
**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): May 31, 2019

ACADIA REALTY TRUST

(Exact name of registrant as specified in its charter)

Maryland
(State or other jurisdiction of incorporation)

1-12002
(Commission File Number)

23-2715194
(I.R.S. Employer Identification No.)

411 Theodore Fremd Avenue
Suite 300
Rye, New York 10580
(Address of principal executive offices) (Zip Code)

(914) 288-8100
(Registrant's telephone number, including area code)

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

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

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

Indicate by check mark whether the registrant is an emerging growth company as defined in 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.

Title of class of registered securities
Common shares of beneficial interest, par value
\$0.001 per share

Trading symbol
AKR

Name of exchange on which registered
The New York Stock Exchange

Item 8.01 Other Events.

On May 31, 2019, Acadia Realty Trust (the “Company”) and Acadia Realty Limited Partnership (the “Operating Partnership”) entered into an ATM Equity Offering Sales Agreement (the “Sales Agreement”) with each of BofA Securities, Inc., Barclays Capital Inc., Citigroup Global Markets Inc. (in its capacity as forward seller, acting as agent for Citibank, N.A.), Goldman Sachs & Co. LLC, Jefferies LLC, SunTrust Robinson Humphrey, Inc. and Wells Fargo Securities, LLC, each as sales agent, principal and/or (except in the case of SunTrust Robinson Humphrey, Inc.) forward seller (in such capacity, each a “Sales Agent”, and together, the “Sales Agents”), and Bank of America, N.A., Barclays Bank PLC, Citibank, N.A., Goldman Sachs & Co. LLC, Jefferies LLC and Wells Fargo Bank, National Association, each as forward purchaser (in such capacity, each a “Forward Purchaser”, and together, the “Forward Purchasers”) to sell, from time to time, common shares of beneficial interest of the Company, par value \$0.001 per share (“Common Shares”), having an aggregate sale price up to \$250,000,000, through an “at-the-market” (“ATM”) equity offering program. The Common Shares will be issued pursuant to the Company’s shelf registration statement on Form S-3 ASR (File No. 333-217594). The Company filed a prospectus supplement, dated May 31, 2019, with the Securities and Exchange Commission in connection with the offer and sale of the Common Shares being sold under the program.

Pursuant to the Sales Agreement, the Common Shares may be offered and sold through any of the Sales Agents in negotiated transactions or transactions that are deemed to be “at-the-market” offerings as defined in Rule 415 of the Securities Act of 1933, as amended, including sales made by means of ordinary brokers’ transactions on the New York Stock Exchange or another national securities exchange, or otherwise, at market prices prevailing at the time of sale, at prices related to prevailing market prices or negotiated transactions, or as otherwise agreed with the applicable Sales Agent.

Additionally, the Company may enter into one or more forward sale agreements with one or more of the Forward Purchasers. In connection with any forward sale agreement, the relevant Sales Agent, acting as forward seller, will, at the Company’s request, use commercially reasonable efforts, consistent with its normal trading and sales practices for similar transactions and applicable laws and regulations, to borrow from third parties and sell a number of Common Shares equal to the number of Common Shares underlying the particular forward sale agreement.

The Sales Agreement provides that each Sales Agent will be entitled to compensation of up to 2.0% of the gross sales price of the Common Shares sold through such Sales Agent. The Sales Agreement also provides that a forward seller will be entitled to commissions at a mutually agreed rate that will not exceed 1.5% of the gross sales price of all borrowed Common Shares sold during the applicable forward hedge selling period by the applicable forward seller, which commissions will be in the form of a reduced initial forward sale price under the related forward sale agreement with the related Forward Purchaser. The Company may also sell Common Shares to a Sales Agent as principal for its own account, at a price and discount to be agreed upon at the time of sale pursuant to a separate terms agreement.

The Company has no obligation to sell any of the Common Shares under the Sales Agreement and may at any time suspend solicitation and offers under the Sales Agreement.

The Company will contribute the net proceeds from this offering to the Operating Partnership, which intends to use the net proceeds for general corporate purposes, which may include, among other things, repayment of debt, purchasing notes, entering into loans, future acquisitions, directly (or indirectly through joint ventures) and through opportunity funds, and redevelopments of, and capital improvements to, properties. Such decisions will depend upon numerous factors and strategic considerations. Pending such usage, the Operating Partnership expects to invest proceeds in short-term instruments.

