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

FORM 8-K

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

Date of Report (Date of earliest event reported) February 20, 2024

ELME COMMUNITIES

(Exact name of registrant as specified in its charter)

MARYLAND
(State of
incorporation)

1-6622
(Commission
File Number)

53-0261100
(IRS Employer
Identification Number)

7550 WISCONSIN AVE, SUITE 900, BETHESDA, MD 20814
(Address of principal executive office) (Zip code)

Registrant's telephone number, including area code: (202) 774-3200

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Shares of Beneficial Interest	ELME	NYSE

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

Emerging growth company

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

Item 8.01 Other Events.*At-the-Market Program*

On February 20, 2024, Elme Communities (“Elme”), entered into an equity distribution agreement (the “Equity Distribution Agreement”) with Wells Fargo Securities, LLC, BNY Mellon Capital Markets, LLC, Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., TD Securities (USA) LLC and Truist Securities, Inc. as agents and forward sellers, as applicable, (collectively, the “Agents” or “Forward Sellers”, as applicable), and Wells Fargo Bank, National Association, The Bank of New York Mellon, Citibank, N.A., Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., The Toronto-Dominion Bank and Truist Bank as forward purchasers (collectively, the “Forward Purchasers”) pursuant to which up to an aggregate gross sales price of \$350,000,000 (the “Offered Shares”) of Elme’s common shares of beneficial interest, \$0.01 par value per share (the “Common Shares”), may be offered and sold from time to time through the Agents, acting as the Company’s sales agents or, if applicable, the Forward Sellers, or directly to the Agents as principals for their own accounts. In connection with entry into the Equity Distribution Agreement, we terminated our prior at-the-market offering program. At the time of such termination, approximately \$340 million remained unsold under such prior program. The Offered Shares sold in the offering will be issued pursuant to a prospectus dated February 20, 2024, and a prospectus supplement filed with the Securities and Exchange Commission (the “SEC”) on February 20, 2024, in connection with one or more offerings of shares under Elme’s shelf registration statement on Form S-3 (Registration No. 333-277167) filed with the SEC on February 20, 2024.

Sales of the Offered Shares made through the Agents, as Elme’s sales agents, or through the Forward Sellers pursuant to the Equity Distribution Agreement, if any, may be made by any method permitted by law, including without limitation in transactions deemed to be an “at the market” offering as defined in Rule 415 of the Securities Act of 1933, as amended (the “Securities Act”), sales made directly on the New York Stock Exchange, on any other existing trading market for the Common Shares or to or through a market maker, or, if agreed by Elme and the Agents or Forward Sellers, as applicable, by any other method permitted by law, including but not limited to in privately negotiated transactions. Elme also may sell the Offered Shares to any Agent as principal for its own account, which may include block sales. Elme intends to use the net proceeds from these sales, if any, for general business purposes, including, without limitation, working capital, the acquisition, renovation, expansion, improvement, development or redevelopment of income-producing properties or the repayment of debt.

Elme made certain customary representations, warranties and covenants concerning Elme and the Offered Shares in the Equity Distribution Agreement, and also agreed to indemnify the Agents, Forward Sellers and Forward Purchasers against certain liabilities, including liabilities under the Securities Act.

The Equity Distribution Agreement provides that, in addition to issuance and sale of Offered Shares to or through the Agents, Elme may also enter into forward sale agreements with each the Forward Purchasers in a form attached as Exhibit H to the Equity Distribution Agreement (each a “Forward Sale Agreement” and together, the “Forward Sale Agreements”). In connection with any Forward Sale Agreement, the relevant Forward Purchaser (or its affiliate) will, subject to the terms and conditions of the Equity Distribution Agreement, use commercially reasonable efforts to borrow from third parties and sell, through its Forward Seller, a number of Offered Shares equal to the number of Common Shares, underlying the particular Forward Sale Agreement. Elme will not initially receive any proceeds from any sale of Offered Shares borrowed by a Forward Purchaser and sold through a Forward Seller. Elme expects to physically settle each Forward Sale Agreement with the relevant Forward Purchaser on one or more dates specified by the Company on or prior to the maturity date of such Forward Sale Agreement, in which case Elme expects to receive aggregate cash proceeds at settlement equal to the number of Common Shares underlying such Forward Sale Agreement multiplied by the then-applicable forward sale price per share. Although Elme expects to settle any Forward Sale Agreements by the physical delivery of Common Shares in exchange for cash proceeds, the Forward Sale Agreements will allow Elme to cash or net-share settle all or a portion of its obligations. If Elme elects to cash settle any Forward Sale Agreement, Elme may not receive any proceeds and the Company may owe cash to the relevant Forward Purchaser. If Elme elects to net share settle any Forward Sale Agreement, Elme will not receive any cash proceeds, and Elme may owe Common Shares to the relevant Forward Purchaser.

Each Agent will receive from Elme a commission of up to 2% of the gross sales price of all shares sold through it under the Equity Distribution Agreement. Each Forward Seller will receive a commission at a mutually agreed rate in the form of a reduction to the initial forward sale price under the related Forward Sale Agreement that will not exceed, but may be lower than, 2% of the gross sales price of the borrowed shares sold by such Forward Seller during the applicable forward hedge selling period for such shares.

Elme or any Agent or Forward Seller may at any time suspend the offering of the Offered Shares pursuant to the terms of the Equity Distribution Agreement. The offering of the Offered Shares pursuant to the Equity Distribution Agreement will terminate upon the earlier of (i) the sale of all the Offered Shares subject to the Equity Distribution Agreement (including shares sold by Elme to or through the Agents and borrowed shares sold by the Forward Sellers) having an aggregate gross sales price of \$350,000,000 and (ii) with respect to the Equity Distribution Agreement, the termination of the Equity Distribution Agreement by Elme, the Sales Agents, the Forward Sellers or the Forward Purchasers as permitted therein.

From time to time, Elme has had customary commercial and/or investment banking relationships with certain of the Agents, Forward Sellers, Forward Purchasers and/or certain of their affiliates.

A copy of the Equity Distribution Agreement is attached to this Current Report on Form 8-K as Exhibit 1.1 and is incorporated herein by reference, and a copy of the Form of Forward Contract is attached to this Current Report on Form 8-K as Exhibit 99.1 and is incorporated herein by reference. The summary set forth above is qualified in its entirety by reference to Exhibit 1.1 and Exhibit 99.1, as applicable.

On February 20, 2024, Hogan Lovells US LLP delivered its legality opinion with respect to the Offered Shares to be issued pursuant to the Equity Distribution Agreement. A copy of the legality opinion is attached hereto as Exhibit 5.1.

This Current Report on Form 8-K shall not constitute an offer to sell or a solicitation of an offer to buy any securities, nor shall there be any sale of these securities in any state or jurisdiction in which such an offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state or other jurisdiction.

Dividend Reinvestment and Share Purchase Plan

On February 20, 2024, Elme also filed with the SEC a prospectus supplement dated February 20, 2024 related to Elme's existing Direct Dividend Reinvestment and Share Purchase Plan (the "Plan"). The Plan is designed to provide Elme's existing shareholders and interested new investors with a method of purchasing Elme's Common Shares and investing all or a percentage of their cash dividends in additional Common Shares.

In connection with the filing of the prospectus supplement, Hogan Lovells US LLP delivered its legality opinion with respect to the Common Shares to be issued pursuant to the Plan. A copy of the legality opinion is attached hereto as Exhibit 5.2.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

- 1.1 [Equity Distribution Agreement, dated February 20, 2024, by and between Elme and Wells Fargo Securities, LLC, BNY Mellon Capital Markets, LLC, Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., TD Securities \(USA\) LLC and Truist Securities, Inc. as agents or forward Sellers, as applicable, and Wells Fargo Bank, National Association, The Bank of New York Mellon, Citibank, N.A., Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., The Toronto-Dominion Bank and Truist Bank as forward purchasers](#)
- 5.1 [Opinion of Hogan Lovells US LLP regarding the legality of the common shares registered](#)
- 5.2 [Opinion of Hogan Lovells US LLP regarding the legality of the common shares registered](#)
- 23.1 [Consent of Hogan Lovells US LLP \(included in Exhibit 5.1\)](#)
- 23.2 [Consent of Hogan Lovells US LLP \(included in Exhibit 5.2\)](#)
- 99.1 [Form of Forward Contract](#)
- 104 Cover Page Interactive Data File (embedded within the Inline XBRL document)

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 hereunto duly authorized.

Date: February 20, 2024

ELME COMMUNITIES

By: /s/ W. Drew Hammond
Name: W. Drew Hammond
Title: Senior Vice President, Chief Administrative Officer,
Treasurer and Corporate Secretary

Elme Communities

\$350,000,000 of Common Shares of Beneficial Interest

EQUITY DISTRIBUTION AGREEMENT

Dated: February 20, 2024

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EXHIBITS

Exhibit A-1	–	Form of Issuance Placement Notice
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Exhibit B	–	Authorized Individuals for Placement Notices and Acceptances
Exhibit C	–	Compensation
Exhibit D	–	Significant Subsidiaries of the Company
Exhibit E	–	Form of Opinions of Company Counsel
Exhibit F	–	Officer Certificate
Exhibit G	–	Issuer Free Writing Prospectuses
Exhibit H	–	Form of Master Forward Confirmation

Elme Communities

\$350,000,000 of Common Shares of Beneficial Interest

EQUITY DISTRIBUTION AGREEMENT

February 20, 2024

To the Several Agents, Forward Sellers and Forward Purchasers
Listed on Schedule I hereto

Ladies and Gentlemen:

Elme Communities, a Maryland real estate investment trust (the "Company"), confirms its agreement (this "Agreement") with (i) each of Wells Fargo Securities, LLC, BNY Mellon Capital Markets, LLC, Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., TD Securities (USA) LLC and Truist Securities, Inc., each in its capacity as agent for the Company (collectively, the "Agents" and individually, an "Agent"), (ii) each of Wells Fargo Bank, National Association, The Bank of New York Mellon, Citibank, N.A., Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., The Toronto-Dominion Bank and Truist Bank, each (or its affiliate assignee) in its capacity as purchaser under any Forward Contract (as defined below) (collectively, the "Forward Purchasers" and individually, a "Forward Purchaser"), and (iii) each of Wells Fargo Securities, LLC, BNY Mellon Capital Markets, LLC, Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., TD Securities (USA) LLC and Truist Securities, Inc., each in its capacity as agent for the Forward Purchaser in connection with the offering and sale of any Forward Hedge Shares (as defined below) hereunder (collectively, the "Forward Sellers" and individually, a "Forward Seller"), as follows:

SECTION 1. Description of Placement Shares.

The Company agrees that, from time to time during the term of this Agreement, on the terms and subject to the conditions set forth herein, it may issue and sell through the Agents, acting as agent and/or principal, or sell through the Forward Sellers, Common Shares of Beneficial Interest, par value \$0.01 per share (the "Common Shares"), having an aggregate sale price of up to \$350,000,000 (such Common Shares, the "Placement Shares," which hereinafter refers to, collectively, the Issuance Shares (as defined below) and the Forward Hedge Shares offered and sold pursuant to this Agreement, and such maximum amount, the "Maximum Amount"); *provided, however*, that in no event shall the Company issue or sell through the Agents or sell through the Forward Sellers such number of Placement Shares that (i) exceeds the Maximum Amount, or (ii) exceeds the number of authorized but unissued Common Shares. It is understood and agreed by the parties hereto that if the Placement Shares are offered or sold through the Forward Seller, then the Forward Seller shall be acting solely as sales agent for the Forward Purchaser with respect to the offering and sale of such Placement Shares. Notwithstanding anything to the contrary contained herein, the parties hereto agree that compliance with the

limitations set forth in this Section 1 regarding the number or amount of Placement Shares issued and sold under this Agreement shall be the sole responsibility of the Company, and neither the Agents nor the Forward Sellers shall have any obligation in connection with such compliance. The issuance and sale of the Placement Shares through the Agents and through the Forward Sellers will be effected pursuant to the Registration Statement (as defined below) filed by the Company with the Securities and Exchange Commission (the "Commission"), which became effective upon filing, although nothing in this Agreement shall be construed as requiring the Company to use the Registration Statement to issue the Placement Shares. For purposes hereof, "Forward Hedge Shares" means all Common Shares borrowed by a Forward Purchaser or its affiliate and offered and sold by its affiliated Forward Seller in connection with any Forward Transaction (as defined in Section 3(a) below) that has occurred or may occur in accordance with the terms and conditions of this Agreement. "Issuance Shares" shall refer to all Placement Shares other than the Forward Hedge Shares. The Company agrees that whenever it determines to sell Placement Shares directly to an Agent as principal it will enter into a separate written agreement containing the terms and conditions of such sale.

The Company has filed, in accordance with the provisions of the Securities Act, with the Commission a registration statement on Form S-3 (File No. 333-277167), including a base prospectus, relating to certain securities, including the Placement Shares to be issued from time to time by the Company, and which incorporates by reference documents that the Company has filed or will file in accordance with the provisions of the Exchange Act. The Company has prepared a prospectus supplement specifically relating to the Placement Shares (the "Prospectus Supplement") to the base prospectus included as part of such registration statement. The Company will furnish to the Agents, the Forward Purchasers and the Forward Sellers, for use by the Agents, the Forward Purchasers and the Forward Sellers, copies of the prospectus included as part of such registration statement, as supplemented by the Prospectus Supplement, relating to the Placement Shares. The "Registration Statement", as of any time, means such registration statement as amended by any post-effective amendments thereto at such time, including the exhibits and any schedules thereto at such time, the documents incorporated or deemed to be incorporated by reference therein at such time pursuant to Item 12 of Form S-3 under the Securities Act and the documents and information otherwise deemed to be a part thereof as of such time pursuant to Rule 430B of the Securities Act ("Rule 430B"), and any Replacement Registration Statement (as defined in Section 7(a) hereof); *provided, however*, that the "Registration Statement" without reference to a time means such registration statement as amended by any post-effective amendments thereto as of the time of the first contract of sale for the Placement Shares, which time shall be considered the "new effective date" of the Registration Statement with respect to the Placement Shares within the meaning of paragraph (f)(2) of Rule 430B, including the exhibits and schedules thereto at such time, the documents and information incorporated or deemed to be incorporated by reference therein at such time pursuant to Item 12 of Form S-3 under the Securities Act and the documents otherwise deemed to be a part thereof as of such time pursuant to Rule 430B. The base prospectus, including all documents incorporated therein by reference, included in the Registration Statement, as it may be supplemented by the Prospectus Supplement, in the form in which such prospectus and/or Prospectus Supplement have most recently been filed by the Company with the Commission pursuant to Rule 424(b) under the Securities Act is herein called the "Prospectus." Any reference herein to the Registration Statement, the Prospectus or any amendment or supplement thereto shall be deemed to refer to and include the documents incorporated by reference therein, and any

reference herein to the terms “amend,” “amendment” or “supplement” with respect to the Registration Statement or the Prospectus shall be deemed to refer to and include the filing after the execution hereof of any document with the Commission deemed to be incorporated by reference therein. For purposes of this Agreement, all references to the Registration Statement, the Prospectus or to any amendment or supplement thereto shall be deemed to include any copy filed with the Commission pursuant to EDGAR.

SECTION 2. Placement.

Each time that the Company wishes to issue Issuance Shares hereunder (each, an “Issuance Placement” and together with any sale of the Forward Hedge Shares by the Forward Sellers in connection with a Forward Transaction, collectively, the “Placements” and each, a “Placement”) it will notify the designated Agent by email notice (or other method mutually agreed to in writing by the parties) containing the parameters in accordance with which it desires the Issuance Shares to be sold, which shall at a minimum include the number or dollar amount of Issuance Shares, the time period during which sales are requested to be made, any limitation on the number or dollar amount of Issuance Shares that may be sold in any one day and any minimum price below which sales may not be made (an “Issuance Placement Notice”), a form of which containing such minimum sales parameters necessary is attached hereto as Exhibit A-1. The Issuance Placement Notice shall originate from any of the individuals from the Company set forth on Exhibit B (with a copy to each of the other individuals from the Company listed on such schedule), and shall be addressed to each of the individuals from such Agent set forth on Exhibit B, as such Exhibit B may be amended from time to time. If such Agent wishes to accept such proposed terms included in the Issuance Placement Notice (which it may decline to do so for any reason in its sole discretion) or, following discussion with the Company, wishes to accept amended terms, such Agent will, prior to 4:30 p.m. (New York City time) on the Business Day following the Business Day on which such Issuance Placement Notice is delivered to such Agent, issue to the Company a notice by email (or other method mutually agreed to in writing by the parties) addressed to all of the individuals from the Company and such Agent set forth on Exhibit B setting forth the terms that such Agent is willing to accept. Where the terms provided in the Issuance Placement Notice are amended as provided for in the immediately preceding sentence, such terms will not be binding on the Company or the Agent until the Company delivers to such Agent an acceptance by email (or other method mutually agreed to in writing by the parties) of all of the terms of such Issuance Placement Notice, as amended (such acceptance with respect to the Issuance Shares, or together with respect to the terms of a Forward Placement Notice (as defined in Section 3(a) hereof), an “Acceptance”), which email shall be addressed to all of the individuals from the Company and such Agent set forth on Exhibit B. The Issuance Placement Notice (as amended by the corresponding Acceptance, if applicable) shall be effective upon receipt by the Company of such Agent’s acceptance of the terms of the Issuance Placement Notice or upon receipt by the Agent of the Company’s Acceptance, as the case may be, unless and until (i) the entire amount of the Issuance Shares has been sold, (ii) in accordance with the notice requirements set forth in the second sentence of this paragraph, the Company terminates the Issuance Placement Notice, (iii) the Company issues a subsequent Issuance Placement Notice with parameters superseding those on the earlier dated Issuance Placement Notice, (iv) this Agreement has been terminated under the provisions of Section 13 or (v) either party shall have suspended the sale of the Placement Shares

in accordance with Section 4 below; provided, however, that any such notice shall not affect or impair either party's obligations with respect to any Issuance Shares sold under the applicable Placement Notice prior to the receipt of such notice. The amount of any discount, commission or other compensation to be paid by the Company to the Agent in connection with the sale of the Issuance Shares shall be calculated in accordance with the terms set forth in Exhibit C. It is expressly acknowledged and agreed that neither the Company nor any Agent will have any obligation whatsoever with respect to a Placement or any Issuance Shares unless and until the Company delivers an Issuance Placement Notice to the Agent and either (i) the applicable Agent accepts the terms of such Issuance Placement Notice or (ii) where the terms of such Issuance Placement Notice are amended, the Company accepts such amended terms by means of an Acceptance pursuant to the terms set forth above, and then only upon the terms specified in the Issuance Placement Notice (as amended by the corresponding Acceptance, if applicable) and herein. In the event of a conflict between the terms of this Agreement and the terms of an Issuance Placement Notice (as amended by the corresponding Acceptance, if applicable), the terms of the Issuance Placement Notice (as amended by the corresponding Acceptance, if applicable) will control.

SECTION 3. Sale of Placement Shares by the Agents and the Forward Sellers

(a) Subject to the terms and conditions set forth in the relevant Master Forward Confirmation (as defined below) and any "Supplemental Confirmation" thereunder, on any Trading Day (as defined below) during the term on which the conditions set forth in Section 9 have been satisfied, the Company may request to enter into a Forward Transaction by delivering a written notice (which notice shall specify that it relates to a "Forward Transaction") to the designated Forward Purchaser and its affiliated Forward Seller, containing the parameters of the Forward Transaction it desires, in accordance with this Agreement (a "Forward Placement Notice") and together with any Issuance Placement Notice, collectively, the "Placement Notices" and each a "Placement Notice"), the form of which is attached hereto as Exhibit A-2. Such Forward Placement Notice shall include, for purposes of (and as defined under) the related Master Forward Confirmation, the proposed (i) first day of the Forward Hedge Selling Period, (ii) Maturity Date, (iii) last day of the Forward Hedge Selling Period, (iv) Forward Hedge Number, (v) Forward Hedge Selling Commission Rate, (vi) Spread, (vii) Initial Stock Loan Rate, (viii) Maximum Stock Loan Rate, (ix) Forward Price Reduction Dates and (x) Forward Price Reduction Amounts (as defined below; together, the "Proposed Confirmation Terms"). The Forward Placement Notice shall originate from any of the individuals from the Company set forth on Exhibit B (with a copy to each of the other individuals from the Company listed on such schedule), and shall be addressed to each of the individuals from such Forward Purchaser and related Forward Seller as set forth on Exhibit B, as such Exhibit B may be updated from time to time with respect to the individuals of each party providing written notice, by an Agent, Forward Purchaser or Forward Seller, to the Company, on the one hand, and by the Company to all Agents, Forward Purchasers and Forward Sellers, on the other hand, of the addition or deletion of individuals of such notifying party. Each Forward Placement Notice is subject to review and acceptance by the applicable Forward Purchaser and Forward Seller. Such Forward Purchaser and the related Forward Seller may accept such Proposed Confirmation Terms (which they may decline to do for any reason in their sole discretion) by e-mail to one of the individuals at the Company named on Exhibit B hereto, as such Schedule may be amended from

time to time, confirming the terms of such Forward Placement Notice. In no event shall the Forward Hedge Selling Commission Rate exceed 2.0%. It is expressly acknowledged and agreed that none of the Company, the Forward Purchaser or the Forward Seller will have any obligation whatsoever with respect to a Forward Placement Notice or any Forward Hedge Shares unless and until the Company delivers a Forward Placement Notice to a Forward Purchaser and the related Forward Seller and such Forward Purchaser and the Forward Seller accept the terms of such Forward Placement Notice, and then only upon the terms specified in the Forward Placement Notice, this Agreement and the relevant Master Forward Confirmation. In the event of a conflict between the terms of Section 2 or Section 3 of this Agreement and an accepted Forward Placement Notice with respect to a Forward Transaction, the terms of such Forward Placement Notice will control with respect to such Forward Transaction. As used herein, “Forward Transaction” means the transaction resulting from an accepted Forward Placement Notice providing for the sale by such Forward Seller of Forward Hedge Shares as specified in such Forward Placement Notice, subject to the terms and conditions of this Agreement and the applicable Forward Contract. “Master Forward Confirmation” means each letter agreement by and between the Company and a Forward Purchaser (including all provisions incorporated by reference therein, substantially in the form attached as Exhibit H). “Forward Contract” means, for each Forward Transaction, the contract evidencing such Forward Transaction between the Company and such Forward Purchaser, which shall be composed of the relevant Master Forward Confirmation and the related “Supplemental Confirmation” (as defined in such Master Forward Confirmation) for such Forward Transaction.

(b) Subject to the provisions of Section 6(a), each Agent, for the period specified in the Issuance Placement Notice, will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell the Issuance Shares up to the amount specified, and otherwise in accordance with the terms of such Issuance Placement Notice (as amended by the corresponding Acceptance, if applicable). Such Agent will provide written confirmation to the Company no later than the opening of the Trading Day (as defined below) immediately following the Trading Day on which it has made sales of Issuance Shares hereunder setting forth the number of Issuance Shares sold on such day, the compensation payable by the Company to the Agent pursuant to Section 2 with respect to such sales, and the Net Proceeds (as defined below) payable to the Company, with an itemization of the deductions made by the Agent (as set forth in Section 6(b)) from the gross proceeds that it receives from such sales. Subject to the terms of the Issuance Placement Notice (as amended by the corresponding Acceptance, if applicable), the Agents may sell Issuance Shares by any method permitted by law, including without limitation in transactions deemed to be an “at the market” offering as defined in Rule 415 under the Securities Act sales made directly on the NYSE, on any other existing trading market for the Common Shares or to or through a market maker other than on exchange. Subject to the terms of the Issuance Placement Notice (as amended by the corresponding Acceptance, if applicable), the Agents may also sell Issuance Shares by any other method permitted by law, including but not limited to in privately negotiated transactions, which may include block trades. The Company acknowledges and agrees that (i) there can be no assurance that any Agent will be successful in selling Issuance Shares, and (ii) the applicable Agent will incur no liability or obligation to the Company or any other person or entity if it does not sell Issuance Shares for any reason other than a failure by the Agent to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Issuance Shares as required under this Section 3. For the purposes hereof, “Trading Day” means any day on which the Common Shares are purchased and sold on the principal market on which the Common Shares are listed or quoted.

(c) (i) Subject to the terms and conditions of this Agreement and as set forth in the relevant Master Forward Confirmation and each “Supplemental Confirmation” under the related Master Forward Confirmation, upon acceptance of a Forward Placement Notice by such Forward Purchaser and Forward Seller, and unless the sale of the Forward Hedge Shares described therein has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement or the relevant Master Forward Confirmation, such Forward Purchaser will use commercially reasonable efforts to borrow Forward Hedge Shares up to the Forward Hedge Number specified in the relevant Forward Placement Notice accepted by such Forward Purchaser and the relevant Forward Seller will use commercially reasonable efforts consistent with its normal trading and sales practices to sell such Forward Hedge Shares, in accordance with the terms of such Forward Placement Notice. “Forward Hedge Number” means the maximum number of Forward Hedge Shares to be sold by a Forward Seller with respect to any Forward Transaction, as specified in the Forward Placement Notice for such Forward Transaction, subject to the terms and conditions of this Agreement.

(ii) No Forward Placement Notice may be delivered hereunder (A) if the Forward Hedge Selling Period specified therein would overlap in whole or in part with any Forward Hedge Selling Period specified in any other Forward Placement Notice delivered hereunder unless the Forward Hedge Shares to be sold under all such previously delivered Forward Placement Notices have all been sold or (B) if any Forward Hedge Selling Period specified therein would overlap in whole or in part with any Unwind Period under (and as defined in) any Forward Contract entered into between the Company and any Forward Purchaser. As used herein, the “Forward Hedge Selling Period” is the period of consecutive Trading Days (as determined by the Company in the Company’s sole discretion and specified in the applicable Forward Placement Notice) beginning on, and including, the Trading Day immediately following the Trading Day on which such Forward Placement Notice is delivered or deemed to be delivered; provided, that if, prior to the scheduled end of any Forward Hedge Selling Period, (x) any event occurs that would permit such Forward Purchaser to designate a “Scheduled Trading Day” as an “Early Valuation Date” (as each such term is defined in the relevant Master Forward Confirmation) under, and pursuant to, the provisions opposite the caption “Early Valuation” in the relevant Master Forward Confirmation or (y) a “Bankruptcy Termination Event” (as such term is defined in the relevant Master Forward Confirmation) occurs, then the Forward Hedge Selling Period shall immediately terminate as of the first such occurrence (or, if later, when persons at such Forward Seller responsible for executing sales of Forward Hedge Shares become aware of such occurrence).

