows from financing activities:		
Proceeds from unsecured credit facility and term loans	161,060	169,000
Unsecured credit facility repayments	(110,500)	(22,000)
Mortgage principal repayments	(3,347)	(2,402)
Payments for deferred financing costs	(1,054)	(16)
Proceeds from issuance of common stock	18,726	19,204
Distributions on common stock	(48,443)	(36,527)
Distributions to noncontrolling interests	(482)	(499)
Repurchase of shares related to equity award tax withholding	(642)	(354)
Cash flow provided by (used in) financing activities	<u>15,318</u>	<u>126,406</u>
Net change in cash and cash equivalents, and restricted cash	<u>(498)</u>	<u>1,291</u>
Cash and cash equivalents, and restricted cash, beginning of period	<u>16,045</u>	<u>14,619</u>
Cash and cash equivalents, and restricted cash, end of the period	<u>\$ 15,547</u>	<u>\$ 15,910</u>
Reconciliation of cash, cash equivalents, and restricted cash to the Consolidated Balance Sheet		
Cash and cash equivalents	\$ 6,587	\$ 7,645
Restricted cash	8,960	8,265
Total cash, cash equivalents, and restricted cash, end of period	<u>\$ 15,547</u>	<u>\$ 15,910</u>

The accompanying notes are an integral part of these condensed consolidated financial statements.

Independence Realty Trust, Inc. and Subsidiaries

**Notes to Condensed Consolidated Financial Statements
As of September 30, 2019**

(Unaudited and dollars in thousands, except share and per share data)

NOTE 1: Organization

Independence Realty Trust, Inc. (“IRT”), is a self-administered and self-managed Maryland real estate investment trust, or REIT, which was formed on March 26, 2009. Our primary purposes are to acquire, own, operate, improve, and manage multifamily apartment communities in non-gateway markets. As of September 30, 2019, we owned and operated 57 multifamily apartment properties, totaling 15,536 units across non-gateway U.S markets, including Atlanta, Louisville, Memphis, and Raleigh. We own substantially all of our assets and conduct our operations through Independence Realty Operating Partnership, LP (“IROP”), of which we are the sole general partner.

As used herein, the terms “we,” “our” and “us” refer to IRT and, as required by context, IROP, and their subsidiaries.

NOTE 2: Summary of Significant Accounting Policies

a. Basis of Presentation

The accompanying unaudited interim consolidated financial statements have been prepared by management in accordance with generally accepted accounting principles in the United States (“GAAP”). Certain information and footnote disclosures normally included in annual consolidated financial statements prepared in accordance with GAAP have been condensed or omitted pursuant to such rules and regulations, although we believe that the included disclosures are adequate to make the information presented not misleading. The unaudited interim consolidated financial statements should be read in conjunction with our audited financial statements as of and for the year ended December 31, 2018 included in our 2018 Annual Report on Form 10-K. In the opinion of management, all adjustments, consisting only of normal recurring adjustments, necessary to present fairly our consolidated financial position and consolidated results of operations and cash flows are included. The results of operations for the interim periods presented are not necessarily indicative of the results for the full year.

b. Principles of Consolidation

The consolidated financial statements reflect our accounts and the accounts of IROP and its subsidiaries. All intercompany accounts and transactions have been eliminated in consolidation. Pursuant to FASB Accounting Standards Codification Topic 810, “Consolidation”, IROP is considered a variable interest entity. As our significant asset is our investment in IROP, substantially all of our assets and liabilities represent the assets and liabilities of IROP.

c. Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting periods. Actual results could differ from those estimates.

d. Cash and Cash Equivalents

Cash and cash equivalents include cash held in banks and highly liquid investments with maturities of three months or less when purchased. Cash, including amounts restricted, may at times exceed the Federal Deposit Insurance Corporation deposit insurance limit of \$250 per institution. We mitigate credit risk by placing cash and cash equivalents with major financial institutions. To date, we have not experienced any losses on cash and cash equivalents.

e. Restricted Cash

Restricted cash includes escrows of our funds held by lenders to fund certain expenditures, such as real estate taxes and insurance, or to be released at our discretion upon the occurrence of certain pre-specified events. As of September 30, 2019, and December 31, 2018, we had \$8,960 and \$6,729, respectively, of restricted cash.

Independence Realty Trust, Inc. and Subsidiaries

Notes to Condensed Consolidated Financial Statements

As of September 30, 2019

(Unaudited and dollars in thousands, except share and per share data)

f. Investments in Real Estate

Investments in real estate are recorded at cost less accumulated depreciation. Costs that both add value and appreciably extend the useful life of an asset are capitalized. Expenditures for repairs and maintenance are expensed as incurred.

Investments in real estate are classified as held for sale in the period in which certain criteria are met including when management commits to a plan to sell, an active program to locate a buyer has been initiated, the sale is probable, and actions required to complete the plan of sale indicate that it is unlikely that significant changes to the plan of sale will be made or the plan of sale will be withdrawn.

Allocation of Purchase Price of Acquired Assets

The properties we acquire are generally accounted for as asset acquisitions. Under asset acquisition accounting, the costs to acquire real estate, including transaction costs related to the acquisition, are accumulated and then allocated to the individual assets and liabilities acquired based upon their relative fair value. Transaction costs and fees incurred related to the financing of an acquisition are capitalized and amortized over the life of the related financing.

We estimate the fair value of acquired tangible assets (consisting of land, building and improvements), identified intangible assets (consisting of in-place leases), and assumed debt at the date of acquisition, based on the evaluation of information and estimates available at that date.

The aggregate value of in-place leases is determined by evaluating various factors, including the terms of the leases that are in place and assumed lease-up periods. The value assigned to this intangible asset is amortized over the assumed lease up period, typically six months. During the three and nine months ended September 30, 2019, we acquired in-place leases with a value of \$448 and \$764, respectively, as part of related property acquisitions that are discussed further in Note 3. For the three and nine months ended September 30, 2019, we recorded \$307 and \$1,157, respectively, of amortization expense for intangible assets. For the three and nine months ended September 30, 2018, we recorded \$567 and \$2,900, respectively, of amortization expense for intangible assets. For the three and nine months ended September 30, 2019, we wrote-off fully amortized intangible assets of \$0 and \$1,532, respectively. For the three and nine months ended September 30, 2018, we wrote-off fully amortized intangible assets of \$1,641 and \$4,155, respectively. As of September 30, 2019, we expect to record additional amortization expense on current in-place intangible assets of \$276 for the remainder of 2019.

Impairment of Long-Lived Assets

Management evaluates the recoverability of our investment in real estate assets, including related identifiable intangible assets, in accordance with FASB ASC Topic 360, "Property, Plant and Equipment". This statement requires that long-lived assets be reviewed for impairment whenever events or changes in circumstances indicate that recoverability of the assets is not assured.

Management reviews its long-lived assets on an ongoing basis and evaluates the recoverability of the carrying value when there is an indicator of impairment. An impairment charge is recorded when it is determined that the carrying value of the asset exceeds the fair value. The estimated cash flows used for the impairment analysis and the determination of estimated fair value are based on our plans for the respective assets and our views of market and economic conditions. The estimates consider matters such as current and historical rental rates, occupancies for the respective and/or comparable properties, and recent sales data for comparable properties. Changes in estimated future cash flows due to changes in our plans or views of market and economic conditions could result in recognition of impairment losses, which, under the applicable accounting guidance, could be substantial.

Depreciation Expense

Depreciation expense for real estate assets is computed using a straight-line method based on a life of 40 years for buildings and improvements and five to ten years for equipment and fixtures. For the three and nine months ended September 30, 2019, we recorded \$13,127 and \$37,445 of depreciation expense, respectively. For the three and nine months ended September 30, 2018, we recorded \$10,216 and \$30,690 of depreciation expense, respectively.

Independence Realty Trust, Inc. and Subsidiaries

Notes to Condensed Consolidated Financial Statements

As of September 30, 2019

(Unaudited and dollars in thousands, except share and per share data)

g. Revenue and Expenses

Rental and other property revenue

We apply FASB ASC Topic 842, “Leases” with respect to our accounting for rental income. We primarily lease apartment units under operating leases generally with terms of one year or less. Rental payments are generally due monthly and rental revenues are recognized on an accrual basis when earned. We have elected to account for lease (i.e. fixed payments including base rent) and non-lease components (i.e. tenant reimbursements and other certain service fees) as a single combined operating lease component since (1) the timing and pattern of transfer of the lease and non-lease components is the same, (2) the lease component is the predominant element, and (3) the combined single lease component would be classified as an operating lease. As a result of this treatment, certain amounts classified within prior revenue captions tenant reimbursement income and other property income have been combined into rental and other property revenue in the consolidated statements of operations and prior period amounts have been adjusted to conform to current period presentation.

We make ongoing estimates of the collectability of our base rents, tenant reimbursements, and other service fees included within rental and other property revenue. Effective January 1, 2019, if collectability is not probable, we adjust rental and other property income for the amount of uncollectible revenue. For the three and nine months ended September 30, 2019, we adjusted rental and other property income by \$285 and \$819, respectively, for uncollectible rental revenue. Prior to January 1, 2019, we maintained an allowance for doubtful accounts based on an ongoing analysis of collectability and recorded changes in the allowance for doubtful accounts as bad debt expense within property operating expenses. For the three and nine months ended September 30, 2018, we recorded bad debt expense of \$236 and \$286, respectively, within property operating expenses in the consolidated statements of operations.

For the three and nine months ended September 30, 2019, we recognized revenues of \$80 and \$103, respectively, related to recoveries of lost rental revenue due to natural disasters and other insurable events from our insurance providers. For the three and nine months ended September 30, 2018, we recognized revenues of \$65 and \$171, respectively, related to recoveries of lost rental revenue due to natural disasters and other insurable events from our insurance providers.

Advertising Expenses

In accordance with FASB ASC Topic 720, “Other Expenses”, we expense the costs of advertising as incurred. For the three and nine months ended September 30, 2019, we incurred \$612 and \$1,763 of advertising expenses, respectively. For the three and nine months ended September 30, 2018, we incurred \$577 and \$1,674 of advertising expenses, respectively.

h. Derivative Instruments

We may use derivative financial instruments to hedge all or a portion of the interest rate risk associated with our borrowings. The principal objective of such arrangements is to minimize the risks and/or costs associated with our operating and financial structure, as well as, to hedge specific anticipated transactions. While these instruments may impact our periodic cash flows, they benefit us by minimizing the risks and/or costs previously described. The counterparties to these contractual arrangements are major financial institutions with which we and our affiliates may also have other financial relationships. In the event of nonperformance by the counterparties, we are potentially exposed to credit loss. However, because of the high credit ratings of the counterparties, we do not anticipate that any of the counterparties will fail to meet their obligations.

In accordance with FASB ASC Topic 815, “Derivatives and Hedging”, we measure each derivative instrument (including certain derivative instruments embedded in other contracts) at fair value and record such amounts in our consolidated balance sheets as either an asset or liability. For derivatives designated as cash flow hedges, the changes in the fair value of the effective portions of the derivative are reported in other comprehensive income and changes in the fair value of the ineffective portions of cash flow hedges, if any, are recognized in earnings. For derivatives not designated as hedges (or designated as fair value hedges), the changes in fair value of the derivative instrument are recognized in earnings. Any derivatives that we designate in hedge relationships are done so at inception. At inception, we determine whether or not the derivative is highly effective in offsetting changes in the designated interest rate risk associated with the identified indebtedness using regression analysis. At each reporting period, we update our regression analysis and use the hypothetical derivative method to measure any ineffectiveness.

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i. Fair Value of Financial Instruments

In accordance with FASB ASC Topic 820, "Fair Value Measurements and Disclosures", fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Where available, fair value is based on observable market prices or parameters or derived from such prices or parameters. Where observable prices or inputs are not available, valuation models are applied. These valuation techniques involve management estimation and judgment, the degree of which is dependent on the price transparency for the instruments or market and the instruments' complexity for disclosure purposes. Assets and liabilities recorded at fair value in our consolidated balance sheets are categorized based upon the level of judgment associated with the inputs used to measure their value. Hierarchical levels, as defined in FASB ASC Topic 820, "Fair Value Measurements and Disclosures" and directly related to the amount of subjectivity associated with the inputs to fair valuations of these assets and liabilities, are as follows:

- **Level 1:** Valuations are based on unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date. The types of assets carried at Level 1 fair value generally are equity securities listed in active markets. As such, valuations of these investments do not entail a significant degree of judgment.
- **Level 2:** Valuations are based on quoted prices for similar instruments in active markets or quoted prices for identical or similar instruments in markets that are not active or for which all significant inputs are observable, either directly or indirectly.
- **Level 3:** Inputs are unobservable for the asset or liability, and include situations where there is little, if any, market activity for the asset or liability. In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, the level in the fair value hierarchy within which the fair value measurement in its entirety falls has been determined based on the lowest level input that is significant to the fair value measurement in its entirety. Our assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment, and considers factors specific to the asset or liability.

The availability of observable inputs can vary depending on the financial asset or liability and is affected by a wide variety of factors, including, for example, the type of investment, whether the investment is new, whether the investment is traded on an active exchange or in the secondary market, and the current market condition. To the extent that valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. Accordingly, the degree of judgment exercised by us in determining fair value is greatest for instruments categorized in Level 3.

Fair value is a market-based measure considered from the perspective of a market participant who holds the asset or owes the liability rather than an entity-specific measure. Therefore, even when market assumptions are not readily available, our own assumptions are set to reflect those that management believes market participants would use in pricing the asset or liability at the measurement date. We use prices and inputs that management believes are current as of the measurement date, including during periods of market dislocation. In periods of market dislocation, the observability of prices and inputs may be reduced for many instruments. This condition could cause an instrument to be transferred from Level 1 to Level 2 or Level 2 to Level 3.

Fair value for certain of our Level 3 financial instruments is derived using internal valuation models. These internal valuation models include discounted cash flow analyses developed by management using current interest rates, estimates of the term of the particular instrument, specific issuer information and other market data for securities without an active market. In accordance with FASB ASC Topic 820, "Fair Value Measurements and Disclosures", the impact of our own credit spreads is also considered when measuring the fair value of financial assets or liabilities, including derivative contracts. Where appropriate, valuation adjustments are made to account for various factors, including bid-ask spreads, credit quality and market liquidity. These adjustments are applied on a consistent basis and are based on observable inputs where available. Management's estimate of fair value requires significant management judgment and is subject to a high degree of variability based upon market conditions, the availability of specific issuer information and management's assumptions.

FASB ASC Topic 825, "Financial Instruments" requires disclosure of the fair value of financial instruments for which it is practicable to estimate that value. Given that cash and cash equivalents and restricted cash are short term in nature with limited fair value volatility, the carrying amount is deemed to be a reasonable approximation of fair value and the fair value input is classified as a Level 1 fair value measurement. The fair value input for the derivatives is classified as a Level 2 fair value measurement within the fair value hierarchy. The fair value inputs for our unsecured credit facility and term loans are classified as Level 2 fair value measurements within the fair value hierarchy. The fair value of mortgage indebtedness is based on a discounted cash flows valuation

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technique. As this technique utilizes current credit spreads, which are generally unobservable, this is classified as a Level 3 fair value measurement within the fair value hierarchy. We determine appropriate credit spreads based on the type of debt and its maturity. There were no transfers between levels in the fair value hierarchy for the nine months ended September 30, 2019. The following table summarizes the carrying amount and the fair value of our financial instruments as of the periods indicated:

Financial Instrument	As of September 30, 2019		As of December 31, 2018	
	Carrying Amount	Estimated Fair Value	Carrying Amount	Estimated Fair Value
Assets				
Cash and cash equivalents	\$ 6,587	\$ 6,587	\$ 9,316	\$ 9,316
Restricted cash	8,960	8,960	6,729	6,729
Derivative assets	982	982	8,307	8,307
Liabilities				
Debt:				
Unsecured credit facility	153,915	156,303	153,983	155,743
Term loans	298,594	300,000	248,380	250,000
Mortgages	526,821	528,140	583,125	577,112
Derivative liabilities	12,415	12,415	—	—

j. Deferred Financing Costs

Costs incurred in connection with debt financing are deferred and classified within indebtedness and charged to interest expense over the terms of the related debt agreements, under the effective interest method.

k. Office Leases

We apply FASB ASC Topic 842, "Leases", which requires a lessee to recognize a right-of-use asset and a lease liability on the balance sheet at the lease commencement date for all leases, except those leases with terms of less than a year. We lease corporate office space under leases with terms of up to 10 years and that may include extension options, but that do not include any residual value guarantees or restrictive covenants. As of September 30, 2019, we had \$2,928 of operating lease right-of-use assets and \$3,206 of operating lease liabilities related to our corporate office leases. The operating lease right-of-use assets are presented within other assets and the operating lease liabilities are presented within other liabilities in our consolidated balance sheet. We recorded \$154 and \$433, respectively, of total operating lease expense during the three and nine months ended September 30, 2019, which is recorded within property management expense and general and administrative expenses in our consolidated statements of operations.

l. Income Taxes

We have elected to be taxed as a REIT beginning with the taxable year ended December 31, 2011. Accordingly, we recorded no income tax expense for the three and nine months ended September 30, 2019 and 2018.

To qualify as a REIT, we must meet certain organizational and operational requirements, including a requirement to distribute at least 90% of our ordinary taxable income to stockholders. As a REIT, we generally are not subject to federal income tax on taxable income that we distribute to our stockholders. If we fail to qualify as a REIT in any taxable year, we will be subject to federal income taxes on our taxable income at regular corporate rates and will not be permitted to qualify for treatment as a REIT for federal income tax purposes for four years following the year during which qualification is lost unless the Internal Revenue Service grants us relief under certain statutory provisions. Such an event could materially adversely affect our net income and net cash available for distribution to stockholders; however, we believe that we are organized and operate in such a manner as to qualify and maintain treatment as a REIT and intend to operate in such a manner so that we will remain qualified as a REIT for federal income tax purposes.

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m. Recent Accounting Pronouncements

Below is a brief description of recent accounting pronouncements that could have a material effect on our financial statements.

Adopted Within these Financial Statements

In February 2016, the FASB issued an accounting standard classified under FASB ASC Topic 842, "Leases". For lessees, this accounting standard amends lease accounting by requiring (1) the recognition of lease assets and lease liabilities for those leases classified as operating leases on the balance sheet and (2) additional disclosure about leasing arrangements. For lessors, the guidance under the new lease standard is substantially similar to legacy lease accounting standards. This standard is effective for annual periods beginning after December 15, 2018, including interim periods within those fiscal years, with early adoption permitted. In July 2018, the FASB issued an amendment to the new standard, which provides a package of practical expedients that (1) allows lessors to not separate lease and non-lease components in a contract and allocate the consideration in the contract to the separate components if both (i) the timing and pattern of revenue recognition for the non-lease component and the related lease component are the same and (ii) the combined single lease component would be classified as an operating lease and (2) provides a transition option that permits entities to not recast the comparative periods presented when transitioning to the standard. We adopted the new standard on January 1, 2019 using the modified retrospective approach and the package of practical expedients. We did not record a cumulative-effect adjustment on the effective date and all prior comparative periods are presented in accordance with legacy lease accounting standards. Our apartment leases, where we are lessor, continued to be accounted for as operating leases under the new standard and, therefore, there were not significant changes in accounting for these leases. For our various corporate office leases, where we are lessee, we recorded a \$308 right of use asset and a lease liability on our consolidated balance sheets upon adoption.

In June 2018, the FASB issued an accounting standard classified under FASB ASC Topic 718, "Compensation – Stock Compensation." The amendments in this update expand the scope of Topic 718 to include share-based payment transactions for acquiring goods and services from nonemployees. As a result, the accounting for share-based payment award transactions could be impacted. We adopted the new standard on January 1, 2019. As we have not issued share-based payments to non-employees since prior to our management internalization, the adoption of this standard has not had an effect on our consolidated financial statements.

NOTE 3: Investments in Real Estate

As of September 30, 2019, our real estate portfolio consisted of 57 apartment properties with 15,536 units. The table below summarizes our investments in real estate:

	As of September 30, 2019	As of December 31, 2018	Depreciable Lives (In years)
Land	\$ 221,767	\$ 209,111	—
Building	1,412,855	1,384,810	40
Furniture, fixtures and equipment	97,770	66,502	5-10
Total investment in real estate	\$ 1,732,392	\$ 1,660,423	
Accumulated depreciation	(145,075)	(112,270)	
Investments in real estate, net	\$ 1,587,317	\$ 1,548,153	

As of September 30, 2019, we owned one property that was classified as held for sale. The 300-unit property held for sale, Iron Rock, is located in Austin, TX and had a net carrying value of \$32,381 as of September 30, 2019.

We had three properties classified as held for sale as of December 31, 2018.

Acquisitions

The below table summarizes our acquisitions for the nine months ended September 30, 2019.

Property Name	Date of Purchase	Location	Units	Contract Price
North Park	4/30/2019	Atlanta, GA	224	\$ 28,000
Rocky Creek	7/11/2019	Tampa, FL	264	\$ 48,000
Total			488	\$ 76,000

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The following table summarizes the aggregate relative fair value of the assets and liabilities associated with the properties acquired during the nine-month period ended September 30, 2019, on the date of acquisition, accounted for under FASB ASC Topic 805-50-15-3.

Description	Fair Value of Assets Acquired During The Nine Months Ended September 30, 2019	
Assets acquired:		
Investments in real estate (a)	\$	75,429
Other assets		128
Intangible assets		764
Total assets acquired	\$	76,321
Liabilities assumed:		
Accounts payable and accrued expenses	\$	345
Other liabilities		166
Total liabilities assumed		511
Estimated fair value of net assets acquired	\$	75,810

(a) Included \$193 of property related acquisition costs capitalized during the nine months ended September 30, 2019.

In October 2019, we acquired a 318-unit property located in Raleigh, NC for a purchase price of \$52,925.

Dispositions

The below table summarizes our dispositions for the nine months ended September 30, 2019.

Property Name	Date of Sale	Sale Price		Gain (loss) on sale (1)	
Reserve at Eagle Ridge	4/30/2019	\$	42,000	\$	12,294
Little Rock, AR Portfolio	7/18/2019	\$	56,500	\$	2,230
Total		\$	98,500	\$	14,524

(1) The gain (loss) for these properties is net of \$5,233 of debt prepayment premium costs.