Although the Company expects to physically settle any forward sale agreement into which it enters (by the delivery of Common Shares) and receive proceeds from the sale of such Common Shares upon one or more forward settlement dates no later than a date that is up to two years from entry into the applicable forward sale agreement, the Company may also elect to cash settle or net share settle all or a portion of its obligations under any forward sale agreement. If the Company elects to cash settle any forward sale agreement, it may not receive any proceeds, and may owe cash to the relevant Forward Purchaser in certain circumstances. If the Company elects to net share settle any forward sale agreement, it will not receive any proceeds and may owe Common Shares to the relevant Forward Purchaser in certain circumstances. Any forward sale agreement is subject to early termination or settlement under certain circumstances.

Some or all of the Sale Agents, Forward Purchasers and/or their respective affiliates have engaged in, and/or may in the future engage in, investment banking, commercial banking, financial advisory and/or other commercial dealings in the ordinary course of business with the Company and/or the Company’s subsidiaries, for which they have received and/or in the future may receive fees and commissions for these transactions or services.

The foregoing description of the Sales Agreement is a summary and is qualified in its entirety by reference to the Sales Agreement (which includes as an exhibit thereto the form of forward sale agreement), which is filed as Exhibit 1.1 to this Current Report on Form 8-K and is incorporated herein by reference.

In connection with the filing of the prospectus supplement, the Company's counsel, Venable LLP delivered its legality opinion with respect to the Common Shares to be issued pursuant to the Sales Agreement. A copy of the legality opinion is attached hereto as Exhibit 5.1 and is incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description
<u>1.1</u>	<u>Sales Agreement, dated as of May 31, 2019, among Acadia Realty Trust, Acadia Realty Limited Partnership and BofA Securities, Inc., Barclays Capital Inc., Citigroup Global Markets Inc., Goldman Sachs & Co. LLC, Jefferies LLC, SunTrust Robinson Humphrey, Inc. and Wells Fargo Securities, LLC, as agents, principals and/or (except in the case of SunTrust Robinson Humphrey, Inc.) forward sellers, and Bank of America, N.A., Barclays Bank PLC, Citibank, N.A., Goldman Sachs & Co. LLC, Jefferies LLC and Wells Fargo Bank, National Association, as forward purchasers.</u>
<u>5.1</u>	<u>Opinion of Venable LLP.</u>
<u>23.1</u>	<u>Consent of Venable LLP (included in Exhibit 5.1).</u>

SIGNATURES

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

Dated: June 5, 2019

ACADIA REALTY TRUST
(Registrant)

By: /s/ John Gottfried

Name: John Gottfried

Title: Sr. Vice President and Chief Financial Officer

ACADIA REALTY TRUST

Common Shares of Beneficial Interest
(\$0.001 par value per share)

ATM EQUITY OFFERING SALES AGREEMENT

May 31, 2019

BofA Securities, Inc.
One Bryant Park
New York, New York 10036

Barclays Capital Inc.
745 Seventh Avenue
New York, New York 10019

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

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

Jefferies LLC
520 Madison Avenue
New York, New York 10022

SunTrust Robinson Humphrey, Inc.
3333 Peachtree Road NE, 11th Floor
Atlanta, Georgia 30326

Wells Fargo Securities, LLC
375 Park Avenue
New York, New York 10152

As Agents

Bank of America, N.A.
One Bryant Park
New York, New York 10036

Barclays Bank PLC
c/o Barclays Capital Inc.
745 Seventh Avenue
New York, NY 10019

Citibank, N.A.
390 Greenwich Street, 6th Floor
New York, New York 10013

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

Jefferies LLC
520 Madison Avenue
New York, New York 10022

Wells Fargo Bank, National Association
375 Park Avenue, 4th Floor
New York, New York 10152

As Forward Purchasers

Ladies and Gentlemen:

Acadia Realty Trust, a Maryland real estate investment trust (the “Company”), confirms its agreement with BofA Securities, Inc., Barclays Capital Inc., Citigroup Global Markets Inc. (in its capacity as forward seller, acting as agent for Citibank, N.A.), Goldman Sachs & Co. LLC, Jefferies LLC, SunTrust Robinson Humphrey, Inc. and Wells Fargo Securities, LLC, each as sales agent, principal and/or (except in the case of SunTrust Robinson Humphrey, Inc.) forward seller (in such capacity, each an “Agent,” and together, the “Agents”), and Bank of America, N.A., Barclays Bank PLC, Citibank, N.A., Goldman Sachs & Co. LLC, Jefferies LLC and Wells Fargo Bank, National Association, each as forward purchaser (in such capacity, each a “Forward Purchaser,” and together, the “Forward Purchasers”). For purposes of clarity, it is understood and agreed by the parties hereto that, if Shares (as defined below) are offered or sold through any Agent acting as forward seller for the applicable Forward Purchaser, then such Agent, as forward seller, shall be acting solely in its capacity as sales agent for such Forward Purchaser and not as sales agent for the Company with respect to the offering and sale of such Shares, and, except in cases where this Agreement (as defined below) expressly refers to an Agent acting as sales agent for the Company or unless otherwise expressly stated or the context otherwise requires, references in this Agreement to any Agent acting as sales agent shall also be deemed to apply to such Agent when acting as forward seller, *mutatis mutandis*; provided that SunTrust Robinson Humphrey, Inc. is not acting as forward seller. It is also understood and agreed by the parties hereto that, if Shares are offered or sold through any Agent acting as sales agent for the Company, then such Agent shall be acting solely in its capacity as sales agent for the Company, and not as sales agent for any Forward Purchaser, with respect to the offering and sale of such Shares.

The Company proposes subject to the terms and conditions stated herein, to issue and sell from time to time to or through the Agents, severally and not jointly, up to \$250,000,000 of shares (the “Shares”) of the Company’s common shares of beneficial interest, par value \$0.001 per share (the “Common Shares”), on the terms set forth in Section 2 of this ATM Equity Offering Sales Agreement (the “Agreement”). The Company agrees that whenever it determines to sell Shares directly to an Agent as principal, it will enter into a separate agreement (each a “Terms Agreement”) in substantially the form of Annex I hereto, relating to such sale in accordance with Section 3 of this Agreement. For the avoidance of doubt, any reference in this Agreement to “Shares” shall not include any “Confirmation Shares” (as defined below).

The Company may also enter into one or more forward stock purchase transactions with any of the Forward Purchasers as set forth in separate forward sale confirmations, each in substantially the form attached hereto as Annex III (each, a “Confirmation,” and together, the “Confirmations”). In connection therewith, the Company and each Agent understand that such Agent or an affiliate thereof will attempt to borrow and then offer, as forward seller on behalf of the applicable Forward Purchaser, the applicable Shares for sale on the terms set forth under this Agreement.

The Company and Acadia Realty Limited Partnership, a Delaware limited partnership (the “Partnership”), for which the Company is the sole general partner, hereby confirm their agreements with the Agents as follows:

Section 1. Representations and Warranties. Each of the Company and the Partnership, jointly and severally, represent and warrant to the Agents and the Forward Purchasers that as of the date of this Agreement, each Registration Statement Amendment Date (as defined below), each Company Periodic Report Date (as defined below), each Company Earnings Report Date (as defined below), each Request Date (as defined in Section 3 below), each Applicable Time (as defined below) and each Settlement Date (as defined below):

(a) (i) The Company and the transactions contemplated by this Agreement meet all of the requirements for using Form S-3 under the Securities Act of 1933, as amended (the "Securities Act") pursuant to the standards for such form in effect currently and immediately prior to October 21, 1992. The registration statement on Form S-3 (No. 333-217594), including any exhibits thereto and any prospectus or prospectus supplement deemed a part thereof, each at the time of effectiveness (the "Registration Statement"), filed by the Company with the Securities and Exchange Commission (the "Commission") on May 2, 2017 (including any Rule 462(b) registration statement) became effective upon filing with the Commission in accordance with Rule 462(e) of the rules and regulations of the Commission under the Securities Act (the "Securities Act Regulations") on May 2, 2017, and no stop order suspending the effectiveness of the Registration Statement or any part thereof has been issued under the Securities Act and no proceedings for that purpose have been instituted or are pending or, to the knowledge of the Company, are contemplated by the Commission or by the state securities authority of any jurisdiction, and any request on the part of the Commission for additional information has been complied with. The Registration Statement was filed by the Company with the Commission not earlier than three years prior to the date hereof. The Registration Statement is an "automatic shelf registration statement," as defined in Rule 405 of the Securities Act Regulations. The Shares, since their registration on the Registration Statement, have been and remain eligible for registration by the Company on the Registration Statement.

(ii) (A) At the original effectiveness of the Registration Statement, (B) 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 Securities Exchange Act of 1934, as amended (the "Exchange Act") or form of prospectus), (C) at the time the Company or any person acting on its behalf (within the meaning, for this clause only, of Rule 163(c) of the Securities Act Regulations) made any offer relating to the Shares in reliance on the exemption of Rule 163 of the Securities Act Regulations, and (D) as of the execution of this Agreement, the Company was and is a "well-known seasoned issuer," as defined in Rule 405 of the Securities Act Regulations.