(iii) No later than the opening of the Trading Day immediately following the Effective Date (as defined in the relevant Master Forward Confirmation), such Forward Purchaser shall execute and deliver to the Company a “Supplemental Confirmation” in respect of the Forward Contract for such Forward Hedge Selling Period, which “Supplemental Confirmation” shall set forth the “Trade Date” for such Forward Transaction (which shall, subject to the terms of the relevant Master Forward Confirmation, be the last Trading Day

of such Forward Hedge Selling Period), the “Effective Date” for such Forward Transaction (which shall, subject to the terms of the relevant Master Forward Confirmation, be the date one Settlement Cycle (as such term is defined in the relevant Master Forward Confirmation) immediately following the last Trading Day of such Forward Hedge Selling Period), the initial “Number of Shares” for such Forward Transaction (which shall, subject to the terms of the relevant Master Forward Confirmation, be the number of Forward Hedge Shares sold during such Forward Hedge Selling Period), the “Maturity Date” for such Forward Transaction (which shall, subject to the terms of the relevant Master Forward Confirmation, be the date set forth opposite the caption “Maturity Date” in the Forward Placement Notice for such Forward Transaction), the “Forward Price Reduction Dates” for such Forward Transaction (which shall be each of the dates set forth below the caption “Forward Price Reduction Dates” in the Forward Placement Notice for such Forward Transaction), the “Forward Price Reduction Amounts” corresponding to such Forward Price Reduction Dates (which shall be each amount set forth opposite each “Forward Price Reduction Date” and below the caption “Forward Price Reduction Amounts” in the Forward Placement Notice for such Forward Transaction), the “Forward Hedge Selling Commission Rate” for such Forward Transaction (which shall be the amount set forth opposite the term “Forward Hedge Selling Commission Rate” in the accepted Forward Placement Notice), the “Spread” for such Forward Transaction (which shall be the amount set forth opposite the term “Spread” in the accepted Forward Placement Notice), the “Initial Forward Price” for such Forward Transaction (which shall be determined as provided in the relevant Master Forward Confirmation), the “Volume-Weighted Hedge Price” (which shall be determined as provided in the relevant Master Forward Confirmation), the “Initial Stock Loan Rate” (which shall be as determined by the Calculation Agent (as defined in the relevant Master Forward Confirmation)), the “Maximum Stock Loan Rate” (which shall be as determined by the Calculation Agent) and the “Notice Settlement Number” (which shall be as determined by the Calculation Agent).

(iii) For each Forward Transaction, the Company shall be obligated to enter into a Forward Contract with such Forward Purchaser if and when the Company delivers a Forward Placement Notice to such Forward Purchaser and the related Forward Seller, and such Forward Purchaser and the related Forward Seller have accepted such Forward Placement Notice as provided in Section 3(a) of this Agreement. In the event that either (A) in the sole judgment of a Forward Purchaser (or an agent thereof), it is unable to borrow and deliver any Forward Hedge Shares up to the Forward Hedge Number for sale with respect to an instruction under this Agreement after using commercially reasonable efforts, consistent with its normal trading and sales practices for similar transactions and applicable law and regulation, or (B) in the sole judgment of such Forward Purchaser, such Forward Purchaser (or its agent) would incur a stock loan cost that is more than a rate equal to the Maximum Stock Loan Rate (as set forth in the accepted Forward Placement Notice) to do so, then the obligation herein of the applicable Forward Seller with respect to sales of Placement Shares in connection with such instruction shall only extend to the aggregate number of Forward Hedge Shares that the Forward Purchaser (or its agent) is able to so borrow below such cost.

SECTION 4. Suspension of Sales. The Company, the applicable Agent or the applicable Forward Seller, as the case may be, may, upon notice to the other party in writing (including by email correspondence to each of the individuals of the other party set forth on Exhibit B, if receipt of such correspondence is actually acknowledged by any of the individuals to whom the notice is sent, other than via auto-reply) or by telephone (confirmed immediately by verifiable facsimile transmission or email correspondence to each of the individuals of the other party set forth on Exhibit B), suspend any sale of Placement Shares; *provided, however*, that such suspension shall not affect or impair either party's obligations with respect to any Placement Shares sold hereunder prior to the receipt of such notice. Each of the parties agrees that no such notice under this Section 4 shall be effective against the other unless it is made to one of the individuals named on Exhibit B hereto, as such Exhibit B may be amended from time to time.

SECTION 5. Representations and Warranties.

(a) *Representations and Warranties by the Company*. The Company represents and warrants to the Agents, the Forward Purchasers and the Forward Sellers, as of the date hereof and as of each Representation Date (as defined below) on which a certificate is required to be delivered pursuant to Section 7(o) of this Agreement, as of each Applicable Time and as of each Settlement Date (as defined below), and agrees with the Agents, the Forward Purchasers, and the Forward Sellers, as follows:

(1) Compliance with Registration Requirements. The Registration Statement has become effective under the Securities Act, or, with respect to any registration statement to be filed to register the offer and sale of the Placement Shares pursuant to Rule 462(b) under the Securities Act (a "Rule 462(b) Registration Statement"), will be filed with the Commission and become effective under the Securities Act no later than 10:00 p.m. (New York City time), on the date of determination of the public offering price for the Placement Shares, and a Replacement Registration Statement, if any, will have become effective under the Securities Act. No stop order preventing or suspending the use of any base prospectus, the Prospectus Supplement, the Prospectus or any Permitted Free Writing Prospectus (as defined below), or the effectiveness of the Registration Statement or any Rule 462(b) Registration Statement and no proceedings for such purpose have been instituted or are pending or, to the knowledge of the Company, are contemplated by the Commission, and any request on the part of the Commission for additional information has been complied with. The Company has filed with the Commission the Prospectus Supplement relating to the Placement Shares in accordance with Rule 424(b).

At the respective times each of the Registration Statement, any Rule 462(b) Registration Statement, any Replacement Registration Statement and any post-effective amendments thereto became or becomes effective and as of the date hereof, the Registration Statement, any Rule 462(b) Registration Statement, any Replacement Registration Statement and any amendments and supplements thereto complied and will comply in all material respects with the requirements of the Securities Act. The conditions for the use of Form S-3, as set forth in the General Instructions thereto, and the Registration Statement meets, and the offering and sale of the Placement Shares as contemplated hereby complies with, the requirements of Rule 415 under the Securities Act (including, without limitation, Rule 415(a)(5)). The Registration Statement, as of the date hereof and each effective date with respect thereto, did not and will not contain an untrue statement of a

material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading. Neither the Prospectus nor any amendments or supplements thereto, as of their respective dates, and at each Applicable Time and Settlement Date, as the case may be, included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

The representations and warranties set forth in the immediately preceding paragraph shall not apply to statements in or omissions from the Registration Statement or the Prospectus, as amended or supplemented, made in reliance upon and in conformity with information furnished to the Company in writing by the Agents, the Forward Purchasers or the Forward Sellers expressly for use therein. For purposes of this Agreement, the only information so furnished as of the date hereof shall be the Agents', the Forward Purchasers' and the Forward Sellers' names (the "Agent Information").

The copies of the Registration Statement, any Rule 462(b) Registration Statement and any Replacement Registration Statement, and any amendments thereto, any other preliminary prospectus, each Issuer Free Writing Prospectus that is required to be filed with the Commission pursuant to Rule 433 and the Prospectus and any amendments or supplements thereto delivered and to be delivered to the Agents, the Forward Purchasers, and the Forward Sellers (electronically or otherwise) in connection with the offering of the Placement Shares were and will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

Each Issuer Free Writing Prospectus relating to the Placement Shares, as of its issue date and as of each Applicable Time and Settlement Date, did not, does not and will not include any information that conflicted, conflicts or will conflict with the information contained in the Registration Statement or the Prospectus, including any incorporated document deemed to be a part thereof that has not been superseded or modified, or included, includes or will include an untrue statement of a material fact or omitted, omits or will omit to state a material fact necessary in order to make the statements therein, in light of the circumstances, prevailing at that subsequent time, not misleading. The foregoing sentence does not apply to statements in or omissions from any Issuer Free Writing Prospectus based upon and in conformity with written information furnished to the Company by the Agent specifically for use therein.

At the time of the initial filing of the Registration Statement, at the time of the most recent amendment thereto for the purposes of complying with Section 10(a)(3) of the Securities Act (whether such amendment was by post-effective amendment, incorporated report filed pursuant to Section 13 or 15(d) of the Exchange Act or form of prospectus), at the time the Company or another offering participant made a bona fide offer (within the meaning, for this paragraph only, of Rule 164(h)(2) of the Securities Act), the Company was and is a "well-known seasoned issuer" as defined in Rule 405 of the Securities Act, including not having been and not being an "ineligible issuer," as defined in Rule 405 of the Securities Act; and, without limitation to the foregoing, the Company has at all relevant times met, meets and will at all relevant times meet the requirements of Rule 164 for the use of a free writing prospectus (as defined in Rule 405) in connection with the offering contemplated hereby. The Company agrees to pay the fees required by the Commission relating to the Placement Shares within the time required by Rule 456(b)(1) without regard to the proviso therein and otherwise in accordance with Rules 456(b) and 457(r).

Each document incorporated by reference in the Registration Statement or the Prospectus heretofore filed, when it was filed (or, if any amendment with respect to any such document was filed, when such amendment was filed), conformed in all material respects with the requirements of the Exchange Act, and any further documents so filed and incorporated after the date of this Agreement will, when they are filed, conform in all material respects with the requirements of the Exchange Act; no such document when it was filed (or, if an amendment with respect to any such document was filed, when such amendment was filed), contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading; and no such document, when it is filed, will contain an untrue statement of a material fact or will omit to state a material fact required to be stated therein or necessary in order to make the statements therein not misleading.

(2) Prior Written Communications. Any offer that is a written communication relating to the Placement Shares made prior to the initial filing of the Registration Statement by the Company or any person acting on its behalf (within the meaning, for this paragraph only, of Rule 163(c) of the Securities Act) has been filed with the Commission in accordance with the exemption provided by Rule 163 of the Securities Act and otherwise complied with the requirements of Rule 163 of the Securities Act, including without limitation the legending requirement.

(3) Good Standing of Company. The Company has been duly organized and is validly existing as a real estate investment trust of unlimited duration with transferable shares of beneficial interest in good standing under the laws of the State of Maryland, with full power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement and the Prospectus and to enter into and perform its obligations under this Agreement and any Forward Contracts, and to consummate the transactions contemplated by the Registration Statement and the Prospectus. The Company is duly qualified to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or be in good standing would not result in a material adverse change in the condition, financial or otherwise, or the results of operations, business, properties or prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business (a "Material Adverse Effect").

(4) Subsidiaries. Each "significant subsidiary" of the Company (as such term is defined in Rule 1-02 of Regulation S-X promulgated under the Securities Act) (each, a "Subsidiary" and, collectively, the "Subsidiaries") (which term includes corporations, limited and general partnerships, limited liability companies, joint ventures and other entities, and includes direct and indirect subsidiaries), has been duly organized and is validly existing as a corporation, limited liability company or partnership, as the case may be, in good standing under the laws of the jurisdiction of its incorporation or organization, has power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement and the Prospectus and is duly qualified to transact business and is in good standing in each jurisdiction in which such qualification is required, whether by reason of the ownership or leasing of property or the conduct of business, except where the failure to so qualify or be in good standing would not

result in a Material Adverse Effect. Except as otherwise stated in the Registration Statement or the Prospectus, all of the issued and outstanding capital stock or other ownership interests of each subsidiary have been duly authorized and validly issued, are fully paid and non-assessable and are owned by the Company, directly or through subsidiaries, free and clear of any security interest, mortgage, pledge, lien, encumbrance, claim or equity; and none of the outstanding shares of capital stock, partnership interests or limited liability company interests, membership interests or other similar interests of any subsidiary was issued in violation of any preemptive rights, rights of first refusal or other similar rights of any security holder of such subsidiary.

(5) Capitalization. The Issuance Shares and the Common Shares to be sold pursuant to any Forward Contract (the “Forward Settlement Shares”) and all other outstanding Common Shares have been duly authorized; the authorized equity capitalization of the Company is as set forth in the Prospectus; all outstanding Common Shares are, and, when the Placement Shares have been delivered and paid for in accordance with this Agreement and any Forward Contracts, such Placement Shares will have been, validly issued, fully paid and nonassessable, will be consistent with the information in the Prospectus and will conform to the description thereof contained in the Prospectus; the shareholders of the Company have no preemptive rights with respect to the Placement Shares; and none of the outstanding Common Shares have been issued in violation of any preemptive or similar rights of any security holder.

(6) Absence of Further Requirements. No consent, approval, authorization, or order of, or filing or registration with, any person (including any governmental agency or body or any court) is required for the consummation by the Company of the transactions contemplated by this Agreement and any Forward Contracts in connection with the offering, issuance and sale of the Placement Shares by the Company, except such as have been obtained under the Securities Act, and such as may be required under state securities laws.

(7) Title to Property. The Company and its subsidiaries have good and marketable title to, or valid and enforceable leasehold estates in, all items of real and personal property referred to in the Registration Statement and the Prospectus as owned or leased by them, in each case free and clear of all liens, encumbrances, claims, security interests and defects, other than those disclosed in the Registration Statement or the Prospectus or that would not, individually or in the aggregate, have a Material Adverse Effect. The Company has no reasonable basis to believe that the lessee under any lease calling for annual lease payments in excess of one percent of the Company’s annual revenue for its last fiscal year is not financially capable of performing its obligations thereunder (excluding leases for which rent payments due for the remainder of such lease are less than such amount).

(8) Absence of Defaults and Conflicts Resulting from Transaction. The execution, delivery and performance of this Agreement and any Forward Contracts, and the issuance and sale of the Placement Shares and compliance with the terms and provisions thereof will not result in a breach or violation of any of the terms and provisions of, or constitute a default or a Debt Repayment Triggering Event (as defined below) under, or result in the imposition of any lien, charge or encumbrance upon any property or assets of the Company or any of its subsidiaries pursuant to, the declaration of trust, partnership agreement, charter or bylaws or other organizational documents of the Company or any of its subsidiaries, any statute, rule, regulation or order of any governmental agency or body or any court, domestic or foreign, having jurisdiction over the

Company or any of its subsidiaries or any of their properties, or any agreement or instrument to which the Company or any of its subsidiaries is a party or by which the Company or any of its subsidiaries is bound or to which any of the properties of the Company or any of its subsidiaries is subject; a “Debt Repayment Triggering Event” means any event or condition that gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture, or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company or any of its subsidiaries.

(9) Absence of Existing Defaults and Conflicts. Neither the Company nor any of its subsidiaries is (i) in violation of its respective declaration of trust, partnership agreement, charter or bylaws or other organizational document or (ii) in default (or with the giving of notice or lapse of time would be in default) under any existing obligation, agreement, covenant or condition contained in any indenture, loan agreement, mortgage, lease or other agreement or instrument to which any of them is a party or by which any of them is bound or to which any of the properties of any of them is subject or (iii) in violation of any law or statute or any judgment, order, rule or regulation of any court or arbitrator or governmental or regulatory authority, except, in the case of clauses (ii) and (iii) above, for any such default or violation that would not, individually or in the aggregate, have a Material Adverse Effect or materially and adversely affect the ability of the Company to perform its obligations under this Agreement and any Forward Contracts.

(10) Authorization of Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(11) Authorization of the Forward Contracts. The form of Forward Contract has been duly authorized by the Company and, each Forward Contract, when executed and delivered by the Company (assuming due authorization, execution and delivery by the applicable Forward Purchaser), will constitute a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except to the extent that such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws relating to or affecting creditors’ rights and general principles of equity and except as rights to indemnity and contribution thereunder may be limited by applicable law or policies underlying such law.

(12) Possession of Licenses and Permits. The Company and its subsidiaries possess, and are in compliance with the terms of, all certificates, authorizations, franchises, licenses and permits (“Licenses”) necessary or material to the conduct of the business now conducted or proposed in the Registration Statement and the Prospectus to be conducted by them and have not received any notice of proceedings relating to the revocation or modification of any Licenses that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect.

(13) Absence of Labor Dispute. No labor dispute with the employees of the Company or any of its subsidiaries exists or, to the knowledge of the Company, is imminent, and the Company is not aware of any existing or imminent labor disturbance by the employees of any of its or its subsidiaries’ principal suppliers, contractors or customers, that, in any such case, would have a Material Adverse Effect.

(14) Possession of Intellectual Property. The Company and its subsidiaries own, possess or can acquire on reasonable terms, adequate trademarks, trade names and other rights to inventions, know-how, patents, copyrights, confidential information and other intellectual property (collectively, “intellectual property rights”) necessary to conduct the business now operated by them, or presently employed by them, and have not received any notice of infringement of or conflict with asserted rights of others with respect to any intellectual property rights that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect.

(15) Environmental Laws. Except as disclosed in the Registration Statement and the Prospectus, neither the Company nor any of its subsidiaries is in violation of any statute, any rule, regulation, decision or order of any governmental agency or body or any court, domestic or foreign, relating to the use, disposal or release of hazardous or toxic substances or relating to the protection or restoration of the environment or human exposure to hazardous or toxic substances (collectively, “environmental laws”), owns or operates any real property contaminated with any substance that is subject to any environmental laws, is liable for any off-site disposal or contamination pursuant to any environmental laws, or is subject to any claim relating to any environmental laws, which violation, contamination, liability or claim would individually or in the aggregate have a Material Adverse Effect; and the Company is not aware of any pending investigation which might lead to such a claim.

(16) Accurate Disclosure. The statements in, or incorporated by reference into, the Registration Statement and the Prospectus under the headings “Description of Shares,” “Description of Common Shares,” “Material U.S. Federal Income Tax Considerations” and “Risk Factors” and the statements in the Registration Statement under Item 15 insofar as such statements summarize legal matters, agreements, documents or proceedings discussed therein, are accurate and fair summaries of such legal matters, agreements, documents or proceedings and present the information required to be shown in all material respects.

(17) REIT Status. With respect to all tax periods regarding which the Internal Revenue Service is or will be entitled to assert any claim, the Company has met the requirements for qualification as a real estate investment trust (“REIT”) under Sections 856 through 860 of the Internal Revenue Code of 1986, as amended (the “Code”), and the Company’s current organization and present and contemplated operations, assets and income as described in the Registration Statement and the Prospectus will permit the Company to continue to meet such requirements.

(18) Insurance. The Company and its subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as are prudent and customary in the businesses in which they are engaged; the Company has no reason to believe that it or any of its subsidiaries will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect; and the Company and each of its subsidiaries has obtained title insurance on all of the properties owned by each of them in an amount at least equal to the original purchase price to acquire land and improvements and such title insurance is in full force and effect.

(19) Taxes. The Company has filed all federal, state and foreign income tax returns that have been required to be filed and has paid all taxes indicated by said returns and all assessments, fines and penalties received by it to the extent that such taxes, assessments, fines or penalties have become due.

(20) Statistical and Market-Related Data. Any third-party statistical and market-related data included or incorporated by reference in the Registration Statement or the Prospectus are based on or derived from sources that the Company believes to be reliable and accurate.

(21) Compliance with Sarbanes-Oxley Act. Except as set forth in the Registration Statement and the Prospectus, (i) the Company, its subsidiaries and the Company's Board of Trustees (the "Board") are in compliance in all material respects with Sarbanes-Oxley (as defined below) and all applicable Exchange Rules (as defined below); (ii) the Company has adopted and disclosed corporate governance guidelines; (iii) the Company maintains a system of internal controls, including, but not limited to, disclosure controls and procedures, internal control over financial reporting, an internal audit function and legal and regulatory compliance controls (collectively, "Internal Controls"), which complies with the Securities Laws (as defined below) and is overseen by the Audit Committee (the "Audit Committee") of the Board in accordance with Exchange Rules; (iv) since December 31, 2009, the Company has not publicly disclosed or reported to the Audit Committee or the Board, and within the next 90 days the Company does not reasonably expect to publicly disclose or report to the Audit Committee or the Board, a significant deficiency, material weakness, change in Internal Controls or fraud involving management or other employees who have a significant role in Internal Controls (each, an "Internal Control Event"), any violation of, or failure to comply with, the Securities Laws, or any matter which, if determined adversely, would have a Material Adverse Effect; and (v) "Securities Laws" means, collectively, the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley"), the Securities Act, the Exchange Act, the rules and regulations of the Commission, the auditing principles, rules, standards and practices applicable to auditors of "issuers" (as defined in Sarbanes-Oxley) promulgated or approved by the Public Company Accounting Oversight Board ("PCAOB Rules" and "PCAOB," respectively), and, as applicable, the rules of the NYSE ("Exchange Rules"). There is and has been no failure on the part of the Company and any of the Company's trustees or officers, in their capacities as such, to comply with Sarbanes-Oxley Section 402 relating to loans and there is and has been no material failure on the part of the Company and any of the Company's trustees or officers, in their capacities as such to comply with Sarbanes-Oxley Sections 302 and 906 relating to certifications.

(22) Litigation. Except as disclosed in the Registration Statement and the Prospectus, there are no pending actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) against or affecting the Company, any of its subsidiaries or any of their respective properties that, if determined adversely to the Company or any of its subsidiaries, would individually or in the aggregate have a Material Adverse Effect, or would materially and adversely affect the ability of the Company to perform its obligations under this Agreement and any Forward Contracts, or which are otherwise material in the context of the sale of the Placement Shares; and no such actions, suits or proceedings (including any inquiries or investigations by any court or governmental agency or body, domestic or foreign) are threatened or, to the Company's knowledge, contemplated.

(23) No Registration Rights. No holders of securities of the Company have rights to the registration of such securities under the Registration Statement.

(24) Financial Statements. The consolidated historical financial statements and schedules of the Company and its consolidated subsidiaries included or incorporated by reference in the Registration Statement and the Prospectus, together with the related schedules (if any) and notes, present fairly the financial condition, results of operations, shareholders' equity and cash flows of the Company and its consolidated subsidiaries as of the dates and for the periods indicated, comply as to form with the applicable accounting requirements of the Securities Act and have been prepared in conformity with GAAP applied on a consistent basis throughout the periods involved (except as otherwise noted therein). The pro forma financial statements and the related notes included or incorporated by reference in the Registration Statement and the Prospectus, if any, present fairly the information shown therein, have been prepared in accordance with the Commission's rules and guidelines with respect to pro forma financial statements and have been properly compiled on the bases described therein, and include assumptions that provide a reasonable basis for presenting the significant effects directly attributable to the transactions and events described therein, the related pro forma adjustments give appropriate effect to those assumptions, and the pro forma adjustments reflect the proper application of those adjustments to the historical financial statement amounts in the pro forma financial statements included in the Registration Statement and the Prospectus. The pro forma financial statements included in the Registration Statement and the Prospectus comply as to form in all material respects with the applicable accounting requirements of Regulation S-X under the Securities Act and the pro forma adjustments have been properly applied to the historical amounts in the compilation of those statements. The historical summaries of revenue and certain operating expenses included in the Registration Statement and the Prospectus present fairly the revenue and those operating expenses included in such summaries of the properties related thereto for the periods specified in conformity with GAAP. Any information contained in the Registration Statement or the Prospectus regarding "non-GAAP financial measures" (as defined in Regulation G of the Commission) complies in all material respects with Regulation G and Item 10 of Regulation S-K of the Commission, to the extent applicable. The interactive data in eXtensible Business Reporting Language included or incorporated by reference in the Registration Statement and the Prospectus fairly presents the information called for in all material respects and is prepared in accordance with the Commission's rules and guidelines applicable thereto.

(25) Independent Accountants. The accountants, who certified the financial statements and delivered their reports with respect to the audited consolidated financial statements and supporting schedules included in the Registration Statement and the Prospectus, are independent registered public accountants with respect to the Company within the meaning of the Securities Act, the Exchange Act and the PCAOB.

(26) No Prohibition on Dividends by Subsidiaries. Except as otherwise provided in a secured loan document relating to a property owned by a subsidiary, no Subsidiary of the Company is currently prohibited, directly or indirectly, from paying any dividends to the Company, from making any other distribution on such Subsidiary's capital stock, from repaying to the Company any loans or advances to such subsidiary from the Company or from transferring any of such Subsidiary's property or assets to the Company or any other subsidiary of the Company, except as described in or contemplated by the Registration Statement and the Prospectus (exclusive of any supplement thereto).

(27) Absence of Manipulation. The Company has not taken, directly or indirectly, any action designed to or that would constitute or that might reasonably be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Placement Shares.

(28) ERISA. None of the following events has occurred or exists that would have a Material Adverse Effect: (i) a failure to fulfill the obligations, if any, under the minimum funding standards of Section 302 of the United States Employee Retirement Income Security Act of 1974, as amended (“ERISA”), and the regulations and published interpretations thereunder with respect to a Plan, determined without regard to any waiver of such obligations or extension of any amortization period; (ii) an audit or investigation by the Internal Revenue Service, the U.S. Department of Labor, the Pension Benefit Guaranty Corporation or any other federal or state governmental agency or any foreign regulatory agency with respect to the employment or compensation of employees by any of the Company or any of its subsidiaries; (iii) any breach of any contractual obligation, or any violation of law or applicable qualification standards, with respect to the employment or compensation of employees by the Company or any of its subsidiaries. None of the following events has occurred or is reasonably likely to occur: (i) a material increase in the aggregate amount of contributions required to be made to all Plans in the current fiscal year of the Company and its subsidiaries compared to the amount of such contributions made in the most recently completed fiscal year of the Company and its subsidiaries; (ii) a material increase in the “accumulated post-retirement benefit obligations” (within the meaning of Statement of Financial Accounting Standards 106) of the Company and its subsidiaries compared to the amount of such obligations in the most recently completed fiscal year of the Company and its subsidiaries; (iii) any event or condition giving rise to a liability under Title IV of ERISA that would have a Material Adverse Effect; or (iv) the filing of a claim by one or more employees or former employees of the Company or any of its subsidiaries related to their employment that would have a Material Adverse Effect. For purposes of this paragraph, the term “Plan” means a plan (within the meaning of Section 3(3) of ERISA) subject to Title IV of ERISA with respect to which the Company or any of its subsidiaries may have any liability.

(29) No Unlawful Payments. Neither the Company nor any of its subsidiaries nor to the knowledge of the Company, any trustee, officer, or employee of the Company or any of its subsidiaries nor, to the knowledge of the Company, any agent, affiliate or other person associated with or acting on behalf of the Company or any of its subsidiaries is aware of or has taken any action, directly or indirectly, that has resulted or would result in (i) the use of any funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity; (ii) the making or taking of an act in furtherance of an offer, promise or authorization of any direct or indirect unlawful payment or benefit to any foreign or domestic government or regulatory official or employee, including of any government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office; (iii) a violation by any such person of any provision of the Foreign Corrupt Practices Act of 1977, as amended, or any applicable law or regulation implementing the OECD Convention on Combating Bribery of

Foreign Public Officials in International Business Transactions, or committed an offence under the Bribery Act 2010 of the United Kingdom, or any other applicable anti-bribery or anti-corruption laws; or (iv) the making, offering, requesting or taking of, or the agreement to take, an act in furtherance of any unlawful bribe or other unlawful benefit, including, without limitation, any rebate, payoff, influence payment, kickback or other unlawful or improper payment or benefit. The Company and its subsidiaries have instituted, maintain and enforce, and will continue to maintain and enforce policies and procedures designed to promote and ensure compliance with all applicable anti-bribery and anti-corruption laws.