NOTE 4: Indebtedness

The following tables contain summary information concerning our indebtedness as of September 30, 2019:

Debt:	Outstanding Principal	Unamortized Debt Issuance Costs		Carrying Amount	Type	Weighted Average Rate	Weighted Average Maturity (in years)
		\$	\$				
Unsecured credit facility (1)	\$ 156,303	\$ (2,388)	\$ 153,915	Floating	3.5%	3.6	
Unsecured term loans	300,000	(1,406)	298,594	Floating	3.5%	4.6	
Mortgages	528,713	(1,892)	526,821	Fixed	3.8%	4.3	
Total Debt	\$ 985,016	\$ (5,686)	\$ 979,330		3.7%	4.3	

(1) The total capacity under the unsecured credit facility is \$350,000, of which \$156,303 was outstanding as of September 30, 2019.

Debt:	Original maturities on or before December 31,					
	2019	2020	2021	2022	2023	Thereafter
Unsecured credit facility	\$ —	\$ —	\$ —	\$ —	\$ 156,303	\$ —
Unsecured term loans	—	—	—	—	—	300,000
Mortgages	1,602	8,135	76,033	70,700	107,202	265,041
Total	\$ 1,602	\$ 8,135	\$ 76,033	\$ 70,700	\$ 263,505	\$ 565,041

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As of September 30, 2019, we were in compliance with all financial covenants contained in documents governing our indebtedness.

The following table contains summary information concerning our indebtedness as of December 31, 2018:

Debt:	Outstanding Principal	Unamortized Debt		Carrying Amount	Type	Weighted Average Rate	Weighted Average Maturity (in years)
		Issuance Costs					
Unsecured credit facility (1)	\$ 155,743	\$ (1,760)		\$ 153,983	Floating	3.9%	2.7
Unsecured term loans	250,000	(1,620)		248,380	Floating	4.0%	5.4
Mortgages	585,672	(2,547)		583,125	Fixed	3.8%	5.1
Total Debt	\$ 991,415	\$ (5,927)		\$ 985,488		3.9%	4.8

(1) The total capacity under the unsecured credit facility was \$300,000, of which \$155,743 was outstanding as of December 31, 2018.

Unsecured Credit Facility

On May 9, 2019, we closed on a new \$350,000 unsecured credit facility that consists entirely of a revolving line of credit (the “Unsecured Revolving Line of Credit”), refinancing and terminating the previous unsecured credit facility. We have the right to increase the aggregate amount of the Unsecured Revolving Line of Credit to up to \$600,000. The maturity date on borrowings outstanding under the Unsecured Revolving Line of Credit is May 9, 2023, subject to our option to extend the revolving commitment for two additional 6-month periods under certain circumstances, including the payment of an extension fee. We may prepay the Unsecured Revolving Line of Credit, in whole or in part, at any time without a prepayment fee or penalty. At our option, borrowings under the Unsecured Revolving Line of Credit will bear interest at a rate equal to either (i) the 1-month LIBOR rate plus a margin of 125 to 200 basis points, or (ii) a base rate plus a margin of 25 to 100 basis points. The applicable margin is determined based upon our total consolidated leverage ratio, as defined in the agreements. At the time of closing, based on our leverage ratio, the margin spread to LIBOR was 155 basis points. We recognized the refinance as a modification of our prior unsecured credit facility and incurred deferred financing costs of \$1,129 associated with this transaction.

Mortgages

On April 30, 2019, we extinguished a property mortgage in the amount of \$18,850 in connection with a property disposition.

On July 18, 2019, we extinguished two property mortgages in the amounts of \$20,527 and \$14,235, respectively, in connection with two property dispositions.

NOTE 5: Derivative Financial Instruments

The following table summarizes the aggregate notional amount and estimated net fair value of our derivative instruments as of September 30, 2019 and December 31, 2018:

	As of September 30, 2019			As of December 31, 2018		
	Notional	Fair Value of Assets	Fair Value of Liabilities	Notional	Fair Value of Assets	Fair Value of Liabilities
Cash flow hedges:						
Interest rate swap	\$ 150,000	\$ 982	\$ —	\$ 150,000	\$ 4,751	\$ —
Interest rate collars	250,000	—	6,617	250,000	3,556	—
Forward interest rate swap	—	—	5,798	—	—	—
Total	\$ 400,000	\$ 982	\$ 12,415	\$ 400,000	\$ 8,307	\$ —

Forward interest rate swap

On May 9, 2019, we entered into a forward-starting interest rate swap contract with a notional value of \$150,000 and a strike of 2.176%. The forward interest rate swap has an effective date of June 17, 2021 and a maturity date of June 17, 2026. We designated

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this forward interest rate swap as a cash flow hedge at inception and determined that the hedge is highly effective in offsetting interest rate fluctuations associated with the identified indebtedness.

Effective interest rate swaps and caps are reported in accumulated other comprehensive income, and the fair value of these hedge agreements is included in other assets or other liabilities.

For our interest rate swap and collars that are considered highly effective hedges, we reclassified realized gains of \$251 and \$1,277 to earnings within interest expense for the three and nine months ended September 30, 2019, respectively, and we expect \$370 to be reclassified out of accumulated other comprehensive income to earnings over the next 12 months.

NOTE 6: Stockholder Equity and Noncontrolling Interests

Stockholder Equity

On March 18, 2019, our board of directors declared a distribution of \$0.18 per share, which was paid on April 25, 2019 to common shareholders of record as of March 29, 2019.

On June 17, 2019, our board of directors declared a distribution of \$0.18 per share, which was paid on July 25, 2019 to common shareholders of record as of June 28, 2019.

On September 12, 2019, our board of directors declared a distribution of \$0.18 per share, which was paid on October 25, 2019 to common shareholders of record as of September 27, 2019.

During the three and nine months ended September 30, 2019, we also paid \$0 and \$209, respectively, of dividends on restricted common share awards that vested during the period.

During the three months ended September 30, 2019, we issued an aggregate of 972,887 shares under our At-the-Market Issuance Sales Agreement entered into in August 4, 2017, with various sales agents (the "ATM Sales Agreement") at a weighted average price of \$13.45, resulting in \$12,763 of net proceeds, after deducting \$260 of commissions. During the nine months ended September 30, 2019, we issued an aggregate of 1,548,591 shares under the ATM Sales Agreement at a weighted average price of \$12.59, resulting in \$18,842 of net proceeds, after deducting \$385 of commissions. Pursuant to the ATM Sales Agreement \$96,014 remained available for issuance as of September 30, 2019.

Noncontrolling Interest

During the three and nine months ended September 30, 2019, no IROP unitholders exchanged any units for shares of our common stock or cash.

As of September 30, 2019, 881,107 IROP units held by unaffiliated third parties remain outstanding.

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On March 18, 2019, our board of directors declared a distribution of \$0.18 per unit, which was paid on April 25, 2019 to IROP unitholders of record as of March 29, 2019.

On June 17, 2019, our board of directors declared a distribution of \$0.18 per unit, which was paid on July 25, 2019 to IROP unitholders of record as of June 28, 2019.

On September 12, 2019, our board of directors declared a distribution of \$0.18 per unit, which was paid on October 25, 2019 to IROP unitholders of record as of September 27, 2019.

NOTE 7: Equity Compensation Plans

In May 2016, our shareholders approved and our board of directors adopted an amended and restated Long Term Incentive Plan (the “Incentive Plan”), which provides for grants of awards to our employees, officers, directors, trustees, consultants or advisors (and those of our affiliates). The Incentive Plan authorizes the grant of restricted or unrestricted shares of our common stock, performance-based restricted share units (“PSUs”), non-qualified and incentive stock options, restricted stock units, stock appreciation rights (“SARs”), dividend equivalents and other stock- or cash-based awards. In conjunction with the amendment, the number of shares of common stock issuable under the Incentive Plan was increased to 4,300,000 shares and the term of the incentive plan was extended to May 12, 2026.

Under the Incentive Plan or predecessor incentive plans, we have granted restricted shares, and PSUs, to our employees and employees of our former advisor. These awards generally vested over a three or four year period. In addition, we have granted unrestricted shares to our non-employee directors. These awards generally vested immediately.

On February 6, 2019, our compensation committee awarded, to our non-executive officer employees, 92,925 restricted stock awards, valued at \$10.35 per share, or \$962 in the aggregate. These restricted stock awards vest over a three-year period. On March 7, 2019, our compensation committee awarded, to our named executive officers, 87,975 restricted stock awards and 263,929 PSUs. The restricted stock awards vest over a four-year period and were valued at \$10.23 per share, or \$900 in the aggregate. The number of PSUs earned will be based on attainment of certain performance criteria over a three-year period, the actual number of shares issuable ranging between 0% and 150% of the number of PSUs granted. The aggregate grant date fair value of the PSUs was \$2,203.

On May 23, 2019, our compensation committee granted stock under the Incentive Plan such that our non-employee directors received an aggregate of 32,844 shares of our common stock, valued at \$360 using our closing stock price of \$10.96. These awards vested immediately.

NOTE 8: Earnings Per Share

The following table presents a reconciliation of basic and diluted earnings per share for the three and nine months ended September 30, 2019 and 2018:

	<u>For the Three Months Ended September 30,</u>		<u>For the Nine Months Ended September 30,</u>	
	<u>2019</u>	<u>2018</u>	<u>2019</u>	<u>2018</u>
Net income	\$ 4,912	\$ 4,836	\$ 22,334	\$ 11,881
Income allocated to noncontrolling interest	(49)	(49)	(222)	(173)
Net income allocable to common shares	<u>4,863</u>	<u>4,787</u>	<u>22,112</u>	<u>11,708</u>
Weighted-average shares outstanding—Basic	90,027,540	87,702,078	89,513,834	86,559,294
Weighted-average shares outstanding—Diluted	<u>90,691,368</u>	<u>88,046,311</u>	<u>90,234,840</u>	<u>86,818,337</u>
Earnings per share—Basic	<u>\$ 0.05</u>	<u>\$ 0.05</u>	<u>\$ 0.25</u>	<u>\$ 0.14</u>
Earnings per share—Diluted	<u>\$ 0.05</u>	<u>\$ 0.05</u>	<u>\$ 0.25</u>	<u>\$ 0.13</u>

Certain IROP units and unvested shares were excluded from the earnings per share computation because their effect would have been anti-dilutive, totaling 881,107 for the three and nine months ended September 30, 2019, and 881,107 and 962,066 for the three and nine months ended September 30, 2018, respectively.

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NOTE 9: Other Disclosures

Litigation

We are subject to various legal proceedings and claims that arise in the ordinary course of our business operations. Matters which arise out of allegations of bodily injury, property damage, and employment practices are generally covered by insurance. While the resolution of these matters cannot be predicted with certainty, we currently believe the final outcome of such matters will not have a material adverse effect on our financial position, results of operations or cash flows.

Loss Contingencies

We record an accrual for loss contingencies when a loss is probable and the amount of the loss can be reasonably estimated. Management reviews these accruals quarterly and makes revisions based on changes in facts and circumstances. When a loss contingency is not both probable and reasonably estimable, management does not accrue the loss. However, if the loss (or an additional loss in excess of an earlier accrual) is at least a reasonable possibility and material, then management discloses a reasonable estimate of the possible loss, or range of loss, if such reasonable estimate can be made. If we cannot make a reasonable estimate of the possible loss, or range of loss, then a statement to that effect is disclosed.

Item 2. Management’s Discussion and Analysis of Financial Condition and Results of Operations

Forward-Looking Statements

The Securities and Exchange Commission (the “SEC”), encourages companies to disclose forward-looking information so that investors can better understand a company’s future prospects and make informed investment decisions. This report contains or incorporates by reference such “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended.

Words such as “anticipates,” “estimates,” “expects,” “projects,” “intends,” “plans,” “believes” and words and terms of similar substance used in connection with any discussion of future operating or financial performance identify forward-looking statements.

We claim the protection of the safe harbor for forward-looking statements provided in the Private Securities Litigation Reform Act of 1995. These statements may be made directly in this report and they may also be incorporated by reference in this report to other documents filed with the SEC, and include, without limitation, statements about future financial and operating results and performance, statements about our plans, objectives, expectations and intentions with respect to future operations, products and services, and other statements that are not historical facts. These forward-looking statements are based upon the current beliefs and expectations of our management and are inherently subject to significant business, economic and competitive uncertainties and contingencies, many of which are difficult to predict and generally beyond our control. In addition, these forward-looking statements are subject to assumptions with respect to future business strategies and decisions that are subject to change. Actual results may differ materially from the anticipated results discussed in these forward-looking statements.

The risk factors discussed and identified in Item 1A of our 2018 Annual Report on Form 10-K, and in other of our public filings with the SEC, among others, could cause actual results to differ materially from the anticipated results or other expectations expressed in the forward-looking statements. We caution you not to place undue reliance on these forward-looking statements, which speak only as of the date of this report. All subsequent written and oral forward-looking statements attributable to us or any person acting on our behalf are expressly qualified in their entirety by the cautionary statements contained or referred to in this section. Except to the extent required by applicable law or regulation, we undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this filing or to reflect the occurrence of unanticipated events.

Overview

Our Company

We are a self-administered and self-managed Maryland real estate investment trust (“REIT”), that acquires, owns, operates, improves and manages multifamily apartment communities across non-gateway U.S. markets. As of September 30, 2019, we owned and operated 57 multifamily apartment properties that contain 15,536 units. Our properties are located in Georgia, North Carolina, Tennessee, Kentucky, Ohio, Oklahoma, Indiana, Texas, Florida, South Carolina, Missouri, Louisiana, and Alabama. We do not have any foreign operations. Our executive offices are located at 1835 Market Street, Suite 2601, Philadelphia, PA 19103 and our telephone number is (267) 270-4800. We have offices in Philadelphia, Pennsylvania and Chicago, Illinois. As of September 30, 2019, we had approximately 444 employees who provided real estate operations, leasing, financial, accounting, acquisition, disposition, development, and other support functions.

Our Business Objective and Investment Strategies

Our primary business objective is to maximize stockholder value through diligent portfolio management, strong operational performance, and a consistent return of capital through distributions and capital appreciation. Our investment strategy is focused on the following:

- gaining scale within key amenity rich submarkets of non-gateway cities that offer good school districts, high-quality retail and major employment centers and are unlikely to experience substantial new apartment construction in the foreseeable future;
- increasing cash flows at our existing apartment properties through prudent property management and strategic renovation projects; and
- acquiring additional properties that have strong and stable occupancies and support a rise in rental rates or that have the potential for repositioning through capital expenditures or tailored management strategies.

Property Portfolio

As of September 30, 2019, we owned 57 multifamily apartment properties, totaling 15,536 units, as summarized below by market.

(Dollars in thousands, except per unit data)

Market	As of September 30, 2019				For the Three Months Ended September 30, 2019		
	Number of Properties	Units	Gross Real Estate Assets	Period End Occupancy	Average Effective Monthly Rent per Unit	Net Operating Income	% of NOI
Atlanta, GA	6	2,020	\$ 253,062	93.4%	\$ 1,163	\$ 4,495	14.8%
Raleigh - Durham, NC	5	1,372	190,618	92.8%	1,199	3,175	10.4%
Louisville, KY	6	1,710	196,882	88.9%	1,004	3,027	10.0%
Memphis, TN	4	1,383	144,311	90.5%	1,143	2,941	9.7%
Columbus, OH	6	1,547	152,162	92.5%	1,011	2,603	8.6%
Tampa-St. Petersburg, FL	4	1,104	171,537	90.2%	1,212	2,331	7.7%
Oklahoma City, OK	5	1,658	77,369	96.2%	671	1,950	6.4%
Indianapolis, IN	4	916	91,010	94.4%	1,014	1,571	5.2%
Dallas, TX	3	734	86,952	94.8%	1,206	1,503	4.9%
Myrtle Beach, SC - Wilmington, NC	3	628	63,301	93.3%	1,053	1,363	4.5%
Charleston, SC	2	518	79,852	94.0%	1,314	1,128	3.7%
Orlando, FL	1	297	48,613	93.9%	1,488	853	2.8%
Charlotte, NC	1	208	42,139	95.7%	1,573	687	2.3%
Asheville, NC	1	252	28,615	97.6%	1,152	615	2.0%
Austin, TX (a)	1	300	36,230	93.0%	1,329	556	1.8%
Chattanooga, TN	2	295	27,195	97.6%	980	467	1.5%
St. Louis, MO	1	152	33,548	92.8%	1,472	463	1.5%
Huntsville, AL	1	178	16,422	98.3%	974	359	1.2%
Baton Rouge, LA	1	264	28,804	84.9%	901	326	1.1%
Total/Weighted Average	57	15,536	\$ 1,768,622	92.8%	\$ 1,084	\$ 30,413	100.0%

(a) Market includes one property which has been classified as held for sale as of September 30, 2019.

As of September 30, 2019, our same-store portfolio consisted of 49 multifamily apartment properties, totaling 13,397 units. See “Non-GAAP Financial Measures – Same Store Portfolio Net Operating Income” below for our methodology for determining our same store portfolio and definitions and reconciliations related to our net operating income and net operating income margin.

Value Add

Value add initiatives, comprised of renovations and upgrades at selected communities to drive increased rental rates, remain a core component of our growth strategy for 2019 and beyond. In 2018, we identified 3,929 units across 12 properties for renovations as part of our Phase I and II value add initiative. In July 2019, we identified eight additional properties totaling 2,402 units to represent Phase III of our value add initiative. In total, we are renovating 20 of our properties comprising 6,331 units or 41% of our total units as of September 30, 2019.

As of September 30, 2019, we were renovating 14 properties and had completed 2,364 of the 4,553 units at these 14 properties. We expect to substantially complete the remaining Phase I and II unit renovations in the first half of 2020. We expect to commence renovations at the Phase III units during the remainder of 2019 and first half of 2020.

Capital Recycling

Our capital recycling program consists of disposing of assets in markets where we lack scale and/or markets where management believes that long term growth outlook is not as attractive relative to other markets.

In April 2019, we sold a 370-unit property located in Chicago, IL for \$42.0 million. We recorded a gain of \$12.3 million for this property, which is net of \$2.0 million of debt extinguishment costs. In July 2019, we sold two properties in Little Rock, AR for \$56.5 million. We recorded a gain of \$2.2 million associated with these properties, which is net of \$3.2 million of debt extinguishment costs.

In April 2019, we purchased a 224-unit property located in Atlanta, GA for \$28.0 million. In July 2019, we purchased a 264-unit property located in Tampa, FL for \$48.0 million.

In October 2019, we purchased a 318-unit property located in Raleigh, NC for \$52.9 million.

New Unsecured Credit Facility

On May 9, 2019, we closed on a new \$350.0 million unsecured credit facility that consists entirely of a revolving line of credit (the “Unsecured Revolving Line of Credit”), refinancing and terminating the previous unsecured credit facility and term loan agreement. We have the right to increase the aggregate amount of the unsecured revolving line of credit to up to \$600.0 million. The maturity date on borrowings outstanding under the Unsecured Revolving Line of Credit is May 9, 2023, subject to our option to extend the revolving commitment for two additional 6-month periods under certain circumstances, including the payment of an extension fee. We may prepay the Unsecured Revolving Line of Credit, in whole or in part, at any time without a prepayment fee or penalty. At our option, borrowings under the Unsecured Revolving Line of Credit will bear interest at a rate equal to either (i) the 1-month LIBOR rate plus a margin of 125 to 200 basis points, or (ii) a base rate plus a margin of 25 to 100 basis points. The applicable margin is determined based upon our total consolidated leverage ratio. At the time of closing and at September 30, 2019, based on our leverage ratio, the margin spread to LIBOR was 155 basis points.

Results of Operations

Three Months Ended September 30, 2019 compared to the Three Months Ended September 30, 2018

(Dollars in thousands)	SAME STORE PROPERTIES				NON SAME STORE PROPERTIES				CONSOLIDATED			
	Three Months Ended September 30,				Three Months Ended September 30,				Three Months Ended September 30,			
	2019	2018	Increase (Decrease)	% Change	2019	2018	Increase (Decrease)	% Change	2019	2018	Increase (Decrease)	% Change
Property Data:												
Number of properties	49	49			8	9	(1)	-11.1%	57	58	(1)	-1.7%
Number of units	13,397	13,397			2,139	2,463	(324)	-13.2%	15,536	15,860	(324)	-2.0%
Average occupancy	93.4%	93.4%	0.0%	n/a	94.3%	93.9%	0.4%	n/a	93.5%	93.5%	0.0%	n/a
Average effective monthly rent, per unit	1,078	1,020	58	5.7%	1,126	1,043	83	8.0%	1,084	1,024	61	5.9%
Revenue:												
Rental and other property revenue	\$ 43,686	\$ 40,975	\$ 2,711	6.6%	\$ 7,371	\$ 7,669	\$ (298)	-3.9%	\$ 51,057	\$ 48,644	\$ 2,413	5.0%
Expenses:												
Property operating expenses	17,268	16,547	721	4.4%	3,278	3,245	33	1.0%	20,546	19,792	754	3.8%
Net Operating Income	\$ 26,418	\$ 24,428	\$ 1,990	8.1%	\$ 4,093	\$ 4,424	\$ (331)	-7.5%	\$ 30,511	\$ 28,852	\$ 1,659	5.8%
Other Revenue:												
Other revenue									\$ 242	\$ 135	\$ 107	79.3%
Corporate and other expenses:												
Property management expenses									1,901	1,661	240	14.4%
General and administrative expenses									3,113	2,578	535	20.8%
Depreciation and amortization expense									13,434	10,783	2,651	24.6%
Total corporate and other expenses									18,448	15,022	3,426	22.8%
Interest expense									(9,783)	(9,129)	(654)	7.2%
Gains on sale of assets									2,390	—	2,390	nm
Net income									4,912	4,836	76	1.6%
Income allocated to noncontrolling interests									(49)	(49)	—	0.0%
Net income available to common shares									\$ 4,863	\$ 4,787	\$ 76	1.6%

Revenue

Rental and other property revenue. Rental and other property revenue increased \$2.5 million to \$51.1 million for the three months ended September 30, 2019 from \$48.6 million for the three months ended September 30, 2018. The increase was primarily attributable to a \$2.7 million increase in same store rental and other property revenue driven by a 5.7% increase in average effective monthly rents compared to the prior year period. This was partially offset by a \$0.2 million decrease in non same store rental and other property revenue compared to the prior year period. The non same store rental and other property revenue decrease was due to the number of properties included in each period being different as a result of the timing of property sales and acquisitions.

Other revenue. Other revenue increased \$0.1 million to \$0.2 million for the three months ended September 30, 2019 compared to \$0.1 million for the three months ended September 30, 2018.