(b) At the respective times the Registration Statement and each amendment thereto became effective, at each deemed effective date with respect to the Agents pursuant to Rule 430B(f)(2) of the rules and regulations of the Commission under the Securities Act Regulations and at each Applicable Time, the Registration Statement complied and will comply as to form in all material respects with the requirements of the Securities Act and the Securities Act Regulations, and 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; *provided, however*, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with the information concerning the Agents or the Forward Purchasers furnished in writing to the Company by the Agents or the Forward Purchasers expressly for use therein, it being understood and agreed that the only such information furnished by any Agents or any Forward Purchasers consists of the information described as such in Section 7(b) of this Agreement.

Neither the Prospectus (as in this Section 1(b)) nor any amendments or supplements thereto, at the time the Prospectus or any such amendment or supplement was issued, at the Applicable Time or at the Settlement Date, included or will include an untrue statement of a material fact or omitted 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; *provided, however*, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with the information concerning the Agents or the Forward Purchasers furnished in writing to the Company by the Agents or the Forward Purchasers expressly for use therein, it being understood and agreed that the only such information furnished by any Agents or any Forward Purchasers consists of the information described as such in Section 7(b) of this Agreement.

Each prospectus (including the prospectus or prospectuses filed as part of the Registration Statement or any amendment thereto) complied as to form when so filed in all material respects with the Securities Act and the Securities Act Regulations and the Prospectus delivered to the Agents and the Forward Purchasers for use in connection with this offering was identical to the electronically transmitted copies thereof filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval system ("EDGAR"), except to the extent permitted by Regulation S-T.

At the Applicable Time, the Disclosure Package (as defined in this Section 1(b)) did not include any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with the information concerning the Agents or the Forward Purchasers furnished in writing to the Company by the Agents or the Forward Purchasers expressly for use therein, it being understood and agreed that the only such information furnished by any Agents or any Forward Purchasers consists of the information described as such in Section 7(b) of this Agreement.

As used in this subsection and elsewhere in this Agreement:

"Applicable Time" means, with respect to any Shares, the time of sale of such Shares pursuant to this Agreement or, if not specified pursuant to this Agreement, immediately prior to the first sale of such Shares.

"Base Prospectus" means the base prospectus dated May 2, 2017 filed as part of the Registration Statement, as amended, in the form first furnished to the Agents and the Forward Purchasers for use in connection with the offering of the Shares, including the documents incorporated by reference therein pursuant to Item 12 of Form S-3 under the Securities Act at the time of the execution of this Agreement.

"Business Day" means any day when the Commission's office in Washington, D.C. is open for business.

"Disclosure Package" means the Prospectus, as amended or supplemented prior to the Applicable Time, any applicable Issuer Free Writing Prospectus(es) (as defined in this Section 1(b)) issued prior to the Applicable Time, any other free writing prospectus that the parties hereto shall hereafter expressly agree in writing to treat as part of the Disclosure Package issued at or prior to the Applicable Time, all taken together, and with respect to any Shares, the public offering price of such Shares.

“Issuer Free Writing Prospectus” means any “issuer free writing prospectus,” as defined in Rule 433 of the Securities Act Regulations (“Rule 433”), relating to the Shares that (i) is required to be filed with the Commission by the Company or (ii) is exempt from filing pursuant to Rule 433(d)(5)(i) because it contains a description of the Shares or of the offering that does not reflect the final terms, in each case in the form filed or required to be filed with the Commission or, if not required to be filed, in the form retained in the Company’s records pursuant to Rule 433(g).

“Prospectus” means the Base Prospectus, as supplemented by the Prospectus Supplement (as defined in this Section 1(b)), including the documents incorporated therein pursuant to Item 12 of Form S-3 as of the date of such Prospectus Supplement.

“Prospectus Supplement” means the most recent prospectus supplement relating to the Shares, to be filed by the Company with the Commission pursuant to Rule 424(b) of the Securities Act Regulations, in the form furnished by the Company to the Agents and the Forward Purchasers in connection with the offering of the Shares.

(c) Each Issuer Free Writing Prospectus, as of its issue date and at all subsequent times through the completion of the offering of Shares under this Agreement or until any earlier date that the Company notified or notifies the Agents and the Forward Purchasers as described in the next sentence, 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 document incorporated by reference therein and any other prospectus deemed to be a part thereof, that has not been superseded or modified. 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 included or would include an untrue statement of a material fact or omitted or would omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances, not misleading, the Company has notified or will notify the Agents and the Forward Purchasers promptly so that any use of such Issuer Free Writing Prospectus may cease until it is amended or supplemented. The foregoing two sentences do 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 Agents or the Forward Purchasers expressly for use therein.