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

(31) No Conflicts with Sanction Laws. Neither the Company nor any of its subsidiaries, nor to the knowledge of the Company, any trustee, officer, employee, agent, or affiliate or other person acting on behalf of the Company or any of its subsidiaries (other than any Agent, Forward Purchaser or Forward Seller) is currently the subject or the target of any sanctions administered or enforced by the U.S. Government, (including, without limitation, the Office of Foreign Assets Control of the U.S. Treasury Department or the U.S. Department of State and including, without limitation, the designation as a “specially designated national” or “blocked person”), the United Nations Security Council, the European Union, His Majesty’s Treasury, or other relevant sanctions authority (collectively, “Sanctions”), nor is the Company or any of its subsidiaries located, organized or resident in a country or territory that is the subject or the target of Sanctions, including, without limitation, Cuba, Iran, North Korea, Syria, the Crimea region of Ukraine, the so-called Donetsk People’s Republic, the so-called Luhansk People’s Republic, the non-government controlled areas of the Zaporizhzhia and Kherson regions of Ukraine and any other Covered Region of Ukraine identified pursuant to Executive Order 14065 (each, a “Sanctioned Country”); and the Company will not, knowingly, directly or indirectly use any of the proceeds of the offering, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other person or entity (i) to fund or facilitate any activities of or business with any person that, at the time of such funding or facilitation, is the subject or the target of any Sanctions, (ii) to fund or facilitate any activities of or any business in any Sanctioned Country or (iii) in any other manner that will result in a violation by any person (including any person participating in the transaction, whether as underwriter, advisor, investor or otherwise) of any Sanctions. For the past five years, the Company and its subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not engage in, any dealings or transactions with any person that at the time of the dealing or transaction is or was the subject or the target of any Sanctions or with any Sanctioned Country.

(32) Significant Subsidiaries. The subsidiaries listed on Exhibit D attached hereto are the only significant subsidiaries of the Company as defined by Rule 1-02 of Regulation S-X.

(33) Lending Relationship. Except as disclosed in the Registration Statement and the Prospectus, neither the Company nor any of its subsidiaries has any outstanding borrowings from, or is a party to any line of credit, credit agreement or other credit facility or otherwise has a borrowing relationship with, any bank or other lending institution affiliated with the Agents, the Forward Purchasers or the Forward Sellers, and, except as disclosed in the Registration Statement and the Prospectus, the Company does not intend to use any of the proceeds from the sale of the Placement Shares to repay any debt owed to the Agents, the Forward Purchasers, the Forward Sellers or any affiliate thereof.

(34) No Other Contracts. There are no contracts or documents that are required to be described in the Registration Statement or the Prospectus or the documents incorporated by reference therein or to be filed as exhibits thereto that have not been so described and filed as required.

(35) Investment Company Act. The Company is not, and, after giving effect to the offering and sale of the Placement Shares contemplated hereunder and the offering, sale and delivery of the Forward Settlement Shares and the application of the proceeds thereof, will not be an “investment company”, as such term is defined in the Investment Company Act of 1940, as amended (the “Investment Company Act”).

(36) Finder’s Fee. Other than this Agreement and any Forward Contracts, there are no contracts, agreements or understandings between the Company and any person that would give rise to a valid claim against the Company or the Agents, Forward Purchasers or Forward Sellers for a brokerage commission, finder’s fee or other like payment as a result of any transactions contemplated by this Agreement and any Forward Contracts.

(37) Proprietary Trading by the Agents, Forward Purchasers or Forward Sellers. The Company acknowledges and agrees that the Agents, Forward Purchasers or Forward Sellers have informed the Company that the Agents, Forward Purchasers or Forward Sellers may, to the extent permitted under the Securities Act and the Exchange Act, purchase and sell Common Shares for their own accounts and for the account of their clients while this Agreement and any Forward Contracts are in effect, and shall be under no obligation to purchase Placement Shares on a principal basis pursuant to this Agreement, except as otherwise agreed by the Agents, Forward Purchasers or Forward Sellers in the Placement Notice (as amended by the corresponding Acceptance, if applicable); provided, that no such purchase or sales for the Agents’, Forward Purchasers’ or Forward Sellers’ own account shall take place while a Placement Notice or Forward Placement Notice is in effect (except (i) as agreed by the Agents, Forward Purchasers or Forward Sellers in the Placement Notice (as amended by the corresponding Acceptance, if applicable) or (ii) to the extent the Agents, Forward Purchasers or Forward Sellers may engage in sales of Issuance Shares purchased or deemed purchased from the Company as a “riskless principal” or in a similar capacity).

(38) Cyber Security. (i) There has been no security breach or incident, unauthorized access or disclosure, or other compromise of or relating to the Company's or its subsidiaries' information technology and computer systems, networks, hardware, software, confidential data and databases (including the confidential data and information of their respective customers, employees, suppliers, vendors and any third party data maintained, processed or stored by the Company and its subsidiaries, and any such data processed or stored by third parties on behalf of the Company and its subsidiaries) (collectively, "IT Systems and Data") which would individually or in the aggregate have a Material Adverse Effect, (ii) neither the Company nor its subsidiaries have been notified of, and have no knowledge of any event or condition that would result in, any material security breach or incident, unauthorized access or disclosure of Company data or other material compromise to their IT Systems and Data and (iii) the Company and its subsidiaries have implemented appropriate controls and technological safeguards to maintain and protect the integrity and security of their IT Systems and Data reasonably consistent with industry standards and practices, or as required by applicable regulatory standards. The Company and its subsidiaries are presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority and contractual obligations relating to the privacy and security of IT Systems and Data.

(39) No Material Adverse Change in Business. Except as disclosed in the Prospectus, since the end of the period covered by the latest audited financial statements included in the Prospectus (i) there has been no change, nor any development or event involving a prospective change, in the condition (financial or otherwise), results of operations, business, properties or prospects of the Company and its subsidiaries, taken as a whole that is material and adverse, (ii) except for ordinary quarterly dividends, there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock and (iii) there has been no material adverse change in the capital stock, short-term indebtedness, long-term indebtedness, net current assets or net assets of the Company and its subsidiaries.

(40) Actively Traded Security. Except under circumstances where the Company has provided the Agents, Forward Purchasers or Forward Sellers with the notice required pursuant to Section 7(y) of this Agreement, the Common Shares are an "actively traded security" excepted from the requirements of Rule 101 of Regulation M under the Exchange Act by subsection (c)(1) of such rule.

(41) NYSE. The outstanding Common Shares have been, and the Placement Shares to be sold by the Company hereunder will have been, approved for listing, subject only to official notice of issuance, on the NYSE, and are registered pursuant to Section 12(b) of the Exchange Act, and the Company has taken no action designed to, or likely to have the effect of, terminating the registration of the Placement Shares under the Exchange Act or delisting any such securities from the NYSE, nor has the Company received any notification that the Commission or the NYSE is contemplating terminating such registration or listing.

(b) Certificates. Any certificate signed by any officer of the Company or any of its subsidiaries and delivered to the Agents, Forward Purchasers or Forward Sellers or to counsel for the Agents, Forward Purchasers or Forward Sellers shall be deemed a representation and warranty by the Company to the Agents, Forward Purchasers or Forward Sellers as to the matters covered thereby.

SECTION 6. Sale and Delivery to Agents and Forward Sellers: Settlement

(a) *Sale of Issuance Shares.* On the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, upon the designated Agent's acceptance of the terms of an Issuance Placement Notice or upon receipt by the designated Agent of an Acceptance, as the case may be, and unless the sale of the Issuance Shares described therein has been declined, suspended, or otherwise terminated in accordance with the terms of this Agreement, such Agent, for the period specified in the Issuance Placement Notice (as amended by the corresponding Acceptance, if applicable), will use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Issuance Shares up to the amount specified, and otherwise in accordance with the terms of such Issuance Placement Notice (as amended by the corresponding Acceptance, if applicable). The Company acknowledges and agrees that (i) there can be no assurance that the designated Agent will be successful in selling Issuance Shares, (ii) the designated Agent will incur no liability or obligation to the Company or any other person or entity if it does not sell Issuance Shares for any reason other than a failure by the designated Agent to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Issuance Shares as required under this Section 6 and (iii) the designated Agent shall be under no obligation to purchase Issuance Shares on a principal basis pursuant to this Agreement, except as otherwise agreed by such Agent in the Issuance Placement Notice (as amended by the corresponding Acceptance, if applicable).

(b) *Sale of Forward Hedge Shares.* Each of the Company, the Forward Purchasers and the Forward Sellers acknowledge and agree that (i) there can be no assurance that the Forward Purchasers or their affiliates will be successful in borrowing, or that the Forward Sellers will be successful in selling Forward Hedge Shares, (ii) the Forward Sellers will incur no liability or obligation to the Company, the Forward Purchasers or any other person or entity if they do not sell Forward Hedge Shares borrowed by the Forward Purchasers or their affiliates for any reason other than a failure by such Forward Seller to use its commercially reasonable efforts consistent with its normal trading and sales practices to sell such Forward Hedge Shares as required under Section 3(c), and (iii) the Forward Purchasers will incur no liability or obligation to the Company, the Forward Sellers or any other person or entity if they or their affiliates do not borrow Forward Hedge Shares for any reason other than a failure by such Forward Purchaser to use its commercially reasonable efforts to borrow or cause its affiliate to borrow such Forward Hedge Shares as required under Section 3(c). Notwithstanding anything herein to the contrary, a Forward Purchaser's obligation to use commercially reasonable efforts to borrow or cause its affiliate to borrow all or any portion of the Forward Hedge Shares (and a Forward Seller's obligation to use commercially reasonable efforts consistent with its normal trading and sales practices to sell such portion of the Forward Hedge Shares) for any Forward Transaction hereunder shall be subject in all respects to the provision "Effectiveness" in Section 3 of the relevant Master Forward Confirmation. In acting hereunder, a Forward Seller will be acting as agent for its affiliated Forward Purchaser and not as principal.

(c) *Settlement of Issuance Shares.* Unless otherwise specified in the applicable Placement Notice (as amended by the corresponding Acceptance, if applicable), settlement for sales of Placement Shares will occur on the second (2nd) Trading Day (or such earlier day as is (i) required by applicable law or rules and regulations or (ii) as is industry practice for regular-way trading and

mutually agreed upon by the Agents or the Forward Sellers, as the case may be, and the Company) following the date on which such sales are made (each, a "Settlement Date"). The amount of proceeds to be delivered to the Company on a Settlement Date against receipt of the Issuance Shares sold (the "Net Proceeds") will be equal to the aggregate sales price received by the Agent at which such Issuance Shares were sold, after deduction for (i) the Agent's commission, discount or other compensation for such sales payable by the Company pursuant to Section 2 hereof, (ii) any other amounts due and payable by the Company to the Agent hereunder pursuant to Section 8(a) hereof, and (iii) any transaction fees imposed by any governmental or self-regulatory organization in respect of such sales. The amount of proceeds to be delivered to such Forward Purchaser by the related Forward Seller on a Settlement Date against receipt of the Forward Hedge Shares sold will be equal to the related Aggregate Forward Hedge Price (as defined in Section 21).

(d) *Delivery of Placement Shares.*

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

(ii) Each sale of Forward Hedge Shares will be settled as between such Forward Purchaser and the Forward Seller on each Settlement Date therefor. On or before each such Settlement Date, such Forward Purchaser will, or will cause its transfer agent to, electronically transfer the Forward Hedge Shares being sold by crediting the related Forward Seller or its designee's account (provided such Forward Seller shall have given the Forward Purchaser written notice of such designee prior to the Settlement Date) at DTC through DWAC or by such other means of delivery as may be mutually agreed upon by such Forward Purchaser and the Forward Seller which in all cases shall be freely tradeable, transferable, registered shares in good deliverable form. On each such Settlement Date, such Forward Seller will deliver the related Aggregate Forward Hedge Price to the related Forward Purchaser in same day funds delivered to an account designated by such Forward Purchaser prior to the relevant Settlement Date.

(e) *Denominations; Registration.* The Company shall deliver the Placement Shares through the facilities of DTC unless the applicable Agent, Forward Purchaser or Forward Seller, as the case may be, shall otherwise instruct. If the applicable Agent, Forward Purchaser or Forward Seller, as the case may be, requests in writing at least one full business day before the Settlement Date, that any Issuance Shares and/or Forward Settlement Shares are to be issued in certificated form, certificates for such securities shall be in such denominations and registered in such names as the applicable Agent, Forward Purchaser or Forward Seller, as the case may be. Any such certificates for the Issuance Shares and Forward Settlement Shares will be made available for examination and packaging by the applicable Agent, Forward Purchaser or Forward Seller, as the case may be, in the City of New York not later than noon (New York time) on the business day prior to the Settlement Date.

(f) *Limitations on Offering Size.* Under no circumstances shall the Company cause or request the offer or sale of any Placement Shares, if after giving effect to the sale of such Placement Shares, the aggregate offering price of the Placement Shares sold pursuant to this Agreement would exceed the lesser of (A) the Maximum Amount and (B) the amount authorized from time to time to be issued and sold under this Agreement by the Company (which authorized amount shall be notified to the Agents, the Forward Purchasers, and the Forward Sellers in writing at any time upon the Agents', the Forward Purchasers', and the Forward Sellers' written request during the pendency of an active Placement Notice or Forward Placement Notice). Under no circumstances shall the Company cause or request the offer or sale of any Placement Shares pursuant to this Agreement at a price lower than the minimum price authorized from time to time by the Company (which minimum price shall be notified to the Agents, the Forward Purchasers and the Forward Seller in writing at any time upon the applicable party's written request to the Company during the pendency of an active Placement Notice). Further, under no circumstances shall the aggregate offering price of Placement Shares sold pursuant to this Agreement, including any separate underwriting or similar agreement covering principal transactions described in Section 1 of this Agreement, exceed the Maximum Amount.

(g) *Limitations on Managers.* The Company agrees that an offer to sell, any solicitation of an offer to buy, or any sales of Placement Shares shall only be effected by or through any one Agent or Forward Seller, as the case may be, on any single given day, and the Company shall in no event request that any other Agent or Forward Seller, as the case may be, sell the Placement Shares on the same day.

(h) *Black-out Limitations.* Notwithstanding any other provision of this Agreement, the Company shall not offer or sell, or request the offer or sale of, any Placement Shares and, by notice to the Agents, Forward Purchasers, and Forward Sellers, given by telephone (confirmed promptly by facsimile transmission or email), shall cancel any instructions for the offer or sale of any Placement Shares, and the Agents, Forward Purchasers, and Forward Sellers shall not be obligated to offer or sell any Placement Shares, (i) during any period in which the Company is, or could be deemed to be, in possession of material non-public information or (ii) except as provided in Section 6(i) hereof, at any time from and including the date on which the Company issues a press release containing, or shall otherwise publicly announce, its earnings, revenues or other operating results for a fiscal period or periods (each, an "Earnings Announcement") through and including the time that is 24 hours after the time that the Company files a Quarterly Report on Form 10-Q or an Annual Report on Form 10-K (a "Filing Time") that includes consolidated financial statements as of and for the same fiscal period or periods, as the case may be, covered by such Earnings Announcement.

(i) *Sales during Quarterly Blackout Periods.* If the Company wishes to offer or sell Placement Shares at any time during the period from and including an Earnings Announcement through and including the time that is 24 hours after the corresponding Filing Time, the Company shall first (i) prepare and deliver to the Agents, Forward Purchasers, and Forward Sellers (with a copy to their respective counsel) a Current Report on Form 8-K that includes substantially the same financial and related information (together with management's discussion and analysis thereof) that was included in such Earnings Announcement (other than any earnings projections and similar forward-looking data and officers' quotations) (each, an "Earnings 8-K"), in form and substance reasonably satisfactory to the Agents, Forward Purchasers, and Forward Sellers, and, prior to its filing, obtain the written consent of the Agents, Forward Purchasers, and Forward Sellers to such filing (consent shall not be unreasonably withheld or delayed), (ii) provide the Agents, Forward Purchasers and Forward Sellers with the officers' certificate, opinions and letters of counsel and accountants' letter specified in Sections 7(o), (p) and (q), respectively, hereof (iii) afford the Agents, Forward Purchasers, and Forward Sellers the opportunity to conduct a due diligence review in accordance with Section 7(m) hereof prior to filing such Earnings 8-K and (iv) file such Earnings 8-K with the Commission, then the provisions of clause (ii) of Section 6(h) shall not be applicable for the period from and after the time at which the foregoing conditions shall have been satisfied (or, if later, the time that is 24 hours after the time that the relevant Earnings Announcement was first publicly released) through and including the time that is 24 hours after the Filing Time of the relevant Quarterly Report on Form 10-Q or Annual Report on Form 10-K under the Exchange Act, as the case may be. For purposes of clarity, the parties hereto agree that (A) the delivery of any officers' certificate, opinions or letters of counsel and accountants' letter pursuant to this Section 6(i) shall not relieve the Company from any of its obligations under this Agreement with respect to any Quarterly Report on Form 10-Q or Annual Report on Form 10-K, as the case may be, including, without limitation, the obligation to deliver officers' certificates, opinions and letters of counsel and accountants' letters as provided in Sections 7(o), (p) and (q), respectively, hereof, and (B) this Section 6(i) shall in no way affect or limit the operation of clause (i) of Section 6(h) hereof, which shall have independent application.

SECTION 7. Covenants of the Company. The Company covenants with the Agents, the Forward Purchasers and the Forward Sellers as follows:

(a) *Registration Statement Amendments; Payment of Fees.* After the date of this Agreement and during any period in which a Prospectus relating to any Placement Shares is required to be delivered by the Agents, Forward Purchasers, and Forward Sellers under the Securities Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), (i) the Company will notify the Agents, Forward Purchasers, and Forward Sellers promptly of the time when any subsequent amendment to the Registration Statement, other than documents incorporated by reference, has been filed with the Commission and/or has become effective or any subsequent supplement to the Prospectus has been filed and of any comment letter from the Commission or any request by the Commission for any amendment or supplement to the Registration Statement or Prospectus or for additional information; (ii) the Company will prepare and file with the Commission, promptly upon the Agents', Forward Purchasers', and Forward

Sellers' request, any amendments or supplements to the Registration Statement or Prospectus that, in the Agents', Forward Purchasers', and Forward Sellers' reasonable opinion, may be necessary or advisable in connection with the distribution of the Placement Shares by the Agents, Forward Purchasers, and Forward Sellers (*provided, however*, that the failure of the Agents, Forward Purchasers, or Forward Sellers to make such request shall not relieve the Company of any obligation or liability hereunder, or affect the respective rights of the Agents, Forward Purchasers, and Forward Sellers to rely on the representations and warranties made by the Company in this Agreement); (iii) the Company will not file any amendment or supplement to the Registration Statement or Prospectus, other than documents incorporated by reference, relating to the Placement Shares or a security convertible into the Placement Shares unless a copy thereof has been submitted to the Agents, Forward Purchasers, and Forward Sellers within a reasonable period of time before the filing and none of the Agents, Forward Purchasers, and Forward Seller has reasonably objected thereto (*provided, however*, that the failure of the Agents, Forward Purchasers, and Forward Sellers to make such objection shall not relieve the Company of any obligation or liability hereunder, or affect the respective rights of the Agents, Forward Purchasers, and Forward Sellers to rely on the representations and warranties made by the Company in this Agreement) and the Company will furnish to the Agents, Forward Purchasers, and Forward Sellers at the time of filing thereof a copy of any document that upon filing is deemed to be incorporated by reference into the Registration Statement or Prospectus, except for those documents available via EDGAR; and (iv) the Company will cause each amendment or supplement to the Prospectus, other than documents incorporated by reference, to be filed with the Commission as required pursuant to the applicable paragraph of Rule 424(b) of the Securities Act (without reliance on Rule 424(b)(8) of the Securities Act). If immediately prior to the third anniversary (the "Renewal Deadline") of the initial effective date of the Registration Statement, any of the Placement Shares remain unsold, then, prior to issuing any Placement Notice with respect to any such unsold Placement Shares, the Company may take such action as is necessary or appropriate in accordance with this Section 7(a) to permit the public offering and sale of the Placement Shares to continue as contemplated in the Prospectus forming part of the expiring Registration Statement. In such event, if the Company has not already done so and is eligible to do so, it may, prior to the Renewal Deadline, file with the Commission either (A) a new automatic shelf registration statement or (B), if the Company is not then eligible to file an automatic shelf registration statement, a new shelf registration statement in either case, relating to any unsold Placement Shares and in a form satisfactory to the Agent and its counsel (such filing, a "Replacement Registration Statement"). If the Replacement Registration Statement does not become effective upon filing under Rule 462(e) of the Securities Act, the Company may use its commercially reasonable efforts to cause such Replacement Registration Statement to be declared effective by, or as soon as possible (and in any event within 180 days) after, the Renewal Deadline. The Company may take all other action necessary or appropriate to permit the public offering and sale of any unsold Placement Shares to continue as contemplated in the Prospectus forming part of the expiring Registration Statement.

(b) *Notice of Commission Stop Orders.* The Company will advise the Agents, Forward Purchasers and Forward Sellers promptly after it receives notice or obtains knowledge thereof, of the issuance or threatened issuance by the Commission of any stop order suspending the effectiveness of the Registration Statement or of any other order preventing or suspending the use of the Prospectus or any Issuer Free Writing Prospectus, or of the suspension of the qualification of the Placement Shares for offering or sale in any jurisdiction or of the loss or suspension of any

exemption from any such qualification, or of the initiation or threatening of any proceedings for any of such purposes, or of any examination pursuant to Section 8(e) of the Securities Act concerning the Registration Statement or if the Company becomes the subject of a proceeding under Section 8A of the Securities Act in connection with the offering of the Placement Shares. The Company will make every reasonable effort to prevent the issuance of any stop order, the suspension of any qualification of the Placement Shares for offering or sale and any loss or suspension of any exemption from any such qualification, and if any such stop order is issued or any such suspension or loss occurs, to obtain the lifting thereof at the earliest possible moment.

(c) *Delivery of Registration Statement and Prospectus.* The Company will furnish to the Agents, Forward Purchasers and Forward Sellers and their respective counsel (at the expense of the Company) copies of the Registration Statement, the Prospectus (including all documents incorporated by reference therein) and all amendments and supplements to the Registration Statement or Prospectus, and any Issuer Free Writing Prospectuses, that are filed with the Commission during any period in which a Prospectus relating to the Placement Shares is required to be delivered under the Securities Act (including all documents filed with the Commission during such period that are deemed to be incorporated by reference therein), in each case as soon as reasonably practicable and in such quantities and at such locations as the Agents, the Forward Purchasers and the Forward Sellers may from time to time reasonably request. The copies of the Registration Statement and the Prospectus and any supplements or amendments thereto furnished to the Agents, the Forward Purchasers and the Forward Sellers will be identical to the electronically transmitted copies thereof filed with the Commission pursuant to EDGAR, except to the extent permitted by Regulation S-T.

(d) *Continued Compliance with Securities Laws.* If at any time when a Prospectus is required by the Securities Act or the Exchange Act to be delivered in connection with a pending sale of the Placement Shares (including, without limitation, pursuant to Rule 172), any event shall occur or condition shall exist as a result of which it is necessary, in the opinion of counsel for the Agents, Forward Purchasers, and Forward Sellers or for the Company, to amend the Registration Statement or amend or supplement the Prospectus in order that the Prospectus will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading in the light of the circumstances existing at the time it is delivered to a purchaser, or if it shall be necessary, in the opinion of such counsel, at any such time to amend the Registration Statement or amend or supplement the Prospectus in order to comply with the requirements of the Securities Act, the Company will promptly notify the Agents, Forward Purchasers, and Forward Sellers to suspend the offering of Placement Shares during such period and the Company will promptly prepare and file with the Commission such amendment or supplement as may be necessary to correct such statement or omission or to make the Registration Statement or the Prospectus comply with such requirements, and the Company will furnish to the Agents, Forward Purchasers, and Forward Sellers such number of copies of such amendment or supplement as any of the Agents, Forward Purchasers, and Forward Sellers may reasonably request. If at any time following issuance of an Issuer Free Writing Prospectus there occurred or occurs an event or development as a result of which such Issuer Free Writing Prospectus conflicted, conflicts or would conflict with the information contained in the Registration Statement or the Prospectus or included, includes or would include an untrue statement of a material fact or omitted, omits or would omit to state a material fact necessary in

order to make the statements therein, in the light of the circumstances, prevailing at that subsequent time, not misleading, the Company will promptly notify the Agents, Forward Purchasers, and Forward Sellers to suspend the offering of Placement Shares during such period and the Company will, subject to Section 7(a) hereof, promptly amend or supplement such Issuer Free Writing Prospectus to eliminate or correct such conflict, untrue statement or omission.

(e) *Blue Sky and Other Qualifications.* The Company will use its best efforts, in cooperation with the Agents, the Forward Purchasers, and the Forward Sellers, to qualify the Placement Shares for offering and sale, or to obtain an exemption for the Placement Shares to be offered and sold, under the applicable securities laws of such states and other jurisdictions (domestic or foreign) as the Agents, Forward Purchasers, and Forward Sellers may designate and to maintain such qualifications and exemptions in effect for so long as required for the distribution of the Placement Shares (but in no event for less than one year from the date of this Agreement); *provided, however*, that the Company shall not be obligated to file any general consent to service of process or to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject. In each jurisdiction in which the Placement Shares have been so qualified or exempt, the Company will file such statements and reports as may be required by the laws of such jurisdiction to continue such qualification or exemption, as the case may be, in effect for so long as required for the distribution of the Placement Shares (but in no event for less than one year from the date of this Agreement).

(f) *Rule 158.* The Company will timely file such reports pursuant to the Exchange Act as are necessary in order to make generally available to its securityholders as soon as reasonably practicable an earnings statement for the purposes of, and to provide to the Agents, the Forward Purchasers and the Forward Sellers the benefits contemplated by, the last paragraph of Section 11(a) of the Securities Act.

(g) *Use of Proceeds.* The Company will use the net proceeds received by it from the sale of the Issuance Shares and the proceeds (if any) received upon settlement of any Forward Contract in the manner specified in the Prospectus under "Use of Proceeds."