Expenses

Property operating expenses. Property operating expenses increased \$0.7 million to \$20.5 million for the three months ended September 30, 2019 from \$19.8 million for the three months ended September 30, 2018. The increase was due to a \$0.7 million increase in same store property operating expenses primarily driven by higher property taxes.

Property management expenses. Property management expenses increased \$0.2 million to \$1.9 million for the three months ended September 30, 2019 from \$1.7 million for the three months ended September 30, 2018. This was primarily due to an increase in compensation expense, software costs, and travel costs for our property management function as we have increased both the number of personnel and the use of technology to drive future operating efficiencies.

General and administrative expenses. General and administrative expenses increased \$0.5 million to \$3.1 million for the three months ended September 30, 2019 from \$2.6 million for the three months ended September 30, 2018. This increase was primarily due to an increase in compensation expense as the size of our corporate office has grown to support asset management functions including the oversight of our value add initiative and general portfolio optimization.

Depreciation and amortization expense. Depreciation and amortization expense increased \$2.6 million to \$13.4 million for the three months ended September 30, 2019 from \$10.8 million for the three months ended September 30, 2018. The increase was attributable to a \$1.5 million increase in depreciation expense from capital expenditures related to our value add program for the three months ended September 30, 2019 compared to the three months ended September 30, 2018 and an increase of \$0.9 million related to six property acquisitions since the beginning of the three month period beginning September 30, 2018.

Interest expense. Interest expense increased \$0.7 million to \$9.8 million for the three months ended September 30, 2019 from \$9.1 million for the three months ended September 30, 2018. This is primarily due to a \$105.3 million increase in the balance of our unsecured credit facility and term loans from September 30, 2018 to September 30, 2019, which related to our investments in additional property acquisitions and value add related capital expenditures.

Nine Months Ended September 30, 2019 compared to the Nine Months Ended September 30, 2018

(Dollars in thousands)	SAME STORE PROPERTIES				NON SAME STORE PROPERTIES				CONSOLIDATED			
	Nine Months Ended September 30,				Nine Months Ended September 30,				Nine Months Ended September 30,			
	2019	2018	Increase (Decrease)	% Change	2019	2018	Increase (Decrease)	% Change	2019	2018	Increase (Decrease)	% Change
Property Data:												
Number of properties	49	49			8	9	(1)	-11.1%	57	58	(1)	-1.7%
Number of units	13,397	13,397			2,139	2,463	(324)	-13.2%	15,536	15,860	(324)	-2.0%
Average occupancy	93.3%	93.7%	-0.4%	n/a	95.1%	94.2%	0.8%	n/a	93.6%	93.8%	-0.2%	n/a
Average effective monthly rent, per unit	1,058	1,005	52	5.2%	1,083	1,052	31	3.0%	1,061	1,011	50	4.9%
Revenue:												
Rental and other property revenue	\$ 128,280	\$ 121,626	\$ 6,654	5.5%	\$ 23,090	\$ 19,368	\$ 3,722	19.2%	\$ 151,370	\$ 140,994	\$ 10,376	7.4%
Expenses:												
Property operating expenses	50,510	48,956	1,554	3.2%	9,994	7,957	2,037	25.6%	60,504	56,913	3,591	6.3%
Net Operating Income	<u>\$ 77,770</u>	<u>\$ 72,670</u>	<u>\$ 5,100</u>	<u>7.0%</u>	<u>\$ 13,096</u>	<u>\$ 11,411</u>	<u>\$ 1,685</u>	<u>14.8%</u>	<u>\$ 90,866</u>	<u>\$ 84,081</u>	<u>\$ 6,785</u>	<u>8.1%</u>
Other Revenue:												
Other revenue									\$ 425	\$ 429	\$ (4)	-0.9%
Corporate and other expenses:												
Property management expenses									5,776	4,936	840	17.0%
General and administrative expenses									9,758	8,184	1,574	19.2%
Depreciation and amortization expense									38,602	33,590	5,012	14.9%
Total corporate and other expenses									54,136	46,710	7,426	15.9%
Interest expense									(29,353)	(26,063)	(3,290)	12.6%
Other income									—	144	(144)	nm
Gains on sale of assets									14,532	—	14,532	nm
Net income									22,334	11,881	10,453	88.0%
Income allocated to noncontrolling interests									(222)	(173)	(49)	-28.3%
Net income available to common shares									<u>\$ 22,112</u>	<u>\$ 11,708</u>	<u>\$ 10,404</u>	<u>88.9%</u>

Revenue

Rental and other property revenue. Rental and other property revenue increased \$10.4 million to \$151.4 million for the nine months ended September 30, 2019 from \$141.0 million for the nine months ended September 30, 2018. The increase was primarily attributable to a \$6.7 million increase in same store rental and other property revenue driven by a 5.2% increase in average effective monthly rents compared to the prior year period partially offset by a 30 basis point decrease in average occupancy compared to the prior year and a \$3.7 million increase in non same store rental and other property revenue. The non same store rental and other property revenue increase was due to the number of properties included in each period being different as a result of the timing of property sales and acquisitions.

Other revenue. Other revenue remained consistent at \$0.4 million for the nine months ended September 30, 2019 and 2018.

Expenses

Property operating expenses. Property operating expenses increased \$3.6 million to \$60.5 million for the nine months ended September 30, 2019 from \$56.9 million for the nine months ended September 30, 2018. The increase was due to a \$1.6 million increase in same store property operating expenses primarily driven by higher property taxes and a \$2.0 million increase in our non

same store property operating expenses. The non same store property operating expenses increase was due to the number of properties included in each period being different as a result of the timing of property sales and acquisitions.

Property management expenses: Property management expenses increased \$0.9 million to \$5.8 million for the nine months ended September 30, 2019 from \$4.9 million for the nine months ended September 30, 2018. This was primarily due to an increase in compensation expense, software costs, and travel costs for our property management function as we have increased both the number of personnel and the use of technology to drive future operating efficiencies.

General and administrative expenses. General and administrative expenses increased \$1.6 million to \$9.8 million for the nine months ended September 30, 2019 from \$8.2 million for the nine months ended September 30, 2018. This increase was primarily due to an increase in compensation expense as the size of our corporate office has grown to support asset management functions including the oversight of our value add initiative and general portfolio optimization.

Depreciation and amortization expense. Depreciation and amortization expense increased \$5.0 million to \$38.6 million for the nine months ended September 30, 2019 from \$33.6 million for the nine months ended September 30, 2018. The increase was attributable to a \$4.2 million increase in depreciation expense driven by capital expenditures from our value add program for the nine months ended September 30, 2019 compared to the nine months ended September 30, 2018 and a \$1.0 million increase in depreciation expense due to 2019 capital recycling activity.

Interest expense. Interest expense increased \$3.3 million to \$29.4 million for the nine months ended September 30, 2019 from \$26.1 million for the nine months ended September 30, 2018. This is primarily due to a \$105.3 million increase in the balance of our unsecured credit facility and term loans from September 30, 2018 to September 30, 2019, which related to our investments in additional property acquisitions and value add related capital expenditures.

Non-GAAP Financial Measures

Funds from Operations (FFO) and Core Funds from Operations (CFFO)

We believe that FFO and CFFO, each of which is a non-GAAP financial measure, are appropriate supplemental measures of the operating performance of a REIT and IRT in particular.

We calculate FFO in accordance with the standards established by the National Association of Real Estate Investment Trusts, or NAREIT, as net income or loss (computed in accordance with GAAP), excluding real estate-related depreciation and amortization expense, gains or losses on sales of real estate and the cumulative effect of changes in accounting principles. We calculate CFFO as FFO, adjusted for stock compensation expense, depreciation and amortization of items that are not added back in the computation of FFO, amortization of deferred financing costs, and other non-cash or non-operating gains or losses related to items such as defeasance costs that we incur when we sell a property subject to secured debt, asset sales, debt extinguishments, and acquisition-related debt extinguishment expenses.

Our calculations of FFO and CFFO may differ from the methodology for calculating FFO, CFFO and similar supplemental measures utilized by other REITs and, accordingly, may not be comparable to FFO, CFFO or similar measures as calculated by other REITs. Our management utilizes FFO and CFFO as measures of our operating performance, and we believe they are also useful to investors because they facilitate an understanding of our operating performance after adjustment for certain non-cash or non-operating items that are required by GAAP to be expensed and facilitate comparison of our current operating performance to prior reporting periods. Furthermore, although FFO, CFFO and other supplemental performance measures are defined in various ways throughout the REIT industry, we believe that FFO and CFFO provide investors with additional useful measures to compare our financial performance to the performance of certain other REITs. Neither FFO nor CFFO is equivalent to net income or cash generated from operating activities determined in accordance with GAAP. Furthermore, FFO and CFFO do not represent amounts available for management's discretionary use because of needed capital replacement or expansion, debt service obligations or other commitments or uncertainties. Neither FFO nor CFFO should be considered as an alternative to net income as an indicator of our operating performance or as an alternative to cash flow from operating activities as a measure of our liquidity.

Set forth below is a reconciliation of net income (loss) to FFO and CFFO for the three and nine months ended September 30, 2019 and 2018 (in thousands, except share and per share information):

	For the Three Months Ended September 30, 2019		For the Three Months Ended September 30, 2018	
	Amount	Per Share (1)	Amount	Per Share (2)
Funds From Operations (FFO):				
Net income (loss)	\$ 4,912	\$ 0.05	\$ 4,836	\$ 0.05
Adjustments:				
Real estate depreciation and amortization	13,313	0.15	10,738	0.13
Net (gains) losses on sale of assets excluding debt extinguishment costs	(5,594)	(0.06)	—	—
FFO	<u>\$ 12,631</u>	<u>\$ 0.14</u>	<u>\$ 15,574</u>	<u>\$ 0.18</u>
Core Funds From Operations (CFFO):				
FFO	\$ 12,631	\$ 0.14	\$ 15,574	\$ 0.18
Adjustments:				
Stock compensation expense	692	0.01	563	0.01
Amortization of deferred financing costs	351	—	309	—
Other depreciation and amortization	121	—	45	—
Debt extinguishment costs included in net gains (losses) on sale of assets	3,204	0.04	—	—
CFFO	<u>\$ 16,999</u>	<u>\$ 0.19</u>	<u>\$ 16,491</u>	<u>\$ 0.19</u>

	For the Nine Months Ended September 30, 2019		For the Nine Months Ended September 30, 2018	
	Amount	Per Share (1)	Amount	Per Share (2)
Funds From Operations (FFO):				
Net income (loss)	\$ 22,334	\$ 0.25	\$ 11,881	\$ 0.14
Adjustments:				
Real estate depreciation and amortization	38,306	0.42	33,489	0.38
Net (gains) losses on sale of assets excluding debt extinguishment costs	(19,765)	(0.22)	—	—
FFO	<u>\$ 40,875</u>	<u>\$ 0.45</u>	<u>\$ 45,370</u>	<u>\$ 0.52</u>
Core Funds From Operations (CFFO):				
FFO	\$ 40,875	\$ 0.45	\$ 45,370	\$ 0.52
Adjustments:				
Stock compensation expense	2,400	0.03	1,966	0.02
Amortization of deferred financing costs	1,052	0.01	1,078	0.01
Other depreciation and amortization	296	—	101	—
Other expense (income)	—	—	(52)	—
Debt extinguishment costs included in net gains (losses) on sale of assets	5,233	0.06	—	—
CFFO	<u>\$ 49,856</u>	<u>\$ 0.55</u>	<u>\$ 48,463</u>	<u>\$ 0.55</u>

- (1) Based on 90,908,646 and 90,394,941 weighted-average shares and units outstanding for the three and nine months ended September 30, 2019, respectively.
- (2) Based on 88,585,940 and 87,870,135 weighted-average shares and units outstanding for the three and nine months ended September 30, 2018, respectively.

Same Store Portfolio Net Operating Income

We believe that Net Operating Income (“NOI”), a non-GAAP financial measure, is an additional useful supplemental measure of our operating performance. We define NOI as total property revenues less total property operating expenses, excluding interest expenses, depreciation and amortization, acquisition expenses, property management expenses, and general and administrative expenses. Other REITs may use different methodologies for calculating NOI, and accordingly, our NOI may not be comparable to other REITs. We believe that this measure provides an operating perspective not immediately apparent from operating income and net income as determined in accordance with GAAP. We use NOI to evaluate our performance on a same store and non-same store basis because NOI measures the core operations of property performance by excluding corporate level expenses, financing expenses, and other items not related to property operating performance and captures trends in rental housing and property operating expenses. However, NOI should only be used as an alternative supplemental measure of our financial performance.

We review our same store properties or portfolio at the beginning of each calendar year. Properties are added into the same store portfolio if they were owned at the beginning of the previous year. Properties that have been sold or are classified as held for sale are excluded from the same store portfolio.

Set forth below is a reconciliation of same store net operating income to net income (loss) available to common shares for the three and nine months ended September 30, 2019 and 2018 (in thousands, except per unit data):

	Three Months Ended September 30, (a)			Nine Months Ended September 30, (a)		
	2019	2018	% change	2019	2018	% change
Revenue:						
Rental and other property revenue	\$ 43,686	\$ 40,975	6.6%	\$ 128,280	\$ 121,626	5.5%
Property Operating Expenses						
Real estate taxes	5,299	4,749	11.6%	16,034	14,592	9.9%
Property insurance	865	820	5.5%	2,537	2,626	-3.4%
Personnel expenses	4,282	4,188	2.2%	12,315	12,176	1.1%
Utilities	2,860	2,621	9.1%	8,148	7,803	4.4%
Repairs and maintenance	1,812	1,714	5.7%	4,869	4,357	11.8%
Contract services	1,099	1,223	-10.1%	3,452	3,709	-6.9%
Advertising expenses	466	460	1.3%	1,362	1,363	-0.1%
Other expenses	585	772	-24.2%	1,793	2,330	-23.0%
Total property operating expenses	17,268	16,547	4.4%	50,510	48,956	3.2%
Net operating income	<u>\$ 26,418</u>	<u>\$ 24,428</u>	<u>8.1%</u>	<u>\$ 77,770</u>	<u>\$ 72,670</u>	<u>7.0%</u>
NOI Margin	60.5%	59.6%	0.9%	60.6%	59.7%	0.9%
Average Occupancy	93.4%	93.4%	0.0%	93.3%	93.7%	-0.4%
Average effective monthly rent, per unit	\$ 1,078	\$ 1,020	5.7%	\$ 1,058	\$ 1,005	5.2%
Reconciliation of Same-Store Net Operating Income to Net Income (Loss)						
Same-store portfolio net operating income (a)	\$ 26,418	\$ 24,428		\$ 77,770	\$ 72,670	
Non same-store net operating income	4,093	4,424		13,096	11,411	
Other revenue	242	135		425	429	
Property management expenses	(1,901)	(1,661)		(5,776)	(4,936)	
General and administrative expenses	(3,113)	(2,578)		(9,758)	(8,184)	
Depreciation and amortization	(13,434)	(10,783)		(38,602)	(33,590)	
Interest expense	(9,783)	(9,129)		(29,353)	(26,063)	
Other income (expense)	—	—		—	144	
Net gains (losses) on sale of assets	2,390	—		14,532	—	
Net income (loss)	<u>\$ 4,912</u>	<u>\$ 4,836</u>		<u>\$ 22,334</u>	<u>\$ 11,881</u>	

(a) Same store portfolio for the three and nine months ended September 30, 2019 and 2018 included 49 properties containing 13,397 units.

Liquidity and Capital Resources

Liquidity is a measure of our ability to meet potential cash requirements, including ongoing commitments to repay borrowings, fund and maintain investments, pay distributions and other general business needs. We believe our available cash balances, financing arrangements and cash flows from operations will be sufficient to fund our liquidity requirements with respect to our existing portfolio for the next twelve months and the foreseeable future.

Our primary cash requirements are to:

- make investments and fund the associated costs, including expenditures, to continue our value add initiatives to improve the quality and performance of our properties;
- repay our indebtedness;

- fund recurring maintenance necessary to maintain our properties;
- pay our operating expenses; and
- distribute a minimum of 90% of our REIT taxable income (determined without regard to the deduction for dividends paid and excluding net capital gain) and to make investments in a manner that enables us to maintain our qualification as a REIT.

We intend to meet our liquidity requirements primarily through a combination of one or more of the following:

- the use of our cash and cash equivalent of \$6.6 million as of September 30, 2019;
- existing and future unsecured financing, including advances under our unsecured credit facility, and financing secured directly or indirectly by the apartment properties in our portfolio;
- cash generated from operating activities;
- net cash proceeds from property sales, including sales undertaken as part of our capital recycling strategy and other sales; and
- proceeds from the sales of our common stock and other equity securities, including common stock that may be sold under our at-the-market program.

Cash Flows

As of September 30, 2019 and 2018, we maintained cash and cash equivalents, and restricted cash of approximately \$15.5 million and \$15.9 million, respectively. Our cash and cash equivalents were generated from the following activities (dollars in thousands):

	For the Nine Months Ended September 30,	
	2019	2018
Cash flow from operating activities	\$ 59,357	\$ 57,315
Cash flow from investing activities	(75,173)	(182,430)
Cash flow from financing activities	15,318	126,406
Net change in cash and cash equivalents, and restricted cash	(498)	1,291
Cash and cash equivalents, and restricted cash, beginning of period	16,045	14,619
Cash and cash equivalents, and restricted cash, end of the period	<u>\$ 15,547</u>	<u>\$ 15,910</u>

The increase in our cash flow from operating activities during the nine months ended September 30, 2019 was primarily driven by higher net operating income from our property portfolio.

Our cash outflow from investing activities during the nine months ended September 30, 2019 was primarily due to two property acquisitions and capital expenditures partially offset by three property dispositions. Our cash outflow from investing activities during the nine months ended September 30, 2018 was primarily due to six property acquisitions and capital expenditures.

Our cash inflow from financing activities during the nine months ended September 30, 2019 was primarily due to draws on our unsecured credit facility and term loans related to the acquisition of two properties and issuances of common stock under our ATM Sales Agreement, partially offset by repayments of our unsecured credit facility, dividends on our common stock, and distributions on noncontrolling interests. Our cash inflow from financing activities during the nine months ended September 30, 2018 was primarily due to draws on our current and previous credit facilities related to the acquisitions of six properties, partially offset by dividends on our common stock and distributions on noncontrolling interests.

Contractual Commitments

Our Annual Report on Form 10-K for the year ended December 31, 2018 filed on February 22, 2019 includes a table of contractual commitments as of December 31, 2018. There were no material changes to these commitments since the filing of our Annual Report on Form 10-K. See the updated debt maturity schedule included in Note 4 in the Notes to the Consolidated Financial Statements.

Off-Balance Sheet Arrangements

There were no off-balance sheet arrangements during the nine months ended September 30, 2019 that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that are material to our interests.

Critical Accounting Estimates and Policies

Our 2018 Annual Report on Form 10-K contains a discussion of our critical accounting policies. Effective January 1, 2019, we adopted several new accounting pronouncements and revised our accounting policies as described in Note 2 to the Consolidated Financial Statements included in Part I, Item 1 of this report. Management discusses our critical accounting policies and management's judgments and estimates with the audit committee of our board of directors.

Item 3. Qualitative and Quantitative Disclosure About Market Risk.

Our 2018 Annual Report on Form 10-K contains a discussion of qualitative and quantitative market risks. There have been no material changes in quantitative and qualitative market risks during the nine months ended September 30, 2019 from the disclosures included in our 2018 Annual Report on Form 10-K.

Item 4. Controls and Procedures.

Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our reports under the Securities Exchange Act of 1934, as amended, or the Exchange Act, is recorded, processed, summarized, and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

Effective as of September 30, 2019, we carried out an evaluation, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures. Based on that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that the disclosure controls and procedures are effective to ensure that information required to be disclosed by us in our Exchange Act filings is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting identified in connection with the evaluation referred to above during the quarter ended September 30, 2019 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

We are subject to various legal proceedings and claims that arise in the ordinary course of our business operations. Matters which arise out of allegations of bodily injury, property damage, and employment practices are generally covered by insurance. While the resolution of these matters cannot be predicted with certainty, we currently believe the final outcome of such matters will not have a material adverse effect on our financial position, results of operations or cash flows.

Item 1A. Risk Factors.

There have not been any material changes from the risk factors previously disclosed in Item 1A—"Risk Factors" in our 2018 Annual Report on Form 10-K.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds.

None.

Item 3. Defaults Upon Senior Securities.

None.

Item 4. Mine Safety Disclosures.

None.

Item 5. Other Information.

On October 30, 2019, our board of directors amended and restated our Bylaws to provide that our stockholders, by the affirmative vote of a majority of all votes entitled to be cast on the matter, shall have the power to make and adopt new Bylaws or to amend, alter or repeal the Bylaws. The amendment to the Bylaws is effective immediately. Prior to the amendment, our board of directors had the exclusive power to amend the Bylaws. Following the amendment, our board of directors and our stockholders have the concurrent power to amend the Bylaws.

The foregoing summary description of the amendment to the Bylaws is not intended to be complete and is qualified in its entirety by reference to the full text of the amended and restated Bylaws, which is attached as Exhibit 3.2 to this Form 10-Q and is incorporated herein by reference

Item 6. Exhibits.

The following exhibits are filed as part of, or incorporated by reference into, this Quarterly Report on Form 10-Q.

3.2 [Amended and Restated Bylaws of Independence Realty Trust, Inc., filed herewith.](#)

10.1* [Amendment No. 2 dated as of October 23, 2019 to the Independence Realty Trust, Inc. Long Term Incentive Plan \(Amended and Restated as of May 12, 2016\), filed herewith.](#)

31.1 [Certification of the Principal Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, filed herewith.](#)

31.2 [Certification of the Principal Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, filed herewith.](#)

32.1 [Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, filed herewith.](#)

32.2 [Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, filed herewith.](#)

101 The following materials, formatted in iXBRL (Inline eXtensible Business Reporting Language): (i) Condensed Consolidated Balance Sheets as of September 30, 2019 and December 31, 2018, (ii) Condensed Consolidated Statements of Operations for the three and nine months ended September 30, 2019 and 2018, (iii) Condensed Consolidated Statement of Comprehensive Income (Loss) for the three and nine months ended September 30, 2019 and 2018, (iv) Condensed Consolidated Statements of Changes in Equity for the three and nine months ended September 30, 2019, (v) Condensed Consolidated Statements of Cash Flows for the nine months ended September 30, 2019 and 2018 and (vi) notes to the condensed consolidated financial statements as of September 30, 2019.