(d) The documents incorporated or deemed to be incorporated by reference into the Registration Statement, the Prospectus and the Disclosure Package, at the time they were filed with the Commission, conformed in all material respects to the requirements of the Securities Act and the Securities Act Regulations or the Exchange Act, and the rules and regulations of the Commission thereunder (the “Exchange Act Regulations”), as applicable, and when read together with the information in the Prospectus and the Disclosure Package (i) at the time the Registration Statement became effective, (ii) at the time each Prospectus was issued and first used and (iii) at the Applicable Time, none of such documents contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading; *provided, however*, that this representation and warranty shall not apply to any statements or omissions made in reliance upon and in conformity with the information concerning the Agents or the Forward Purchasers furnished in writing to the Company by the Agents or the Forward Purchasers expressly for use therein, it being understood and agreed that the only such information furnished by any Agents or any Forward Purchasers consists of the information described as such in Section 7(b) of this Agreement.

(e) The Company has not distributed and will not distribute, prior to the completion of the Agents' distribution of the Shares under this Agreement, any offering material in connection with the offering and sale of the Shares other than the Prospectus or any Issuer Free Writing Prospectus reviewed and consented to by the Agents and the Forward Purchasers or the Registration Statement.

(f) This Agreement has been duly authorized, executed and delivered by, and is a valid and binding agreement of, the Company and the Partnership.

(g) There are no contracts or other documents required to be described in the Registration Statement, the Disclosure Package or the Prospectus or to be filed as exhibits to the Registration Statement or incorporated by reference that have not been described, filed or incorporated by reference as required. The contracts so described in the Registration Statement, the Disclosure Package and the Prospectus to which the Company is a party have been duly authorized, executed and delivered by the Company, constitute valid and binding agreements of the Company, and are enforceable against and, to the Company's knowledge by, the Company in accordance with their respective terms, except to the extent that the indemnification and contribution provisions set forth in Section 7 of this Agreement may be limited by the federal and state securities laws and public policy considerations in respect thereof, and except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforceability of creditors' rights generally. To the Company's knowledge, no other party is in material breach of or material default under any of such contracts.

(h) Except as otherwise disclosed in the Registration Statement, the Disclosure Package and the Prospectus, subsequent to the respective dates as of which information is given in the Registration Statement, the Disclosure Package and the Prospectus: (i) there has been no material adverse change, or any development that could reasonably be expected to result in a material adverse change, in the condition, financial or otherwise, or in the earnings, shareholders' equity, business, operations or prospects, whether or not arising from transactions in the ordinary course of business, of the Company, the Partnership and their subsidiaries, considered as one entity or a material adverse effect on the performance by the Company or, as applicable, the Partnership pursuant to this Agreement or the consummation of any of the transactions contemplated hereby (any such change is called a "Material Adverse Change"); (ii) the Company, the Partnership and their subsidiaries, considered as one entity, have not incurred any material liability or obligation, indirect, direct or contingent, not in the ordinary course of business nor entered into any material transaction or agreement not in the ordinary course of business; and (iii) there has been no dividend or distribution of any kind declared, set aside for payment, paid or made by the Company or the Partnership, except for dividends set aside for payment or paid to the Company, the Partnership or any of their subsidiaries on any class of capital stock or repurchase or redemption by the Company, the Partnership or any of their subsidiaries of any class of capital stock.

(i) BDO USA, LLP, who has expressed its opinion with respect to certain financial statements (which term as used in this Agreement includes the related notes and schedules, if any, thereto) and supporting schedules filed with the Commission and included or incorporated by reference or deemed to be included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus, is an independent registered public accounting firm as required by the Securities Act, the Exchange Act and the rules and regulations of the Public Company Accounting Oversight Board.