(h) *Listing.* During any period in which the Prospectus relating to the Placement Shares is required to be delivered by the Agents, Forward Purchasers, and Forward Sellers under the Securities Act with respect to a pending sale of the Placement Shares (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), the Company will use its commercially reasonable efforts to cause the Placement Shares to be listed on the NYSE.

(i) *Filings with the NYSE.* The Company will timely file with the NYSE all material documents and notices required by the NYSE of companies that have or will issue securities that are traded on the NYSE.

(j) *Reporting Requirements.* The Company, during any period when the Prospectus is required to be delivered under the Securities Act and the Exchange Act (including in circumstances where such requirement may be satisfied pursuant to Rule 172 under the Securities Act), will file all documents required to be filed with the Commission pursuant to the Exchange Act within the time periods required by the Exchange Act.

(k) *Notice of Other Sales.* During the pendency of any Placement Notice delivered hereunder (as amended by the corresponding Acceptance, if applicable), the Company will not, without giving the Agents, the Forward Purchasers and the Forward Sellers at least two (2) business day's prior written notice specifying the nature of the proposed sale and the date of such proposed sale, (A) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, lend or otherwise transfer or dispose of, directly or indirectly, any Common Shares or securities convertible into or exchangeable or exercisable for or repayable with Common Shares, or file any registration statement under the Securities Act with respect to any of the foregoing (other than a shelf registration statement under Rule 415 under the Securities Act, a registration statement on Form S-8 or post-effective amendment to the Registration Statement) or (B) enter into any swap or other agreement or any transaction that transfers in whole or in part, directly or indirectly, any of the economic consequence of ownership of the Common Shares, or any securities convertible into or exchangeable or exercisable for or repayable with Common Shares, whether any such swap or transaction described in clause (A) or (B) above is to be settled by delivery of Common Shares or such other securities, in cash or otherwise. The foregoing sentence shall not apply to (i) the Placement Shares to be offered and sold through the Agents, the Forward Purchasers and the Forward Sellers pursuant to this Agreement, (ii) any Common Shares issued by the Company upon the exercise of an option or warrant or the conversion, redemption or exchange of a security outstanding at the time such Placement Notice is delivered, including Common Shares issuable upon exchange of operating partnership units of any operating partnership subsidiary of the Company ("OP Units"), (iii) any issuances of OP Units, (iv) Common Shares issuable pursuant to the Company's direct dividend reinvestment plan as it may be amended or replaced from time to time, and (v) equity incentive awards approved by the Board or the compensation committee thereof or the issuance of Common Shares upon exercise thereof.

(l) *Change of Circumstances.* The Company will, at any time during a fiscal quarter in which the Company intends to tender a Placement Notice or sell Placement Shares, advise the Agents, Forward Purchasers, and Forward Sellers promptly after it shall have received notice or obtained knowledge thereof, of any information or fact that would alter or affect in any material respect any opinion, certificate, letter or other document provided to the Agents, Forward Purchasers, and Forward Sellers pursuant to this Agreement.

(m) *Due Diligence Cooperation.* The Company will cooperate with any reasonable due diligence review conducted by the Agents, Forward Purchasers, and/or Forward Sellers or their respective counsel or agents in connection with the transactions contemplated hereby, including, without limitation, providing information and making available documents and senior officers, during regular business hours and at the Company's principal offices, as the Agents, Forward Purchasers, and/or Forward Sellers may reasonably request.

(n) *Disclosure of Sales.* The Company will disclose in its quarterly reports on Form 10-Q and in its annual report on Form 10-K the number of Placement Shares sold through the Agents, Forward Purchasers or Forward Sellers, the Net Proceeds to the Company and the compensation payable by the Company to the Agents, Forward Purchasers or Forward Sellers with respect to such Placement Shares.

(o) *Representation Dates; Certificate.* On or prior to the date that the first Placement Shares are sold pursuant to the terms of this Agreement and:

(1) each time the Company:

(i) files the Prospectus relating to the Placement Shares or amends or supplements the Registration Statement or the Prospectus relating to the Placement Shares by means of a post-effective amendment, sticker, or supplement but not by means of incorporation of documents by reference into the Registration Statement or the Prospectus relating to the Placement Shares;

(ii) files an annual report on Form 10-K under the Exchange Act;

(iii) files a quarterly report on Form 10-Q under the Exchange Act; or

(iv) files a report on Form 8-K containing amended financial information (other than an earnings release, to “furnish” information pursuant to Items 2.02 or 7.01 of Form 8-K) under the Exchange Act; and

(2) at any other time reasonably requested by the Agents, Forward Purchasers and Forward Sellers, (each such date of filing of one or more of the documents referred to in clauses (1)(i) through (iv) and any time of request pursuant to this Section 7(o) shall be a “Representation Date”), the Company shall furnish the Agents, Forward Purchasers, and Forward Sellers with a certificate, in the form attached hereto as Exhibit F within two (2) Trading Days of any Representation Date. Except as otherwise notified by an Agent, Forward Purchaser and Forward Seller with respect to a Representation Date on which the Company files its Form 10-K, the requirement to provide a certificate under this Section 7(o) shall be waived for any Representation Date occurring at a time at which no Placement Notice (as amended by the corresponding Acceptance, if applicable) is pending, which waiver shall continue until the earlier to occur of the date the Company delivers a Placement Notice hereunder (which for such calendar quarter shall be considered a Representation Date) and the next occurring Representation Date. Notwithstanding the foregoing, if the Company subsequently decides to sell Placement Shares following a Representation Date when the Company relied on such waiver and did not provide the Agents, Forward Purchasers or Forward Sellers with a certificate under this Section 7(o), then before the Company delivers the Placement Notice or any of the Agents, Forward Purchasers, and Forward Sellers sells any Placement Shares, the Company shall provide the Agents, Forward Purchasers, and Forward Sellers with a certificate, in the form attached hereto as Exhibit F, dated on or prior to the date of the Placement Notice.

(p) *Legal Opinions.* On or prior to the date that the first Placement Shares are sold pursuant to the terms of this Agreement, and within two (2) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a certificate in the form attached hereto as Exhibit F for which no waiver is applicable, the Company shall cause to be furnished to the Agents, Forward Purchasers and Forward Sellers written opinions of Hogan Lovells US LLP (“Company Counsel”), or other counsel satisfactory to the Agents, Forward Purchasers and Forward Sellers, in form and substance satisfactory to the Agents, Forward Purchasers and Forward Sellers and

their respective counsel, dated the date that the opinions are required to be delivered, substantially similar to the forms attached hereto as Exhibit E, modified, as necessary, to relate to the Registration Statement and the Prospectus as then amended or supplemented; *provided, however*, that in lieu of such opinions for subsequent Representation Dates, counsel may furnish the Agents, Forward Purchasers and Forward Sellers with a letter (a "Reliance Letter") to the effect that the Agents, Forward Purchasers and Forward Sellers may rely on a prior opinion delivered under this Section 7(p), to the same extent as if it were dated the date of such letter (except that statements in such prior opinion shall be deemed to relate to the Registration Statement and the Prospectus as amended or supplemented at such Representation Date).

(q) *Comfort Letter*. On or prior to the date that the first Placement Shares are sold pursuant to the terms of this Agreement, within two (2) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a certificate substantially in the form attached hereto as Exhibit F for which no waiver is applicable, the Company shall cause its independent accountants (and any other independent accountants whose report is included in the Registration Statement or the Prospectus) to furnish the Agents, Forward Purchasers and Forward Sellers letters (the "Comfort Letters"), dated the date the Comfort Letter is delivered, in form and substance satisfactory to the Agents, Forward Purchasers and Forward Sellers, (i) confirming that they are an independent registered public accounting firm within the meaning of the Securities Act, the Exchange Act and the PCAOB, (ii) stating, as of such date, the conclusions and findings of such firm with respect to the financial information and other matters ordinarily covered by accountants' "comfort letters" to underwriters in connection with registered public offerings (the first such letter, the "Initial Comfort Letter") and (iii) updating the Initial Comfort Letter with any information that would have been included in the Initial Comfort Letter had it been given on such date and modified as necessary to relate to the Registration Statement and the Prospectus, as amended and supplemented to the date of such letter.

(r) *Market Activities*. The Company will not, directly or indirectly, (i) take any action designed to cause or result in, or that constitutes or might reasonably be expected to constitute, the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Placement Shares or (ii) sell, bid for, or purchase the Placement Shares to be issued and sold pursuant to this Agreement, or pay anyone any compensation for soliciting purchases of the Placement Shares to be issued and sold pursuant to this Agreement other than the Agents, Forward Purchasers and Forward Sellers; *provided, however*, that the Company may bid for and purchase its Common Shares in accordance with Rule 10b-18 under the Exchange Act; and provided further, that no such bids or purchases shall be made by the Company during the two (2) Trading Days before or after any sale of any Placement Shares pursuant to this Agreement.

(s) *Insurance*. The Company and its subsidiaries shall maintain, or cause to be maintained, insurance in such amounts and covering such risks as is reasonable and customary for companies engaged in similar businesses in similar industries, except where the failure to maintain such insurance would not have a Material Adverse Effect.

(t) *Compliance with Laws*. The Company and each of its subsidiaries shall maintain, or cause to be maintained, all material environmental permits, licenses and other authorizations required by federal, state and local law in order to conduct their businesses as described in the Prospectus, and the Company and each of its subsidiaries shall conduct their businesses, or cause their businesses

to be conducted, in substantial compliance with such permits, licenses and authorizations and with applicable environmental laws, except where the failure to maintain or be in compliance with such permits, licenses and authorizations could not reasonably be expected to have a Material Adverse Effect.

(u) *Investment Company Act.* The Company will conduct its affairs in such a manner so as to reasonably ensure that neither it nor its subsidiaries will be or become, at any time prior to the termination of this Agreement, an “investment company,” as such term is defined in the Investment Company Act, assuming no change in the Commission’s current interpretation as to entities that are not considered an investment company.

(v) *Securities Act and Exchange Act.* The Company will use its best efforts to comply with all requirements imposed upon it by the Securities Act and the Exchange Act as from time to time in force, so far as necessary to permit the continuance of sales of, or dealings in, the Placement Shares as contemplated by the provisions hereof and the Prospectus.

(w) *No Offer to Sell.* Other than a free writing prospectus (as defined in Rule 405 under the Securities Act) approved in advance in writing by the Company and the Agents, Forward Purchasers and Forward Sellers, in their respective capacities as a principal or agent hereunder, the Company (including its agents and representatives, other than the Agents, Forward Purchasers and Forward Sellers in their respective capacities as such) will not, directly or indirectly, make, use, prepare, authorize, approve or refer to any free writing prospectus relating to the Placement Shares to be sold by the Agents, Forward Purchasers and Forward Sellers as principal or agent hereunder.

(x) *Sarbanes-Oxley Act.* The Company and its subsidiaries will use their best efforts to comply with all effective applicable provisions of the Sarbanes-Oxley Act of 2002.

(y) *Regulation M.* If the Company has reason to believe that the exemptive provisions set forth in Rule 101(c)(1) of Regulation M under the Exchange Act are not satisfied with respect to the Company or the Common Shares, it shall promptly notify the Agents, Forward Purchasers and Forward Sellers and sales of the Placement Shares under this Agreement shall be suspended until that or other exemptive provisions have been satisfied in the judgment of each party.

(z) *REIT Treatment.* The Company currently intends to continue to elect to qualify as a REIT under the Code and will use its best efforts to enable the Company to continue to meet the requirements for qualification and taxation as a REIT under the Code for subsequent tax years that include any portion of the term of this Agreement; unless the Company’s Board in good faith determines by resolution that it is in the best interests of the Company’s stockholders not to meet such requirements.

SECTION 8. Payment of Expenses.

(a) *Expenses.* The Company will pay all expenses incident to the performance of its obligations under this Agreement and any Forward Contract, including (i) the preparation, printing and filing of the Registration Statement (including financial statements and exhibits) as originally filed and of each amendment and supplement thereto, (ii) the word processing, printing and delivery to the Agents, Forward Purchasers and Forward Sellers of this Agreement, any Forward Contract and such other documents as may be required in connection with the offering, purchase, sale, issuance or delivery of the Placement Shares, (iii) the preparation, issuance and delivery of the certificates for the Placement Shares to the Agents, Forward Purchasers and Forward Sellers, including any stock or other transfer taxes and any capital duties, stamp duties or other duties or taxes payable upon the sale, issuance or delivery of the Placement Shares to the Agents, Forward Purchasers and Forward Sellers, (iv) the fees and disbursements of the counsel, accountants and other advisors to the Company, (v) the qualification or exemption of the Placement Shares under securities laws in accordance with the provisions of Section 7(e) hereof, including filing fees and the reasonable fees and disbursements of counsel for the Agents, Forward Purchasers and Forward Sellers in connection therewith and in connection with the preparation of the Blue Sky Survey and any supplements thereto (not to exceed \$10,000), (vi) the printing and delivery to the Agents, Forward Purchasers and Forward Sellers of copies of any permitted Free Writing Prospectus and the Prospectus and any amendments or supplements thereto and any costs associated with electronic delivery of any of the foregoing by the Agents, Forward Purchasers or Forward Sellers to investors, (vii) the preparation, printing and delivery to the Agents, Forward Purchasers and Forward Sellers of copies of the Blue Sky Survey and any Canadian “wrapper” and any supplements thereto, (viii) the fees and expenses of the custodian and the transfer agent and registrar for the Placement Shares, (ix) the filing fees incident to, and the reasonable fees and disbursements of counsel to the Agents, Forward Purchasers and Forward Sellers in connection with, any review by FINRA of the terms of the sale of the Placement Shares, (x) the fees and expenses incurred in connection with the listing of the Placement Shares on the NYSE, and (xi) if Placement Shares having an aggregate offering price of \$25,000,000 or more have not been offered and sold under this Agreement by the eighteen month anniversary of the date of this Agreement (or such earlier date at which the Company terminates this Agreement) (the “Determination Date”), the Company shall reimburse the Agents, Forward Purchasers and Forward Sellers for all of their reasonable out-of-pocket expenses, including the reasonable fees and disbursements of counsel for the Agents, Forward Purchasers and Forward Sellers incurred by the Agents, Forward Purchasers and Forward Sellers in connection with the transactions contemplated by this Agreement (the “Expenses”); provided that the Company shall not be obligated to reimburse any such Expenses pursuant to this Agreement in excess of \$150,000 in the aggregate (and such \$150,000 limit shall be reduced pro rata for any portion of such \$25,000,000 of Placement Shares actually sold pursuant to this Agreement during such eighteen-month period (i.e., if, for example \$6,250,000 of Placement Shares are sold, such limit shall be \$112,500; if, for example, \$12,500,000 of Placement Shares are sold, such limit shall be \$75,000; and if, for example, \$18,750,000 of Placement Shares are sold, such limit shall be \$37,500)). The Expenses shall be due and payable by the Company to the Agents, Forward Purchasers and Forward Sellers within five (5) business days of the Determination Date. The Agents, Forward Purchasers and Forward Sellers shall be solely responsible for allocating any reimbursement pursuant to this subsection among themselves.

(b) *Termination of Agreement.* If this Agreement is terminated by the Agents, Forward Purchasers and Forward Sellers in accordance with the provisions of Section 9(m) or Section 13(a)(i) hereof, the Company shall reimburse the Agents, Forward Purchasers and Forward Sellers for all of their out of pocket expenses, including the reasonable fees and disbursements of counsel for the Agents, Forward Purchasers and Forward Sellers, unless Placement Shares having an aggregate offering price of \$25,000,000 or more have previously been offered and sold under this Agreement.

SECTION 9. Conditions to Agents, Forward Purchasers', and Forward Sellers' Obligations. The obligations of the Agents, Forward Purchasers, and Forward Sellers hereunder with respect to a Placement will be subject to the continuing accuracy and completeness of the representations and warranties of the Company contained in this Agreement and in certificates of any officer of the Company or any subsidiary of the Company delivered pursuant to the provisions hereof, to the performance by the Company of its covenants and other obligations hereunder, and to the following further conditions:

(a) *Effectiveness of Registration Statement.* The Registration Statement, any Replacement Registration Statement and any Rule 462(b) Registration Statement shall have become effective and shall be available for (i) all sales of Placement Shares issued pursuant to all prior Placement Notices (each as amended by a corresponding Acceptance, if applicable) and (ii) the sale of all Placement Shares contemplated to be issued by any Placement Notice (each as amended by a corresponding Acceptance, if applicable).

(b) *No Material Notices.* None of the following events shall have occurred and be continuing: (i) receipt by the Company or any of its subsidiaries of any request for additional information from the Commission or any other federal or state governmental authority during the period of effectiveness of the Registration Statement, the response to which would require any post-effective amendments or supplements to the Registration Statement or the Prospectus; (ii) the issuance by the Commission or any other federal or state governmental authority of any stop order suspending the effectiveness of the Registration Statement or the initiation of any proceedings for that purpose; (iii) receipt by the Company of any notification with respect to the suspension of the qualification or exemption from qualification of any of the Placement Shares for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose; or (iv) the occurrence of any event that makes any material statement made in the Registration Statement or the Prospectus, or any Issuer Free Writing Prospectus, or any material document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in the Registration Statement, related Prospectus, or any Issuer Free Writing Prospectus, or such documents so that, in the case of the Registration Statement, it will not contain any materially untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading and, that in the case of the Prospectus and any Issuer Free Writing Prospectus, it will not contain any materially untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(c) *No Material Misstatement or Omission.* The Agents, the Forward Purchasers and the Forward Sellers shall not have advised the Company that the Registration Statement or Prospectus, or any Issuer Free Writing Prospectus, or any amendment or supplement thereto, contains an untrue statement of fact that in the reasonable opinion of any of the Agents, the Forward Purchasers and the Forward Sellers is material, or omits to state a fact that in the opinion of any of the Agents, the Forward Purchasers and the Forward Sellers is material and is required to be stated therein or is necessary to make the statements therein not misleading.

(d) *Material Changes.* Except as contemplated in the Prospectus, or disclosed in the Company's reports filed with the Commission, there shall not have been any material adverse change in the condition, financial or otherwise, or in the results of operations, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business.

(e) *Opinions of Counsel for Company.* The Agents, Forward Purchasers and Forward Sellers shall have received the favorable opinions of Company Counsel, required to be delivered pursuant to Section 7(p) on or before the date on which such delivery of such opinions is required pursuant to Section 7(p).

(f) *Representation Certificate.* The Agents, Forward Purchasers and Forward Sellers shall have received the certificate required to be delivered pursuant to Section 7(o) on or before the date on which delivery of such certificate is required pursuant to Section 7(o).

(g) *Accountant's Comfort Letter.* The Agents, Forward Purchasers and Forward Sellers shall have received the Comfort Letter required to be delivered pursuant Section 7(q) on or before the date on which such delivery of such opinion is required pursuant to Section 7(q).

(h) *Opinion of Counsel for The Agents, Forward Purchasers and Forward Sellers.* On or prior to the date that the first Placement Shares are sold pursuant to the terms of this Agreement and within two (2) Trading Days of each Representation Date with respect to which the Company is obligated to deliver a certificate in the form attached hereto as Exhibit F for which no waiver is applicable, the Agents, Forward Purchasers and Forward Sellers shall have received the favorable written opinion or opinions of Goodwin Procter LLP, counsel for the Agents, Forward Purchasers and Forward Sellers, dated such date, with respect to such matters as the Agents, Forward Purchasers and Forward Sellers may reasonably request.

(i) *Approval for Listing.* The Issuance Shares and the Forward Settlement Shares shall either have been (i) approved for listing on NYSE, subject only to notice of issuance, or (ii) the Company shall have filed an application for listing of the Issuance Shares and the Forward Settlement Shares on NYSE at, or prior to, the issuance of any Placement Notice.

(j) *No Suspension.* Trading in the Common Shares shall not have been suspended on the NYSE.

(k) *Additional Documents.* On each date on which the Company is required to deliver a certificate pursuant to Section 7(o), counsel for the Agents, Forward Purchasers and Forward Sellers shall have been furnished with such documents and opinions as they may reasonably require for the purpose of enabling them to pass upon the issuance and sale of the Placement Shares as herein contemplated, or in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, contained in this Agreement.

(l) *Securities Act Filings Made.* All filings with the Commission required by Rule 424 under the Securities Act to have been filed prior to the issuance of any Placement Notice hereunder shall have been made within the applicable time period prescribed for such filing by Rule 424.

(m) *Termination of Agreement.* If any condition specified in this Section 9 shall not have been fulfilled when and as required to be fulfilled, this Agreement may be terminated by each of the Agents, Forward Purchasers and Forward Sellers as to itself by notice to the Company, and such termination shall be without liability of any party to any other party except as provided in Section 8 hereof and except that, in the case of any termination of this Agreement, Sections 5, 10, 11, 12, 16 and 23 hereof shall survive such termination and remain in full force and effect.

SECTION 10. Indemnification.

(a) *Indemnification by the Company.* The Company agrees to indemnify and hold harmless each of the Agents, the Forward Purchasers and the Forward Sellers, each of their respective affiliates (as such term is defined in Rule 501(b) of the Securities Act) (each, an "Affiliate"), its respective selling agents and each person, if any, who controls the Agents, Forward Purchasers and Forward Sellers within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act as follows:

(i) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, arising out of any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or any amendment thereto), including any information deemed to be a part thereof pursuant to Rule 430B, or the omission or alleged omission therefrom of a material fact required to be stated therein or necessary to make the statements therein not misleading, or arising out of any untrue statement or alleged untrue statement of a material fact included (A) in any Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto) or (B) in any materials or information provided to investors by, or with the approval of, the Company in connection with the marketing of any offering of Placement Shares ("Marketing Materials"), including any roadshow or investor presentations made to investors by the Company (whether in person or electronically), or the omission or alleged omission therefrom of a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(ii) against any and all loss, liability, claim, damage and expense whatsoever, as incurred, to the extent of the aggregate amount paid in settlement of any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or of any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission; provided that (subject to Section 10(d) below) any such settlement is effected with the written consent of the Company; and

(iii) against any and all expense whatsoever, as incurred (including the fees and disbursements of counsel chosen by the Agents, Forward Purchasers and Forward Sellers), reasonably incurred in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue statement or omission, or any such alleged untrue statement or omission, to the extent that any such expense is not paid under (i) or (ii) above,

provided, however, that this indemnity agreement shall not apply to any loss, liability, claim, damage or expense to the extent arising out of any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with information furnished to the Company in writing by the Agents, Forward Purchasers or Forward Sellers expressly for use therein, it being understood and agreed that the only such information furnished by the Agents, Forward Purchasers or Forward Sellers as of the date hereof consists of the Agent Information.

(b) *Indemnification by the Agents, Forward Purchasers and Forward Sellers* The Agents, Forward Purchasers and Forward Sellers agree, severally and not jointly, to indemnify and hold harmless the Company, its trustees, each of its officers who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act against any and all loss, liability, claim, damage and expense described in the indemnity contained in subsection (a) of this Section 10, as incurred, but only with respect to untrue statements or omissions, or alleged untrue statements or omissions, made in the Registration Statement (or any amendment thereto), any Issuer Free Writing Prospectus or the Prospectus (or any amendment or supplement thereto) in reliance upon and in conformity with information furnished to the Company in writing by the Agents, Forward Purchasers and Forward Sellers expressly for use therein, it being understood and agreed that the only such information furnished by the Agents, Forward Purchasers and Forward Sellers as of the date hereof consists of the Agent Information.

(c) *Actions against Parties; Notification*. Each indemnified party shall give notice as promptly as reasonably practicable to each indemnifying party of any action commenced against it in respect of which indemnity may be sought hereunder, but failure to so notify an indemnifying party shall not relieve such indemnifying party from any liability hereunder to the extent it is not materially prejudiced as a result thereof and in any event shall not relieve it from any liability which it may have otherwise than on account of this indemnity agreement. Counsel to the indemnified parties shall be selected as follows: counsel to each of the Agents, Forward Purchasers and Forward Sellers, its respective Affiliates, and each person, if any, who controls the Agents, Forward Purchasers and Forward Sellers within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall be selected by the Agents, Forward Purchasers and Forward Sellers; and counsel to the Company, its trustees, each of its officers who signed the Registration Statement and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall be selected by the Company. An indemnifying party may participate at its own expense in the defense of any such action; *provided, however*, that counsel to the indemnifying party shall not (except with the consent of the indemnified party) also be counsel to the indemnified party. In no event shall the indemnifying parties be liable for the fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for the Agents, Forward Purchasers and Forward Sellers and each person, if any, who controls the Agents, Forward Purchasers and Forward Sellers within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, and the fees and expenses of more than one counsel (in addition to any local counsel) separate from their own counsel for the Company, its trustees, each of its officers who signed the Registration Statement

and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, in each case in connection with any one action or separate but similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances. No indemnifying party shall, without the prior written consent of the indemnified parties, settle or compromise or consent to the entry of any judgment with respect to any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever in respect of which indemnification or contribution could be sought under this Section 10 or Section 11 hereof (whether or not the indemnified parties are actual or potential parties thereto), unless such settlement, compromise or consent (i) includes an unconditional release of each indemnified party from all liability arising out of such litigation, investigation, proceeding or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(d) *Settlement Without Consent if Failure to Reimburse.* If at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel, such indemnifying party agrees that it shall be liable for any settlement of the nature contemplated by Section 10(a)(ii) effected without its written consent if (i) such settlement is entered into more than 45 days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall have received notice of the terms of such settlement at least 30 days prior to such settlement being entered into and (iii) such indemnifying party shall not have reimbursed such indemnified party in accordance with such request prior to the date of such settlement.

SECTION 11. Contribution. If the indemnification provided for in Section 10 hereof is for any reason unavailable to or insufficient to hold harmless an indemnified party in respect of any losses, liabilities, claims, damages or expenses referred to therein, then each indemnifying party shall contribute to the aggregate amount of such losses, liabilities, claims, damages and expenses incurred by such indemnified party, as incurred, (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Agents, Forward Purchasers and Forward Sellers on the other hand from the offering of the Placement Shares pursuant to this Agreement or (ii) if the allocation provided by clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and of the Agents, Forward Purchasers and Forward Sellers on the other hand in connection with the statements or omissions.

The relative benefits received by the Company on the one hand and the Agents, the Forward Purchasers and the Forward Sellers on the other hand in connection with the offering of the Placement Shares pursuant to this Agreement shall be deemed to be (i) in the case of the Company, the sum of (A) the net proceeds (before deducting expenses) received by the Company from the sale of the Issuance Shares and (B) the number of Forward Hedge Shares for each Forward Transaction under this Agreement multiplied by the Forward Hedge Price for such Forward Transaction, (ii) in the case of the Agents, the commissions received by the Agents in connection with their sale of Placement Shares hereunder, (iii) in the case of the Forward Sellers, the number of Forward Hedge Shares sold by the Forward Seller under this Agreement for each Forward Transaction, multiplied by the Forward Hedge Selling Commission Rate for such Forward Transaction (the "Actual Forward Commission"), and (iv) in the case of the Forward Purchasers,

the number of Forward Hedge Shares sold to hedge each Forward Contract executed by such Forward Purchaser in connection with this Agreement multiplied by the net Spread (as such term is defined in the related Forward Contract for such Forward Transaction and net of any related stock borrow costs or other costs or expenses actually incurred) multiplied by the Forward Hedge Price for such Forward Hedge Shares (the "Actual Forward Spread").