104 Cover Page Interactive Data File (embedded within the Inline XBRL document).

* Management contract or compensatory plan or arrangement.

SIGNATURES

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

Independence Realty Trust, Inc.

Date: October 31, 2019

By: /s/ SCOTT F. SCHAEFFER
Scott F. Schaeffer
Chairman of the Board and Chief Executive Officer
(Principal Executive Officer)

Date: October 31, 2019

By: /s/ JAMES J. SEBRA
James J. Sebra
Chief Financial Officer and Treasurer
(Principal Financial Officer)

Date: October 31, 2019

By: /s/ JASON R. DELOZIER
Jason R. Delozier
Chief Accounting Officer
(Principal Accounting Officer)

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Section 2: EX-10.1 (EX-10.1)

Exhibit 10.1

AMENDMENT NO. 2

Dated as of October 23, 2019
to the
INDEPENDENCE REALTY TRUST, INC.
LONG TERM INCENTIVE PLAN
(Amended and Restated as of May 12, 2016)

Pursuant to Article 15 of the Independence Realty Trust, Inc. Long Term Incentive Plan (Amended and Restated as of May 12, 2016), as amended (the “Plan”), the Board of Directors of Independence Realty Trust, Inc. has authorized the following amendments to the Plan, effective as of the date set forth above:

1. Section 4.1 the Plan is hereby amended and restated as follows:

“4.1. COMMITTEE. The Plan shall be administered by the Compensation Committee appointed by the Board (which Committee shall consist of at least two directors) or its successor or such other committee of the Board to which the Board has delegated with authority to administer the Plan or, at the discretion of the Board from time to time, the Plan may be administered by the Board. The members of the Committee shall be appointed by, and may be changed at any time and from time to time in the discretion of, the Board. It is intended that at least two of the directors appointed to serve on the Committee shall be “non-employee directors” (within the meaning of Rule 16b-3 promulgated under the 1934 Act) and that any such members of the Committee who do not so qualify shall abstain from participating in any decision to make or administer Awards that are made to Eligible Participants who at the time of consideration for such Award are persons subject to the short-swing profit rules of Section 16 of the 1934 Act. However, the mere fact that a Committee member shall fail to qualify as a “non-employee director” or shall fail to abstain from such action shall not invalidate any Award made by the Committee which Award is otherwise validly made under the Plan.

In addition, the Board may from time to time designate a subcommittee consisting of one or more of its members (the

“Award Subcommittee”) to grant Awards to Eligible Participants who are not, at the time of the issuance of such Award, subject to the short-swing profit rules of Section 16 of the 1934 Act, subject to such limitations as may be prescribed by the Board from time to time. The authority of the Award Subcommittee to grant Awards includes the authority to determine the recipients of such Awards, to determine the number of Shares, OP Interests or the dollar amount to which such Awards relate and to determine the other terms and conditions of such Awards, but the authority to administer the Plan will otherwise remain with the Committee. Moreover, the creation of an Award Subcommittee will not reduce or restrict the authority of the Committee, unless expressly provided by the Board.

The Board may reserve to itself any or all of the authority and responsibility of the Committee under the Plan or may act as administrator of the Plan for any and all purposes. To the extent the Board has reserved any authority and responsibility to itself, or during any time that the Board is acting as administrator of the Plan, it shall have all the powers of the Committee hereunder, and any reference herein to the Committee or the Award Subcommittee shall include the Board. To the extent any action of the Board under the Plan conflicts with actions taken by the Committee or the Award Subcommittee, the actions of the Board shall control.”

2. The introductory phrase of Section 4.3 the Plan is hereby amended and restated as follows:

“4.3. AUTHORITY OF COMMITTEE. Except as otherwise set forth in Section 4.1, the Committee has the exclusive power, authority and discretion to:”

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Section 3: EX-3.2 (EX-3.2)

Exhibit 3.2

INDEPENDENCE REALTY TRUST, INC.

(a Maryland Corporation)

AMENDED AND RESTATED BYLAWS

As Amended and Restated as of October 30, 2019

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AMENDED AND RESTATED BYLAWS
OF
INDEPENDENCE REALTY TRUST, INC.

(a Maryland Corporation)

As Amended and Restated as of October 30, 2019

ARTICLE I

OFFICES

Section 1. PRINCIPAL OFFICE

. The principal office of Independence Realty Trust, Inc. (the "Corporation") in the State of Maryland shall be located at such place as the Board of Directors (the "Board") may designate.

Section 2. ADDITIONAL OFFICES

. The Corporation may have additional offices, within or without the State of Maryland, including a principal executive office, at such places as the Board may from time to time determine or the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. PLACE

. All meetings of stockholders shall be held at such place or places, within or without the State of Maryland, as shall be fixed by resolution of the Board adopted by a majority of the total number of authorized Directors (whether or not there exist any vacancies in previously authorized Directorships at the time any such resolution is presented to the Board for adoption) and stated in the notice of the meeting.

Section 2. ANNUAL MEETING

. An annual meeting of stockholders for the election of directors and the transaction of any other business as may properly be brought before the meeting in accordance with these Bylaws shall be held on the date and at the time fixed by (i) resolution of the Board adopted by a majority of the total number of authorized Directors (whether or not there exist any vacancies in previously authorized Directorships at the time any such resolution is presented to the Board for adoption), (ii) a duly authorized committee of the Board, or (iii) the Chairman of the Board, if delegated that authority by the resolution of the Board adopted by a majority of the total number of authorized Directors (whether or not there exist any vacancies in previously authorized Directorships at the time any such resolution is presented to the Board for adoption).

Section 3. NOTICE

. Not less than ten (10) calendar days before each meeting of stockholders, the secretary shall give to each stockholder entitled to vote at such meeting and to each stockholder not entitled to vote who is entitled to notice of the meeting, notice in writing or

by electronic transmission stating the time and place of the meeting and, in the case of a special meeting or as otherwise may be required by any statute, the purpose for which the meeting is called, by mail, by presenting it to such stockholder personally, by leaving it at the stockholder's residence or usual place of business or by any other means permitted by applicable Maryland law. If mailed, such notice shall be deemed to be given when deposited in the United States mail addressed to the stockholder at the stockholder's address as it appears on the records of the Corporation, with postage thereon prepaid. If transmitted electronically, such notice shall be deemed to be given when transmitted to the stockholder by an electronic transmission to any address or number of the stockholder at which the stockholder receives electronic transmissions. The Corporation may give a single notice to all stockholders who share an address, which single notice shall be effective as to any stockholder at such address, unless such stockholder objects to receiving such single notice or revokes a prior consent to receiving such single notice. Failure to give notice of any meeting to one or more stockholders, or any irregularity in such notice, shall not affect the validity of any meeting fixed in accordance with this Article II or the validity of any proceedings at any such meeting.

Section 4. ORGANIZATION AND CONDUCT

(a) At every meeting of the stockholders, the Chairman of the Board, if there is such an officer, or if not, such person who is designated by the Board, shall act as chairman of the meeting and shall call all meetings to order, determine the order of business and determine all other matters of procedure regarding the meeting. The Secretary shall act as secretary of all meetings of the stockholders; and in the absence of the Secretary, an Assistant Secretary, if any, shall act as secretary of such meeting of the stockholders; and in the absence of the Secretary or any Assistant Secretary, the chairman of the meeting may appoint any person to act as secretary of the meeting. In the event that the Secretary presides at a meeting of stockholders, an assistant secretary or, in the absence of all assistant secretaries, an individual appointed by the Board or the chairman of the meeting, shall record the minutes of the meeting.

(b) To the maximum extent permitted by applicable law, the Board shall be entitled to adopt, or in the absence of the Board doing so, the chairman of the meeting shall be entitled to prescribe, such rules, regulations or procedures for the conduct of meetings of stockholders as it, he or she shall deem appropriate. Such rules, regulations and procedures that the Board or the chairman of any meeting of stockholders may adopt include, without limitation: (1) establishing an agenda for the meeting and the order for the consideration of the items of business on such agenda, (2) restricting admission to the time set for the commencement of the meeting, (3) limiting attendance at the meeting to stockholders of record of the Corporation entitled to vote at the meeting, their duly authorized proxies or other such persons as the chairman of the meeting may determine, (4) limiting participation at the meeting on any matter to stockholders of record of the Corporation entitled to vote on such matter, their duly authorized proxies or other such persons as the chairman of the meeting may determine to recognize and, as a condition to recognizing any such participant, requiring such participant to provide the chairman of the meeting with evidence of his or her name and affiliation, whether he or she is a stockholder or a proxy for a stockholder, and the class and series and number of shares of each class and series of capital stock of the Corporation which are owned beneficially and/or of record by such stockholder, (5) limiting the time allotted to questions or comments by participants, (6) taking such actions as are necessary or appropriate to maintain order, decorum, safety and security at the meeting, (7) removing any

stockholder who refuses to comply with meeting procedures, rules or guidelines as established by the chairman of the meeting, (8) complying with any state and local laws and regulations concerning safety and security, (9) restricting use of audio or video recording devices at the meeting, and (10) taking such other action as, in the discretion of the chairman of the meeting, is deemed necessary, appropriate or convenient for the proper conduct of the meeting. Unless and to the extent determined by the Board or the chair of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure. Should any person in attendance become unruly or obstruct the meeting proceedings, the chairman of the meeting shall have the power to have such person removed from participation.

Section 5. QUORUM

. At any meeting of stockholders, the presence in person or by proxy of stockholders entitled to cast a majority of all the votes entitled to be cast at such meeting on any matter shall constitute a quorum; but this section shall not affect any requirement under any statute or the charter of the Corporation (the "Charter") for the vote necessary for the approval of any matter. If such quorum is not established at any meeting of the stockholders, the chairman of the meeting may adjourn the meeting from time to time to a date not more than one hundred twenty (120) calendar days after the original record date without notice other than announcement at the meeting. At such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified.

The stockholders present either in person or by proxy, at a meeting which has been duly called and at which a quorum has been established, may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of enough stockholders to leave fewer than would be required to establish a quorum.

Section 6. VOTING

. A plurality of all the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to elect a director. Each share may be voted for as many individuals as there are directors to be elected and for whose election the share is entitled to be voted, without any right to cumulative votes. A majority of the votes cast at a meeting of stockholders duly called and at which a quorum is present shall be sufficient to approve any other matter which may properly come before the meeting, unless more than a majority of the votes cast is required by statute or by the Charter. Unless otherwise provided by statute or by the Charter, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of stockholders. Voting on any question or in any election may be *viva voce* unless the chairman of the meeting shall order that voting be by ballot or otherwise.

Section 7. PROXIES

. A holder of record of shares of stock of the Corporation may cast votes in person or by proxy executed by the stockholder or by the stockholder's duly authorized agent in any manner permitted by law. Such proxy or evidence of authorization of such proxy shall be filed with the secretary of the Corporation before or at the meeting. No proxy shall be valid more than eleven months after its date unless otherwise provided in the proxy.

Section 8. VOTING OF STOCK BY CERTAIN HOLDERS

(a) Stock of the Corporation registered in the name of a corporation, partnership, trust, limited liability company or other entity, if entitled to be voted, may be voted by the president or a vice president, general partner, trustee or managing member thereof, as the case may be, or a

proxy appointed by any of the foregoing individuals, unless some other person who has been appointed to vote such stock pursuant to a bylaw or a resolution of the governing body of such corporation or other entity or agreement of the partners of a partnership presents a certified copy of such bylaw, resolution or agreement, in which case such person may vote such stock. Any trustee or fiduciary may vote stock registered in the name of such person in the capacity of trustee or fiduciary, either in person or by proxy.

(b) Shares of stock of the Corporation directly or indirectly owned by it shall not be voted at any meeting and shall not be counted in determining the total number of outstanding shares entitled to be voted at any given time, unless they are held by it in a fiduciary capacity, in which case they may be voted and shall be counted in determining the total number of outstanding shares at any given time.

(c) The Board may adopt by resolution a procedure by which a stockholder may certify in writing to the Corporation that any shares of stock registered in the name of the stockholder are held for the account of a specified person other than the stockholder. The resolution shall set forth the class of stockholders who may make the certification, the purpose for which the certification may be made, the form of certification and the information to be contained in it; if the certification is with respect to a record date, the time after the record date within which the certification must be received by the Corporation; and any other provisions with respect to the procedure which the Board considers necessary or desirable. On receipt by the Corporation of such certification, the person specified in the certification shall be regarded as, for the purposes set forth in the certification, the holder of record of the specified stock in place of the stockholder who makes the certification.

Section 9. INSPECTORS

(a) The Board or the chairman of a meeting of stockholders may, in advance of any such meeting, appoint one or more inspectors of election to act at the meeting and make a written report thereof. If no such appointment shall be made, or if any of the inspectors so appointed shall fail to attend, or refuse or be unable to serve, then such appointment may be made by the presiding officer of the meeting at the meeting or any adjournment thereof. No director or candidate for the office of director shall act as an inspector of an election of directors. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors. Each inspector, before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such person's ability.

(b) If appointed, the inspectors shall ascertain the number of shares outstanding and the voting power of each; (i) determine the shares represented at the meeting, in person or by proxy, and the validity and effect of proxies and ballots; (ii) ascertain the existence of a quorum; (iii) receive and tabulate all votes and ballots; (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by them; (v) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots; and (vi) do such acts as are proper to conduct the election or vote with fairness to all stockholders. In determining the validity and counting of all proxies and ballots, the inspectors shall act in accordance with applicable law. The date and time of the opening and the closing of

the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting. No ballots, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls. On request of the presiding officer at the meeting, the inspectors shall make a report in writing of any challenge, request or matter determined by them and shall execute a certificate of any fact found by them. If there is more than one inspector, the report of a majority shall be the report of the inspectors. The report of the inspector or inspectors on the number of shares represented at the meeting and the results of the voting shall be *prima facie* evidence thereof.

Section 10. INTRODUCTION OF BUSINESS AT A MEETING OF STOCKHOLDERS

(a) Business Before Annual Meeting. Except as otherwise provided by applicable law, at an annual meeting of stockholders, no business shall be transacted and no corporate action shall be proposed or taken except as shall have been properly brought before the annual meeting in accordance with the Charter and these Bylaws. For business to be properly brought before an annual meeting, such business must be (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board (or any duly authorized committee thereof), (ii) if not specified in the notice of meeting (or any supplement thereto) provided by or at the direction of the Board (or any duly authorized committee thereof), otherwise properly brought before the annual meeting by or at the direction of the Board (or any duly authorized committee of the Board) or the Chairman of the Board (if any), or (iii) brought before the annual meeting by a stockholder Present in Person (as defined below) who (A) was the beneficial owner of shares of the Corporation's stock entitled to vote at the annual meeting as of the time of the delivery of the Proposal Notice (as defined below), on the record date for the determination of stockholders entitled to notice of and to vote at the annual meeting and as of the time of the annual meeting, (B) is entitled to vote at such annual meeting, and (C) has complied with this Article II, Section 10 in all applicable respects. For purposes of these Bylaws, "Present in Person" shall mean that the stockholder proposing that the business be brought before the annual meeting of the Corporation, or, if the proposing stockholder is not an individual, a qualified representative of such proposing stockholder, appear in person at such annual meeting (unless such meeting is held by means of remote communication in which case the proposing stockholder or its qualified representative shall be present at such annual meeting by means of remote communication). Notwithstanding the foregoing, stockholders seeking to nominate persons to serve on the Board must comply with Article III, Section 17 of these Bylaws and, other than defined terms, this Article II, Section 10 shall not be applicable to the nominations of directors for election to the Board. For purposes of these Bylaws, "qualified representative" means (i) if the stockholder is a corporation, any duly authorized officer of such corporation, (ii) if the stockholder is a limited liability company, any duly authorized member, manager or officer of such limited liability company, (iii) if the stockholder is a partnership, any general partner or person who functions as general partner for such partnership, (iv) if the stockholder is a trust, the trustee of such trust, or (v) if the stockholder is an entity other than the foregoing, the persons acting in such similar capacities as the foregoing with respect to such entity.

(b) Advance Notice of Stockholder Business.

(i) Stockholder Proposals. Except with respect to nominations for election to the Board, which must be made in compliance with the provisions of Article III, Section 17 of these Bylaws, and except for stockholder proposals submitted for inclusion in the Corporation's proxy statement pursuant to, and in compliance with, Rule 14a-8 (and the interpretations thereunder) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the rules and regulations of the Securities and Exchange Commission (the "SEC") promulgated thereunder and which proposals are not excludable under Rule 14a-8 of the Exchange Act, whether pursuant to a no-action letter from the Staff of the SEC's Division of Corporation Finance or a determination of a federal court of competent jurisdiction, and which are included in the notice of meeting given by or at the direction of the Board (or any duly authorized committee thereof) and the Corporation's proxy statement pursuant to Rule 14a-8 of the Exchange Act, for a proposal to be properly brought before any annual meeting of stockholders by a stockholder, in addition to the requirements of Article II, Section 10(a) of these Bylaws, the stockholder must have given timely notice thereof in writing to the Secretary (the "Proposal Notice"), which Proposal Notice shall be in proper form, and the making of such proposal must be permitted by applicable law, the Charter and these Bylaws, and must comply with the notice and other procedures set forth in this Article II, Section 10(b) in all applicable respects. To be timely, the Proposal Notice must be in writing and, except as provided in paragraph (iii) of this Section 10(b), must set forth all information required to be provided pursuant to this Section 10(b) and must be delivered to, or mailed and received by, the Secretary of the Corporation at the principal office of the Corporation not earlier than the close of business on the one hundred and fiftieth (150th) calendar day and not later than the close of business on the one hundred and twentieth (120th) calendar day prior to the one-year anniversary date of the date of the filing of the definitive proxy statement for the immediately preceding year's annual meeting of stockholders; *provided, however*, that in the event that the date of the annual meeting of stockholders is more than thirty (30) calendar days before or more than thirty (30) calendar days after the one-year anniversary date of the immediately preceding year's annual meeting of stockholders or special meeting in lieu thereof, or if the Corporation did not hold an annual meeting of stockholders or special meeting in lieu thereof in the preceding fiscal year, notice by the stockholder to be timely must be so delivered to, or mailed and received by, the Secretary of the Corporation not earlier than the close of business on the one hundred fiftieth (150th) calendar day prior to the date of such annual meeting and not later than the later of (i) the close of business on the one hundred twentieth (120th) calendar day prior to such annual meeting or (ii) the close of business on the tenth (10th) calendar day following the day on which public disclosure of the date of such annual meeting was first made by the Corporation (or if that day is not a business day for the Corporation, on the next succeeding business day). For purposes of these Bylaws, "Proposal Notice Deadline" shall mean the last date for a stockholder to deliver a Proposal Notice in accordance with the provisions of the previous sentence. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above. For purposes of these Bylaws, "close of business" shall mean 5:00 p.m. local time at the principal executive offices of the Corporation on any calendar day, whether or not such day is a business day. For purposes of these Bylaws, "public disclosure" or its corollary "publicly disclosed" shall mean (i) disclosure by the Corporation in a document publicly filed or furnished by it with the SEC pursuant to Section 13, 14 or 15(d) of the Exchange Act, (ii) in a press release issued by the Corporation and distributed through a national news or wire service, or (iii) another method reasonably intended by the Corporation to achieve broad-based dissemination of the information contained therein.

(ii) Required Form of Proposal Notice for Stockholder Proposals. To be in proper form, the Proposal Notice shall set forth in writing:

(1) Information Regarding each Proposing Person. As to each Proposing Person (as such term is defined in Article II, Section 10(b)(vi)(1)):

(a) the name and address of such Proposing Person, as they appear on the Corporation's stock transfer books;

(b) the class, series and number of shares of the Corporation directly or indirectly beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) and/or held of record by such Proposing Person (including any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future, whether such right is exercisable immediately, only after the passage of time or only upon the satisfaction of certain conditions precedent), the dates on which such shares were acquired and the investment intent of such acquisition of shares at the time they were acquired;

(c) a description in reasonable detail of any pending, or to such Proposing Person's knowledge, threatened legal proceeding in which any Proposing Person is a party or participant involving the Corporation or any officer, director "affiliate" (for purposes of these Bylaws, as such term is used by Rule 12b-2 under the Exchange Act) or "associate" (for purposes of these Bylaws, as such term is used by Rule 12b-2 under the Exchange Act) of the Corporation;

(d) a description in reasonable detail of any relationship (including any direct or indirect interest in any agreement, arrangement or understanding, written or oral) between any Proposing Person and the Corporation or any director, officer, affiliate or associate of the Corporation;

(e) the full notional amount of any securities that, directly or indirectly, underlie any "derivative security" (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a "call equivalent position" (as such term is defined in Rule 16a-1(b) under the Exchange Act) (together, a "Synthetic Equity Position") and that is, directly or indirectly, held or maintained by such Proposing Person with respect to any shares of any class or series of shares of the Corporation; provided that, for the purposes of the definition of "Synthetic Equity Position," the term "derivative security" shall also include any security or instrument that would not otherwise constitute a "derivative security" (as such term is defined in Rule 16a-1(c) under the Exchange Act) as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination; and, *provided, further*, that any Proposing Person satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a Proposing Person that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) shall not be deemed to hold or maintain the notional amount of any securities that underlie a

Synthetic Equity Position held by such Proposing Person as a hedge with respect to a bona fide derivatives trade or position of such Proposing Person arising in the ordinary course of such Proposing Person's business as a derivatives dealer;

(f) a description in reasonable detail of any agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of stock) that has been made by or on behalf of such Proposing Person, the effect or intent of any of the foregoing being to mitigate loss to, or to manage risk of stock price changes for, any Proposing Person or to increase or decrease the voting power or pecuniary or economic interest of such Proposing Person or any of its affiliates or associates with respect to stock of the Corporation;

(g) a description in reasonable detail of any proxy, contract, arrangement, understanding or relationship, written or oral and formal or informal, between such Proposing Person and any other person or entity (naming each such person or entity) pursuant to which the Proposing Person has a right to vote any shares of the Corporation;

(h) a description in reasonable detail of any rights to dividends on the shares of any class or series of shares of the Corporation directly or indirectly held of record or beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation;

(i) a description in reasonable detail of any performance-related fees (other than an asset-based fee) to which the Proposing Person may be entitled as a result of any increase or decrease in the value of shares of the Corporation or any of its derivative securities;

(j) a description in reasonable detail of any direct or indirect interest of such Proposing Person in any contract or agreement with the Corporation, or any affiliate or associate of the Corporation (naming such affiliate or associate);

(k) a description in reasonable detail of all agreements, arrangements and understandings, written or oral and formal or informal, (1) between or among any of the Proposing Persons or (2) between or among any Proposing Person and any other person or entity (naming each such person or entity) in connection with or related to the proposal of business by a stockholder, including without limitation (A) any understanding, formal or informal, written or oral, that any Proposing Person may have reached with any stockholder of the Corporation (including their names) with respect to how such stockholder will vote its shares in the Corporation at any meeting of the Corporation's stockholders or take other action in support of or related to any business proposed, or other action to be taken, by the Proposing Person, and (B) any agreements that would be required to be disclosed by any Proposing Person or any other person or entity pursuant to Item 5 or Item 6 of a Schedule 13D that would be filed pursuant to the Exchange Act and the rules and regulations promulgated thereunder (regardless of whether the requirement to file a Schedule 13D is applicable to the Proposing Person or other person or entity);

(l) all other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing if such a filing was to be made by any Proposing Person in connection with the contested solicitation of proxies or consents (even if a contested solicitation is not involved) by any Proposing Person in support of the business

proposed to be brought before the meeting pursuant to Section 14(a) and Regulation 14A under the Exchange Act;

(m) a representation as to whether any Proposing Person intends to deliver a proxy statement and form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock entitled to vote and required to approve the proposed business described in the Proposal Notice and, if so, identifying each such Proposing Person; and

(n) a representation that the stockholder delivering the Proposal Notice or its qualified representative intends to appear in person at the meeting (unless such meeting is held by means of remote communication and, in such case, a representation that the stockholder or its qualified representative shall appear at the meeting by means of remote communication) to propose the actions specified in the Proposal Notice and to vote all proxies solicited.