(j) The financial statements included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus present fairly the consolidated financial position of the Company and its subsidiaries as of and at the dates indicated and the results of their operations and cash flows for the periods specified. The supporting schedules included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus present fairly the information stated therein. Such financial statements and supporting schedules comply as to form with the applicable accounting requirements of the Securities Act, the Exchange Act, the Securities Act Regulations and the Exchange Act Regulations and have been prepared in conformity with generally accepted accounting principles as applied in the United States applied on a consistent basis throughout the periods involved, except as may be expressly stated in the related notes thereto. The pro forma financial statements and other pro forma financial information included, or incorporated by reference in, the Registration Statement, the Disclosure Package and the Prospectus 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 or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus. The pro forma financial statements included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus comply as to form in all material respects with the applicable accounting requirements of the Commission's Regulation S-X and the pro forma adjustments have been properly applied to the historical amounts in the compilation of those statements. No other historical, pro forma or other financial statements or supporting schedules are required under applicable law, including the Securities Act, the Securities Act Regulations, the Exchange Act and the Exchange Act Regulations, to be included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus. The financial data included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus fairly present the information set forth therein on a basis consistent with that of the audited financial statements contained in the Company's most recent Annual Report on Form 10-K. Any non-GAAP financial measures, as defined under Regulation G under the Securities Act, included in the Registration Statement, the Disclosure Package and the Prospectus are permitted for use in documents filed with the Commission and are presented in conformity with the Securities Act, the Securities Act Regulations, the Exchange Act and the Exchange Act Regulations.

(k) Each of the Company, the Partnership and their subsidiaries has been duly incorporated, formed or organized, as the case may be, and is validly existing as a real estate investment trust, corporation, partnership, limited liability company or other legal entity in good standing under the laws of the jurisdiction of its incorporation, organization or formation and has full real estate investment trust, corporate, partnership or other power and authority to own, lease and operate its properties and to conduct its business as described in the Registration Statement, the Disclosure Package and the Prospectus and, in the case of the Company and the Partnership, to enter into and perform their respective obligations under this Agreement and to consummate the transactions contemplated herein. Each of the Company, the Partnership and each of their subsidiaries is duly qualified as a foreign corporation or other legal entity 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 for such jurisdictions where the failure to so qualify or to be in good standing would not, individually or in the aggregate, result in a Material Adverse Change. All of the issued and outstanding capital stock, membership interests, partnership interests or similar equity interests of each subsidiary have been duly authorized and validly issued, are fully paid and non-assessable and the equity interests in each subsidiary which are owned by the Company, directly or through subsidiaries, are free and clear of any security interest, mortgage, pledge, lien, encumbrance or claim. The Company does not own or control, directly or indirectly, any corporation, association or other entity other than the subsidiaries listed on Exhibit 21.1 of the Company's most recently filed Annual Report on Form 10-K, subject to any immaterial additions and deletions (collectively, the "Subsidiaries"). There are no Subsidiaries, except for the Partnership, Acadia Strategic Opportunity Fund II, LLC, Acadia Strategic Opportunity Fund III, LLC and Acadia Strategic Opportunity Fund, IV LLC, of the Company that meet the definition of "significant subsidiaries" under Regulation S-X under the Securities Act.

(l) The authorized, issued and outstanding capital shares of the Company are as described in the Registration Statement, the Disclosure Package and the Prospectus (other than for subsequent issuances, if any, pursuant to this Agreement, employee benefit plans described in the Registration Statement, the Disclosure Package and the Prospectus or upon exercise of outstanding options described in the Registration Statement, the Disclosure Package and the Prospectus). The Common Shares (including the Shares) conform in all material respects to the description thereof contained in the Registration Statement, the Disclosure Package and the Prospectus. All of the issued and outstanding Common Shares have been duly authorized and validly issued, are fully paid and non-assessable and have been offered, sold and issued in compliance with federal and state securities laws. The issuance of the Shares has been duly and validly authorized and, upon being delivered and paid for pursuant to this Agreement, the Shares will be fully paid, validly issued and non-assessable, free and clear of any security interest, mortgage, pledge, lien, encumbrance or claim. All of the issued and outstanding units of limited partnership interest in the Partnership (the "OP Units") have been duly authorized by the Partnership. As of the date of this Agreement, the Company is the sole general partner of the Partnership and owns OP Units representing an approximately 94% interest in the Partnership. None of the outstanding Common Shares were issued in violation of any preemptive rights, rights of first refusal or other similar rights to subscribe for or purchase securities of the Company, and the holders of the outstanding capital shares of the Company are not entitled to preemptive or other rights to subscribe for the Shares. There are no authorized or outstanding options, warrants, preemptive rights, rights of first refusal or other rights to purchase, or equity or debt securities convertible into or exchangeable or exercisable for, any capital shares or ownership interests in the Company or any of its subsidiaries other than those accurately described in the Registration Statement, the Disclosure Package and the Prospectus. The description of the Company's share option, share bonus and other share plans or arrangements, and the options or other rights granted thereunder, set forth in the Registration Statement, the Disclosure Package and the Prospectus accurately and fairly presents the information required to be shown with respect to such plans, arrangements, options and rights. The issuance and sale of the Common Shares issuable pursuant to each Confirmation, if any (collectively, the "Confirmation Shares") have been duly and validly authorized and, upon being delivered and paid for (if applicable) pursuant to such Confirmation, such Confirmation Shares will be fully paid, validly issued and non-assessable, free and clear of any security interest, mortgage, pledge, lien, encumbrance or claim.