The relative fault of the Company on the one hand and the Agents, Forward Purchasers and Forward Sellers on the other hand shall be determined by reference to, among other things, whether the untrue or the alleged untrue statement of a material fact or omission or alleged omission to state a material fact relates to information supplied by the Company or by the Agents, Forward Purchasers and Forward Sellers, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

The Company and the Agents, Forward Purchasers and Forward Sellers agree that it would not be just and equitable if contribution pursuant to this Section 11 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section 11. The aggregate amount of losses, liabilities, claims, damages and expenses incurred by an indemnified party and referred to above in this Section 11 shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in investigating, preparing or defending against any litigation, or any investigation or proceeding by any governmental agency or body, commenced or threatened, or any claim whatsoever based upon any such untrue or alleged untrue statement or omission or alleged omission.

Notwithstanding the provisions of this Section 11, in no event shall (i) the Agents be required to contribute any amount in excess of the commissions received by them under this Agreement, (ii) the Forward Sellers be required to contribute any amount in excess of the Actual Forward Commission received by them under this Agreement and (iii) the Forward Purchasers be required to contribute any amount in excess of the Actual Forward Spread received by them under this Agreement.

No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

For purposes of this Section 11, each person, if any, who controls any of the Agents, Forward Purchasers or Forward Sellers within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as the Agents, Forward Purchasers and Forward Sellers, and each trustee of the Company, each officer of the Company who signed the Registration Statement, and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act shall have the same rights to contribution as the Company.

SECTION 12. Representations, Warranties and Agreements to Survive Delivery. All representations, warranties and agreements contained in this Agreement or in certificates of officers of the Company or any of its subsidiaries submitted pursuant hereto, shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of the Agents, Forward Purchasers and Forward Sellers or a controlling person, or by or on behalf of the Company, and shall survive delivery of the Placement Shares to the Agents, Forward Purchasers and Forward Sellers.

SECTION 13. Termination of Agreement.

(a) *Termination; General*. Each of the Agents, Forward Purchasers and Forward Sellers may terminate this Agreement as to itself, by notice to the Company, as hereinafter specified at any time (i) if there has been, since the time of execution of this Agreement or since the date as of which information is given in the Prospectus, any material adverse change in the condition, financial or otherwise, or in the results of operations, business affairs or business prospects of the Company and its subsidiaries considered as one enterprise, whether or not arising in the ordinary course of business, or (ii) if there has occurred any material adverse change in the financial markets in the United States or the international financial markets, any outbreak of hostilities or escalation thereof or other calamity or crisis or any change or development involving a prospective change in national or international political, financial or economic conditions, in each case the effect of which is such as to make it, in the judgment of the Agent, Forward Purchaser or Forward Seller, impracticable or inadvisable to market the Placement Shares or to enforce contracts for the sale of the Placement Shares, or (iii) if trading in the Placement Shares has been suspended or limited by the Commission or the NYSE, or if trading generally on the NYSE American, the NYSE or the Nasdaq Stock Market has been suspended or limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by order of the Commission, FINRA or any other governmental authority, or a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States or in Europe, or (iv) if a banking moratorium has been declared by either Federal or New York authorities.

(b) *Termination by the Company*. The Company shall have the right, by giving three (3) days' notice as hereinafter specified to terminate this Agreement in full, or with respect to one or more Agents, Forward Purchasers and Forward Sellers, in its sole discretion at any time after the date of this Agreement.

(c) *Termination by the Agents, the Forward Purchasers and the Forward Sellers*. Each of the Agents, Forward Purchasers and Forward Sellers shall have the right, by giving three (3) days' notice as hereinafter specified to terminate this Agreement as to itself in its sole discretion at any time after the date of this Agreement.

(d) *Automatic Termination*. Unless earlier terminated pursuant to this Section 13. , this Agreement shall automatically terminate upon the issuance and sale of all of the Placement Shares through the Agents and/or Forward Sellers on the terms and subject to the conditions set forth herein with an aggregate sale price equal to the amount set forth in Section 1. of this Agreement.

(e) *Continued Force and Effect*. This Agreement shall remain in full force and effect unless terminated pursuant to Sections 13(a)(i), (b), (c) or (d) above or otherwise by mutual agreement of the parties.

(f) *Effectiveness of Termination.* Any termination of this Agreement shall be effective on the date specified in such notice of termination; *provided, however,* that such termination shall not be effective until the close of business on the date of receipt of such notice by the Agents, Forward Purchasers and Forward Sellers or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of Placement Shares, such Placement Shares shall settle in accordance with the provisions of this Agreement.

(g) *Liabilities.* If this Agreement is terminated pursuant to this Section 13, such termination shall be without liability of any party to any other party except as provided in Section 8 hereof, and except that, in the case of any termination of this Agreement, Section 5, Section 10, Section 11, Section 12, Section 16 and Section 23 hereof shall survive such termination and remain in full force and effect.

SECTION 14. Notices. Except as otherwise provided in this Agreement, all notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if mailed or transmitted by any standard form of telecommunication. Notices to the Company shall be directed to it at 7550 Wisconsin Ave., Suite 900, Bethesda, MD 20814, Attention to Steven Freishtat, Chief Financial Officer, with a copy to Paul D. Manca, 555 Thirteenth Street, NW, Washington, DC 20004. Notices to the Agents, the Forward Purchasers and the Forward Sellers shall be delivered to the address for such Agent, Forward Purchaser or Forward Seller, as applicable, set forth on Schedule II, in each case, with a copy to Goodwin Procter LLP, 100 Northern Avenue, Boston, MA 02210, Attention: Scott C. Chase.

SECTION 15. Recognition of the U.S. Special Resolution Regimes

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

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

SECTION 16. Parties. This Agreement shall inure to the benefit of and be binding upon the Agents, Forward Purchasers and Forward Sellers, the Company and their respective successors. Nothing expressed or mentioned in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the Agents, Forward Purchasers and Forward Sellers, the

Company and their respective successors and the controlling persons and officers and trustees referred to in Sections 10 and 11 and their heirs and legal representatives, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the Agents, Forward Purchasers and Forward Sellers, the Company and their respective successors, and said controlling persons and officers and trustees and their heirs and legal representatives, and for the benefit of no other person, firm or corporation. No purchaser of Placement Shares from the Agents or Forward Sellers shall be deemed to be a successor by reason merely of such purchase.

SECTION 17. Adjustments for Stock Splits. The parties acknowledge and agree that all stock-related numbers contained in this Agreement shall be adjusted to take into account any stock split, stock dividend or similar event effected with respect to the Placement Shares.

SECTION 18. Governing Law; Time and Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. SPECIFIED TIMES OF DAY REFER TO NEW YORK CITY TIME. Any action, suit or proceeding to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in any federal court located in the Southern District of the State of New York or any New York state court located in the Borough of Manhattan, and the Company agrees to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) and each party waives (to the full extent permitted by law) any objection it may have to the laying of venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding has been brought in an inconvenient forum.

SECTION 19. Effect of Headings. The Section and Exhibit headings herein are for convenience only and shall not affect the construction hereof.

SECTION 20. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed Agreement by one party to the other may be made by facsimile or e-mail transmission. The words "execution," "signed," "signature," and words of like import in this Agreement or in any other certificate, agreement or document related to this Agreement, if any, shall include images of manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, "pdf," "tif" or "jpg") and other electronic signatures (including, without limitation, DocuSign and AdobeSign). The use of electronic signatures and electronic records (including, without limitation, any contract or other record created, generated, sent, communicated, received, or stored by electronic means) shall be of the same legal effect, validity and enforceability as a manually executed signature or use of a paper-based record-keeping system to the fullest extent permitted by applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act and any other applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act or the Uniform Commercial Code.

SECTION 21. Definitions. As used in this Agreement, the following terms have the respective meanings set forth below:

“Aggregate Forward Hedge Price” means, for any Forward Contract the “Forward Price” for such Forward Contract (as defined therein).

“Applicable Time” means the time of each sale of any Placement Shares or any securities pursuant to this Agreement.

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

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

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

“EDGAR” means the Commission’s Electronic Data Gathering, Analysis and Retrieval system.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the Commission thereunder.

“FINRA” means the Financial Industry Regulatory Authority, Inc.

“GAAP” means generally accepted accounting principles.

“Issuer Free Writing Prospectus” means any “issuer free writing prospectus,” as defined in Rule 433, relating to the Placement Shares that (i) is required to be filed with the Commission by the Company, (ii) is a “road show” that is a “written communication” within the meaning of Rule 433(d)(8)(i) whether or not required to be filed with the Commission, or (iii) is exempt from filing pursuant to Rule 433(d)(5)(i) because it contains a description of the Placement Shares or of the offering that does not reflect the final terms, and all free writing prospectuses that are listed in Exhibit G hereto, in each case in the form furnished (electronically or otherwise) to the Agents, Forward Purchasers or Forward Sellers for use in connection with the offering of the Placement Shares.

“NYSE” means the New York Stock Exchange.

“Rule 163,” “Rule 164,” “Rule 172,” “Rule 405,” “Rule 415,” “Rule 424(b),” “Rule 430B,” “Rule 433” and “Rule 462(b)” refer to such rules under the Securities Act.

“Rule 462(b) Registration Statement” means a registration statement filed by the Company pursuant to Rule 462(b) for the purpose of registering any of the Placement Shares under the Securities Act, including the documents incorporated by reference therein and the Rule 430A Information.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the Commission thereunder.

“U.S. Special Resolution Regime” means each of (i) the Federal Deposit Insurance Act of 1950, as amended, and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as amended, and the regulations promulgated thereunder.

All references in this Agreement to financial statements and schedules and other information that is “contained,” “included” or “stated” in the Registration Statement or the Prospectus (and all other references of like import) shall be deemed to mean and include all such financial statements and schedules and other information that is incorporated by reference in the Registration Statement or the Prospectus, as the case may be.

All references in this Agreement to the Registration Statement, any Replacement Registration Statement, any Rule 462(b) Registration Statement, the Prospectus or any amendment or supplement to any of the foregoing shall be deemed to include the copy filed with the Commission pursuant to EDGAR; all references in this Agreement to any Issuer Free Writing Prospectus (other than any Issuer Free Writing Prospectuses that, pursuant to Rule 433, are not required to be filed with the Commission) shall be deemed to include the copy thereof filed with the Commission pursuant to EDGAR; and all references in this Agreement to “supplements” to the Prospectus shall include, without limitation, any supplements, “wrappers” or similar materials prepared in connection with any offering, sale or private placement of any Placement Shares by the Agents or Forward Sellers outside of the United States.

SECTION 22. Permitted Free Writing Prospectuses. The Company represents, warrants and agrees that, unless it obtains the prior consent of each Agent, Forward Purchaser or Forward Seller, and each Agent, Forward Purchaser or Forward Seller represents, warrants and agrees that, unless it obtains the prior consent of the Company, it has not made and will not make any offer relating to the Placement Shares that would constitute an Issuer Free Writing Prospectus, or that would otherwise constitute a “free writing prospectus,” as defined in Rule 405, required to be filed with the Commission. Any such free writing prospectus consented to by each Agent, Forward Purchaser or Forward Seller or by the Company, as the case may be, is hereinafter referred to as a “Permitted Free Writing Prospectus.” The Company represents and warrants that it has treated and agrees that it will treat each Permitted Free Writing Prospectus as an “issuer free writing prospectus,” as defined in Rule 433, and has complied and will comply with the requirements of Rule 433 applicable to any Permitted Free Writing Prospectus, including timely filing with the Commission where required, legending and record keeping. For the purposes of clarity, the parties hereto agree that all free writing prospectuses, if any, listed in Exhibit G hereto are Permitted Free Writing Prospectuses.

SECTION 23. Absence of Fiduciary Relationship. The Company acknowledges and agrees that:

(a) Each Agent, Forward Purchaser or Forward Seller is acting solely as agent and/or principal in connection with the public offering of the Placement Shares and in connection with each transaction contemplated by this Agreement and the process leading to such transactions, including the determination of the public offering prices of any Placement Shares and any related discounts and commissions, and the price to be paid for any Forward Hedge Shares are arm's-length commercial transactions between the Company, on the one hand, and the applicable Agents and/or Forward Purchasers, as applicable, on the other hand, and does not constitute a recommendation, investment advice, or solicitation of any action by the Agents or Forward Purchasers, no fiduciary or advisory relationship between the Company or any of its respective affiliates, stockholders (or other equity holders), creditors or employees or any other party, on the one hand, and each Agent, Forward Purchaser or Forward Seller, on the other hand, has been or will be created in respect of any of the transactions contemplated by this Agreement, irrespective of whether or not each Agent, Forward Purchaser or Forward Seller has advised or is advising the Company on other matters, and each Agent, Forward Purchaser or Forward Seller has no obligation to the Company with respect to the transactions contemplated by this Agreement except the obligations expressly set forth in this Agreement;

(b) any public offering price of the Placement Shares set forth in this Agreement was not established by the Agents, Forward Purchasers, or Forward Sellers;

(c) it is capable of evaluating and understanding, and understands and accepts, the terms, risks and conditions of the transactions contemplated by this Agreement;

(d) none of the Agents, Forward Purchaser, or Forward Sellers has provided any legal, accounting, regulatory or tax advice with respect to the transactions contemplated by this Agreement and it has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate;

(e) it is aware that each of the Agents, Forward Purchasers or Forward Sellers and its respective affiliates are engaged in a broad range of transactions which may involve interests that differ from those of the Company and each of the Agents, Forward Purchasers or Forward Sellers has no obligation to disclose such interests and transactions to the Company by virtue of any fiduciary, advisory or agency relationship or otherwise; and

(f) it waives, to the fullest extent permitted by law, any claims it may have against the Agents, Forward Purchasers or Forward Sellers for breach of fiduciary duty or alleged breach of fiduciary duty and agrees that the Agents, Forward Purchasers and Forward Sellers shall not have any liability (whether direct or indirect, in contract, tort or otherwise) to it in respect of such a fiduciary duty claim or to any person asserting a fiduciary duty claim on its behalf or in right of it or the Company, employees or creditors of Company.

[Signature Page Follows]

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

Very truly yours,

ELME COMMUNITIES

By: /s/ Steven M. Freishtat

Name: Steven M. Freishtat

Title: Executive Vice President and Chief Financial Officer

CONFIRMED AND ACCEPTED, as of the date first above written:

WELLS FARGO SECURITIES, LLC
as Agent and Forward Seller

By /s/ Aldin Dervisevic

Authorized Signatory

WELLS FARGO BANK, NATIONAL ASSOCIATION *as Forward Purchaser*

By /s/ Aldin Dervisevic

Authorized Signatory

BNY MELLON CAPITAL MARKETS, LLC
as Agent and Forward Seller

By /s/ Dan Klinger
Authorized Signatory

THE BANK OF NEW YORK MELLON
as Forward Purchaser

By /s/ Robert Lynch
Authorized Signatory

[Signature Page to Equity Distribution Agreement]

CITIGROUP GLOBAL MARKETS INC.
as Agent and Forward Seller

By /s/ Jared M. Nutt
Authorized Signatory

CITIBANK, N.A.
as Forward Purchaser

By /s/ Eric Natelson
Authorized Signatory

[Signature Page to Equity Distribution Agreement]

GOLDMAN SACHS & CO. LLC
as Agent and Forward Seller

By /s/ Ryan Cunn
Authorized Signatory

GOLDMAN SACHS & CO. LLC
as Forward Purchaser

By /s/ Ryan Cunn
Authorized Signatory

[Signature Page to Equity Distribution Agreement]

KEYBANC CAPITAL MARKETS INC.
as Agent and Forward Seller

By /s/ Jaryd Banach
Authorized Signatory

KEYBANC CAPITAL MARKETS INC.
as Forward Purchaser

By /s/ Jaryd Banach
Authorized Signatory

[Signature Page to Equity Distribution Agreement]

TD SECURITIES (USA) LLC
as Agent and Forward Seller

By /s/ Brad Limpert
Authorized Signatory

THE TORONTO-DOMINION BANK
as Forward Purchaser

By /s/ Vanessa Simonetti
Authorized Signatory

[Signature Page to Equity Distribution Agreement]

TRUIST SECURITIES, INC.
as Agent and Forward Seller

By /s/ J. West Riggs
Authorized Signatory

TRUIST BANK
as Forward Purchaser

By /s/ J. West Riggs
Authorized Signatory

[Signature Page to Equity Distribution Agreement]

SCHEDULE I

AGENTS, FORWARD SELLERS AND FORWARD PURCHASERS

Wells Fargo Securities, LLC
500 West 33rd Street
New York, New York 10001

BNY Mellon Capital Markets, LLC
240 Greenwich Street
New York, New York 10286

Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013

Goldman Sachs & Co. LLC
200 West Street
New York, New York 10282

As Agents and Forward Sellers

Wells Fargo Bank, National Association
500 West 33rd Street
New York, New York 10001

The Bank of New York Mellon
240 Greenwich Street
New York, New York 10286

Citibank, N.A.
388 Greenwich Street
New York, New York 10013

Goldman Sachs & Co. LLC
200 West Street
New York, New York 10282

As Forward Purchasers

KeyBanc Capital Markets Inc.
127 Public Square, 7th Floor
Cleveland, Ohio 44114

TD Securities (USA) LLC
1 Vanderbilt Avenue
New York, NY 10017

Truist Securities, Inc.
3333 Peachtree Road NE, 11th Floor
Atlanta, Georgia 30326

KeyBanc Capital Markets Inc.
127 Public Square, 7th Floor
Cleveland, Ohio 44114

The Toronto-Dominion Bank
c/o TD Securities (USA) LLC, as Agent
1 Vanderbilt Avenue
New York, NY 10017

Truist Bank
3333 Peachtree Road NE, 11th Floor
Atlanta, Georgia 30326

SCHEDULE II
NOTICE INFORMATION

Notices to the Agents and/or Forward Sellers shall be directed to them at:

Wells Fargo Securities, LLC, 500 West 33rd Street, New York, NY 10001, Attention:

BNY Mellon Capital Markets, LLC, Equity Capital Markets, 240 Greenwich St, 3W, New York, New York 10286, to the attention of

Citigroup Global Markets Inc., 388 Greenwich Street, New York, New York 10013, Attention:

Goldman Sachs & Co. LLC, 200 West Street, New York, New York 10282, Attention:

KeyBanc Capital Markets Inc. 127 Public Square, 7th Floor Cleveland, Ohio 44114 Attention:

TD Securities (USA) LLC, 1 Vanderbilt Avenue, New York, NY 10017, Attn:

Truist Securities, Inc., 3333 Peachtree Road NE, 11th Floor, Atlanta, Georgia 30326, Attn:

Notices to the Forward Purchasers shall be directed to them at:

Wells Fargo Bank, National Association, 500 West 33rd Street, 14th Floor, New York, New York 10001, Attention:

The Bank of New York Mellon, 240 Greenwich Street, 3rd Floor, New York, New York 10286, to the attention of

Citibank, N.A., 388 Greenwich Street, New York, New York 10013, Attention:

Goldman Sachs & Co. LLC, 200 West Street, New York, New York 10282, Attention:

KeyBanc Capital Markets Inc. 127 Public Square, 7th Floor Cleveland, Ohio 44114 Attention:

The Toronto-Dominion Bank, c/o TD Securities (USA) LLC, as Agent, 1 Vanderbilt Avenue, New York, NY 10017, Attn:

Truist Bank, 3333 Peachtree Road NE, 11th Floor, Atlanta, Georgia 30326, Attn:

SII-2

EXHIBIT A-1

FORM OF ISSUANCE PLACEMENT NOTICE

From: []
Cc: []
To: []

Subject: Equity Distribution—Placement Notice

Ladies and Gentlemen:

Pursuant to the terms and subject to the conditions contained in the Equity Distribution Agreement among Elme Communities (the "Company") and (i) each of Wells Fargo Securities, LLC, BNY Mellon Capital Markets, LLC, Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., TD Securities (USA) LLC and Truist Securities, Inc., each in its capacity as agent for the Company (collectively, the "Agents" and individually, an "Agent"), (ii) each of Wells Fargo Bank, National Association, The Bank of New York Mellon, Citibank, N.A., Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., The Toronto-Dominion Bank and Truist Bank, each (or its affiliate assignee) in its capacity as forward purchaser, and (iii) each of Wells Fargo Securities, LLC, BNY Mellon Capital Markets, LLC, Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., TD Securities (USA) LLC and Truist Securities, Inc., each in its capacity as agent for the forward purchaser in connection with the offering and sale of any forward hedge shares, dated February 20, 2024 (the "Agreement"), the Company hereby requests that you sell up to [•] OR [\$•] in aggregate offering price of] Common Shares of Beneficial Interest, par value \$0.01 per share (the "Securities"), at a minimum market price of \$[•] per share. The Company shall pay the designated Agent compensation equal to [•]% of the gross proceeds from the sale of the Securities set forth in this Placement Notice.

The daily issuance of the above referenced Securities should not represent any more than [•]% of the Company's average daily trading volume on any given day, and should be issued between [•], 20[•] and [•], 20[•].

[ADDITIONAL SALES PARAMETERS MAY BE ADDED, SUCH AS SPECIFIC DATES ON WHICH THE SHARES MAY NOT BE SOLD ON, THE MANNER IN WHICH SALES ARE TO BE MADE BY THE AGENT, AND/OR THE CAPACITY IN WHICH THE AGENT MAY ACT IN SELLING SHARES (AS PRINCIPAL, AGENT, OR BOTH)]

EXHIBIT A-2

FORM OF FORWARD PLACEMENT NOTICE

From: [Elme Communities]
 To: [Forward Purchaser] (the "Forward Purchaser")
 Attention:
 To: [Forward Seller]
 Attention:
 Subject: At-The-Market Issuance – Forward Placement Notice

Ladies and Gentlemen:

Pursuant to the terms and subject to the conditions contained in the Equity Distribution Agreement among Elme Communities (the "Company") and (i) each of Wells Fargo Securities, LLC, BNY Mellon Capital Markets, LLC, Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., TD Securities (USA) LLC and Truist Securities, Inc., each in its capacity as agent for the Company (collectively, the "Agents" and individually, an "Agent"), (ii) each of Wells Fargo Bank, National Association, The Bank of New York Mellon, Citibank, N.A., Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., The Toronto-Dominion Bank and Truist Bank, each (or its affiliate assignee) in its capacity as Forward Purchaser, and (iii) each of Wells Fargo Securities, LLC, BNY Mellon Capital Markets, LLC, Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., TD Securities (USA) LLC and Truist Securities, Inc., each in its capacity as agent for the forward purchaser in connection with the offering and sale of any forward hedge shares, dated February 20, 2024 (the "Agreement"), the Company hereby requests that the Company and the Forward Purchaser enter into a Forward Transaction (as defined in the Agreement) with respect to Company's common shares of beneficial interest, par value \$0.01 per share, on the following terms. This Forward Placement Notice relates to a "Forward Transaction".

The Company desires to enter into a Forward Transaction, including a related Master Forward Confirmation substantially consistent with the Form of Master Forward Confirmation, in each case on the following terms:

First Date of Forward Hedge Selling Period: [], 20[]
 Maturity Date: [], 20[]
 Last Date of Forward Hedge Selling Period: [], 20[]
 Forward Hedge Number: []
 Forward Hedge Selling Commission Rate: [.]%
 Spread: [.]%
 Initial Stock Loan Rate: [] basis points per annum
 Maximum Stock Loan Rate: [] basis points per annum

Forward Price Reduction Dates	Forward Price Reduction Amounts
[]	USD[]
[]	USD[]
[]	USD[]
[]	USD[]

EXHIBIT B

AUTHORIZED INDIVIDUALS FOR PLACEMENT NOTICES AND ACCEPTANCES

Wells Fargo Securities, LLC

Scott Levin
Email:

Chris Flouhouse
Email:

Nick Gorman
Email:

Jennifer Lynch
Email:

Billy O'Connell
Email:

Josie Callanan
Email:

Elizabeth Alvarez
Email:

Wells Fargo Bank, National Association

Scott Levin
Email:

Chris Flouhouse
Email:

Nick Gorman
Email:

Jennifer Lynch
Email:

Billy O'Connell
Email:

Josie Callanan
Email:

Elizabeth Alvarez
Email:

Corporate Equity Derivatives
Email:

BNY Mellon Capital Markets, LLC

Dan Klinger
Email:

Michael Palma
Email:

JC Mas
Email:

Kevin Millet
Email:

Robert Lynch
Email:

The Bank of New York Mellon

Dan Klinger
Email:

Michael Palma
Email:

JC Mas
Email:

Kevin Millet
Email:

Robert Lynch
Email:

Citigroup Global Markets Inc.

Matthew T. Morris
Email:

Derek Gross
Email:

Walter Westhoff
Email:

Citibank, N.A.

Eric Natelson
Email:

Theodore Finkelstein
Email:

Bianca Gotuaco
Email:

Goldman Sachs & Co. LLC

Ryan Cunn
Email:

Tim Carson
Email:

Andrew Fry
Email:

Arden Neu
Email:

KeyBanc Capital Markets Inc.

Jaryd Banach
Email:

Michael Jones
Email:

John Salisbury
Email:

TD Securities (USA) LLC

Michael Murphy
Email:

Adriano Pierroz
Email:

The Toronto-Dominion Bank

Chris Obalde
Email:

Vanessa Simonetti
Email:

Truist Securities, Inc.

Keith Carpenter
Email:

Geoff Fennel
Email:

ATM Offerings
Email:

Truist Bank

Michael Collins
Email:

Keith Carpenter
Email:

Geoff Fennel
Email:

ATM Offerings
Email:

Elme Communities

Steven Freishtat
Email:

Paul T. McDermott
Email:

Drew Hammond
Email:

EXHIBIT C
COMPENSATION

The designated Agent shall be paid compensation equal to up to 2.0% of the gross proceeds from the sales of Issuance Shares pursuant to the terms of this Agreement. The actual compensation paid to the designated Agent shall be set forth in the applicable Issuance Placement Notice.