(2) Information Regarding the Proposal: As to each item of business that the stockholder giving the Proposal Notice proposes to bring before the annual meeting:

(a) a description in reasonable detail of the business desired to be brought before the meeting and the reasons (including the text of any reasons for the business that will be disclosed in any proxy statement or supplement thereto to be filed with the SEC) detailing why such stockholder or any other Proposing Person believes that the taking of the action or actions proposed to be taken would be in the best interests of the Corporation and its stockholders;

(b) the text of the proposal or business (including the text of any resolutions proposed for consideration);

(c) a description in reasonable detail of any interest of any Proposing Person in such business, including any anticipated benefit to the stockholder or any other Proposing Person therefrom, including any interest that will be disclosed to the Corporation's stockholders in any proxy statement to be distributed to the Corporation's stockholders); and

(d) all other information relating to such proposed business that would be required to be disclosed in a proxy statement or other filing if such a filing was to be made by any of the Proposing Persons in connection with the contested solicitation of proxies or consents (even if a contested solicitation is not involved) in support of such proposed business by one or more Proposing Persons pursuant to Section 14(a) and Regulation 14A under the Exchange Act.

(iii) Notwithstanding anything to the contrary contained in this Section 10, the information required to be included in a Proposal Notice provided pursuant to paragraphs (i) and (ii) of this Section 10(b) shall not include any ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is directed to prepare and submit the notice required by paragraphs (i) and (ii) of this Section 10(b) on behalf of a beneficial owner of the shares held of record by such broker, dealer, commercial bank, trust company or other nominee and who is not otherwise affiliated or associated with such beneficial owner.

(iv) Updating of Proposal Notice.

(1) A stockholder providing notice of any business proposed to be conducted at an annual meeting shall further update and supplement such notice, as necessary, from time to time, so that the information provided or required to be provided in such notice pursuant to this Article II, Section 10(b) shall be true, correct and complete in all respects not only prior to the Proposal Notice Deadline but also at all times thereafter and prior to the annual meeting, and such update and supplement shall be received by the Secretary of the Corporation not later than the earlier of (A) five (5) business days following the occurrence of any event, development or occurrence which would cause the information provided to be not true, correct and complete in all respects, and (B) ten (10) business days prior to the meeting at which such proposals contained therein are to be considered.

(2) If the information submitted pursuant to this Article II, Section 10(b) by any stockholder proposing business for consideration at an annual meeting shall not be true, correct and complete in all respects prior to the Proposal Notice Deadline, such information may be deemed not to have been provided in accordance with this Article II, Section 10(b). For the avoidance of doubt, the updates required pursuant to this Article II, Section 10(b) do not cause a notice that was not in compliance with this Article II, Section 10(b) when first delivered to the Corporation prior to the Proposal Notice Deadline to thereafter be in proper form in accordance with this Article II, Section 10.

(3) Upon written request by the Secretary of the Corporation, the Board (or any duly authorized committee thereof), any stockholder submitting a Proposal Notice proposing business for consideration at an annual meeting shall provide, within five (5) business days of delivery of such request (or such other period as may be specified in such request), written verification, satisfactory in the reasonable discretion of the Board, any duly authorized committee thereof or any duly authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder in the Proposal Notice delivered pursuant to this Article II, Section 10(b) (including, if requested by the Corporation, written confirmation by such stockholder that it continues to intend to bring the business proposed in the Proposal Notice before the meeting). If a stockholder fails to provide such written verification within such period, the information as to which written verification was requested may be deemed not to have been provided in accordance with this Article II, Section 10(b).

(v) Exclusive Means. Except as provided by Rule 14a-8 (and the interpretations thereof) of the Exchange Act, and notwithstanding anything in these Bylaws to the contrary (other than the provisions of Article II, Section 10(b)(xi) below relating to any proposal properly submitted in accordance with Rule 14a-8 (and the SEC's interpretations thereunder, including those of the Staff of the SEC's Division of Corporation Finance) under the Exchange Act and included in the notice of meeting (or any supplement thereto) made by or at the direction of the Board (or any duly authorized committee thereof) and the Corporation's proxy statement) and other than nominations for election to the Board which must comply with the provisions of Article III, Section 17 hereof), this Article II, Section 10 shall be the exclusive means for any stockholder of the Corporation to propose business to be brought before an annual meeting of stockholders and, except as aforesaid, no business shall be conducted at any annual meeting of stockholders that is not properly brought before the meeting in accordance with this Article II, Section 10. If the

chairman of such meeting shall determine, based on the facts and circumstances and in consultation with counsel (who may be the Corporation's internal counsel), that such business was not properly brought before the meeting in accordance with this Article II, Section 10, then the chairman of the meeting shall so declare to the meeting and not permit such business to be transacted at such meeting. In addition, business proposed to be brought by a stockholder may not be brought before an annual meeting if such stockholder takes action contrary to the representations made in the stockholder notice applicable to such business or if the stockholder notice applicable to such business contains an untrue statement of a fact or omits to state a fact necessary to make the statements therein not misleading.

(vi) Definitions of Proposing Person and Acting in Concert.

(1) For purposes of these Bylaws, "Proposing Person" means (i) the stockholder providing the Proposal Notice or Nominating Notice (as defined below), as applicable, (ii) the beneficial owner of the Corporation's capital stock, if different, on whose behalf the Proposal Notice or Nominating Notice, as applicable, is given, (iii) any affiliate or associate (as defined under the Exchange Act) of such stockholder or beneficial owner, (iv) each person who is a member of a "group" (for purposes of these Bylaws, as such term is used in Rule 13d-5 under the Exchange Act) with any such stockholder or beneficial owner (or their respective affiliates and associates) or is otherwise Acting in Concert (as defined below) with any such stockholder or beneficial owner (or their respective affiliates and associates) with respect to the proposals or nominations, as applicable, and (v) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A, or any successor instructions) with such stockholder or beneficial owner in the solicitation of proxies in respect of any nominations or other business proposed to be brought before the Corporation's stockholders.

(2) For purposes of these Bylaws, a person shall be deemed to be "Acting in Concert" with another person if such person knowingly acts (whether or not pursuant to an express agreement, arrangement or understanding) in concert with, or towards a common goal relating to the management, governance or control of the Corporation in parallel with, such other person where (A) each person is conscious of the other person's conduct or intent and this awareness is an element in their decision-making processes and (B) at least one additional factor suggests that such persons intend to act in concert or in parallel, which such additional factors may include, without limitation, exchanging information (whether publicly or privately), attending meetings, conducting discussions, or making or soliciting invitations to act in concert or in parallel; *provided, however*, that a person shall not be deemed to be Acting in Concert with any other person solely as a result of the solicitation or receipt of revocable proxies, or special meeting demands from such other person in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a proxy statement filed on Schedule 14A. A person Acting in Concert with another person shall be deemed to be Acting in Concert with any third party who is also Acting in Concert with such other person.

(vii) Referencing and Cross-Referencing. The Proposal Notice is required to clearly indicate and expressly reference which provisions of this Article II, Section 10(b) the information disclosed is intended to be responsive to. Information disclosed in one section of the Proposal Notice, or an Exhibit, Annex or Schedule thereto, in response to one provision of this

Article II, Section 10(b) shall not be deemed responsive to any other provision of this Article II, Section 10(b) unless it is expressly cross-referenced to such other provision.

(viii) No Incorporation by Reference. For a Proposal Notice to comply with the requirements of this Article II, Section 10(b), it must set forth in writing directly within the body of the Proposal Notice (as opposed to being incorporated by reference from any other document or writing not included with, and made a part of, the Proposal Notice) all the information required to be included therein as set forth in this Article II, Section 10(b). For the avoidance of doubt, a Proposal Notice shall not be deemed to be in compliance with this Article II, Section 10(b) if it attempts to include the required information by incorporating by reference any other document, writing or part thereof not included with, and made a part of, the Proposal Notice.

(ix) Accuracy of Information. A stockholder submitting the Proposal Notice, by its delivery to the Corporation, represents and warrants that all information contained therein, as of the Proposal Notice Deadline, is true, accurate and complete in all respects, contains no false and misleading statements and such stockholder acknowledges that it intends for the Corporation and the Board to rely on such information as (i) being true, accurate and complete in all respects and (ii) not containing any false and misleading statements.

(x) Requirement for Separate and Timely Notice. Notwithstanding any notice of the annual meeting sent to stockholders on behalf of the Corporation, a stockholder must separately comply with this Article II, Section 10 to conduct business at any stockholder meeting. If the stockholder's proposed business is the same or relates to business brought by the Corporation and included in the Corporation's annual meeting notice, the stockholder is nevertheless still required to comply with this Article II, Section 10 and deliver, prior to the Proposal Notice Deadline, its own separate and timely Proposal Notice to the Secretary of the Corporation that complies in all respects with the requirements of this Article II, Section 10.

(xi) Rule 14a-8. Nothing in this Article II, Section 10 shall be deemed to affect the rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to, and in compliance with, Rule 14a-8 (and the SEC's interpretations thereof, including those of the Staff of the SEC's Division of Corporation Finance) of the Exchange Act.

(xii) Exchange Act and Maryland General Corporation Law ("MGCL"). In addition to the provisions of this Article II, Section 10(b), a stockholder shall also comply with all applicable requirements of the Exchange Act, the MGCL and other applicable law with respect to any business that may be brought before an annual meeting and any solicitations of proxies in connection therewith.

Section 11. STOCKHOLDERS' CONSENT IN LIEU OF MEETING

. Any action required or permitted to be taken at any meeting of stockholders may be taken without a meeting (a) if a unanimous consent setting forth the action is given in writing or by electronic transmission by each stockholder entitled to vote on the matter and filed with the minutes of proceedings of the stockholders or (b) if the action is advised, and submitted to the stockholders for approval, by the Board and a consent in writing or by electronic transmission of stockholders entitled to cast not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting of stockholders is delivered to the Corporation in accordance with the MGCL. The

Corporation shall give notice of any action taken by less than unanimous consent to each stockholder not later than ten days after the effective time of such action.

Section 12. CONTROL SHARE ACQUISITION ACT

. Notwithstanding any other provision of the Charter or these Bylaws, Title 3, Subtitle 7 of the MGCL or any successor statute, shall not apply to any acquisition by any person of shares of stock of the Corporation. This section may be repealed, in whole or in part, at any time, whether before or after an acquisition of control shares and, upon such repeal, may, to the extent provided by any successor bylaw, apply to any prior or subsequent control share acquisition.

Section 13. POSTPONEMENT AND CANCELLATION OF MEETINGS

. Any previously scheduled annual or special meeting of the stockholders may be postponed, and any previously scheduled annual or special meeting of the stockholders called by the Board may be canceled, by resolution of the Board upon public notice given prior to the time previously scheduled for such meeting of stockholders.

Section 14. SPECIAL MEETINGS

(a) Special meetings of the stockholders of the Corporation may only be called (i) at any time and for any purpose or purposes, by the Board pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board for adoption), or by the Chairman of the Board, or (ii) by the Secretary of the Corporation, upon the written request of the record stockholders of the Corporation as of the record date fixed in accordance with Article II, Section 14(d) of these Bylaws who hold, in the aggregate, not less than a majority of the outstanding shares of the Corporation that would be entitled to vote at the meeting (the "Requisite Percentage") at the time such request is submitted by the holders of such Requisite Percentage, subject to and in accordance with this Article II, Section 14. The notice of a special meeting shall state the purpose or purposes of the special meeting, and the business to be conducted at the special meeting shall be limited to the purpose or purposes stated in the notice. At any special meeting of the stockholders, only such business shall be conducted or considered as shall have been properly brought before the special meeting. For business to be properly brought before a special meeting, it must be (i) specified in the Corporation's notice of meeting (or any supplement thereto) given by or at the direction of the Board (or any duly authorized committee thereof), (ii) if not specified in the notice of meeting (or any supplement thereto) provided by or at the direction of the Board (or any duly authorized committee thereof), otherwise properly brought before the special meeting by or at the direction of the Board (or any duly authorized committee of the Board) or the Chairman of the Board (if any), or (iii) otherwise properly requested to be brought before a special meeting requested by holders of the Requisite Percentage in accordance with the provisions of this Article II, Section 14 (a "Stockholder Requested Special Meeting"). Except in accordance with this Article II, Section 14 and except as provided in Article III, Section 17 with respect to a stockholder's ability to propose candidates for election as directors at a special meeting of stockholders where the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting in accordance with the provisions of this Article II, Section 14, stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders. Stockholders seeking to propose candidates for election to the Board at a special

meeting, whether a Stockholder Requested Special Meeting or other special meeting of stockholders where the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting in accordance with the provisions of this Article II, Section 14, must also comply with the requirements set forth in Article III, Section 17 for providing a timely and proper written notice for the proposal of candidates for election as directors.

(b) No stockholder may request that the Secretary of the Corporation call a Stockholder Requested Special Meeting unless a stockholder of record of the Corporation has first submitted a request in writing (“Record Date Request Notice”) that the Board fix a record date (a “Request Record Date”) for the purpose of determining the stockholders entitled to request that the Secretary of the Corporation call a Stockholder Requested Special Meeting, which Record Date Request Notice shall be in proper form and shall comply with, and include all the information required by, Article II, Section 14(c), and shall be delivered to, or mailed and received by, the Secretary of the Corporation at the principal executive offices of the Corporation.

(c) To be in proper form for purposes of this Article II, Section 14, a Record Date Request Notice shall set forth:

(1) As to each Requesting Person (as defined below), (A) the information required by Article II, Section 10(b)(ii)(1), except that for purposes of this Article II, Section 14 the term “Requesting Person” shall be substituted for the term “Proposing Person” in all places it appears in Article II, Section 10(b)(ii)(1); (B) a representation that such Requesting Person intends to hold the shares of the Corporation described in response to Article II, Section 10(b)(ii)(1) through the date of the Stockholder Requested Special Meeting; and (C) the disclosure in clauses (k) and (l) of Article II, Section 10(b)(ii)(1) shall be made with respect to the business proposed to be conducted at the special meeting or the proposed election of directors at the Stockholder Requested Special Meeting, as the case may be);

(2) As to the purpose or purposes of the Stockholder Requested Special Meeting, (A) a description of (1) the specific purpose or purposes of the Stockholder Requested Special Meeting, (2) the matter(s) proposed to be acted on at the Stockholder Requested Special Meeting, and (3) the reasons for conducting such business at the Stockholder Requested Special Meeting (including the text of any reasons for the business that will be disclosed in any proxy statement or supplement thereto to be filed with the SEC); (B) a reasonably detailed description of any material interest in such matter of each Requesting Person; and (C) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Requesting Persons and (y) between or among any Requesting Person and any other person or entity (naming each such person or entity) in connection with the request for the Stockholder Requested Special Meeting or the business or nominees for election to the Board proposed to be acted on at the Stockholder Requested Special Meeting; and

(3) If directors are proposed to be elected at the Stockholder Requested Special Meeting, (i) as to each Requesting Person, the information set forth in Article II, Section 10(b)(ii)(1) of these Bylaws (except that for purposes of this Article II, Section 14(c), the term “Requesting Person” shall be substituted for the term “Proposing Person” in all places it appears

in Article II, Section 10(b)(ii)(1) of these Bylaws and any reference to “business” or “proposal” therein will be deemed to be a reference to the “nomination” contemplated by this Article II, Section 14(c); and (ii) the information for each person whom a Requesting Person proposes to nominate for election as a director at the Stockholder Requested Special Meeting that is required to be disclosed for each person by Article III, Section 17(c)(2) of these Bylaws.

For purposes of this Article II, Section 14(c), the term “Requesting Person” shall mean (i) the stockholder submitting the a Record Date Request Notice; (ii) the beneficial owner or beneficial owners, if different, on whose behalf such notice is being sent is made; (iii) any affiliate or associate of such stockholder or beneficial owner; and (iv) each other person who is a member of a “group” (for purposes of these Bylaws, as such term is used in Rule 13d-5 under the Exchange Act) with any such stockholder or beneficial owner (or their respective affiliates and associates) or is otherwise Acting in Concert (as defined below) with any such stockholder or beneficial owner (or their respective affiliates and associates) with respect to any actions intended to have the Corporation fix a Request Record Date or call a Stockholder Requested Special Meeting.

A stockholder submitting a Record Date Request Notice, by its delivery to the Corporation, represents and warrants that all information contained therein is true, accurate and complete in all respects, contains no false and misleading statements and such stockholder acknowledges that it intends for the Corporation and the Board to rely on such information as being true, accurate and complete in all respects. The Record Date Request Notice is required to clearly indicate and expressly reference which provisions of this Section 14(c) the information disclosed is intended to be responsive to. Information disclosed in one section of the Record Date Request Notice, or an Exhibit, Annex or Schedule thereto, in response to one provision of this Section 14(c) shall not be deemed responsive to any other provision of this Section 14(c) unless it is expressly cross-referenced to such other provision. For a Record Date Request Notice to comply with the requirements of this Section 14(c), it must set forth in writing directly within the body (as opposed to being incorporated by reference from any other document or writing not included with, and made a part of, the Record Date Request Notice) of the Record Date Request Notice all the information required to be included therein as set forth in this Section 14(c). For the avoidance of doubt, a Record Date Request Notice shall not be deemed to be in compliance with this Section 14(c) if it attempts to include the required information by incorporating by reference any other document, writing or part thereof not included with, and made a part of, the Record Date Request Notice where such information may be included. Notwithstanding anything to the contrary contained in this Section 14, the information required to be included in a Record Date Request Notice provided pursuant to this Section 14(c) shall not include any ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is directed to prepare and submit the notice required by this Section 14(c) on behalf of a beneficial owner of the shares held of record by such broker, dealer, commercial bank, trust company or other nominee and who is not otherwise affiliated or associated with such beneficial owner.

(d) Within ten (10) calendar days after receipt of a Record Date Request Notice in proper form and otherwise in compliance with this Article II, Section 14 from any stockholder of record, the Board may adopt a resolution fixing a Request Record Date for the purpose of determining the stockholders entitled to request that the Secretary of the Corporation call a Stockholder Requested Special Meeting, which date shall not precede the date upon which the resolution fixing the Request Record Date is adopted by the Board. If no resolution fixing a

Request Record Date has been adopted by the Board within the ten (10) calendar day period after the date on which such a request to fix a Request Record Date was received, the Request Record Date in respect thereof shall be deemed to be the twentieth (20th) calendar day after the date on which such a request is received. Notwithstanding anything in this Article II, Section 14 to the contrary, no Request Record Date shall be fixed if the Board determines that the written request or requests to call a Stockholder Requested Special Meeting (each, a “Special Meeting Request” and collectively, the “Special Meeting Requests”), that would otherwise be submitted following such Request Record Date would not reasonably be expected to comply with the requirements set forth in Article II, Section 14(g).

(e) In order for a Stockholder Requested Special Meeting to be called, one or more Special Meeting Requests, in the form required by this Article II, Section 14, must be signed by stockholders who, as of the Request Record Date, hold of record or beneficially, in the aggregate, the Requisite Percentage and must be timely delivered to the Secretary of the Corporation at the principal executive offices of the Corporation. To be timely, a Special Meeting Request must be delivered to the principal executive offices of the Corporation not later than the sixtieth (60th) calendar day following the Request Record Date. In determining whether a Stockholder Requested Special Meeting has been properly requested, multiple Special Meeting Requests delivered to the Secretary will be considered together only if (i) each Special Meeting Request identifies the same purpose or purposes of the Stockholder Requested Special Meeting and the same matters proposed to be acted on at such meeting (in each case as determined in good faith by the Board), and (ii) such Special Meeting Requests have been dated and delivered to the Secretary within sixty (60) calendar days of the earliest dated Special Meeting Request.