(m) Neither the Company, the Partnership nor any of their subsidiaries is in violation of its respective charter, declaration of trust, by-laws, certificate of formation, partnership agreement, operating agreement or similar documents or is in default (or, with the giving of notice or lapse of time, would be in default) (“Default”) under any indenture, mortgage, loan or credit agreement, note, contract, franchise, lease or other agreement, obligation, condition, covenant or instrument to which the Company, the Partnership or any of their subsidiaries is a party or by which it or any of them may be bound, or to which any of the property or assets of the Company, the Partnership or any of their subsidiaries is subject (each, an “Existing Instrument”), except for such Defaults as would not, individually or in the aggregate, result in a Material Adverse Change. The Company’s and the Partnership’s execution, delivery and performance of this Agreement and any Confirmation, the application of the proceeds from the issuance of the Shares or any Confirmation Shares as described under “Use of Proceeds” in the Disclosure Package and the Prospectus and the consummation of the transactions contemplated hereby and thereby and by the Registration Statement (i) will not result in any violation of the provisions of the respective charter, declaration of trust, by-laws, certificate of formation, partnership agreement, operating agreement or similar documents of the Company, the Partnership or any subsidiary, (ii) will not conflict with or constitute a breach of, or Default or a Debt Repayment Triggering Event (as defined in this Section 1(m)) under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Company, the Partnership or any of their subsidiaries pursuant to, or require the consent of any other party to, any Existing Instrument, except for such conflicts, breaches, Defaults, Debt Repayment Triggering Events, liens, charges or encumbrances as would not, individually or in the aggregate, result in a Material Adverse Change and (iii) will not result in any violation of any law, statute, rule, regulation, judgment, order or decree, administrative regulation or administrative or court decree applicable to the Company, the Partnership or any subsidiary or any of its or their property. No consent, approval, authorization or other order of, or registration or filing with, any court or other governmental or regulatory authority or agency, is required for the Company’s or the Partnership’s execution, delivery and performance of this Agreement and any Confirmation, and consummation of the transactions contemplated hereby and thereby and by the Registration Statement and the Prospectus, except such consents, approvals, authorizations, orders, filings, registrations or qualifications as may be required under applicable state securities or Blue Sky laws and from the Financial Industry Regulatory Authority, Inc. (“FINRA”). As used herein, a “Debt Repayment Triggering Event” means any event or condition which gives, or with the giving of notice or lapse of time would give, the holder of any note, debenture or other evidence of indebtedness (or any person acting on such holder’s behalf) the right to require the repurchase, redemption or repayment of all or a portion of such indebtedness by the Company, the Partnership or any of its subsidiaries;

(n) Except as otherwise disclosed in the Registration Statement, the Disclosure Package and the Prospectus, there are no legal or governmental actions, suits, investigations or proceedings pending or, to the best of the Company's or the Partnership's knowledge, threatened (i) against or affecting the Company, the Partnership or any of their subsidiaries, (ii) that has as the subject thereof any officer or trustee of, or property owned or leased by, the Company, the Partnership or any of their subsidiaries or (iii) relating to environmental or discrimination matters, which would reasonably be expected to result in a Material Adverse Change or adversely affect the consummation of the transactions contemplated by this Agreement and any Confirmation. No material labor dispute with the employees of the Company, the Partnership or any of their subsidiaries exists or, to the best of the Company's and the Partnership's knowledge, is threatened or imminent, and neither the Company nor the Partnership is aware of any existing or imminent labor disturbance by the employees at any of its or its subsidiaries' principal suppliers, contractors or customers that could result in a Material Adverse Change.