EXHIBIT D

SIGNIFICANT SUBSIDIARIES OF THE COMPANY

<u>Name</u>	<u>Jurisdiction of Organization</u>	<u>Type of Entity</u>
WashREIT OP LLC	Delaware	Limited Liability Company
WashREIT OP Sub DC LLC	Delaware	Limited Liability Company
WashREIT Riverside LLC	Delaware	Limited Liability Company
WashREIT Riverside Apartments LLC	Delaware	Limited Liability Company

EXHIBIT E

FORM OF OPINIONS OF COMPANY COUNSEL

E-1

EXHIBIT F
OFFICER CERTIFICATE

The undersigned Paul T. McDermott, the duly qualified and elected President and Chief Executive Officer of Elme Communities ("Company"), a Maryland real estate investment trust, does hereby certify in such capacity and on behalf of the Company, pursuant to Section 7(o) of the Equity Distribution Agreement (the "Agreement") dated February 20, 2024, by and among the Company and (i) each of Wells Fargo Securities, LLC, BNY Mellon Capital Markets, LLC, Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., TD Securities (USA) LLC and Truist Securities, Inc. as agents and forward sellers, as applicable, (collectively, the "Agents" or "Forward Sellers", as applicable), and (ii) each of Wells Fargo Bank, National Association, The Bank of New York Mellon, Citibank, N.A., Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., The Toronto-Dominion Bank and Truist Bank as forward purchasers (collectively, the "Forward Purchasers"), that to the knowledge of the undersigned:

The representations and warranties of the Company in Section 5 of each of the Agreements (A) to the extent such representations and warranties are subject to qualifications and exceptions contained therein relating to materiality or Material Adverse Effect, are true and correct on and as of the date hereof with the same force and effect as if expressly made on and as of the date hereof, except for those representations and warranties that speak solely as of a specific date and which were true and correct as of such date, and (B) to the extent such representations and warranties are not subject to any qualifications or exceptions, are true and correct in all material respects as of the date hereof as if made on and as of the date hereof with the same force and effect as if expressly made on and as of the date hereof except for those representations and warranties that speak solely as of a specific date and which were true and correct as of such date; and

The Company has complied in all material respects with all agreements and satisfied all conditions on their part to be performed or satisfied pursuant to each of the Agreements at or prior to the date hereof (other than those conditions waived by the Agents).

EXHIBIT G

ISSUER FREE WRITING PROSPECTUSES

None

G-1

EXHIBIT H
FORM OF MASTER FORWARD CONFIRMATION

H-1



Hogan Lovells US LLP
Columbia Square
555 Thirteenth Street, NW
Washington, DC 20004
T +1 202 637 5600
F +1 202 637 5910
www.hoganlovells.com

February 20, 2024

Board of Trustees
Elme Communities
7550 Wisconsin Ave.
Suite 900
Bethesda, MD 20814

To the addressee referred to above:

We are acting as counsel to Elme Communities, a Maryland real estate investment trust (the “**Company**”), in connection with the public offering of up to \$350,000,000 in aggregate gross sales price of the Company’s common shares of beneficial interest, par value \$0.01 per share (the “**Common Shares**”), all of which are to be offered and sold by the Company from time to time in accordance with the terms of the Equity Distribution Agreement, dated February 20, 2024, between the Company and each of the persons named on Schedule 1 and Schedule 2 attached hereto (the “**Equity Distribution Agreement**”), which, among other things, contemplates that the Company may from time to time enter into one or more forward contracts with each of the persons named on Schedule 2 (the “**Forward Contracts**,” and together with the Equity Distribution Agreement, the “**Agreements**”). The offering of the Common Shares by the Company is being made pursuant to a prospectus supplement dated February 20, 2024 (the “**Prospectus Supplement**”) and the accompanying base prospectus dated February 20, 2024 (together with Prospectus Supplement, collectively, the “**Prospectus**”) that form part of the Company’s effective registration statement on Form S-3, as amended (No. 333-277167) (the “**Registration Statement**”). This opinion letter is furnished to you at your request to enable you to fulfill the requirements of Item 601(b)(5) of Regulation S-K, 17 C.F.R. § 229.601(b)(5), in connection with the Registration Statement.

For purposes of this opinion letter, we have examined copies of such agreements, instruments and documents as we have deemed an appropriate basis on which to render the opinions hereinafter expressed. In our examination of the aforesaid documents, we have assumed the genuineness of all signatures, the legal capacity of all natural persons, the accuracy and completeness of all documents submitted to us, the authenticity of all original documents, and the conformity to authentic original documents of all documents submitted to us as copies (including pdfs). We also have assumed that the Common Shares will not be issued in violation of the ownership limit contained in the Company’s Articles of Amendment and Restatement, as amended. As to all matters of fact, we have relied on the representations and statements of fact made in the documents so reviewed, and we have not independently established the facts so relied on. This opinion letter is given, and all statements herein are made, in the context of the foregoing.

Hogan Lovells US LLP is a limited liability partnership registered in the state of Delaware. “Hogan Lovells” is an international legal practice that includes Hogan Lovells US LLP and Hogan Lovells International LLP, with offices in: Alicante Amsterdam Baltimore Berlin Beijing Birmingham Boston Brussels Colorado Springs Denver Dubai Dusseldorf Frankfurt Hamburg Hanoi Ho Chi Minh City Hong Kong Houston Johannesburg London Los Angeles Luxembourg Madrid Mexico City Miami Milan Minneapolis Monterrey Munich New York Northern Virginia Paris Philadelphia Riyadh Rome San Francisco São Paulo Shanghai Silicon Valley Singapore Sydney Tokyo Warsaw Washington, D.C. Associated Offices: Budapest Jakarta Shanghai FTZ. Business Service Centers: Johannesburg Louisville. For more information see www.hoganlovells.com

This opinion letter is based as to matters of law solely on the applicable provisions of Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland, as amended. We express no opinion herein as to any other statutes, rules, or regulations. For purposes of the opinion set forth below, we have assumed that the Common Shares are issued for a price per share equal to or greater than the minimum price authorized by the Company's board of trustees prior to the date hereof.

Based upon, subject to and limited by the foregoing, we are of the opinion that following (i) execution and delivery by the Company of the Equity Distribution Agreement, (ii) execution and delivery by the Company of each Forward Contract relating to any forward purchase pursuant to the Equity Distribution Agreement in the form attached as Exhibit H to the Equity Distribution Agreement, together with the relevant supplemental confirmation thereto (the "**Supplemental Confirmation**"), (iii) authorization by the Company's Board of Trustees, or authorization by a duly authorized pricing committee thereof, within the limitations established by resolutions duly adopted by the Company's Board of Trustees and duly authorized pricing committee thereof and in each case made available to us, of the terms pursuant to which the Common Shares may be sold pursuant to the Agreements, (iv) authorization by a duly authorized executive officer, designated by the Company's Board of Trustees to approve instruction notices (each, an "**Instruction Notice**") under the Agreements, of the terms of the applicable Instruction Notice and Supplemental Confirmation (if any) executed in a manner consistent with the foregoing and pursuant to which the Common Shares may be sold pursuant to the Agreements, (v) issuance of the Common Shares pursuant to the terms established by the Board of Trustees and the pricing committee thereof and the terms of the applicable Instruction Notice and Supplemental Confirmation (if any) and (v) receipt by the Company of the proceeds for the Common Shares sold pursuant to such terms and such applicable Instruction Notice and Supplemental Confirmation (if any), the Common Shares will be validly issued, fully paid and non-assessable.

This opinion letter has been prepared for your use in connection with the filing by the Company of a Current Report on Form 8-K relating to the offer and sale of the Common Shares, which Form 8-K will be incorporated by reference into the Registration Statement and Prospectus, and speaks as of the date hereof. We assume no obligation to advise of any changes in the foregoing subsequent to the delivery of this letter.

We hereby consent to the filing of this opinion letter as Exhibit 5.1 to the above-described Form 8-K and to the reference to this firm under the caption "Legal Matters" in the Prospectus Supplement. In giving this consent, we do not thereby admit that we are an "expert" within the meaning of the Securities Act of 1933, as amended.

Very truly yours,

/s/ Hogan Lovells US LLP

HOGAN LOVELLS US LLP

Schedule 1

[AGENTS AND FORWARD SELLERS]

Wells Fargo Securities, LLC
500 West 33rd Street
New York, New York 10001

BNY Mellon Capital Markets, LLC 240
Greenwich Street
New York, New York 10286

Citigroup Global Markets Inc.
388 Greenwich Street
New York, New York 10013

Goldman Sachs & Co. LLC
200 West Street
New York, New York 10282

KeyBanc Capital Markets Inc.
127 Public Square, 7th Floor
Cleveland, Ohio 44114

TD Securities (USA) LLC
1 Vanderbilt Avenue
New York, NY 10017

Truist Securities, Inc.
3333 Peachtree Road NE, 11th Floor
Atlanta, Georgia 30326

Schedule 2

[FORWARD PURCHASERS]

Wells Fargo Bank, National Association
500 West 33rd Street
New York, New York 10001

The Bank of New York Mellon
240 Greenwich Street
New York, New York 10286

Citibank, N.A.
388 Greenwich Street
New York, New York 10013

Goldman Sachs & Co. LLC
200 West Street
New York, New York 10282

KeyBanc Capital Markets Inc.
127 Public Square, 7th Floor
Cleveland, Ohio 44114

The Toronto-Dominion Bank
c/o TD Securities (USA) LLC, as Agent
1 Vanderbilt Avenue
New York, NY 10017

Truist Bank
3333 Peachtree Road NE, 11th Floor
Atlanta, Georgia 30326



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February 20, 2024

Board of Trustees
 Elme Communities
 7550 Wisconsin Avenue
 Suite 900
 Bethesda, MD 20814

To the addressee referred to above:

We are acting as counsel to Elme Communities, a Maryland real estate investment trust (the “**Company**”), in connection with the public offering of up to 850,000 of the Company’s common shares of beneficial interest, par value \$0.01 per share (the “**Common Shares**”), all of which Common Shares may be offered and sold by the Company from time to time in accordance with the Company’s Direct Dividend Reinvestment and Share Purchase Plan (the “**Plan**”) as described in the prospectus supplement dated February 20, 2024 (the “**Prospectus Supplement**”) and the accompanying prospectus dated February 20, 2024 (together with Prospectus Supplement, collectively, the “**Prospectus**”) that form part of the Company’s effective registration statement on Form S-3, as amended (No. 333-277167) (the “**Registration Statement**”). This opinion letter is furnished to you at your request to enable you to fulfill the requirements of Item 601(b)(5) of Regulation S-K, 17 C.F.R. § 229.601(b)(5), in connection with the Registration Statement.

For purposes of this opinion letter, we have examined copies of such agreements, instruments and documents as we have deemed an appropriate basis on which to render the opinions hereinafter expressed. In our examination of the aforesaid documents, we have assumed the genuineness of all signatures, the legal capacity of all natural persons, the accuracy and completeness of all documents submitted to us, the authenticity of all original documents, and the conformity to authentic original documents of all documents submitted to us as copies (including pdfs). We also have assumed that the Common Shares will not be issued in violation of the ownership limit contained in the Company’s Articles of Amendment and Restatement, as amended. As to all matters of fact, we have relied on the representations and statements of fact made in the documents so reviewed, and we have not independently established the facts so relied on. This opinion letter is given, and all statements herein are made, in the context of the foregoing.

This opinion letter is based as to matters of law solely on the applicable provisions of Title 8 of the Corporations and Associations Article of the Annotated Code of Maryland, as amended. We express no opinion herein as to any other statutes, rules, or regulations.

Based upon, subject to and limited by the foregoing, we are of the opinion that following (i) issuance and sale of the Common Shares in accordance with the terms of the Plan as contemplated by the Registration Statement, and (ii) receipt by the Company of the consideration specified in the Plan, the Common Shares will be validly issued, fully paid, and nonassessable.

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This opinion letter has been prepared for use in connection with the filing by the Company of a Current Report on Form 8-K relating to the offer and sale of the Common Shares pursuant to the Plan, which Form 8-K will be incorporated by reference into the Registration Statement and Prospectus, and speaks as of the date hereof. We assume no obligation to advise of any changes in the foregoing subsequent to the delivery of this letter.

We hereby consent to the filing of this opinion letter as Exhibit 5.2 to the above-described Form 8-K and to the reference to this firm under the caption "Legal Matters" in the Prospectus Supplement. In giving this consent, we do not thereby admit that we are an "expert" within the meaning of the Securities Act of 1933, as amended.

Very truly yours,

/s/ Hogan Lovells US LLP

HOGAN LOVELLS US LLP

FORM OF MASTER FORWARD CONFIRMATION

To: Elme Communities (“**Counterparty**”)
7550 Wisconsin Ave, Suite 900
Bethesda, Maryland 20814

From: [DEALER] (“**Dealer**”)
[DEALER CONTACT INFORMATION]

Re: Master Confirmation for Counterparty Share Forward Sale Transactions

Date: [____], 20[__]

Ladies and Gentlemen:

The purpose of this communication (this “**Master Confirmation**”) is to set forth the terms and conditions of the transactions to be entered into from time to time (each, a “**Transaction**” and, collectively, the “**Transactions**”) between [DEALER] (“**Dealer**”) and Elme Communities, a Maryland real estate investment trust (“**Counterparty**”) in accordance with the terms of the Equity Distribution Agreement (the “**Sales Agreement**”), dated as of February 20, 2024, between Counterparty and (i) each of Wells Fargo Securities, LLC, BNY Mellon Capital Markets, LLC, Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., TD Securities (USA) LLC and Truist Securities, Inc., as agents, (ii) each of Wells Fargo Bank, National Association, The Bank of New York Mellon, Citibank, N.A. (or any of its affiliates), Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., The Toronto-Dominion Bank and Truist Bank, as forward purchasers, and (iii) each of Wells Fargo Securities, LLC, BNY Mellon Capital Markets, LLC, Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, KeyBanc Capital Markets Inc., TD Securities (USA) LLC and Truist Securities, Inc., as forward sellers. Each Transaction will be evidenced by a supplemental confirmation substantially in the form of Annex A hereto (each, a “**Supplemental Confirmation**”, and each such Supplemental Confirmation, together with this Master Confirmation, a “**Confirmation**” for purposes of the Agreement specified below). Each Confirmation will be a confirmation for purposes of Rule 10b-10 promulgated under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”).

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

Each Confirmation shall supplement, form a part of and be subject to an agreement (the “**Agreement**”) in the form of the 2002 ISDA Master Agreement (the “**ISDA Form**”), as published by ISDA, as if Dealer and Counterparty had executed the ISDA Form on the date hereof (but without any Schedule except for (i) the election of New York law (without regard to New York’s choice of laws doctrine other than Title 14 of Article 5 of the New York General Obligations Law) as the governing law; (ii) US Dollars (“**USD**”) as the Termination Currency; and (iii) the election that the “Cross Default” provisions of Section 5(a)(vi) of the Agreement shall apply to Counterparty and Dealer, with a (X) “Threshold Amount” of USD 75 million for Counterparty and (Y) a “Threshold Amount” of 3% of shareholder’s equity for [Dealer][Dealer’s ultimate parent]. All provisions contained in the Agreement are incorporated into and shall govern each Confirmation except as expressly modified below. Each Confirmation will evidence a complete and binding agreement between Dealer and Counterparty as to the terms of the relevant Transaction and will replace any previous agreement between the parties with respect to the subject matter thereof.

The Transactions under this Master Confirmation shall be the only Transactions under the Agreement. If there exists any ISDA Master Agreement between Dealer and Counterparty or any confirmation or other agreement between Dealer and Counterparty pursuant to which an ISDA Master Agreement is deemed to exist between Dealer and Counterparty, then notwithstanding anything to the contrary in such ISDA Master Agreement, such confirmation or agreement or any other agreement to which Dealer and Counterparty are parties, none of the Transactions to which this Master Confirmation relates shall be considered a “Transaction” under, or otherwise governed by, such existing or deemed ISDA Master Agreement. Each of Dealer and Counterparty represents to the other that it has entered into the Transaction in reliance upon such tax, accounting, regulatory, legal, and financial advice as it deems necessary and not upon any view expressed by the other.

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

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

General Terms:

Trade Date: For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be, subject to the provisions under the heading “Early Valuation” in Section 2 of this Master Confirmation, the last Trading Day (as defined in the Sales Agreement) of the Forward Hedge Selling Period (as defined in the Sales Agreement) for such Transaction.

Effective Date: For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the date that is one Settlement Cycle following the Trade Date for such Transaction, or such later date on which the conditions set forth in Section 3 of this Master Confirmation shall have been satisfied by Counterparty or waived by Dealer.

Buyer:	Dealer
Seller:	Counterparty
Maturity Date:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the date set forth in the effective Forward Placement Notice (as defined in the Sales Agreement) as amended by any corresponding acceptance by Dealer for such Transaction (or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day).
Shares:	The common shares of beneficial interest (" Shares "), par value \$0.01 per Share, of Counterparty (Ticker: " ELME ")
Number of Shares:	For each Transaction, initially, as specified in the Supplemental Confirmation for such Transaction, to be the number of Shares equal to the aggregate number of Shares that are sold through a Forward Seller (as defined in the Sales Agreement) for the Forward Hedge Selling Period (as defined in the Sales Agreement) for such Transaction (the " Initial Number of Shares "); <i>provided</i> that the Number of Shares is subject to reduction as provided in Section 3 below. On each Relevant Settlement Date, the Number of Shares shall be reduced by the number of Settlement Shares settled on such date.
Settlement Currency:	USD
Exchange:	The New York Stock Exchange
Related Exchange:	All Exchanges
Prepayment:	Not Applicable
Variable Obligation:	Not Applicable
Initial Forward Price:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the product of (i) an amount equal to 1 minus the Forward Hedge Selling Commission Rate (as defined in the Sales Agreement and specified in the Supplemental Confirmation for such Transaction) applicable to such Transaction; and (ii) the Volume-Weighted Hedge Price for such Transaction (such product adjusted as the Calculation Agent determines appropriate to (x) reflect on each day during the Forward Hedge Selling Period and through the Effective Date the sum of 1 and the Daily Rate for such day multiplied by the then-Initial Forward Price as of such day and (y) reduce the then-Initial Forward Price by the relevant Forward Price Reduction Amount on each Forward Price Reduction Date, if any, occurring on or before the Trade Date).

Forward Price:	For each Transaction, on the Effective Date of such Transaction, the Initial Forward Price, and on any day thereafter, the product of the Forward Price on the immediately preceding calendar day and $1 + \text{the Daily Rate} * (1/365)$; <i>provided</i> that the Forward Price on each Forward Price Reduction Date shall be the Forward Price otherwise in effect on such date <i>minus</i> the Forward Price Reduction Amount for such Forward Price Reduction Date.
Volume-Weighted Hedge Price:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be the volume-weighted average of the prices per share of Forward Hedge Shares (as defined in the Sales Agreement) sold pursuant to the Sales Agreement on each Trading Day of the Forward Hedge Selling Period (as defined in the Sales Agreement) for such Transaction, as determined by the Calculation Agent.
Daily Rate:	For any day, the Overnight Bank Funding Rate for such day <i>minus</i> the Spread.
Spread:	For each Transaction, as specified in the Supplemental Confirmation for such Transaction.
Overnight Bank Funding Rate:	For any day, the rate set forth opposite the caption "Overnight Bank Funding Rate" for such day on the page "OBFR01 <Index> <GO>" on the BLOOMBERG Professional Service, or any successor page; <i>provided</i> that if no such rate appears for such day on such page, Overnight Bank Funding Rate for such day will be determined by the Calculation Agent based on its estimate of the prevailing USD overnight bank funding rate for such day.
Forward Price Reduction Dates:	For each Transaction, as specified in Schedule I to the Supplemental Confirmation for such Transaction, to be each date set forth under the heading "Forward Price Reduction Dates" in the effective Forward Placement Notice for such Transaction.
Forward Price Reduction Amount	For each Forward Price Reduction Date of a Transaction, as specified in Schedule I to the Supplemental Confirmation for such Transaction, to be the Forward Price Reduction Amount set forth opposite such date in the effective Forward Placement Notice for such Transaction.
<u>Valuation:</u>	
Valuation Date:	For any Settlement (as defined below) with respect to any Transaction, if Physical Settlement is applicable, as designated in the relevant Settlement Notice (as defined below); or if Cash Settlement or Net Share Settlement is applicable, the last Unwind Date for such Settlement. Section 6.6 of the Equity Definitions shall not apply to any Valuation Date. For the avoidance of doubt, the last Unwind Date shall be determined by Dealer based on the completion of the unwinding of its hedge position.

Unwind Dates:	For any Cash Settlement or Net Share Settlement with respect to any Settlement of any Transaction, each day on which Dealer (or its agent or affiliate) purchases Shares in the market in connection with unwinding its hedge position in connection with such Settlement, starting on the First Unwind Date for such Settlement.
First Unwind Date:	For any Cash Settlement or Net Share Settlement with respect to any Settlement of any Transaction, as designated in the relevant Settlement Notice.
Unwind Period:	For any Cash Settlement or Net Share Settlement with respect to any Settlement of any Transaction, the period starting on the First Unwind Date for such Settlement and ending on the Valuation Date for such Settlement, subject to "Early Valuation" below. If any Trading Day during an Unwind Period for any Transaction is a Disrupted Day, the Calculation Agent may make commercially reasonable adjustments to the terms of such Transaction (including, without limitation, the Cash Settlement Amount, the number of Net Share Settlement Shares and the Settlement Price) to account for the occurrence of such Disrupted Day.
Market Disruption Event:	The definition of "Market Disruption Event" in Section 6.3(a) of the Equity Definitions is hereby amended by replacing the first sentence in its entirety with the following: "'Market Disruption Event' means in respect of a Share or an Index, the occurrence or existence of (i) a Trading Disruption, (ii) an Exchange Disruption, (iii) an Early Closure or (iv) a Regulatory Disruption, in each case that the Calculation Agent determines is material."
Early Closure:	Section 6.3(d) of the Equity Definitions is hereby amended by deleting the remainder of the provision following the term "Scheduled Closing Time" in the fourth line thereof.
Regulatory Disruption:	Any event that Dealer, in its good faith and commercially reasonable judgment based on advice of counsel, determines that it is appropriate with regard to any legal, regulatory or self-regulatory requirements or related policies and procedures generally applicable in similar situations and applied in a non-discriminatory manner (whether or not such requirements, policies or procedures are imposed by law or have been voluntarily adopted by Dealer), for it to refrain from or decrease any market activity in connection with the Transaction.

Settlement Terms:

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

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

nonpublic information concerning itself or the Shares, (B) Counterparty is electing the settlement method and designating the First Unwind Date specified in such Settlement Notice in good faith and not as part of a plan or scheme to evade compliance with Rule 10b-5 under the Exchange Act ("**Rule 10b-5**") or any other provision of the federal securities laws, (C) Counterparty is not "insolvent" (as such term is defined under Section 101(32) of the U.S. Bankruptcy Code (Title 11 of the United States Code) (the "**Bankruptcy Code**")), (D) Counterparty would be able to purchase a number of Shares equal to the greater of (x) the number of Settlement Shares designated in such Settlement Notice and (y) a number of Shares with a value as of the date of such Settlement Notice equal to the product of (I) such number of Settlement Shares and (II) the applicable Relevant Forward Price for such Cash Settlement or Net Share Settlement in compliance with the laws of Counterparty's jurisdiction of organization, (E) Counterparty is not electing Cash Settlement or Net Share Settlement to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares), and (F) such election, and settlement in accordance therewith, does not and will not violate or conflict with any law, regulation or supervisory guidance applicable to Counterparty, or any order or judgment of any court or other agency of government applicable to it or any of its assets, and any governmental consents that are required to have been obtained by Counterparty with respect to such election or settlement have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and (iii) Notwithstanding any election to the contrary in any Settlement Notice, Physical Settlement shall be applicable for any Settlement of any Transaction: (A) to all of the Settlement Shares designated in such Settlement Notice if, at any time from the date such Settlement Notice is received by Dealer until the related First Unwind Date, inclusive, (I) the trading price per Share on the Exchange (as determined by Dealer in a commercially reasonable manner) is below the Threshold Price or (II) Dealer determines, in its good faith and reasonable judgment, that it would, after using commercially reasonable efforts, be unable to purchase a number of Shares in the market sufficient to unwind its hedge position in respect of the portion of such Transaction represented by such Settlement Shares and satisfy its delivery obligation hereunder, if any, by the Maturity Date (taking into account any additional share forward or other equity derivative transaction Counterparty has entered into) (x) in a manner that (A) would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be subject

to the safe harbor provided by Rule 10b-18(b) under the Exchange Act and (B) based on advice of counsel, would not raise material risks under applicable securities laws or (y) due to the lack of sufficient liquidity in the Shares (each, a “**Trading Condition**”); or (B) to all or a portion of the Settlement Shares designated in such Settlement Notice if, on any day during the relevant Unwind Period, (I) the trading price per Share on the Exchange (as determined by Dealer in a commercially reasonable manner) is below the Threshold Price or (II) Dealer determines, in its good faith and commercially reasonable judgment or based on advice of counsel, as applicable, that a Trading Condition has occurred with respect to such Transaction, in which case the provisions set forth below in the fourth paragraph opposite “Early Valuation” shall apply as if such day were the Early Valuation Date and (x) for purposes of clause (i) of such paragraph, such day shall be the last Unwind Date of such Unwind Period and the “Unwound Shares” shall be calculated to, and including, such day and (y) for purposes of clause (ii) of such paragraph, the “Remaining Shares” shall be equal to the number of Settlement Shares designated in such Settlement Notice minus the Unwound Shares determined in accordance with clause (x) of this sentence.

Threshold Price: For each Transaction, as specified in the Supplemental Confirmation for such Transaction, to be 50% of the Initial Forward Price for such Transaction.

Electing Party: Counterparty

Settlement Method Election Date: With respect to any Settlement of any Transaction, the 5th Scheduled Trading Day immediately preceding (x) the Valuation Date for such Transaction, in the case of Physical Settlement, or (y) the First Unwind Date for such Transaction, in the case of Cash Settlement or Net Share Settlement.

Default Settlement Method: Physical Settlement

Physical Settlement: Notwithstanding Section 9.2(a)(i) of the Equity Definitions, on the Settlement Date for any Physical Settlement of any Transaction, Dealer shall pay to Counterparty an amount (“**Physical Settlement Amount**”) equal to the Forward Price for such Transaction on the relevant Valuation Date *multiplied* by the number of Settlement Shares for such Settlement, and Counterparty shall deliver to Dealer such Settlement Shares. If, on any Settlement Date, the Shares to be delivered by Counterparty to Dealer hereunder are not so delivered (the “**Deferred Shares**”), and a Forward Price Reduction Date occurs during the period from, and including, such Settlement Date to, but excluding, the date such Shares are actually delivered to Dealer, then the portion of the Physical Settlement Amount payable by Dealer to Counterparty in respect of the Deferred Shares shall be reduced by an amount equal to the Forward Price Reduction Amount for such Forward Price Reduction Date, multiplied by the number of Deferred Shares.