(f) To be in proper form for purposes of this Article II, Section 14, a Special Meeting Request must include and set forth (a) a description of (i) the specific purpose or purposes of the Stockholder Requested Special Meeting, (ii) the matter(s) proposed to be acted on at the Stockholder Requested Special Meeting, and (iii) the reasons for conducting such business at the Stockholder Requested Special Meeting (including the text of any reasons for the business that will be disclosed in any proxy statement or supplement thereto to be filed with the SEC), and (b) the text of the proposed business (including the text of any resolutions proposed for consideration), if applicable, and (c) with respect to (1) any stockholder or stockholders submitting a Special Meeting Request; (2) the beneficial owner or beneficial owners, if different, on whose behalf such Special Meeting Request is made; (3) any affiliate or associate of such stockholder or beneficial owner; and (4) each other person who is a member of a “group” (for purposes of these Bylaws, as such term is used in Rule 13d-5 under the Exchange Act) with any such stockholder or beneficial owner (or their respective affiliates and associates) or is otherwise Acting in Concert (as defined below) with any such stockholder or beneficial owner (or their respective affiliates and associates) with respect to any actions intended to have the Corporation fix a Request Record Date or call a Stockholder Requested Special Meeting (but excluding any stockholder that has provided such request in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A (a “Solicited Stockholder”)), the information required to be provided pursuant to this Article II, Section 14 of a Requesting Person. A stockholder submitting a Special Meeting Request, by its delivery to the Corporation, represents and warrants that all information contained therein is true, accurate and complete in all respects, contains no false and misleading

statements and such stockholder acknowledges that it intends for the Corporation to rely on such information as being true, accurate and complete in all respects. The Special Meeting Request is required to clearly indicate and expressly reference which provisions of this Section 14 the information disclosed is intended to be responsive to. Information disclosed in one section of the Special Meeting Request, or an Exhibit, Annex or Schedule thereto, in response to one provision of this Section 14 shall not be deemed responsive to any other provision of this Section 14 unless it is expressly cross-referenced to such other provision. For a Special Meeting Request to comply with the requirements of this Section 14, it must set forth in writing directly within the body (as opposed to being incorporated by reference from any other document or writing not included with, and made a part of, the Special Meeting Request) of the Special Meeting Request all the information required to be included therein as set forth in this Section 14. For the avoidance of doubt, a Special Meeting Request shall not be deemed to be in compliance with this Section 14 if it attempts to include the required information by incorporating by reference any other document, writing or part thereof not included with, and made a part of, the Special Meeting Request where such information may be included. A stockholder may revoke a Special Meeting Request by written revocation delivered to the Secretary at any time prior to the Stockholder Requested Special Meeting. If any such revocation(s) are received by the Secretary after the Secretary's receipt of Special Meeting Requests from the Requisite Percentage of stockholders, and as a result of such revocation(s) there no longer are unrevoked demands from the Requisite Percentage of stockholders to call a Stockholder Requested Special Meeting, then the Board shall have the discretion to determine whether or not to proceed with the Stockholder Requested Special Meeting.

(g) The Secretary shall not accept, and shall consider ineffective, a Special Meeting Request if (i) such Special Meeting Request does not comply with this Article II, Section 14 or relates to an item of business to be transacted at the Stockholder Requested Special Meeting that is not a proper subject for stockholder action under applicable law; (ii) the Board calls an annual or special meeting of stockholders (in lieu of calling the Stockholder Requested Special Meeting) in accordance with Article II, Section 14 (j); or (iii) such Special Meeting Request was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law.

(h) Business brought before any Stockholder Requested Special Meeting by stockholders shall be limited to the matters proposed in the valid Special Meeting Request; *provided, however*, that nothing herein shall prohibit the Board from bringing other matters before the stockholders at any Stockholder Requested Special Meeting and including such matters in the notice of the meeting its provides to stockholders. If none of the stockholders who submitted and signed the Special Meeting Request (but excluding any Solicited Stockholder) appears in person at the Stockholder Requested Special Meeting or sends a qualified representative to the Stockholder Requested Special Meeting to present the matters to be presented for consideration that were specified in the Stockholder Meeting Request (unless the Stockholder Requested Special Meeting is held by means of remote communication in which case the requesting stockholder or its qualified representative shall be present by means of remote communication), the Corporation need not present such matters for a vote at such meeting.

(i) Any special meeting of stockholders, including any Stockholder Requested Special Meeting, shall be held at such date and time as may be fixed by the Board in accordance with these Bylaws and in compliance with applicable law; provided that a Stockholder Requested Special Meeting shall be held within ninety (90) calendar days after the Corporation receives one or more valid Special Meeting Requests in compliance with this Article II, Section 14 from stockholders having beneficial ownership of at least the Requisite Percentage; *provided, however* that if the Board neglects or refuses to fix the date of such Stockholder Requested Special Meeting and give the notice required by Article II, Section 3, then the person or persons making the request may do so; *provided, further*, that the Board shall have the discretion to call an annual or special meeting of stockholders (in lieu of calling the Stockholder Requested Special Meeting) in accordance with Article II, Section 14(j) or cancel any Stockholder Requested Special Meeting that has been called but not yet held for any of the reasons set forth in the foregoing provisions of this Article II, Section 14.

(j) If a Special Meeting Request is made that complies with this Article II, Section 14, the Board may (in lieu of calling the Stockholder Requested Special Meeting) present an identical or substantially similar item for stockholder approval at any other meeting of stockholders that is held within ninety (90) calendar days after the Corporation receives such Special Meeting Request.

(k) In connection with a Stockholder Requested Special Meeting called in accordance with this Article II, Section 14, the stockholder or stockholders (except for any Solicited Stockholder) who requested that the Board fix a record date for notice and voting for the special meeting in accordance with this Article II, Section 14 or who signed and delivered a Special Meeting Request to the Secretary shall further update and supplement the information previously provided to the Corporation in connection with such requests, if necessary, so that the information provided or required to be provided in such requests pursuant to this Article II, Section 14 shall be true, correct and complete as of (i) the record date for the determination of persons entitled to receive notice of the special meeting and (ii) the date that is five (5) business days prior to the special meeting and, in the event of any adjournment or postponement thereof, five (5) business days prior to such adjourned or postponed special meeting. In the case of an update and supplement pursuant to clause (i) of this Section, such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than eight (8) business days after the record date for the determination of persons entitled to receive notice of the special meeting. In the case of an update and supplement pursuant to clause (ii) of this Section, such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than two (2) business days prior to the date for the special meeting, and, in the event of any adjournment or postponement thereof, two (2) business days prior to such adjourned or postponed special meeting.

(l) Upon written request by the Secretary of the Corporation, the Board or any duly authorized committee thereof, any stockholder or stockholders (except for any Solicited Stockholder) who requested that the Board fix a record date for notice and voting for the special meeting in accordance with this Article II, Section 14 or who signed and delivered a Special Meeting Request to the Secretary shall provide, within five (5) business days of delivery of such request (or such other period as may be specified in such request), written verification,

satisfactory in the reasonable discretion of the Board, any duly authorized committee thereof or any duly authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder or stockholders in accordance with this Article II, Section 14. If a stockholder fails to provide such written verification within such period, the information as to which written verification was requested may be deemed not to have been provided in accordance with this Article II, Section 14.

(m) Notwithstanding anything in these Bylaws to the contrary, the Secretary shall not be required to call a Stockholder Requested Special Meeting pursuant to this Article II, Section 14 except in accordance with this Article II, Section 14. If the Board shall determine that any request to fix a record date for notice and voting for the special meeting or Special Meeting Request was not properly made in accordance with this Article II, Section 14, or shall determine that the stockholder or stockholders requesting that the Board fix such record date or submitting a Special Meeting Request have not otherwise complied with this Article II, Section 14, then the Board shall not be required to fix such record date or to call and hold the Stockholder Requested Special Meeting. In addition to the requirements of this Article II, Section 14, each Requesting Person shall comply with all requirements of applicable law, including all requirements of the Exchange Act and the MGCL, with respect to (i) any request to fix a record date for notice and voting for the Stockholder Requested Special Meeting, (ii) any Special Meeting Request or (iii) a Stockholder Requested Special Meeting.

(n) After receipt of Special Meeting Requests in proper form and in accordance with this Article II, Section 14 from a stockholder or stockholders holding the Requisite Percentage, the Board shall duly call, and determine the place, date and time of, a Stockholder Requested Special Meeting for the purpose or purposes and to conduct the business specified in the Special Meeting Requests received by the Corporation; *provided, however* that the Stockholder Requested Special Meeting shall be held within ninety (90) calendar days after the Corporation receives one or more valid Special Meeting Requests in compliance with this Article II, Section 14 from stockholders holding at least the Requisite Percentage; *provided, further*, that the Board shall have the discretion to call an annual or special meeting of stockholders (in lieu of calling the Stockholder Requested Special Meeting) in accordance with Article II, Section 14(j) or cancel any Stockholder Requested Special Meeting that has been called but not yet held for any of the reasons set forth in the foregoing provisions of this Article II, Section 14. The Board shall provide written notice of such Stockholder Requested Special Meeting in accordance with Article II, Section 3 of these Bylaws. The record date for notice and voting for such a Stockholder Requested Special Meeting shall be fixed in accordance with Article VII, Section 4 of these Bylaws.

Section 15. MEETINGS BY REMOTE COMMUNICATION

. If authorized by the Board, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication, participate in the meeting and be deemed present in person and vote at the meeting, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxy holder, (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxy holders a reasonable opportunity to participate

in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxy holder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

ARTICLE III

DIRECTORS

Section 1. GENERAL POWERS

. The business and affairs of the Corporation shall be managed under the direction of its Board.

Section 2. NUMBER, TENURE AND RESIGNATION

. At any regular meeting or at any special meeting called for that purpose, a majority of the entire Board may establish, increase or decrease the number of directors, provided that the number thereof shall never be less than the minimum number required by the MGCL, nor more than fifteen (15), and further provided that the tenure of office of a director shall not be affected by any decrease in the number of directors. Any director of the Corporation may resign at any time by delivering his or her resignation to the Board, the chairman of the Board or the secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the resignation. The acceptance of a resignation shall not be necessary to make it effective unless otherwise stated in the resignation.

Section 3. ANNUAL AND REGULAR MEETINGS

. An annual meeting of the Board shall be held once each calendar year. The Board may provide, by resolution, the time and place for the holding of regular meetings of the Board without other notice than such resolution.

Section 4. SPECIAL MEETINGS

. Special meetings of the Board may be called by or at the request of the chairman of the Board, the chief executive officer, the president or a majority of the directors then in office. The person or persons authorized to call special meetings of the Board may fix any place as the place for holding any special meeting of the Board called by them. The Board may provide, by resolution, the time and place for the holding of special meetings of the Board without other notice than such resolution.

Section 5. NOTICE

. Notice of any special meeting of the Board shall be delivered personally or by telephone, electronic mail, facsimile transmission, courier or United States mail to each director at his or her business or residence address. Notice by personal delivery, telephone, electronic mail or facsimile transmission shall be given at least 24 hours prior to the meeting. Notice by United States mail shall be given at least three days prior to the meeting. Notice by courier shall be given at least two days prior to the meeting. Telephone notice shall be deemed to be given when the director or his or her agent is personally given such notice in a telephone call to which the director or his or her agent is a party. Electronic mail notice shall be deemed to be given upon transmission of the message to the electronic mail address given to the Corporation by the director. Facsimile transmission notice shall be deemed to be given upon completion of the transmission of the message to the number given to the Corporation by the director and receipt of a completed answer-back indicating receipt. Notice by United States mail shall be deemed to be given when deposited in the United States mail properly addressed, with postage thereon prepaid.

Notice by courier shall be deemed to be given when deposited with or delivered to a courier properly addressed. Neither the business to be transacted at, nor the purpose of, any annual, regular or special meeting of the Board need be stated in the notice, unless specifically required by statute or these Bylaws.

Section 6. QUORUM

. A majority of the directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board, provided that, if less than a majority of such directors is present at such meeting, a majority of the directors present may adjourn the meeting from time to time without further notice, and provided further that if, pursuant to applicable law, the Charter or these Bylaws, the vote of a majority or other percentage of a particular group of directors is required for action, a quorum must also include a majority or such other percentage of such group. The directors present at a meeting which has been duly called and at which a quorum has been established may continue to transact business until adjournment, notwithstanding the withdrawal from the meeting of enough directors to leave fewer than required to establish a quorum.

Section 7. VOTING

. The action of a majority of the directors present at a meeting at which a quorum is present shall be the action of the Board, unless the concurrence of a greater proportion is required for such action by applicable law, the Charter or these Bylaws. If enough directors have withdrawn from a meeting to leave fewer than required to establish a quorum, but the meeting is not adjourned, the action of the majority of that number of directors necessary to constitute a quorum at such meeting shall be the action of the Board, unless the concurrence of a greater proportion is required for such action by applicable law, the Charter or these Bylaws.

Section 8. ORGANIZATION

. At each meeting of the Board, the chairman of the Board or, in the absence of the chairman, the vice chairman of the Board, if any, shall act as chairman of the meeting. In the absence of both the chairman and vice chairman of the Board, the chief executive officer or, in the absence of the chief executive officer, the president or, in the absence of the president, a director chosen by a majority of the directors present shall act as chairman of the meeting. The secretary or, in his or her absence, an assistant secretary of the Corporation or, in the absence of the secretary and all assistant secretaries, an individual appointed by the chairman of the meeting, shall act as secretary of the meeting.

Section 9. TELEPHONE MEETINGS

. Directors may participate in a meeting by means of a conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 10. CONSENT BY DIRECTORS WITHOUT A MEETING

. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting, if a consent in writing or by electronic transmission to such action is given by each director and is filed with the minutes of proceedings of the Board.

Section 11. VACANCIES

. If for any reason any or all the directors cease to be directors, such event shall not terminate the Corporation or affect these Bylaws or the powers of the remaining directors hereunder. Except as may be provided by the Board in setting the terms of any class or series of preferred stock, any vacancy on the Board may be filled only by a majority of the

remaining directors, even if the remaining directors do not constitute a quorum. Any director elected to fill a vacancy shall serve for the remainder of the full term of the directorship in which the vacancy occurred and until a successor is duly elected and qualified.

Section 12. COMPENSATION

. Directors shall not receive any stated salary for their services as directors but, by resolution of the Board, may receive compensation per year and/or per meeting and/or per visit to real property or other facilities owned or leased by the Corporation and for any service or activity they performed or engaged in as directors. Directors may be reimbursed for expenses of attendance, if any, at each annual, regular or special meeting of the Board or of any committee thereof and for their expenses, if any, in connection with each property visit and any other service or activity they perform or engage in as directors; but nothing herein contained shall be construed to preclude any directors from serving the Corporation in any other capacity and receiving compensation therefor.

Section 13. RELIANCE

. Each director and officer of the Corporation shall, in the performance of his or her duties with respect to the Corporation, be entitled to rely on any information, opinion, report or statement, including any financial statement or other financial data, prepared or presented by an officer or employee of the Corporation whom the director or officer reasonably believes to be reliable and competent in the matters presented, by a lawyer, certified public accountant or other person, as to a matter which the director or officer reasonably believes to be within the person's professional or expert competence, or, with respect to a director, by a committee of the Board on which the director does not serve, as to a matter within its designated authority, if the director reasonably believes the committee to merit confidence.

Section 14. RATIFICATION

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

Section 15. CERTAIN RIGHTS OF DIRECTORS AND OFFICERS

. A director or officer of the Corporation shall have no responsibility to devote his or her full time to the affairs of the Corporation. Any director or officer, in his or her personal capacity or in a capacity as an affiliate, employee or agent of any other person, or otherwise, may have business interests and engage in business activities similar to, in addition to or in competition with those of or relating to the Corporation.

Section 16. EMERGENCY PROVISIONS

. Notwithstanding any other provision in the Charter or these Bylaws, this Section 16 shall apply during the existence of any catastrophe, or other similar emergency condition, as a result of which a quorum of the Board under Article III of these Bylaws cannot readily be obtained (an "Emergency"). During any Emergency, unless

otherwise provided by the Board, (i) a meeting of the Board or a committee thereof may be called by any director or officer by any means feasible under the circumstances; (ii) notice of any meeting of the Board during such an Emergency may be given less than 24 hours prior to the meeting to as many directors and by such means as may be feasible at the time, including publication, television or radio; and (iii) the number of directors necessary to constitute a quorum shall be one-third of the entire Board.

Section 17. NOMINATION OF DIRECTORS

(a) Method of Nomination. Nominations of candidates for election as directors may be made at any annual meeting of stockholders or at any special meeting of stockholders, but in the case of any special meeting of stockholders, only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting in accordance with Article II, Section 14 of these Bylaws, (i) by, or at the direction of the Board (or any duly authorized committee thereof) (including, without limitation, by making reference to the nominees in the proxy statement delivered to stockholders on behalf of the Board), or (ii) by any stockholder of the Corporation Present in Person who (A) is a beneficial owner (as of the time notice of such proposed nomination is given by the stockholder as set forth in this Article III, Section 17, as of the record date for the meeting in question and at the time of the meeting) of any shares of the Corporation's capital stock outstanding, (B) is entitled to vote at such meeting, and (C) complies with all applicable requirements of this Article III, Section 17. Only persons who are proposed as director nominees in accordance with the procedures set forth in this Article III, Section 17 shall be eligible for election as directors at any meeting of stockholders.

(b) Stockholder Nominations. For a person to be properly brought before any stockholders' meeting by a stockholder as a proposed nominee for election as director, the stockholder must have given timely notice thereof in writing to the Secretary (the "Nominating Notice"), which Nominating Notice shall be in proper form. To be timely, the Nominating Notice must be made in writing and, except as provided in Section 17(d), must set forth all information required to be provided pursuant to this Section 17(b) and must be delivered to, or mailed and received by, the Secretary of the Corporation at the principal office of the Corporation (i) not earlier than the close of business on the one hundred and fiftieth (150th) calendar day and not later than the close of business on the one hundred and twentieth (120th) calendar day prior to the one-year anniversary date of the date of the filing of the definitive proxy statement for the immediately preceding year's annual meeting of stockholders or (ii) in the case of a special meeting of stockholders called in accordance with Article II, Section 14 of these Bylaws for the purpose of electing directors, or in the event that the annual meeting of stockholders is called for a date that is more than thirty (30) calendar days before or more than thirty (30) calendar days after the one-year anniversary date of the immediately preceding year's annual meeting of stockholders or special meeting in lieu thereof, or if the Corporation did not hold an annual meeting (or special meeting in lieu of an annual meeting) in the preceding fiscal year, notice by the stockholder to be timely must be so delivered to, or mailed and received by, the Secretary of the Corporation not earlier than the close of business on the one hundred fiftieth (150th) calendar day prior to the date of such annual meeting and not later than the later of (i) the close of business on the one hundred twentieth (120th) calendar day prior to the scheduled date of such stockholders' meeting or (ii) the close of business on the tenth (10th) calendar day

following the day on which public disclosure of the date of such stockholders' meeting was first made by the Corporation (or if that day is not a business day for the Corporation, on the next succeeding business day). For purposes of these Bylaws, "Nominating Notice Deadline" shall mean the last date for a stockholder to deliver a Nominating Notice in accordance with the provisions of the previous sentence. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above. Notwithstanding anything in the second sentence of this Article III, Section 17(b) to the contrary, in the event that the number of directors to be elected to the Board is increased and there is no public disclosure naming all of the nominees for director or specifying the size of the increased Board made by the Corporation at least one hundred and thirty (130) calendar days prior to the one-year anniversary date of the date of the filing of the definitive proxy statement for the immediately preceding year's annual meeting of stockholders, a stockholder's notice required by this Article III, Section 17 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, and only with respect to a stockholder who had, prior to such increase in the size of the Board, previously submitted in proper form a Nominating Notice prior to the Nominating Notice Deadline, if it shall be delivered to, or mailed and received by, the Secretary of the Corporation at the principal office of the Corporation not later than the close of business on the tenth (10th) calendar day following the day on which such public disclosure is first made by the Corporation.

(c) Required Form of Nominating Notice. To be in proper form, the Nominating Notice to the Secretary of the Corporation shall set forth in writing:

(1) Information Regarding the Proposing Person. As to each Proposing Person, the information set forth in Article II, Section 10(b)(ii)(1) of these Bylaws (except that for purposes of this Article III, Section 17(c), any reference to "business" or "proposal" therein will be deemed to be a reference to the "nomination" contemplated by this Article III, Section 17(c).

(2) Information Regarding the Nominee: As to each person whom the Proposing Person giving notice proposes to nominate for election as a director:

(i) all information with respect to such proposed nominee that would be required to be set forth in a Nominating Notice pursuant to Article III, Section 17(c)(1) if such proposed nominee were a Proposing Person;

(ii) a description in reasonable detail of any and all litigation, whether or not judicially resolved, settled or dismissed, relating to the proposed nominee's past or current service on the Board (or similar governing body) of any Corporation, limited liability company, partnership, trust or any other entity where a legal complaint filed in any state or federal court located within the United States alleges that the proposed nominee committed any act constituting (a) a breach of fiduciary duties, (b) misconduct, (c) fraud, (d) breaches of confidentiality obligations, and/or (e) a breach of the entity's code of conduct applicable to directors;

(iii) to the extent that such proposed nominee has been convicted of any past criminal offenses involving dishonesty or a breach of trust or duty, a description in reasonable detail of such offense and all legal proceedings relating thereto;

(iv) to the extent that such proposed nominee has ever been suspended or barred by any governmental authority or self-regulatory organization from engaging in any profession or participating in any industry, or has otherwise been subject to a disciplinary action by a governmental authority or self-regulatory organization that provides oversight over the proposed nominee's current or past profession or an industry that the proposed nominee has participated in, a description in reasonable detail of such action and the reasons therefor;

(v) to the extent that such proposed nominee has been determined by any governmental authority or self-regulatory organization to have violated any federal or state securities or commodities laws, including but not limited to, the Securities Act of 1933, as amended, the Exchange Act or the Commodity Exchange Act, a description in reasonable detail of such violation and all legal proceedings relating thereto;

(vi) all information relating to such proposed nominee that would be required to be disclosed in a proxy statement or other filing that would be required to be made by any Proposing Person pursuant to Section 14(a) under the Exchange Act in connection with a contested solicitation of proxies or consents (even if a contested solicitation is not involved) by a Proposing Person for the election of directors;

(vii) such proposed nominee's executed written consent to be named in the proxy statement of the Proposing Person as a nominee and to serve as a director of the Corporation if elected;

(viii) to the extent that such proposed nominee has entered into (a) any agreement, arrangement or understanding (whether written or oral) with, or has given any commitment or assurance to, any person or entity as to the positions that such proposed nominee, if elected as a director of the Corporation, would take in support of or in opposition to any issue or question that may be presented to him or her for consideration in his or her capacity as a director of the Corporation, (b) any agreement, arrangement or understanding (whether written or oral) with, or has given any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, would act or vote with respect to any issue or question presented to him or her for consideration in his or her capacity as a director of the Corporation, (c) any agreement, arrangement or understanding (whether written or oral) with any person or entity that could be reasonably interpreted as having been both (1) entered into in contemplation of the proposed nominee being elected as a director of the Corporation, and (2) intended to limit or interfere with the proposed nominee's ability to comply, if elected as a director of the Corporation, with his or her fiduciary duties, as a director of the Corporation, to the Corporation or its stockholders, or (d) any agreement, arrangement or understanding (whether written or oral) with any person or entity that could be reasonably interpreted as having been or being intended to require such proposed nominee to consider the interests of a person or entity (other than the Corporation and its stockholders) in complying with his or her fiduciary duties, as a director of the Corporation, to the Corporation or its stockholders, a description in reasonable detail of each such agreement, arrangement or understanding (whether written or oral) or commitment or assurance;

(ix) the amount of any equity securities beneficially owned by such proposed nominee in any company that is a direct competitor of the Corporation or its operating subsidiaries

if such beneficial ownership by such nominee, when aggregated with that of all other proposed nominees and the Proposing Persons, is five percent (5%) or more of the class of equity securities of such company;

(x) a description in reasonable detail of any and all agreements, arrangements and/or understandings, written or oral, between such proposed nominee and any person or entity (naming each such person or entity) with respect to any direct or indirect compensation, reimbursement, indemnification or other benefit (whether monetary or non-monetary) in connection with or related to such proposed nominee's service on the Board if elected as a member of the Board;

(xi) a description in reasonable detail of any and all other agreements, arrangements and/or understandings, written or oral, between such proposed nominee and any person or entity (naming such person or entity) in connection with such proposed nominee's service or action as a proposed nominee and, if elected, as a member of the Board;

(xii) a certificate executed by the proposed nominee (A) certifying that such proposed nominee (1) is not, and will not become, a party to any agreement, arrangement or understanding with any person or entity other than the Corporation in connection with service or action as a director that has not been disclosed to the Corporation; and (2) agreeing to comply, if elected as a director of the Corporation, with all corporate governance, conflicts of interest, code of conduct and ethics, confidentiality and stock ownership and trading policies and guidelines of the Corporation, as the same shall be amended from time to time by the Board; and (B) attaching a completed proposed nominee questionnaire (which questionnaire shall be provided by the Corporation, upon request, to the stockholder providing the notice); and

(xiii) all information that would be required to be disclosed pursuant to Items 403 and 404 under Regulation S-K if the stockholder providing the Nominating Notice or any other Proposing Person were the "registrant" for purposes of such rule and the proposed nominee were a director or executive officer of such registrant.