Settlement Date:	For any Settlement of any Transaction to which Physical Settlement is applicable, the Valuation Date for such Settlement.
Net Share Settlement:	On the Net Share Settlement Date for any Settlement of any Transaction to which Net Share Settlement is applicable, if the Net Share Settlement Amount for such Settlement is greater than zero, Counterparty shall deliver a number of Shares equal to such Net Share Settlement Amount (rounded down to the nearest integer) to Dealer, and if such Net Share Settlement Amount is less than zero, Dealer shall deliver a number of Shares equal to the absolute value of such Net Share Settlement Amount (rounded down to the nearest integer) to Counterparty, in either case, in accordance with Section 9.4 of the Equity Definitions, with such Net Share Settlement Date deemed to be a "Settlement Date" for purposes of such Section 9.4, and, in either case, plus cash in lieu of any fractional Shares included in such Net Share Settlement Amount but not delivered due to rounding required hereby, valued at the Settlement Price. If, on any Net Share Settlement Date for any Transaction, the Shares to be delivered by Counterparty or Dealer hereunder upon Net Share Settlement are not so delivered (the " Net Share Deferred Shares "), and a Forward Price Reduction Date with respect to such Transaction occurs during the period from, and including, such Net Share Settlement Date to, but excluding, the date such Shares are actually delivered to such party, then the portion of the Net Share Settlement Shares for such Transaction deliverable by Dealer or Counterparty in respect of the Net Share Deferred Shares shall be adjusted by the Calculation Agent to reflect the occurrence of such Forward Price Reduction Amount for such Forward Price Reduction Date.
Net Share Settlement Date:	For any Settlement of any Transaction to which Net Share Settlement is applicable, the date that follows the Valuation Date for such Settlement by one Settlement Cycle.
Net Share Settlement Amount:	For any Settlement of any Transaction to which Net Share Settlement is applicable, an amount equal to the Forward Cash Settlement Amount for such Settlement <i>divided by</i> the Settlement Price.
Cash Settlement:	On the Cash Settlement Payment Date in respect of which Cash Settlement applies, if the Forward Cash Settlement Amount is a positive number, Counterparty will pay the Forward Cash Settlement Amount to Dealer. If the Forward Cash Settlement Amount is a negative number, Dealer will pay the absolute value of the Cash Settlement Amount to Counterparty. Such amounts shall be paid on such Cash Settlement Payment Date by wire transfer of immediately available funds.

Forward Cash Settlement Amount:	Notwithstanding Section 8.5(c) of the Equity Definitions, the Forward Cash Settlement Amount for any Cash Settlement or Net Share Settlement of any Transaction shall be equal to (i) the number of Settlement Shares for such Settlement <i>multiplied by</i> (ii) an amount equal to (A) the Settlement Price for such Settlement <i>minus</i> (B) the Relevant Forward Price for such Settlement.
Relevant Forward Price:	For any Cash Settlement or Net Share Settlement of any Transaction, the weighted average of the Forward Prices for such Transactions on each Unwind Date relating to such Settlement (weighted based on the number of Shares purchased by Dealer or its agent or affiliate on each such Unwind Date in connection with unwinding Dealer's hedge position in connection with such Settlement, as determined by the Calculation Agent).
Settlement Price:	For any Cash Settlement or Net Share Settlement of any Transaction, the weighted average price of the purchases of Shares made by Dealer (or its agent or affiliate) during the Unwind Period in connection with unwinding its hedge position relating to such Settlement (weighted based on the number of Shares purchased by Dealer or its agent or affiliate on each Unwind Date in connection with unwinding its hedge position in connection with such Settlement, as determined by the Calculation Agent), <i>plus</i> USD 0.02 per Share.
Unwind Activities:	The times and prices at which Dealer (or its agent or affiliate) purchases any Shares during any Unwind Period in connection with unwinding its hedge position in respect of each Transaction shall be determined by Dealer in a commercially reasonable manner. Without limiting the generality of the foregoing, in the event that Dealer concludes, in its good faith and commercially reasonable discretion based on advice of counsel, that would have been an Unwind Date but for the occurrence of a Regulatory Disruption, Dealer may (but shall not be required to) notify Counterparty in writing that a Regulatory Disruption has occurred on such Scheduled Trading Day without specifying (and Dealer shall not otherwise communicate to Counterparty) the nature of such Regulatory Disruption, and, for the avoidance of doubt, such Scheduled Trading Day shall not be an Unwind Date for such Transaction and such Regulatory Disruption shall be deemed to be a Market Disruption Event; <i>provided</i> that Dealer may exercise its right to suspend under this sentence only in its good faith and commercially reasonable discretion in relation to events or circumstances that are not the result of actions of it or any of its Affiliates that are taken with the intent to avoid its obligations under the Transactions.

Relevant Settlement Date: For any Settlement of any Transaction, the Settlement Date, Cash Settlement Payment Date or Net Share Settlement Date for such Settlement, as the case may be.

Other Applicable Provisions: To the extent Dealer is obligated to deliver Shares under any Transaction, the provisions of Sections 9.2 (last sentence only), 9.8, 9.9, 9.10, 9.11 and 9.12 of the Equity Definitions will be applicable as if "Physical Settlement" applied to such Transaction; *provided* that the Representation and Agreement contained in Section 9.11 of the Equity Definitions shall be modified by excluding any representations therein relating to restrictions, obligations, limitations or requirements under applicable securities laws that exist as a result of the fact that Counterparty is the issuer of the Shares.

Share Adjustments:

Potential Adjustment Events: An Extraordinary Dividend shall not constitute a Potential Adjustment Event. For the avoidance of doubt, a cash dividend on the Shares that differs from expected dividends as of the Trade Date of any Transaction shall not be a Potential Adjustment Event under Section 11.2(c)(vii) of the Equity Definitions with respect to such Transaction.

Extraordinary Dividend: For any Transaction, any dividend or distribution declared by the Counterparty with respect to the Shares that is a payment or distribution by the Counterparty to holders of Shares that the Counterparty announces will be an "extraordinary" or "special" dividend or distribution.

Regular Dividend Amount: For each Transaction and for each calendar quarter, the amount set forth under the heading "Regular Dividend Amounts" in the Placement Notice as amended by any corresponding Forward Acceptance (each such term as defined in the Sales Agreement) for such Transaction and for such calendar quarter (or, if no such amount is specified, zero), as specified in Schedule I to the Supplemental Confirmation for such Transaction.

Method of Adjustment: Calculation Agent Adjustment

Additional Adjustment: If, in Dealer's commercially reasonable judgment, the stock loan fee to Dealer (or an affiliate of Dealer), excluding the federal funds or other interest rate component payable by the relevant stock lender to Dealer or such affiliate under the terms of the applicable stock lender agreements, for any 20 Scheduled Trading Days over a period of 30 consecutive Scheduled Trading Days, of borrowing a number of Shares equal to the Number of Shares to hedge its exposure to any Transaction exceeds a weighted average rate equal

to the Initial Stock Loan Rate for such Transaction, the Calculation Agent may, without duplication, reduce the Forward Price for such Transaction in order to compensate Dealer for the amount by which such cost exceeded a weighted average rate equal to such Initial Stock Loan Rate during such period.

Extraordinary Events:

- Extraordinary Events: In lieu of the consequences that would otherwise apply under Article 12 of the Equity Definitions to any applicable Extraordinary Event (excluding any Failure to Deliver, Increased Cost of Hedging, Increased Cost of Stock Borrow or any Extraordinary Event that also constitutes a Bankruptcy Termination Event, but including, for the avoidance of doubt, any other applicable Additional Disruption Event), the provisions specified below under the heading “Early Valuation” paragraph below shall apply.
- Merger Event: Applicable; *provided* that Section 12.1(b) of the Equity Definitions is hereby amended by deleting the remainder of such Section beginning with the words “in each case if the Merger Date is on or before” in the fourth to last line thereof.
- Tender Offer: Applicable.
- Delisting: In addition to the provisions of Section 12.6(a)(iii) of the Equity Definitions, it shall also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, The Nasdaq Global Select Market or The Nasdaq Global Market (or their respective successors); if the Shares are immediately re-listed, re-traded or re-quoted on any such exchange or quotation system, such exchange or quotation system shall be deemed to be the Exchange.

Additional Disruption Events:

- Change in Law: With respect to any Transaction, applicable; *provided* that (A) any determination as to whether (i) the adoption of or any change in any applicable law or regulation (including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption or promulgation of new regulations authorized or mandated by existing statute) or (ii) the promulgation of or any change in or public announcement of the formal or informal interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), in each case, constitutes a “Change in Law” shall be made without regard to Section 739 of the Dodd- Frank Wall Street Reform and Consumer Protection Act of 2010 or any similar legal certainty provision in any legislation

enacted, or rule or regulation promulgated, on or after the Trade Date of such Transaction and (B) Section 12.9(a)(ii) of the Equity Definitions is hereby amended (i) by replacing the parenthetical beginning after the word “regulation” in the second line thereof with the phrase “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption or promulgation of new regulations authorized or mandated by existing statute)” and (ii) by replacing the words “the interpretation” with the words “or public announcement of any formal or informal interpretation” in the third line thereof and (C) the words “, unless the illegality is due to an act or omission of the party seeking to elect termination of the Transaction with the intent to avoid its obligations under the terms of the Transaction” are added immediately following the word “Transaction” in the fifth line thereof; and *provided further* that Section 12.9(a)(ii) of the Equity Definitions is hereby amended by adding the phrase “and/or Hedge Position” after the word “Shares” in clause (X) thereof and (iii) by adding the phrase “in the manner contemplated by the Hedging Party on the Trade Date” immediately following the word “Transaction” in clause (X) thereof.

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

Loss of Stock Borrow: Applicable; *provided* that Section 12.9(b)(iv) of the Equity Definitions shall be amended by (i) deleting clause (A) of the first sentence thereof in its entirety and (ii) deleting the words “neither the Non-Hedging Party nor the Lending Party lends Shares in the amount of the Hedging Shares or” in the second sentence thereof.

Maximum Stock Loan Rate: For each Transaction, as specified in the Supplemental Confirmation for such Transaction.

Hedging Party: For all applicable Additional Disruption Events, Dealer

Determining Party: For all applicable Extraordinary Events, Dealer

Early Valuation:

Early Valuation: For any Transaction, notwithstanding anything to the contrary herein, in the Agreement, in any Supplemental Confirmation or in the Equity Definitions, at any time (x) concurrently with or following the occurrence of a Hedging Event with respect to such Transaction, the declaration by Counterparty of Dividends and Other Distributions (as defined below), or an ISDA Event with respect to such Transaction or (y) if an Excess Ownership Position, an Excess Charter Ownership Position or an Excess Regulatory Ownership Position exists, Dealer (or, in the case of an ISDA Event that is an Event of Default or Termination Event, the party entitled to designate an Early Termination Date in respect of such event pursuant to Section 6 of the Agreement) shall have the right to designate any Scheduled Trading Day to be the “Early Valuation Date” for such Transaction, in which case the provisions set forth in this “Early Valuation” section shall apply to such Transaction, in the case of an Event of Default or Termination Event, in lieu of Section 6 of the Agreement. For the avoidance of doubt, any amount calculated pursuant to this “Early Valuation” section (in respect of which Counterparty satisfies its payment and/or delivery obligations under this “Early Valuation” section) as a result of an Extraordinary Dividend shall not be adjusted by the value associated with such Extraordinary Dividend.

Dealer represents and warrants to and agrees with Counterparty, assuming the accuracy and completeness of the representations and warranties of Counterparty hereunder and under the Sales Agreement and the compliance with, and satisfaction of, the covenants and undertakings of Counterparty hereunder and under the Sales Agreement, that (i) based upon advice of counsel, Dealer (A) does not have actual knowledge of the existence as of the date hereof of an Excess Ownership Position or an Excess Regulatory Ownership Position and (B) based on good faith inquiry in the ordinary course of Dealer’s business does not have actual knowledge as of the date hereof of any event or circumstance that will cause the occurrence of an Excess Ownership Position or an

Excess Regulatory Ownership Position on any day during the term of the applicable Transaction; and (ii) assuming no event or circumstance by or within the control of Counterparty or its affiliates occurs in connection with which the “beneficial ownership” (within the meaning of Section 13 of the Exchange Act and the rules promulgated thereunder) of Shares by Dealer Group (as defined below) and/or the “ownership” (howsoever defined under any Applicable Law) of Shares by Dealer Group or another Dealer Person (as defined below) would increase, Dealer will not knowingly cause the occurrence of an Excess Ownership Position or an Excess Regulatory Ownership Position on any day during the term of the applicable Transaction with the specific intent of causing the occurrence of an Early Valuation Date. “**Dividends and Other Distributions**” means any dividend or distribution, on the Shares with an ex-dividend date occurring on any day following the Trade Date of such Transaction of (A) any cash dividend (other than an Extraordinary Dividend) to the extent all cash dividends having an ex-dividend date during the period from, and including, any Forward Price Reduction Date (with the Trade Date being a Forward Price Reduction Date for purposes of this clause only) to, but excluding, the next subsequent Forward Price Reduction Date exceeds, on a per Share basis, the Forward Price Reduction Amount set forth opposite the first date of any such period on Schedule I to the relevant Supplemental Confirmation, (B) any Extraordinary Dividend, (C) any share capital or other securities of another issuer acquired or owned (directly or indirectly) by Counterparty as a result of a spin-off or other similar transaction or (D) any other type of securities (other than Shares), rights or warrants or other assets, in any case for payment (cash or other consideration) at less than the prevailing market price, as determined in a commercially reasonable manner by Dealer. If the Early Valuation Date for a Transaction occurs on a date that is not during an Unwind Period for such Transaction, then such Early Valuation Date shall be a Valuation Date for a Physical Settlement of such Transaction, and the number of Settlement Shares for such Settlement shall be the Number of Shares on such Early Valuation Date; *provided* that Dealer may in its good faith and in a reasonable manner permit Counterparty to elect Cash Settlement or Net Share Settlement in respect of such Transaction, in which case Dealer, as Hedging Party, will determine, in good faith and in a commercially reasonable manner, the Scheduled Trading Day that will be the First Unwind Date for such Cash Settlement or Net Share Settlement.

If the Early Valuation Date for a Transaction occurs during an Unwind Period for such Transaction, then (i) (A) the last Unwind Date of such Unwind Period shall be deemed to be such Early Valuation Date, (B) a Settlement shall occur in respect of such Unwind Period, and the Settlement Method elected by Counterparty in respect of such Settlement shall apply (subject to the provisions under "Settlement Terms" above in respect of the applicable Settlement Method), and (C) the number of Settlement Shares for such Settlement shall be the number of Unwound Shares for such Unwind Period on such Early Valuation Date, and (ii) (A) such Early Valuation Date shall be a Valuation Date for an additional Physical Settlement of such Transaction (*provided* that Dealer may in its good faith and commercially reasonable discretion elect that the Settlement Method elected by Counterparty for the Settlement described in clause (i) of this sentence shall apply, in which case Dealer, in its good faith and in a commercially reasonable manner, will determine the Scheduled Trading Day that will be the First Unwind Date for such Cash Settlement or Net Share Settlement) and (B) the number of Settlement Shares for such additional Settlement shall be the number of Remaining Shares on such Early Valuation Date.

Notwithstanding the foregoing, in the case of a Nationalization or Merger Event, if at the time of the related Relevant Settlement Date the Shares have changed into cash or any other property or the right to receive cash or any other property, the Calculation Agent may adjust the terms of the applicable Transaction as it determines appropriate to account for such change to the nature of the Shares.

If, upon designation of an Early Valuation Date by Dealer pursuant to this section, Counterparty fails to deliver the Settlement Shares relating to such Early Valuation Date when due or otherwise fails to perform obligations within its control in respect of any Transaction, it shall be an Event of Default with respect to Counterparty and Section 6 of the Agreement shall apply.

ISDA Event:

(i) Any Event of Default or Termination Event, other than an Event of Default or Termination Event that also constitutes a Bankruptcy Termination Event, that gives rise to the right of either party to designate an Early Termination Date pursuant to Section 6 of the Agreement or (ii) the announcement of any event or transaction that, if consummated, would result in a Merger Event, Tender Offer, Nationalization, Delisting or Change in Law, in each case, as determined by the Calculation Agent.

Hedging Event:

(i) (x) A Loss of Stock Borrow or (y) a Hedging Disruption, (ii) (A) an Increased Cost of Stock Borrow or (B) an Increased Cost of Hedging in connection with which, in the case of sub-clause (A) or (B), Counterparty does not elect, and so notify the Hedging Party of its election, in each case, within the required time period to either amend such Transaction pursuant to Section 12.9(b)(v)(A) or Section 12.9(b)(vi)(A) of the Equity Definitions, as applicable, or

pay an amount determined by the Calculation Agent that corresponds to the relevant Price Adjustment pursuant to Section 12.9(b)(v)(B) or Section 12.9(b)(vi)(B) of the Equity Definitions, as applicable, or (iii) the occurrence of a Market Disruption Event during an Unwind Period and the continuance of such Market Disruption Event for at least eight Scheduled Trading Days.

Remaining Shares: For any Transaction, on any day, the Number of Shares for such Transaction as of such day (or, if such day occurs during an Unwind Period for such Transaction, the Number of Shares for such Transaction as of such day minus the Unwound Shares for such Transaction for such Unwind Period on such day).

Unwound Shares: For any Transaction, for any Unwind Period in respect of such Transaction on any day, the aggregate number of Shares with respect to which Dealer has unwound (as determined by Dealer in good faith) its hedge position in respect of such Transaction in connection with the related Settlement as of such day.

Acknowledgments:

Non-Reliance: Applicable

Agreements and Acknowledgments Regarding Hedging Activities: Applicable

Additional Acknowledgments: Applicable

Transfer: Notwithstanding anything to the contrary in the Agreement, Dealer may assign, transfer and set over all rights, title and interest, powers, privileges and remedies of Dealer under any Transaction, in whole or in part, to an affiliate of Dealer without the consent of Counterparty; *provided* that under the applicable law effective on the date of such transfer or assignment, Counterparty will not be required, as a result of such transfer or assignment, to pay an amount in respect of an Indemnifiable Tax greater than the amount, if any, that Counterparty would have been required to pay Dealer in the absence of such transfer or assignment; and Counterparty will not receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount, unless Counterparty would not have been entitled to receive any additional amount in respect of such payment in the absence of such transfer or assignment; *provided further* that no Termination Event with respect to which Dealer is the Defaulting Party or an Affected Party, as the case may be, exists or would result

therefrom, and no Extraordinary Event, Early Valuation, Market Disruption Event, ISDA Event, Excess Ownership Position or Excess Regulatory Ownership Position or other event or circumstance giving rise to a right or responsibility to terminate or cancel a Transaction or to make an adjustment to the terms of a Transaction would result therefrom.

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

Calculation Agent:

Dealer; *provided* that, following the occurrence and during the continuation of an Event of Default pursuant to Section 5(a)(vii) of the Agreement with respect to which Dealer is the sole Defaulting Party, Counterparty shall have the right to select an independent leading dealer in the market for U.S. corporate equity derivatives, unless an Event of Default has also occurred and is continuing to occur with respect to the Counterparty, in which case Dealer is the Calculation Agent. Following any determination or calculation by the Calculation Agent hereunder, upon a written request by Counterparty, the Calculation Agent will, within five Exchange Business Days of its receipt of such written request, provide to Counterparty by e-mail to the e-mail address provided by Counterparty in such written request a report (in a commonly used file format for the storage and manipulation of financial data) displaying in reasonable detail the basis for such determination or calculation, as the case may be; *provided* that Dealer shall not be required to disclose any proprietary or confidential models of Dealer or any information that is proprietary or subject to contractual, legal or regulatory obligations to not disclose such information. All calculations and determinations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner.

Counterparty Payment Instructions:

To be provided by Counterparty

Dealer Payment Instructions:

To be provided by Dealer

The Office of Counterparty for each Transaction is: Inapplicable, Counterparty is not a Multibranch Party

The Office of Dealer for each Transaction is: [•]

Counterparty's Contact Details for Purpose of Giving Notice
Elme Communities
7550 Wisconsin Ave, Suite 900
Bethesda, Maryland 20814
Attn: Steven Freishtat
Email:
Fascimile No.:

Dealer's Contact Details for Purpose of Giving Notice: *[Insert Dealer Name and Notice Information.]*

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

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

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

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

(d) the effective date of the effective Forward Placement Notice (as defined in the Sales Agreement) shall have occurred as provided in the Sales Agreement;

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

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

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

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

If the Sales Agreement is terminated prior to any such sale of Shares thereunder during the Forward Hedge Selling Period, the parties shall have no further obligations in connection with the Master Confirmation, Supplemental Confirmation and the related Transaction, other than in respect of breaches of representations, warranties, covenants or agreements on or prior to such date. For the avoidance of doubt, if the Sales Agreement is terminated prior to the last day of the Forward Hedge Selling Period, this Master Confirmation and the related Supplemental Confirmation shall remain in effect with respect to any Shares that had been sold by the Forward Seller for Dealer prior to such termination.

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

5. Additional Representations and Warranties of Counterparty. In addition to the representations and warranties in the Agreement and those contained elsewhere herein, Counterparty represents and warrants to Dealer, and agrees with Dealer, as of the date hereof and as of each effective date of a Forward Placement Notice, Trade Date and Forward Hedge Settlement Date, that:

(a) without limiting the generality of Section 13.1 of the Equity Definitions, it acknowledges that Dealer is not making any representations or warranties with respect to the treatment of any Transaction, including without limitation ASC Topic 260, Earnings Per Share, ASC Topic 815, Derivatives and Hedging, FASB Statements 128, 133, as amended, 149 or 150, EITF 00-19, 01-6, 03-6 or 07-5, ASC Topic 480, Distinguishing Liabilities from Equity, ASC 815-40, Derivatives and Hedging—Contracts in Entity’s Own Equity (or any successor issue statements) or under the Financial Accounting Standards Board’s Liabilities & Equity Project;

(b) it has reserved and will keep available at all times, free from preemptive rights, out of its authorized but unissued Shares, solely for the purpose of issuance upon settlement of the Transaction as herein provided, the Capped Number. All Shares so issuable shall, upon such issuance, be accepted for listing or quotation on the Exchange;

(c) it will not repurchase any Shares if, immediately following such repurchase, the aggregate Number of Shares across all Transactions would be equal to or greater than 4.9% of the number of then-outstanding Shares and it will notify Dealer immediately upon the announcement or consummation of any repurchase of Shares in an amount that, taken together with the amount of all repurchases since the date of the last such notice (or, if no such notice has been given, since the Trade Date), exceeds 0.5% of the number of then-outstanding Shares;

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

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

(f) it is in compliance with its reporting obligations under the Exchange Act, and its most recent Annual Report on Form 10-K, together with all reports subsequently filed by it pursuant to the Exchange Act, taken together and as amended and supplemented to the date of this representation, do not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

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

(h) as of any Trade Date and as of the date of any payment or delivery by Counterparty or Dealer hereunder, it is not and will not be “insolvent” (as such term is defined under Section 101(32) of the Bankruptcy Code);

(i) it is not, and after giving effect to the Transactions contemplated hereby will not be, required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended;

(j) it: (i) is an “institutional account” as defined in FINRA Rule 4512(c); (ii) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, and will exercise independent judgment in evaluating any recommendations of Dealer or its associated persons and (iii) has total assets of at least USD 50 million as of the date hereof;

(k) ownership positions held by Dealer or any of its affiliates solely in its capacity as a nominee or fiduciary (i) do not constitute “beneficial ownership” or “constructive ownership” by Dealer and (ii) shall not result in Dealer being deemed or treated as the “owner” of such positions, in each case for purposes of Counterparty’s Articles of Amendment and Restatement of Declaration of Trust, as amended from time to time;

(l) it understands, agrees and acknowledges that no obligations of Dealer to it hereunder shall be entitled to the benefit of deposit insurance and that such obligations shall not be guaranteed by any affiliate of Dealer (subject to Section 8(b) of this Master Confirmation) or any governmental agency;

(m) in connection with this Master Confirmation, each Supplemental Confirmation, the Sales Agreement, each Transaction and the other transactions contemplated hereunder and thereunder (the “**Relevant Transactions**”), Counterparty acknowledges that none of Dealer and/or its affiliates is advising Counterparty or any other person as to any legal, tax, investment, accounting or regulatory matters in any jurisdiction (for the avoidance of doubt, notwithstanding any advisory relationship that Dealer and/or its affiliates may have, or may have had in the past, with Counterparty and/or its affiliates). Counterparty shall consult with its own advisors concerning such matters and shall be responsible for making its own independent investigation and appraisal of the Relevant Transactions, and none of Dealer and/or its affiliates shall have any responsibility or liability to Counterparty with respect thereto. Any review by the Dealer and/or its affiliates of Counterparty, the Relevant Transactions or other matters relating to the Relevant Transactions will be performed solely for the benefit of Dealer and/or its affiliates, as the case may be, and shall not be on behalf of Counterparty. Counterparty waives to the full extent permitted by applicable law any claims it may have against Dealer and/or its affiliates arising from an alleged breach of fiduciary duty in connection with the Relevant Transactions; and

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

6. Additional Covenants of Counterparty.

(a) Counterparty acknowledges and agrees that any Shares delivered by Counterparty to Dealer on any Settlement Date or Net Share Settlement Date will be (i) newly issued, (ii) approved for listing or quotation on the Exchange, subject to official notice of issuance, and (iii) registered under the Exchange Act, and, when delivered by Dealer (or an affiliate of Dealer) to securities lenders from whom Dealer (or an affiliate of Dealer) borrowed Shares in connection with hedging its exposure to any Transaction, will be freely saleable without further registration or other restrictions under the Securities Act in the hands of those securities lenders, irrespective of whether any such stock loan is effected by Dealer or an affiliate of Dealer. Accordingly, Counterparty agrees that any Shares so delivered will not bear a restrictive legend and will be deposited in, and the delivery thereof shall be effected through the facilities of, the Clearance System. In addition, Counterparty represents and agrees that any such Shares shall be, upon such delivery, duly and validly authorized, issued and outstanding, fully paid and nonassessable, free of any lien, charge, claim or other encumbrance. Counterparty agrees and acknowledges that such approval for listing or quotation on the Exchange shall be a condition precedent for the purpose of Section 2(a)(iii) of the Agreement with respect to each obligation of Dealer under Section 2(a)(i) of the Agreement in respect of the relevant Transaction.

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

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

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

(e) Neither Counterparty nor any of its "affiliated purchasers" (as defined by Rule 10b-18 under the Exchange Act ("**Rule 10b-18**")) shall take any action that would cause any purchases of Shares by Dealer or any of its Affiliates in connection with any Cash Settlement or Net Share Settlement of any Transaction not to meet the requirements of the safe harbor provided by Rule 10b-18 if such purchases were made by Counterparty. Without limiting the generality of the foregoing, during any Unwind Period, except with the prior written consent of Dealer, Counterparty will not, and will cause its affiliated purchasers (as defined in Rule 10b-18)

not to, directly or indirectly (including, without limitation, by means of a derivative instrument) purchase, offer to purchase, place any bid or limit order that would effect a purchase of, or announce or commence any tender offer relating to, any Shares (or equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) or any security convertible into or exchangeable for the Shares.

(f) Counterparty will not take, or permit to be taken, any action to cause any “restricted period” (as such term is defined in Regulation M promulgated under the Exchange Act (“**Regulation M**”)) to occur in respect of Shares or any security with respect to which the Shares are a “reference security” (as such term is defined in Regulation M) during any Unwind Period.

(g) During any Unwind Period, Counterparty shall: (i) prior to the opening of trading in the Shares on any day on which Counterparty makes, or expects to be made, any public announcement (as defined in Rule 165(f) under the Securities Act) of any Merger Transaction, notify Dealer of such public announcement; (ii) promptly notify Dealer following any such announcement that such announcement has been made; (iii) promptly (but in any event prior to the next opening of the regular trading session on the Exchange) provide Dealer with written notice specifying (A) Counterparty’s average daily Rule 10b-18 Purchases (as defined in Rule 10b-18) during the three full calendar months immediately preceding the announcement date for the Merger Transaction that were not effected through Dealer or its affiliates and (B) the number of Shares purchased pursuant to the proviso in Rule 10b-18(b)(4) under the Exchange Act for the three full calendar months preceding such announcement date. Such written notice shall be deemed to be a certification by Counterparty to Dealer that such information is true and correct. In addition, Counterparty shall promptly notify Dealer of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders. Counterparty acknowledges that any such notice may result in a Regulatory Disruption, a Trading Condition or, if such notice relates to an event that is also an ISDA Event, an Early Valuation, or may affect the length of any ongoing Unwind Period; accordingly, Counterparty acknowledges that its delivery of such notice must comply with the standards set forth in Section 6(c) above. “Merger Transaction” means any merger, acquisition or similar transaction involving a recapitalization with respect to the Counterparty and/or the Shares as contemplated by Rule 10b-18(a)(13)(iv) under the Exchange Act.

(h) Counterparty shall promptly execute any Supplemental Confirmation delivered to Counterparty by Dealer.

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

8. Additional Provisions.

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

(b) The parties hereto intend for:

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

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

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

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

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

(c) Notwithstanding any other provision of the Agreement, this Master Confirmation or any Supplemental Confirmation, in no event will Counterparty be required to deliver in the aggregate in respect of all Settlement Dates, Net Share Settlement Dates or other dates on which Shares are delivered in respect of any amount owed under a Transaction a number of Shares greater than two times the Number of Shares for such Transaction as of the Trade Date for such Transaction (the "**Capped Number**"). The Capped Number shall be subject to adjustment only on account of (x) Potential Adjustment Events of the type specified in (1) Sections 11.2(e)(i) through (vi) of the Equity Definitions or (2) Section 11.2(e)(vii) of the Equity Definitions so long

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

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

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

(f) Counterparty acknowledges that:

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

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

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

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

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

9. Indemnification. Without duplication of any indemnification obligations under the Sales Agreement, Counterparty agrees to indemnify and hold harmless Dealer, its affiliates and its assignees and their respective directors, officers, employees, agents and controlling persons (Dealer and each such person being an "**Indemnified Party**") from and against any and all losses (excluding, for the avoidance of doubt, financial losses resulting from the economic terms of any Transaction), claims, damages and liabilities (or actions in respect thereof), joint or several, incurred by or asserted against such Indemnified Party arising out of any breach of any covenant or representation made by Counterparty in this Master Confirmation, any Supplemental Confirmation or the Agreement. Counterparty will not be liable under the foregoing indemnification provision to the extent that any loss, claim, damage, liability or expense is found in a nonappealable judgment by a court of competent jurisdiction to have resulted from Dealer's fraud, willful misconduct, gross negligence or bad faith in performing the services that are subject of any Transaction. If for any reason the foregoing indemnification is unavailable to any Indemnified Party or insufficient to hold harmless any Indemnified Party, then Counterparty shall contribute, to the maximum extent permitted by law, to the amount paid or payable by the Indemnified Party as a result of such loss, claim, damage or liability. In addition, Counterparty will reimburse any Indemnified Party for all reasonable expenses (including reasonable counsel fees and expenses) as they are incurred in connection with the investigation of, preparation for or defense or settlement of any pending or threatened claim or any action, suit or proceeding arising therefrom, whether or not such Indemnified Party is a party thereto and whether or not such claim, action, suit or proceeding is initiated or brought by or on behalf of Counterparty. Counterparty will not be liable under this Indemnity paragraph to the extent that any loss, claim, damage, liability or expense is found in a final and nonappealable judgment by a court to have resulted from the fraud, gross negligence, willful misconduct or bad faith of the Indemnified Party. The provisions of this Section 9 shall survive the completion of the Transactions contemplated by this Master Confirmation and any Supplemental Confirmation and any assignment and/or delegation of any Transaction made pursuant to the Agreement or this Master Confirmation (or any Supplemental Confirmation) shall inure to the benefit of any permitted assignee of Dealer. For the avoidance of doubt, any payments due as a result of this provision may not be used to set off any obligation of Dealer upon settlement of any Transaction.

10. **Beneficial Ownership.** Notwithstanding anything to the contrary in the Agreement, this Master Confirmation or any Supplemental Confirmation, in no event shall Dealer be entitled to receive, or be deemed to receive, Shares to the extent that, upon such receipt of such Shares, (i) the “beneficial ownership” (within the meaning of Section 13 of the Exchange Act and the rules promulgated thereunder) of Shares by Dealer, and all persons who may form a “group” (within the meaning of Rule 13d-5(b)(1) under the Exchange Act) with Dealer with respect to “beneficial ownership” of any Shares (collectively, “**Dealer Group**”), would be equal to or greater than 4.9% of the outstanding Shares (such condition, an “**Excess Ownership Position**”), (ii) violation would occur in respect of any restriction on ownership and/or transfer set forth in Article VII of Counterparty’s Articles of Amendment and Restatement of Declaration of Trust, as amended from time to time, taking into account any waivers that are then in effect (such condition, the “**Excess Charter Ownership Position**”) or (iii) Dealer, any Dealer Group or any person whose ownership position would be aggregated with that of Dealer or Dealer Group (any of Dealer, any Dealer Group or any such person, a “**Dealer Person**”) under any state or federal bank holding company or banking laws, or any federal, state or local laws, regulations or regulatory orders or organizational documents or contracts of Counterparty, in each case, applicable to ownership of Shares (“**Applicable Laws**”), and as a result of such aggregation would own, beneficially own, constructively own, control, hold the power to vote or otherwise meet a relevant definition of ownership in excess of a number of Shares equal to (x) the lesser of (A) the maximum number of Shares that would be permitted under Applicable Laws and (B) the number of Shares that would give rise to reporting or registration obligations or other requirements (including obtaining prior approval by a state or federal regulator) of a Dealer Person under Applicable Laws and with respect to which such requirements have not been met or the relevant approval has not been received or that would give rise to any consequences under the constitutive documents of Counterparty or any contract or agreement to which Counterparty is a party, in each case *minus* (y) 1% of the number of Shares outstanding on the date of determination (such condition described in clause (iii), an “**Excess Regulatory Ownership Position**”). If any delivery owed to Dealer hereunder is not made, in whole or in part, as a result of this provision, (i) Counterparty’s obligation to make such delivery shall not be extinguished and Counterparty shall make such delivery as promptly as practicable after, but in no event later than one Exchange Business Day after, Dealer gives notice to Counterparty that such delivery would not result in (x) any Dealer Person directly or indirectly beneficially owning in excess of 4.9% of the outstanding Shares or (y) the occurrence of an Excess Charter Ownership Position or Excess Regulatory Ownership Position and (ii) if such delivery relates to a Physical Settlement, notwithstanding anything to the contrary herein, Dealer shall not be obligated to satisfy the portion of its payment obligation corresponding to any Shares required to be so delivered until the date Counterparty makes such delivery. Upon request of Dealer, Counterparty shall promptly confirm to Dealer the number of Shares then outstanding and Dealer shall then promptly advise Counterparty with respect to any limitations under this Section 10 applicable to any anticipated delivery of Shares hereunder; provided, however, that neither a failure by Counterparty to notify Dealer of the number of Shares then outstanding nor a failure of Dealer to advise Counterparty with respect to any applicable limitations shall be deemed a default hereunder and notwithstanding such failure the remainder of this Section 10 shall continue to apply. For the avoidance of doubt, any delivery of Shares made by Counterparty to Dealer that

Dealer was not entitled to receive under the terms of this Section 10 shall not be deemed to satisfy any of the delivery obligations of Counterparty hereunder and Dealer shall promptly return such Shares to Counterparty, pending which Dealer shall be deemed to hold any such Shares solely as custodian for the benefit of Counterparty.

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

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

13. Use of Shares. Dealer acknowledges and agrees that, except in the case of a Private Placement Settlement, Dealer shall use any Shares delivered by Counterparty to Dealer on any Relevant Settlement Date with respect to any Transaction to return to securities lenders to close out borrowings created by Dealer (or its agents or affiliates, as applicable) in connection with its hedging activities related to exposure under such Transaction in a manner that Dealer or otherwise believes in good faith to be in compliance with applicable securities law.

14. Governing Law. Notwithstanding anything to the contrary in the Agreement, the Agreement, this Master Confirmation, any Supplemental Confirmation and all matters arising in connection with the Agreement, this Master Confirmation or any Supplemental Confirmation shall be governed by, and construed and enforced in accordance with, the laws of the State of New York.

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

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

17. Right to Extend. Dealer may postpone any Relevant Settlement Date or any other date of valuation or delivery, with respect to some or all of the relevant Settlement Shares, if Dealer determines, based on the advice of counsel, that such extension is reasonably necessary or appropriate to enable Dealer to effect purchases of Shares in connection with its hedging activity hereunder in a manner that would, if Dealer were Counterparty or an affiliated purchaser of Counterparty, be in compliance with applicable legal and regulatory requirements.

18. Waiver of Right to Trial by Jury. **EACH OF DEALER AND COUNTERPARTY HEREBY IRREVOCABLY WAIVES (ON SUCH PARTY’S OWN BEHALF AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ON BEHALF OF SUCH PARTY’S STOCKHOLDERS) ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS MASTER CONFIRMATION OR ANY SUPPLEMENTAL CONFIRMATION OR THE ACTIONS OF DEALER, COUNTERPARTY OR THEIR AFFILIATES IN THE NEGOTIATION, PERFORMANCE OR ENFORCEMENT HEREOF.**

19. Jurisdiction. THE PARTIES HERETO IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF NEW YORK IN CONNECTION WITH ALL MATTERS RELATING HERETO AND WAIVE ANY OBJECTION TO THE LAYING OF VENUE IN, AND ANY CLAIM OF INCONVENIENT FORUM WITH RESPECT TO, THESE COURTS.

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

21. Delivery of Cash. For the avoidance of doubt, nothing in this Master Confirmation or any Supplemental Confirmation shall be interpreted as requiring Counterparty to deliver cash or other assets in respect of the settlement of any Transaction, except in circumstances where the required cash or other asset settlement thereof is permitted for classification of the contract as equity by *ASC 815-40, Derivatives and Hedging—Contracts in Entity’s Own Equity*, as in effect on the Trade Date.

22. **Other Forwards.** Counterparty agrees that it shall not (x) cause to occur, or permit to exist, any Forward Hedge Selling Period (as defined in the Sales Agreement) at any time there is (1) a "Forward Hedge Selling Period" (or equivalent concept) relating to any other issuer forward sale or similar transaction (including, without limitation, any "Transaction" under (as and defined under) any substantially identical master forward confirmation) with any financial institution other than Dealer (an "**Other Forward Transaction**"), (2) any "Unwind Period" (or equivalent concept) hereunder or under any Other Forward Transaction or (3) any other period in which Counterparty directly or indirectly issues and sells Shares pursuant to an underwriting agreement (or similar agreement including, without limitation, any equity distribution agreement) (such period, a "**Selling Period**") that Counterparty enters into with any financial institution other than Dealer, or (y) cause to occur, or permit to exist, any Unwind Period at any time there is (1) an "Unwind Period" (or equivalent concept) under any Other Forward Transaction, (2) a "Forward Hedge Selling Period" (or equivalent concept) under any Other Forward Transaction or (3) any Selling Period. Dealer acknowledges, however, that, pursuant to the Sales Agreement, Counterparty may enter into one or more forward transactions (each, an "**Other ATM Forward Transaction**") with another Forward Purchaser (as defined in the Sales Agreement) (an "**Other Dealer**"). Dealer and Counterparty agree that if Counterparty designates a "Relevant Settlement Date" (or equivalent concept) with respect to one or more Other ATM Forward Transactions for which "Cash Settlement" (or equivalent concept) or "Net Share Settlement" (or equivalent concept) is applicable, and the resulting "Unwind Period" (or equivalent concept) for such Other Forward Transaction coincides for any period of time with an Unwind Period for a Transaction (the "**Overlap Unwind Period**"), Counterparty shall notify Dealer at least one Scheduled Trading Day prior to the commencement of such Overlap Unwind Period of the first Scheduled Trading Day and length of such Overlap Unwind Period, and Dealer shall be permitted to purchase Shares to unwind its hedge in respect of a Transaction only on alternating Scheduled Trading Days during such Overlap Unwind Period, commencing on the first, second, third or later Scheduled Trading Day of such Overlap Unwind Period, as notified to Dealer by Counterparty at least one Scheduled Trading Day prior to such Overlap Unwind Period (which alternating Scheduled Trading Days, for the avoidance of doubt, would be every other Scheduled Trading Day if there is only one Other Dealer in such Overlap Unwind Period, every third Scheduled Trading Day if there are two Other Dealers, etc.).

23. **Forward Placement Notices.** Counterparty and Dealer agree that, upon the effectiveness of any accepted Forward Placement Notice relating to a Forward Transaction (as such term is defined in the Sales Agreement), in respect of the Transaction to which such accepted Forward Placement Notice relates, each of the representations, warranties, covenants, agreements and other provisions of this Master Confirmation and the Supplemental Confirmation for such Transaction (including, without limitation, Dealer's right to designate an Early Valuation Date in respect of such Transaction pursuant to the provisions above in Section 2 of this Master Confirmation under the heading "Early Valuation," and the termination of such Transaction following an Insolvency Filing pursuant to Section 7 of this Master Confirmation) shall govern, and be applicable to, such Transaction as of the first Trading Day of the Forward Hedge Selling Period for such Transaction as if the Trade Date for such Transaction were such first Trading Day. Notwithstanding anything to the contrary in this Master Confirmation, any Supplemental

Confirmation, the Agreement, or the 2002 Definitions, if Dealer designates an Early Valuation Date with respect to a Transaction (1) following the occurrence of an Event of Default or Termination Event, other than an Insolvency Filing, and such Early Valuation Date is to occur before the date that is one Settlement Cycle after the last day of the Forward Hedge Selling Period for such Transaction or (2) prior to Counterparty's execution of the Supplemental Confirmation relating to such Transaction, then, for purposes of such Early Valuation Date, (i) a Supplemental Confirmation relating to such Transaction reasonably completed by Dealer (as if the Trade Date for such Transaction were the last day of the Forward Hedge Selling Period on which the Forward Seller sold Forward Hedge Shares for such Transaction) shall, subject to the provisions under "Effectiveness" in Section 3 above, be deemed to be immediately effective and (ii) in the case of (1), the Forward Price shall be deemed to be the Initial Forward Price (calculated assuming that the last Trading Day of such Forward Hedge Selling Period were the day immediately following the date Dealer so notifies Counterparty of such designation of an Early Valuation Date for purposes of such Early Valuation Date). For the avoidance of doubt, in the event that this Section 23 is triggered, the terms of such deemed Supplemental Confirmation shall be reviewed, confirmed or determined by the Calculation Agent to the same extent such terms would have been reviewed, confirmed or determined by the Calculation Agent if the parties had entered into a Supplemental Confirmation.

24. Tax Matters.

(a) For the purpose of Section 3(f) of the Agreement:

(i) Dealer makes the following representations: *[Insert dealer-specific tax representations.]*

(ii) Counterparty makes the following representations:

A. It is a "U.S. person" (as that term is used in Treasury Regulation section 1.1441-4(a)(3) (ii) for U.S. federal income tax purposes.

B. It is a real estate investment trust for U.S. federal income tax purposes and is organized under the laws of the State of Maryland, and is an exempt recipient under Treasury Regulation section 1.6049-4(c)(1)(ii)(J).

(b) Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act "Indemnifiable Tax", as defined in Section 14 of the Agreement, shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "FATCA Withholding Tax"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of the Agreement.

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

(d) **Tax documentation**. For the purposes of Sections 4(a)(i) and 4(a)(ii) of the Agreement, Counterparty shall provide to Dealer a valid and duly executed U.S. Internal Revenue Service Form W-9, or any successor thereto that eliminates U.S. federal backup withholding tax on payments to Counterparty under this Agreement (i) on or before the date of execution of this Master Confirmation; (ii) promptly upon reasonable demand by Dealer; and (iii) promptly upon learning that any such tax form previously provided has become invalid, obsolete, or incorrect. Additionally, Counterparty or Dealer shall, promptly upon reasonable request by the other party, provide such other tax forms and documents reasonably requested by such other party.

(e) **Change of Account**. Section 2(b) of the Agreement is hereby amended by the addition of the following after the word “delivery” in the first line thereof: “to another account in the same legal and tax jurisdiction”.

25. U.S. Resolution Stay Protocol

The parties acknowledge and agree that (i) to the extent that prior to the date hereof both parties have adhered to the 2018 ISDA U.S. Resolution Stay Protocol (the “**Protocol**”), the terms of the Protocol are incorporated into and form a part of the Agreement, and for such purposes the Agreement shall be deemed a Protocol Covered Agreement, Dealer shall be deemed a Regulated Entity and Counterparty shall be deemed an Adhering Party; (ii) to the extent that prior to the date hereof the parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the “**Bilateral Agreement**”), the terms of the Bilateral Agreement are incorporated into and form a part of the Agreement, and for such purposes the Agreement shall be deemed a Covered Agreement, Dealer shall be deemed a “Covered Entity” and Counterparty shall be deemed a “Counterparty Entity”; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the “**Bilateral Terms**”) of the form of bilateral template entitled “Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)” published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at www.isda.org and, a copy of which is available

upon request), the effect of which is to amend the qualified financial contracts between the parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of the Agreement, and for such purposes the Agreement shall be deemed a "Covered Agreement," Dealer shall be deemed a "Covered Entity" and Counterparty shall be deemed a "Counterparty Entity." In the event that, after the date of the Agreement, both parties hereto become adhering parties to the Protocol, the terms of the Protocol will replace the terms of this Section 27. In the event of any inconsistencies between the Agreement and the terms of the Protocol, the Bilateral Agreement or the Bilateral Terms (each, the "**QFC Stay Terms**"), as applicable, the QFC Stay Terms will govern. Terms used in this paragraph without definition shall have the meanings assigned to them under the QFC Stay Rules. For purposes of this paragraph, references to "the Agreement" include any related credit enhancements entered into between the parties or provided by one to the other. In addition, the parties agree that the terms of this paragraph shall be incorporated into any related covered affiliate credit enhancements, with all references to Dealer replaced by references to the covered affiliate support provider.

"**QFC Stay Rules**" mean the regulations codified at 12 C.F.R. 252.2, 252.81-8, 12 C.F.R.382.1- 7 and 12 C.F.R. 47.1-8, which, subject to limited exceptions, require an express recognition of the stay-and-transfer powers of the FDIC under the Federal Deposit Insurance Act and the Orderly Liquidation Authority under Title II of the Dodd Frank Wall Street Reform and Consumer Protection Act and the override of default rights related directly or indirectly to the entry of an affiliate into certain insolvency proceedings and any restrictions on the transfer of any covered affiliate credit enhancements.]

[U.S. Resolution Stay Provisions]

(a) Recognition of the U.S. Special Resolution Regimes

(i) In the event that Dealer becomes subject to a proceeding under (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder or (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder (a "**U.S. Special Resolution Regime**") the transfer from Dealer of this Master Confirmation, and any interest and obligation in or under, and any property securing, this Master Confirmation, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Master Confirmation, and any interest and obligation in or under, and any property securing, this Master Confirmation were governed by the laws of the United States or a state of the United States.

(ii) In the event that Dealer or an Affiliate becomes subject to a proceeding under a U.S. Special Resolution Regime, any Default Rights (as defined in 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable ("**Default Right**")) under this Master Confirmation that may be exercised against Dealer are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Master Confirmation were governed by the laws of the United States or a state of the United States.

(b) Limitation on Exercise of Certain Default Rights Related to an Affiliate's Entry Into Insolvency Proceedings. Notwithstanding anything to the contrary in this Master Confirmation, the parties expressly acknowledge and agree that:

(i) Counterparty shall not be permitted to exercise any Default Right with respect to this Master Confirmation or any Affiliate Credit Enhancement that is related, directly or indirectly, to an Affiliate of the Dealer becoming subject to receivership, insolvency, liquidation, resolution, or similar proceeding (an "**Insolvency Proceeding**"), except to the extent that the exercise of such Default Right would be permitted under the provisions of 12 C.F.R. 252.84, 12 C.F.R. 47.5 or 12 C.F.R. 382.4, as applicable; and

(ii) Nothing in this Master Confirmation shall prohibit the transfer of any Affiliate Credit Enhancement, any interest or obligation in or under such Affiliate Credit Enhancement, or any property securing such Affiliate Credit Enhancement, to a transferee upon or following an Affiliate of Dealer becoming subject to an Insolvency Proceeding, unless the transfer would result in the Counterparty being the beneficiary of such Affiliate Credit Enhancement in violation of any law applicable to the Counterparty.

(iii) For the purpose of this paragraph:

I. "**Affiliate**" is defined in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

II. "**Credit Enhancement**" means any credit enhancement or credit support arrangement in support of the obligations of Dealer under or with respect to this Master Confirmation, including any guarantee, collateral arrangement (including any pledge, charge, mortgage or other security interest in collateral or title transfer arrangement), trust or similar arrangement, letter of credit, transfer of margin or any similar arrangement.

(c) U.S. Protocol. If Counterparty has previously adhered to, or subsequently adheres to, the ISDA 2018 U.S. Resolution Stay Protocol as published by the International Swaps and Derivatives Association, Inc. as of July 31, 2018 (the "**ISDA U.S. Protocol**"), the terms of such protocol shall be incorporated into and form a part of this Confirmation and the terms of the ISDA U.S. Protocol shall supersede and replace the terms of this section. For purposes of incorporating the ISDA U.S. Protocol, Dealer shall be deemed to be a Regulated Entity, Counterparty shall be deemed to be an Adhering Party, and this Master Confirmation shall be deemed to be a Protocol Covered Agreement. Capitalized terms used but not defined in this paragraph shall have the meanings given to them in the ISDA U.S. Protocol.

(d) Pre-existing In-Scope Agreements. Dealer and Counterparty agree that to the extent there are any outstanding “in-scope QFCs,” as defined in 12 C.F.R. § 252.82(d), that are not excluded under 12 C.F.R. § 252.88, between Dealer and Counterparty that do not otherwise comply with the requirements of 12 C.F.R. § 252.2, 252.81–8 (each such agreement, a “**Preexisting In-Scope Agreement**”), then each such Preexisting In-Scope Agreement is hereby amended to include the foregoing provisions in this section, with references to “this Master Confirmation” being understood to be references to the applicable Preexisting In-Scope Agreement.]

26. []⁴

⁴ If applicable, additional representations and covenants related to Forward Purchaser regulatory requirements such as Forward Purchaser’s use of agents, Company acknowledgement of risk disclosure, Company consent to transaction reporting, etc. to be added to particular master confirmations as customary.

Please confirm that the foregoing correctly sets forth the terms of the agreement between Dealer and Counterparty by executing this Master Confirmation and returning such copy to Dealer.

Yours faithfully,
[DEALER]

By: _____
Name:
Title:

[Signature Page to Master Confirmation]

Agreed and accepted by:

ELME COMMUNITIES

By: _____
Name:
Title:

[Signature Page to Master Confirmation]

FORM OF SUPPLEMENTAL CONFIRMATION

To: Elme Communities (“**Counterparty**”)
From: [DEALER] (“**Dealer**”)
[DEALER CONTACT INFORMATION]
Re: Issuer Share Forward Sale Transactions
Date: []

Ladies and Gentlemen:

The purpose of this Supplemental Confirmation is to confirm the terms and conditions of the Transaction entered into between [Dealer] (“**Dealer**”) and Elme Communities, a Maryland real estate investment trust (“**Counterparty**”), on the Trade Date specified below. This Supplemental Confirmation is a binding contract between Dealer and Counterparty as of the relevant Trade Date for the Transaction referenced below.

(1) This Supplemental Confirmation supplements, forms part of, and is subject to the Master Confirmation dated as of [, 20] (the **Master Confirmation**) between Dealer and Counterparty, as amended and supplemented from time to time. All provisions contained in the Master Confirmation govern this Supplemental Confirmation except as expressly modified below.

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

Trade Date: []

Effective Date: []

Number of Shares: []

Maturity Date: []

Forward Hedge Selling Commission Rate: []%

Initial Forward Price: USD []

Threshold Price: USD []

Volume-Weighted Hedge Price: []

Spread: []% per annum

Notice Settlement Number: [] Scheduled Trading Days

Initial Stock Loan Rate: []

Maximum Stock Loan Rate: []

Please confirm that the foregoing correctly sets forth the terms of the agreement between Dealer and Counterparty by executing this Supplemental Confirmation and returning such copy to Dealer.

Yours faithfully,
[DEALER]

By: _____
Name:
Title:

[Signature Page to Supplemental Confirmation]

Agreed and accepted by:

ELME COMMUNITIES

By: _____

Name:

Title:

[Signature Page to Supplemental Confirmation]

Schedule I

FORWARD PRICE REDUCTION AMOUNTS

<u>Forward Price Reduction Date:</u>	<u>Forward Price Reduction Amount:</u>
[]	USD[]
[]	USD[]
REGULAR DIVIDEND AMOUNTS	
For any calendar quarter:	USD[]

PRIVATE PLACEMENT PROCEDURES

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

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

(b) as of or prior to the date of delivery, Dealer and any potential purchaser of any such shares from Dealer (or any affiliate of Dealer designated by Dealer) identified by Dealer shall be afforded a commercially reasonable opportunity to conduct a due diligence investigation with respect to Counterparty customary in scope for private placements of equity securities of issuers comparable to Counterparty (including, without limitation, the right to have made available to them for inspection all financial and other records, pertinent corporate documents and other information reasonably requested by them);

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

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

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

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