(d) Notwithstanding anything to the contrary contained in this Section 17, the information required to be included in a Nominating Notice provided pursuant to paragraphs (b) and (c) of this Section 17 shall not include any ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is directed to prepare and submit the notice required by paragraphs (b) and (c) of this Section 17 on behalf of a beneficial owner of the shares held of record by such broker, dealer, commercial bank, trust company or other nominee and who is not otherwise affiliated or associated with such beneficial owner.

(e) Updating of Nominating Notice.

(1) A stockholder providing a Nominating Notice with respect to any nominations proposed to be made at any stockholders' meeting shall further update and supplement such notice, as necessary, from time to time, so that the information provided or required to be provided in such notice pursuant to this Article III, Section 17 shall be true, correct and complete in all respects not only prior to the Nominating Notice Deadline but also at all times thereafter, and such update and supplement shall be received by the Secretary of the Corporation

not later than the earlier of (A) five (5) business days following the occurrence of any event, development or occurrence which would cause the information provided to be not true, correct and complete in all respects, and (B) ten (10) business days prior to the meeting at which such proposals contained therein are to be considered.

(2) If the information submitted pursuant to this Article III, Section 17 by any stockholder of a proposed nomination to be made at a stockholders' meeting shall not be true, correct and complete in all respects prior to the Nominating Notice Deadline, such information may be deemed not to have been provided in accordance with this Article III, Section 17. For the avoidance of doubt, the updates required pursuant to this Article III, Section 17 do not cause a notice that was not in compliance with this Article III, Section 17 when delivered to the Corporation prior to the Nominating Notice Deadline to thereafter be in proper form in accordance with this Article III, Section 17.

(3) Upon written request by the Secretary of the Corporation, the Board or any duly authorized committee thereof, any stockholder proposing nominees for consideration at a stockholders' meeting shall provide, within five (5) business days of delivery of such request (or such other period as may be specified in such request), written verification, satisfactory in the reasonable discretion of the Board, any duly authorized committee thereof or any duly authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder pursuant to this Article III, Section 17 (including, if requested by the Corporation, written confirmation by such stockholder that it continues to intend to bring the nominations proposed in the Nominating Notice before the meeting). If a stockholder fails to provide such written verification within such period, the information as to which written verification was requested may be deemed not to have been provided in accordance with this Article III, Section 17.

(f) Exclusive Means. Article III, Section 17 of these Bylaws shall be the exclusive means of any stockholder of the Corporation to propose a Nominee for election to the Board at any stockholders' meeting. No candidate shall be eligible for nomination as a director of the Corporation unless such candidate for nomination and the Proposing Person seeking to place such candidate's name in nomination for election at a stockholders' meeting shall have complied with this Article III, Section 17 in all respects. If the chairman of such stockholders' meeting shall determine, based on the facts and circumstances and in consultation with counsel (who may be the Corporation's internal counsel), that such Nominee was not properly nominated in accordance with this Article III, Section 17, then the chairman of the stockholders' meeting shall so declare such determination to the stockholders' meeting, the defective nomination shall be disregarded and any ballots cast for the candidate in question (but in the case of any form of ballot listing other qualified nominees, only the ballots cast for the nominee in question) shall be void and of no force or effect. In addition, nominations made by a stockholder may not be brought before a stockholders' meeting if such stockholder takes action contrary to the representations made in the Nominating Notice applicable to such nomination or if the Nominating Notice applicable to such nomination contains an untrue statement of a fact or omits to state a fact necessary to make the statements therein not misleading.

(g) No Incorporation by Reference. For a Nominating Notice to comply with the requirements of this Article III, Section 17, it must set forth in writing directly within the body

(as opposed to being incorporated by reference from any other document or writing not included with, and made a part of, the Nominating Notice) of the Nominating Notice all the information required to be included therein as set forth in this Article III, Section 17. For the avoidance of doubt, a Nominating Notice shall not be deemed to be in compliance with this Article III, Section 17 if it attempts to include the required information by incorporating by reference any other document, writing or part thereof not included with, and made a part of, the Nominating Notice.

(h) Referencing and Cross-Referencing. The Nominating Notice is required to clearly indicate and expressly reference which provisions of this Article III, Section 17 the information disclosed is intended to be responsive to. Information disclosed in one section of the Proposal Notice, or an Exhibit, Annex or Schedule thereto, in response to one provision of this Article III, Section 17 shall not be deemed responsive to any other provision of this Article III, Section 17 unless it is expressly cross-referenced to such other provision.

(i) Accuracy of Information. A stockholder submitting the Nominating Notice, by its delivery to the Corporation, represents and warrants that, as of the Nominating Notice Deadline, all information contained therein is true, accurate and complete in all respects, contains no false and misleading statements and such stockholder acknowledges that it intends for the Corporation and the Board to rely on such information as (i) being true, accurate and complete in all respects and (ii) not containing any false and misleading statements.

(j) Requirement for Separate and Timely Notice. Notwithstanding any notice of stockholders' meeting sent to stockholders on behalf of the Corporation, a stockholder must separately comply with this Article III, Section 17 to propose director nominations at any stockholders' meeting and is still required to deliver its own separate and timely Nominating Notice to the Secretary of the Corporation prior to the Nominating Notice Deadline which complies in all respects with the requirements of this Article III, Section 17.

(k) Exchange Act and MGCL. In addition to the provisions of this Article III, Section 17, a stockholder shall also comply with all applicable requirements of the Exchange Act, the MGCL and other applicable law with respect to any nominations of directors for election at any stockholders' meeting and any solicitations of proxies in connection therewith.

ARTICLE IV

COMMITTEES

Section 1. NUMBER, TENURE AND QUALIFICATIONS

. The Board may appoint from among its members committees, composed of one or more directors, to serve at the pleasure of the Board.

Section 2. POWERS

. The Board may delegate to committees appointed under Section 1 of this Article any of the powers of the Board, except as prohibited by law.

Section 3. MEETINGS

. Notice of committee meetings shall be given in the same manner as notice for special meetings of the Board. A majority of the members of the committee shall constitute a quorum for the transaction of business at any meeting of the committee. The act

of a majority of the committee members present at a meeting shall be the act of such committee. The Board may designate a chairman of any committee, and such chairman or, in the absence of a chairman, any two members of any committee (if there are at least two members of the committee) may fix the time and place of its meeting unless the Board shall otherwise provide. In the absence of any member of any such committee, the members thereof present at any meeting, whether or not they constitute a quorum, may appoint another director to act in the place of such absent member.

Section 4. TELEPHONE MEETINGS

. Members of a committee of the Board may participate in a meeting by means of a conference telephone or other communications equipment if all persons participating in the meeting can hear each other at the same time. Participation in a meeting by these means shall constitute presence in person at the meeting.

Section 5. CONSENT BY COMMITTEES WITHOUT A MEETING

. Any action required or permitted to be taken at any meeting of a committee of the Board may be taken without a meeting, if a consent in writing or by electronic transmission to such action is given by each member of the committee and is filed with the minutes of proceedings of such committee.

Section 6. VACANCIES

. Subject to the provisions hereof, the Board shall have the power at any time to change the membership of any committee, to fill any vacancy, to designate an alternate member to replace any absent or disqualified member or to dissolve any such committee.

ARTICLE V

OFFICERS

Section 1. GENERAL PROVISIONS

. The officers of the Corporation shall include a president, a secretary and a treasurer and may include a chairman of the Board, a vice chairman of the Board, a chief executive officer, one or more vice presidents, a chief operating officer, a chief financial officer, one or more assistant secretaries and one or more assistant treasurers. In addition, the Board may from time to time elect such other officers with such powers and duties as it shall deem necessary or desirable. The officers of the Corporation shall be elected annually by the Board, except that the chief executive officer or president may from time to time appoint one or more vice presidents, assistant secretaries and assistant treasurers or other officers. Each officer shall serve until his or her successor is elected and qualifies or until his or her death, or his or her resignation or removal in the manner hereinafter provided. Any two or more offices except president and vice president may be held by the same person. Election of an officer or agent shall not of itself create contract rights between the Corporation and such officer or agent.

Section 2. REMOVAL AND RESIGNATION

. Any officer or agent of the Corporation may be removed, with or without cause, by the Board if in its judgment the best interests of the Corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Any officer of the Corporation may resign at any time by delivering his or her resignation to the Board, the chairman of the Board, the chief executive officer, the president or the secretary. Any resignation shall take effect immediately upon its receipt or at such later time specified in the resignation. The acceptance of a resignation shall

not be necessary to make it effective unless otherwise stated in the resignation. Such resignation shall be without prejudice to the contract rights, if any, of the Corporation.

Section 3. VACANCIES

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

Section 4. CHIEF EXECUTIVE OFFICER

. The Board may designate a chief executive officer. In the absence of such designation, the chairman of the Board shall be the chief executive officer of the Corporation. The chief executive officer shall have general responsibility for implementation of the policies of the Corporation, as determined by the Board, and for the management of the business and affairs of the Corporation. He or she may execute any deed, mortgage, bond, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Corporation or shall be required by law to be otherwise executed; and in general shall perform all duties incident to the office of chief executive officer and such other duties as may be prescribed by the Board from time to time.

Section 5. CHIEF OPERATING OFFICER

. The Board may designate a chief operating officer. The chief operating officer shall have the responsibilities and duties as determined by the Board or the chief executive officer.

Section 6. CHIEF FINANCIAL OFFICER

. The Board may designate a chief financial officer. The chief financial officer shall have the responsibilities and duties as determined by the Board or the chief executive officer.

Section 7. CHAIRMAN OF THE BOARD

. The Board may designate from among its members a chairman of the Board, who shall not, solely by reason of these Bylaws, be an officer of the Corporation. The Board may designate the chairman of the Board as an executive or non-executive chairman. The chairman of the Board shall preside over the meetings of the Board. The chairman of the Board shall perform such other duties as may be assigned to him or her by these Bylaws or the Board.

Section 8. PRESIDENT

. In the absence of a chief executive officer, the president shall in general supervise and control all of the business and affairs of the Corporation. In the absence of a designation of a chief operating officer by the Board, the president shall be the chief operating officer. He or she may execute any deed, mortgage, bond, contract or other instrument, except in cases where the execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Corporation or shall be required by law to be otherwise executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the Board from time to time.

Section 9. VICE PRESIDENTS

. In the absence of the president or in the event of a vacancy in such office, the vice president (or in the event there be more than one vice president, the vice presidents in the order designated at the time of their election or, in the absence of any designation, then in the order of their election) shall perform the duties of the president and when so acting shall have all the powers of and be subject to all the restrictions upon the president; and shall perform such other duties as from time to time may be assigned to such vice president by the

chief executive officer, the president or the Board. The Board may designate one or more vice presidents as executive vice president, senior vice president, or vice president for particular areas of responsibility.

Section 10. SECRETARY

. The secretary shall (a) keep the minutes of the proceedings of the stockholders, the Board and committees of the Board in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law; (c) be custodian of the corporate records and of the seal of the Corporation; (d) keep a register of the post office address of each stockholder which shall be furnished to the secretary by such stockholder; (e) have general charge of the stock transfer books of the Corporation; and (f) in general perform such other duties as from time to time may be assigned to him or her by the chief executive officer, the president or the Board.

Section 11. TREASURER

. The treasurer shall have the custody of the funds and securities of the Corporation, shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation, shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board and in general perform such other duties as from time to time may be assigned to him or her by the chief executive officer, the president or the Board. In the absence of a designation of a chief financial officer by the Board, the treasurer shall be the chief financial officer of the Corporation.

Section 12. ASSISTANT SECRETARIES AND ASSISTANT TREASURERS

. The assistant secretaries and assistant treasurers, in general, shall perform such duties as shall be assigned to them by the secretary or treasurer, respectively, or by the chief executive officer, the president or the Board.

Section 13. COMPENSATION

. The compensation of the officers shall be fixed from time to time by or under the authority of the Board and no officer shall be prevented from receiving such compensation by reason of the fact that he or she is also a director.

ARTICLE VI

CONTRACTS, CHECKS AND DEPOSITS

Section 1. CONTRACTS

. The Board may authorize any officer or agent to enter into any contract or to execute and deliver any instrument in the name of and on behalf of the Corporation and such authority may be general or confined to specific instances. Any agreement, deed, mortgage, lease or other document shall be valid and binding upon the Corporation when duly authorized or ratified by action of the Board and executed by an authorized person.

Section 2. CHECKS AND DRAFTS

. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Corporation shall be signed by such officer or agent of the Corporation in such manner as shall from time to time be determined by the Board.

Section 3. DEPOSITS

. All funds of the Corporation not otherwise employed shall be deposited or invested from time to time to the credit of the Corporation as the Board, the chief

executive officer, the president, the chief financial officer or any other officer designated by the Board may determine.

ARTICLE VII

STOCK

Section 1. CERTIFICATES

. Except as may be otherwise provided by the Board, stockholders of the Corporation are not entitled to certificates representing the shares of stock held by them. In the event that the Corporation issues shares of stock represented by certificates, such certificates shall be in such form as prescribed by the Board or a duly authorized officer, shall contain the statements and information required by the MGCL and shall be signed by the officers of the Corporation in any manner permitted by the MGCL. In the event that the Corporation issues shares of stock without certificates, to the extent then required by the MGCL, the Corporation shall provide to the record holders of such shares a written statement of the information required by the MGCL to be included on stock certificates. There shall be no differences in the rights and obligations of stockholders based on whether or not their shares are represented by certificates.

Section 2. TRANSFERS

. All transfers of shares of stock shall be made on the books of the Corporation, by the holder of the shares, in person or by his or her attorney, in such manner as the Board or any officer of the Corporation may prescribe and, if such shares are certificated, upon surrender of certificates duly endorsed. The issuance of a new certificate upon the transfer of certificated shares is subject to the determination of the Board that such shares shall no longer be represented by certificates. Upon the transfer of any uncertificated shares, to the extent then required by the MGCL, the Corporation shall provide to the record holders of such shares a written statement of the information required by the MGCL to be included on stock certificates.

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

Notwithstanding the foregoing, transfers of shares of any class or series of stock will be subject in all respects to the Charter and all of the terms and conditions contained therein.

Section 3. REPLACEMENT CERTIFICATE

. Any officer of the Corporation may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, destroyed, stolen or mutilated, upon the making of an affidavit of that fact by the person claiming the certificate to be lost, destroyed, stolen or mutilated; provided, however, if such shares have ceased to be certificated, no new certificate shall be issued unless requested in writing by such stockholder and the Board has determined that such certificates may be issued. Unless otherwise determined by an officer of the Corporation, the owner of such lost, destroyed, stolen or mutilated certificate or certificates, or his or her legal representative, shall be required, as a condition precedent to the issuance of a new certificate or certificates, to give the Corporation a bond in such sums as it may direct as indemnity against any claim that may be made against the Corporation.

Section 4. FIXING OF RECORD DATE

. The Board may set, in advance, a record date for the purpose of determining stockholders entitled to notice of or to vote at any meeting of stockholders or determining stockholders entitled to receive payment of any dividend or the allotment of any other rights, or in order to make a determination of stockholders for any other proper purpose. Such date, in any case, shall not be prior to the close of business on the day the record date is fixed and shall be not more than 90 days and, in the case of a meeting of stockholders, not less than ten days, before the date on which the meeting or particular action requiring such determination of stockholders of record is to be held or taken.

When a record date for the determination of stockholders entitled to notice of and to vote at any meeting of stockholders has been set as provided in this section, such record date shall continue to apply to the meeting if adjourned or postponed, except if the meeting is adjourned or postponed to a date more than 120 days after the record date originally fixed for the meeting, in which case a new record date for such meeting may be determined as set forth herein.

Section 5. STOCK LEDGER

. The Corporation shall maintain at its principal office or at the office of its counsel, accountants or transfer agent, an original or duplicate stock ledger containing the name and address of each stockholder and the number of shares of each class held by such stockholder.

Section 6. FRACTIONAL STOCK; ISSUANCE OF UNITS

. The Board may authorize the Corporation to issue fractional stock or authorize the issuance of scrip, all on such terms and under such conditions as it may determine. Notwithstanding any other provision of the Charter or these Bylaws, the Board may issue units consisting of different securities of the Corporation. Any security issued in a unit shall have the same characteristics as any identical securities issued by the Corporation, except that the Board may provide that for a specified period securities of the Corporation issued in such unit may be transferred on the books of the Corporation only in such unit.

ARTICLE VIII

ACCOUNTING YEAR

The Board shall have the power, from time to time, to fix the fiscal year of the Corporation by a duly adopted resolution.

ARTICLE IX

DISTRIBUTIONS

Section 1. AUTHORIZATION

. Dividends and other distributions upon the stock of the Corporation may be authorized by the Board, subject to the provisions of law and the Charter. Dividends and other distributions may be paid in cash, property or stock of the Corporation, subject to the provisions of law and the Charter.

Section 2. CONTINGENCIES

. Before payment of any dividends or other distributions, there may be set aside out of any assets of the Corporation available for dividends or

other distributions such sum or sums as the Board may from time to time, in its absolute discretion, think proper as a reserve fund for contingencies, for equalizing dividends, for repairing or maintaining any property of the Corporation or for such other purpose as the Board shall determine, and the Board may modify or abolish any such reserve.

ARTICLE X

SEAL

Section 1. SEAL

. The Board may authorize the adoption of a seal by the Corporation. The seal shall contain the name of the Corporation and the year of its incorporation and the words "Incorporated Maryland." The Board may authorize one or more duplicate seals and provide for the custody thereof.

Section 2. AFFIXING SEAL

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

ARTICLE XI

INDEMNIFICATION AND ADVANCE OF EXPENSES

Section 1. INDEMNIFICATION FOR PROCEEDINGS OTHER THAN BY OR IN THE RIGHT OF THE CORPORATION

. Subject to the other provisions of this Article XII, any person (and the spouses, heirs, executors, administrators and estate of such person) who was or is made a party or is threatened to be made a party to or is otherwise involved in any Proceeding (as defined in Section 19 of this Article XII), other than an action by or in the right of the Corporation, by reason of the fact that such person, or another person of whom such person is the legal representative, is or was serving in an Official Capacity (as defined in Section 19 of this Article XII) for the Corporation, or, while serving in an Official Capacity for the Corporation, is or was serving, at the request of, for the convenience of, or to represent the interests of, the Corporation, in an Official Capacity for another corporation, limited liability company, partnership, joint venture, trust, association, or other entity or enterprise, whether for profit or not-for profit, including any subsidiaries of the Corporation, and any employee benefit plans maintained or sponsored by the Corporation (an "Other Enterprise"), whether the basis of such Proceeding is an alleged action in an Official Capacity or in any other capacity while serving in an Official Capacity, or is an employee of the Corporation specifically designated by the Board as an indemnified employee (hereinafter, each of the foregoing persons, a "Covered Person"), shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the MGCL (as the same exists or may hereafter be amended, but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) against any and all Expenses (as defined in Section 19 of this Article XII) actually and reasonably incurred or suffered by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and,

with respect to any criminal Proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Section 2. INDEMNIFICATION FOR PROCEEDINGS BY OR IN THE RIGHT OF THE CORPORATION

. Subject to the other provisions of this Article XII, the Corporation shall indemnify and hold harmless, to the fullest extent permitted by the MGCL (as the same exists now or as it may be hereinafter amended, but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), any Covered Person who was or is a party or is threatened to be made a party to, or otherwise becomes involved in, a Proceeding by or in the right of the Corporation against Expenses actually and reasonably incurred by such person in connection with the defense or settlement of such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; provided that no indemnification shall be made in respect of any claim, issue or matter as to which such person, or another person of whom such person is the legal representative, shall have been adjudged to be liable to the Corporation unless and only to the extent that the court in which such Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such Expenses which the court shall deem proper.

Section 3. INDEMNIFICATION FOR EXPENSES OF SUCCESSFUL PARTY

. Notwithstanding the other provisions of this Article XII, to the extent that a Covered Person has been successful on the merits or otherwise in defense of any Proceeding described in Section 1 or Section 2 of this Article XII, or in defense of any claim, issue or matter therein, such person shall be indemnified against Expenses (as defined in Section 19 of this Article XII) actually and reasonably incurred by such person in connection therewith, notwithstanding an earlier determination by the Corporation (including by its directors, stockholders or any Independent Counsel) that the Covered Person is not entitled to indemnification under applicable law. For purposes of these Bylaws, the term "successful on the merits or otherwise" shall include, but not be limited to, (i) any termination, withdrawal, or dismissal (with or without prejudice) of any Proceeding against the Covered Person without any express finding of liability or guilt against the Covered Person, (ii) the expiration of one-hundred twenty (120) days after the making of any claim or threat of a Proceeding without the institution of the same and without any promise or payment made to induce a settlement, and (iii) the settlement of any Proceeding pursuant to which the Covered Person is required to pay less than \$100,000.

Section 4. INDEMNIFICATION OF OTHERS

. Subject to the other provisions of this Article XII, the Corporation shall have the power to indemnify its employees and its agents to the extent not prohibited by the MGCL or other applicable law. Subject to applicable law, the Board shall have the power to delegate the determination of whether employees or agents shall be indemnified to such person or persons as the Board determines.

Section 5. RIGHT TO ADVANCEMENT

. Expenses incurred by a Covered Person in defending a Proceeding shall be paid by the Corporation in advance of the final disposition of such Proceeding. Such advances shall be paid by the Corporation within ten (10) business days after the receipt by the Corporation of a statement or statements from the Covered Person requesting such advance or advances from time to time together with a reasonable accounting of such

Expenses; provided, however, that, if the MGCL so requires, the payment of such Expenses incurred by a Covered Person in his or her capacity as a director, officer, employee or representative in advance of the final disposition of a proceeding, shall be made only upon delivery to the Corporation of an undertaking in writing, by or on behalf of such Covered Person, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right of appeal (a "final disposition") that such Covered Person is not entitled to be indemnified under this Article XII or otherwise. The Covered Person's undertaking to repay the Corporation any amounts advanced for Expenses shall not be required to be secured and shall not bear interest.

(a) Except as otherwise provided in the MGCL or this Section 5, the Corporation shall not impose on the Covered Person additional conditions to the advancement of Expenses or require from the Covered Person additional undertakings regarding repayment. Advancements of Expenses shall be made without regard to the Covered Person's ability to repay the Expenses.

(b) Advancements of Expenses pursuant to this Section 5 shall not require approval of the Board or the stockholders of the Corporation, or of any other person or body. The Secretary shall promptly advise the Board in writing of the request for advancement of Expenses, of the amount and other details of the request and of the undertaking to make repayment provided pursuant to this Section 5.

(c) Advancements of Expenses to a Covered Person shall include any and all reasonable expenses incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Corporation to support the advancements claimed.

(d) The right to advancement of Expenses shall not apply to (i) any Proceeding against a Covered Person brought by the Corporation and approved by resolution adopted by the affirmative vote of a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time such resolution is presented to the Board for adoption) which alleges willful misappropriation of corporate assets by such agent, wrongful disclosure of confidential information, or any other willful and deliberate breach in bad faith of such agent's duty to the Corporation or its stockholders, or (ii) any claim for which indemnification is excluded pursuant to these Bylaws, but shall apply to any Proceeding referenced in Section 6 (c) or Section 6(d) of this Article XII prior to a determination that the person is not entitled to be indemnified by the Corporation.

Section 6. LIMITATIONS ON INDEMNIFICATION

. Except as otherwise required by the MGCL or the Charter, the Corporation shall not be obligated to indemnify any person pursuant to this Article XII in connection with any Proceeding (or any part of any Proceeding):

(a) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(b) for an accounting or disgorgement of profits pursuant to Section 16(b) of the Exchange Act, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements);

(c) for any reimbursement of the Corporation by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the Corporation, as required in each case under the Exchange Act, including any such reimbursements that arise from an accounting restatement of the Corporation pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”) or the rules of any national securities exchange upon which the Corporation’s securities are listed, if such person is held liable therefor (including pursuant to any settlement arrangements);

(d) for any reimbursement of the Corporation by such person of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act, if such person is held liable therefor (including pursuant to any settlement arrangements);

(e) initiated by such person against the Corporation or its directors, officers, employees, agents or other Covered Persons, unless (i) the Board, by resolution thereof adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board for adoption), authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (ii) the Corporation provides the indemnification, in its sole discretion, pursuant to the powers vested in the Corporation under applicable law, (iii) otherwise made under Section 5 of this Article XII or (iv) otherwise required by applicable law; or

(f) if prohibited by applicable law.

Section 7. PROCEDURE FOR INDEMNIFICATION; DETERMINATION

(a) To obtain indemnification under this Article XII, a Covered Person shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to the Covered Person and is reasonably necessary to determine whether and to what extent the Covered Person is entitled to indemnification.

(b) Upon written request by a Covered Person for indemnification, a determination (the “Determination”), if required by applicable law, with respect to the Covered Person’s entitlement thereto shall be made as follows: (i) by the Board by majority vote of a quorum consisting of Disinterested Directors (as defined in this Article XII, Section 19), (ii) if such a quorum of Disinterested Directors cannot be obtained, by majority vote of a committee duly designated by the Board (all directors, whether or not Disinterested Directors, may participate in such designation) consisting solely of two or more Disinterested Directors, (iii) if such a committee cannot be designated, by any Independent Counsel (as defined in this Article XII, Section 19) selected by the Board, as prescribed in clause (i) above or by the committee of the Board prescribed in clause (ii) above, in a written opinion to the Board, a copy of which shall be delivered to the Covered Person; or if a quorum of the Board cannot be obtained for clause (i) above and the committee cannot be designated under clause (ii) above, selected by a majority

vote of the Board (in which directors who are parties may participate); or (iv) if such Independent Counsel determination cannot be obtained, by a majority vote of a quorum of stockholders consisting of stockholders who are not parties to such Proceeding, or if no such quorum is obtainable, by a majority vote of stockholders who are not parties to the Proceeding.

(c) If, in regard to any Expenses (i) the Covered Person shall be entitled to indemnification pursuant to Article XII, Section 3, (ii) no determination with respect to the Covered Person's entitlement is legally required as a condition to indemnification of the Covered Person hereunder, or (iii) the Covered Person has been determined pursuant to Article XII, Section 7 (b) to be entitled to indemnification hereunder, then payments of the Expenses shall be made as soon as practicable but in any event no later than thirty (30) calendar days after the later of (A) the date on which written demand is presented to the Corporation pursuant to Article XII, Section 7(a) or (B) the earliest date on which the applicable criterion specified in clause (i), (ii) or (iii) of this Section 7(c) is satisfied.

(d) If (i) the Corporation (including by its Disinterested Directors, Independent Counsel or stockholders) determines that the Covered Person is not entitled to be indemnified in whole or in part under applicable law, (y) any amount of Expenses is not paid in full by the Corporation according to Article XII, Section 7(c) after the Determination is made pursuant to Article XII, Section 7(b) that the Indemnitee is entitled to be indemnified, or (z) any amount of any requested advancement of Expenses is not paid in full by the Corporation according to Article XII, Section 5 above after a request and an undertaking pursuant to Article XII, Section 5 above have been received by the Corporation, in each case, the Covered Person shall have the right to commence litigation in any court of competent jurisdiction, either challenging any such Determination, which shall not be binding, or any aspect thereof (including the legal or factual bases therefor), seeking to recover the unpaid amount of Expenses and otherwise to enforce the Corporation's obligations under these Bylaws and, if successful in whole or in part, the Covered Person shall be entitled to be paid also any and all Expenses incurred in connection with prosecuting such claim. In any such suit, the Corporation shall, to the fullest extent not prohibited by law, have the burden of proof and the burden of persuasion, to establish by clear and convincing evidence, that the Covered Person is not entitled to either (i) the requested indemnification or, (ii) except where the required undertaking, if any, has not been tendered to the Corporation, the requested advancement of Expenses. If the Covered Person commences legal proceedings in a court of competent jurisdiction to secure a determination that the Covered Person should be indemnified under applicable law, any such judicial proceeding shall be conducted in all respects as a *de novo* trial, on the merits, the Covered Person shall continue to be entitled to receive Expense advancements, and the Covered Person shall not be required to reimburse the Corporation for any Expenses advanced, unless and until a final judicial determination is made (as to which all rights of appeal therefrom have been exhausted or lapsed) that the Covered Person is not entitled to be so indemnified under applicable law. Neither the failure of the Corporation (including its Disinterested Directors, Independent Counsel or stockholders) to have made a determination prior to the commencement of such action that indemnification of the Covered Person is proper in the circumstances because he or she has met the applicable standard of conduct set forth under the MGCL or other applicable law, nor an actual determination by the Corporation (including its Disinterested Directors, Independent Counsel or stockholders) that the Covered Person has not met such applicable standard of

conduct, shall be a defense to the action or create a presumption that the Covered Person has not met the applicable standard of conduct.

(e) The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that the person's conduct was unlawful.

(f) Notwithstanding anything contained herein to the contrary, if a Determination shall have been made pursuant to Article XII, Section 7(b) above that the Covered Person is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding commenced pursuant to Article XII, Section 7(d) above.

(g) The Corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to Article XII, Section 7(d) above that the procedures and presumptions of these Bylaws are not valid, binding and enforceable and shall stipulate in such proceeding that the Corporation is bound by all the provisions of these Bylaws.

Section 8. PROCEDURES FOR THE DETERMINATION OF WHETHER STANDARDS HAVE BEEN SATISFIED

(a) All costs incurred by the Corporation in making the Determination shall be borne solely by the Corporation, including, but not limited to, the costs of legal counsel, proxy solicitations and judicial determinations. The Corporation shall also be solely responsible for paying all costs incurred by it in defending any suits or Proceedings challenging payments by the Corporation to a Covered Person under these Bylaws.

(b) The Corporation shall use its best efforts to make the Determination contemplated by this Article XII, Section 7(b) hereof as promptly as is reasonably practicable under the circumstances.

Section 9. NON-EXCLUSIVITY OF RIGHTS

. The right to indemnification and the advancement of Expenses incurred in defending a Proceeding in advance of its final disposition conferred in this Article XII shall not be deemed exclusive of any other rights to which any Covered Person seeking indemnification or advancement of Expenses may be entitled to under any law (common law or statutory law), provision of the Charter, bylaw, agreement, insurance policy, vote of stockholders or Disinterested Directors or otherwise, both as to action in such person's Official Capacity and as to action in another capacity while holding such office or while employed by or acting as agent for the Corporation, and shall continue as to a person who has ceased to be a Covered Person and shall inure to the benefit of the spouses, heirs, executors and administrators of such a person. The Corporation is specifically authorized to enter into an agreement with any of its directors, officers, employees or agents providing for indemnification and advancement of Expenses that may change, enhance, qualify or limit any right to indemnification or the advancement of Expenses provided by this Article XII, to the fullest extent not prohibited by the MGCL or other applicable law.

Section 10. CONTINUATION OF RIGHTS

. The rights of indemnification and advancement of Expenses provided in this Article XII shall continue as to any person who has ceased to serve in an Official Capacity and shall inure to the benefit of his or her spouses, heirs, executors, administrators and estates.

Section 11. CONTRACT RIGHTS

. Without the necessity of entering into an express contract with any Covered Person, the obligations of the Corporation to indemnify a Covered Person under this Article XII, including the duty to advance Expenses, shall be considered a contract right between the Corporation and such individual and shall be effective to the same extent and as if provided for in a contract between the Corporation and the Covered Person. Such contract right shall be deemed to vest at the commencement of such Covered Person's service to or at the request of the Corporation, and no amendment, modification or repeal of this Article XII shall affect, to the detriment of the Covered Person and such Covered Person's heirs, executors, administrators and estate, such obligations of the Corporation in connection with a claim based on any act or failure to act occurring before such modification or repeal.

Section 12. SUBROGATION

. In the event of payment of indemnification to a Covered Person, the Corporation shall be subrogated to the extent of such payment to any right of recovery such person may have and such person, as a condition of receiving indemnification from the Corporation, shall execute all documents and do all things that the Corporation may deem necessary or desirable to perfect such right of recovery, including the execution of such documents necessary to enable the Corporation effectively to enforce any such recovery.

Section 13. NO DUPLICATION OF PAYMENTS

. The Corporation shall not be liable under this Article XII to make any payment in connection with any claim made against a Covered Person to the extent such person has otherwise received payment (under any insurance policy, bylaw, agreement or otherwise) of the amounts otherwise payable as indemnity hereunder.

Section 14. INSURANCE AND FUNDING

(a) The Corporation shall purchase and maintain insurance, at its expense, to protect itself and any person against any liability or expense asserted against or incurred by such person in connection with any Proceeding, to the fullest extent authorized by the MGCL, as the same exists or may hereafter be amended, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under this Article XII or the MGCL or otherwise; provided that such insurance is available on acceptable terms, which determination shall be made by resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board for adoption). The Corporation may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to insure the payment of such sums as may become necessary to effect the indemnification provided herein.

(b) Any full or partial payment by an insurance company under any insurance policy covering any Covered Person indemnified above made to or on behalf of a Covered Person under this Article XII shall relieve the Corporation of its liability for indemnification provided for under this Article XII or otherwise to the extent of such payment.

(c) In the absence of fraud, (i) the decision of the Board as to the propriety of the terms and conditions of any insurance or other financial arrangement made pursuant to this Section 14 and the choice of the person to provide the insurance or other financial arrangement is conclusive, and (ii) the insurance or other financial arrangement does not subject any director approving it to personal liability for his or her action in approving the insurance or other financial arrangement; even if a director approving the insurance or other financial arrangement is a beneficiary of the insurance or other financial arrangement.

Section 15. SEVERABILITY

. If this Article XII or any word, clause, provision or other portion hereof or any award made hereunder shall for any reason be determined to be invalid on any ground by any court of competent jurisdiction, the provisions hereof shall not otherwise be affected thereby but shall remain in full force and effect, and the Corporation shall nevertheless indemnify and hold harmless each Covered Person indemnified pursuant to this Article XII as to all Expenses with respect to any Proceeding to the fullest extent permitted by any applicable portion of this Article XII that shall not have been invalidated and to the fullest extent permitted by applicable law.

Section 16. NO IMPUTATION

. The knowledge and/or actions, or failure to act, of any officer, director, employee or representative of the Corporation, an Other Enterprise or any other person shall not be imputed to a Covered Person for purposes of determining the right to indemnification under this Article XII.

Section 17. RELIANCE

. Persons who after the date of the adoption of this Article XII or any amendment thereto serve or continue to serve the Corporation in an Official Capacity or who, while serving in an Official Capacity, serve or continue to serve in an Official Capacity for an Other Enterprise, shall be conclusively presumed to have relied on the rights to indemnification and advancement of Expenses contained in this Article XII.

Section 18. NOTICES

. Any notice, request or other communication required or permitted to be given to the Corporation under this Article XII shall be in writing and either delivered in person or sent by U.S. mail, overnight courier or by e-mail or other electronic transmission, to the Secretary of the Corporation and shall be effective only upon receipt by the Secretary.

Section 19. CERTAIN DEFINITIONS

(a) The term "Corporation" shall include, in addition to Independence Realty Trust, Inc. and, in the event of a consolidation or merger involving the Corporation, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of an Other Enterprise, shall stand in the same position under the provisions of this Article XII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

(b) The term “Disinterested Director” means a director of the Corporation who is not and was not a party to the matter in respect of which indemnification is sought by the Covered Person.

(c) The term “Expenses” shall be broadly construed and shall include all direct and indirect losses, liabilities, damages, expenses, including fees and expenses of attorneys, fees and expenses of accountants, court costs, transcript costs, fees and expenses of experts, witness fees and expenses, travel expenses, printing and binding costs, telephone charges, delivery service fees, the premium, security for, and other costs relating to any bond (including cost bonds, appraisal bonds, or their equivalents), judgments, fines, penalties (whether civil, criminal or other), ERISA excise taxes assessed on a person with respect to an employee benefit plan, and amounts paid or payable in connection with any judgment, award or settlement, including any interest, assessments, any federal, state, local or foreign taxes imposed as a result of the actual or deemed receipt of any indemnification or expense advancement payments, and all other disbursements or expenses incurred in connection with (i) the investigation, preparation, prosecution, defense, mediation, arbitration, appeal or settlement of a Proceeding, (ii) serving as an actual or prospective witness, or preparing to be a witness in a Proceeding, or other participation in, or other preparation for, any Proceeding, (iii) any compulsory interviews or depositions related to a Proceeding, (iv) any non-compulsory interviews or depositions related to a Proceeding, subject to the person receiving advance written approval by the Corporation to participate in such interviews or depositions, and (v) responding to, or objecting to, a request to provide discovery in any Proceeding. Expenses shall also include any federal, state, local and foreign taxes imposed on such person as a result of the actual or deemed receipt of any payments under this Article XII.

(d) The term “Independent Counsel” means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporate law and neither currently is, nor in the five (5) years previous to its selection has been, retained to represent (i) the Corporation or the Covered Person in any matter material to either such party (other than with respect to matters concerning the Covered Person under this Article XII) or other indemnitees concerning similar indemnification arrangements or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Corporation or the Covered Person in an action to determine the Covered Person’s rights under this Article XII.

(e) The term “not opposed to the best interest of the Corporation,” when used in the context of a Covered Person’s service with respect to employee benefit plans maintained or sponsored by the Corporation, describes the actions of a person who acts in good faith and in a manner he or she reasonably believes to be in the best interests of the participants and beneficiaries of an employee benefit plan.

(f) The term “Official Capacity” shall mean (i) service as a director or officer of the Corporation or (ii) while serving as a director or officer of the Corporation, service, at the request of the Corporation, as an officer, director, manager, member, partner, tax matters partner,

employee, agent, fiduciary, trustee or other representative of the Corporation or an Other Enterprise.

(g) The term “Proceeding” shall be broadly construed and shall include any threatened, pending or completed action, suit, investigation (including any internal investigation), inquiry, hearing, mediation, arbitration, other alternative dispute mechanism or any other proceeding, whether civil, criminal, administrative, regulatory, arbitrative, legislative, investigative or otherwise and whether formal or informal, or any appeal of any kind therefrom, including an action initiated by a Covered Person to enforce a Covered Person’s rights to indemnification or advancement of Expenses under these Bylaws, and whether instituted by or in the right of the Corporation, a governmental agency, the Board, any authorized committee thereof, a class of its security holders or any other party, and whether made pursuant to federal, state or other law, or any inquiry, hearing or investigation (including any internal investigation), whether formal or informal, whether instituted by or in the right of the Corporation, a governmental agency, the Board, any committee thereof, a class of its security holders, or any other party that the Covered Person believes might lead to the institution of any such proceeding.

(h) The term “serving at the request of the Corporation” shall include any service by an officer or director of the Corporation to the Corporation or an Other Enterprise, including any service as an officer, director, manager, member, partner, tax matters partner, employee, agent, fiduciary, trustee or other representative of the Corporation or an Other Enterprise, including service relating to an employee benefit plan and its participants or beneficiaries, at the request of, for the convenience of, or to represent the interests of, the Corporation or any subsidiary of the Corporation. For the purposes of these Bylaws, a director’s or officer’s service to the Corporation or an Other Enterprise shall be presumed to be “serving at the request of the Corporation,” unless it is conclusively determined to the contrary by a majority vote of the directors of the Corporation, excluding, if applicable, such director. With respect to such determination, it shall not be necessary for the Covered Person to show any actual or prior request by the Corporation or its Board for such service to the Corporation or such Other Enterprise.

Section 20. INTENT OF ARTICLE

. The intent of this Article XII is to provide for indemnification to the fullest extent permitted by the applicable laws of the State of Maryland. To the extent that such applicable laws may be amended or supplemented from time to time, this Article XII shall be amended automatically and construed so as to permit indemnification to the fullest extent from time to time permitted by applicable law. Neither an amendment nor repeal of this Article XII, nor the adoption of any provision of these Bylaws inconsistent with this Article XII, shall eliminate or reduce the effect of this Article XII in respect of any matter occurring, or action or proceeding accruing or arising or that, but for this Article XII, would accrue or arise, prior to such amendment repeal or adoption of any inconsistent provision.

ARTICLE XII

WAIVER OF NOTICE

Whenever any notice of a meeting is required to be given pursuant to the Charter or these Bylaws or pursuant to applicable law, a waiver thereof in writing or by electronic transmission,

given by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Neither the business to be transacted at nor the purpose of any meeting need be set forth in the waiver of notice of such meeting, unless specifically required by statute. The attendance of any person at any meeting shall constitute a waiver of notice of such meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting has not been lawfully called or convened.

ARTICLE XIII

AMENDMENT OF BYLAWS

The Board shall have the power to adopt, amend, alter or repeal any provision of these Bylaws and to make new Bylaws by resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time such resolution is presented to the Board for adoption) acting at any special or regular meeting of the Board if, in addition to any other notice required by these Bylaws and other applicable requirements contained herein, notice of such amendment, alteration or repeal is contained in the notice or waiver of notice of such meeting, which notice shall also include, without limitation, the text of any such proposed amendment and/or any resolution calling for any such amendment, alteration or repeal. In addition, stockholders shall have the power to adopt, amend, alter or repeal any provision of these Bylaws and to make new Bylaws, by the affirmative vote of a majority of all the votes entitled to be cast on the matter at a meeting of stockholders duly called and at which a quorum is present.

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Section 4: EX-31.1 (EX-31.1)

Exhibit 31.1

Certification of Chief Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, Scott F. Schaeffer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Independence Realty Trust, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably

likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

- b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 31, 2019

By: /s/ SCOTT F. SCHAEFFER

Scott F. Schaeffer
Chairman of the Board and Chief Executive Officer
(Principal Executive Officer)

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Section 5: EX-31.2 (EX-31.2)

Exhibit 31.2

Certification of Chief Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

I, James J. Sebra, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Independence Realty Trust, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 31, 2019

By: /s/ JAMES J. SEBRA

James J. Sebra
Chief Financial Officer and Treasurer
(Principal Financial Officer)

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Section 6: EX-32.1 (EX-32.1)

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE
SARBANES-OXLEY ACT OF 2002**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and in connection with the Quarterly Report on Form 10-Q of Independence Realty Trust, Inc. (the "Company") for the period ended September 30, 2019, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, the Chairman of the Board, Chief Executive Officer and President of the Company, certifies, to his knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: October 31, 2019

By: /s/ SCOTT F. SCHAEFFER
Scott F. Schaeffer
Chairman of the Board and Chief Executive Officer
(Principal Executive Officer)

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Section 7: EX-32.2 (EX-32.2)

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO SECTION 906 OF THE
SARBANES-OXLEY ACT OF 2002**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and in connection with the Quarterly Report on Form 10-Q of Independence Realty Trust, Inc. (the "Company") for the period ended September 30, 2019, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), the undersigned, the Chief Financial Officer and Treasurer of the Company, certifies, to his knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: October 31, 2019

By: /s/ JAMES J. SEBRA
James J. Sebra
Chief Financial Officer and Treasurer
(Principal Financial Officer)

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