(o) The Company, the Partnership and their subsidiaries own or possess sufficient trademarks, trade names, patent rights, copyrights, domain names, licenses, approvals, trade secrets and other similar rights (collectively, "Intellectual Property Rights") reasonably necessary to conduct their businesses as now conducted or as proposed to be conducted in the Registration Statement, the Disclosure Package and the Prospectus, and the expected expiration of any of such Intellectual Property Rights would not result in a Material Adverse Change. Neither the Company, the Partnership, nor any of their subsidiaries has received any notice of infringement or conflict with asserted Intellectual Property Rights of others, which infringement or conflict, if the subject of an unfavorable decision, would result in a Material Adverse Change. The Company and the Partnership are not parties to or bound by any options, licenses or agreements with respect to the Intellectual Property Rights of any other person or entity that are required to be set forth in the Registration Statement, the Disclosure Package and the Prospectus and are not described in all material respects. None of the technology employed by the Company or the Partnership has been obtained or is being used by the Company or the Partnership in violation of any contractual obligation binding on the Company, the Partnership or, to the Company's or the Partnership's knowledge, any of their officers, trustees or employees or is otherwise in violation of the rights of any persons, except for violations which would not, individually or in the aggregate, result in a Material Adverse Change.

(p) The Company, the Partnership and each subsidiary possess such valid and current certificates, authorizations, licenses or permits issued by the appropriate state, federal or foreign regulatory agencies or bodies necessary to conduct their respective businesses, except where the failure to possess such certificate, authorizations or permits would not, individually or in the aggregate, result in a Material Adverse Change, and neither the Company, the Partnership nor any of their subsidiaries has received any notice of proceedings relating to the revocation or modification of, or non-compliance with, any such certificate, authorization, license or permit which, singly or in the aggregate, if the subject of an unfavorable decision, ruling or finding, could result in a Material Adverse Change.

(q) Each of the Company, the Partnership and each of their subsidiaries owns or leases all such properties as are necessary to the conduct of their respective operations as presently conducted. The Company, the Partnership and each of their subsidiaries has good and marketable title to all the properties and assets reflected as owned in the Company's consolidated financial statements (and schedules thereto) or elsewhere in the Registration Statement, the Disclosure Package and the Prospectus, in each case free and clear of any security interests, mortgages, liens, encumbrances, equities, claims and other defects, except as disclosed in the Registration Statement, the Disclosure Package and the Prospectus or where the existence of any security interest, mortgage, lien, encumbrance, equity, claim or other defect would not, individually or in the aggregate, result in a Material Adverse Change. The real property, improvements, equipment and personal property held under lease by the Company, the Partnership or any of their subsidiaries are held under valid and enforceable leases, except where the invalidity or unenforceability of any leases would not, individually or in the aggregate, result in a Material Adverse Change.

(r) The Company, the Partnership and their subsidiaries have filed all necessary federal, state, local and foreign income and franchise tax returns or have properly requested extensions thereof and have paid all taxes required to be paid by any of them and, if due and payable, any related or similar assessment, fine or penalty levied against any of them except as may be being contested in good faith and by appropriate proceedings. To the knowledge of the Company, there is no tax deficiency likely to be asserted against the Company, the Partnership or any of their subsidiaries. All tax liabilities, if any, of the Company, the Partnership and their subsidiaries are adequately provided for on the respective books of the entities.

(s) The Company has met the requirements for qualification and taxation as a real estate investment trust (“REIT”) under the Internal Revenue Code of 1986, as amended (the “Code”), as of the close of every taxable year during the Company’s existence, and the Company’s current and proposed method of operation will enable it to continue to meet the requirements for qualification and taxation as a real estate investment trust for federal income tax purposes.

(t) Each of the Partnership and any subsidiary limited liability company or partnership, except Acadia Self Storage Management Investment Company LLC, A-K JV I LLC and Acadia Fund IV Investments LLC, which have elected to be treated as taxable REIT subsidiaries, is qualified as a partnership or a disregarded entity for federal income tax purposes and not as an association taxable as a corporation or as a publicly traded partnership.

(u) Each of the Company and the Partnership is not, and after giving effect to the offer and sale of the Shares and any Confirmation Shares, as applicable, and after receipt of payment for the Shares on any Settlement Date and any proceeds received pursuant to any Confirmation, and the application of the proceeds therefrom as described under “Use of Proceeds” in each of the Registration Statement, the Disclosure Package and the Prospectus will not be, required to be registered as, an “investment company” or a company “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended (the “Investment Company Act”), and will conduct its business in a manner so that it will not become subject to the Investment Company Act.

(v) Each of the Company, the Partnership and their subsidiaries are insured by recognized, financially sound and reputable institutions with policies in such amounts and with such deductibles and covering such risks as are prudent and customary for their respective businesses including, but not limited to, policies covering real and personal property owned or leased by the Company, the Partnership and their subsidiaries against theft, damage, destruction, acts of vandalism and all other risks customarily insured against. All such policies of insurance are in full force and effect. There are no claims by the Company, the Partnership or any of their subsidiaries under any such policy or instrument as to which any insurance company is denying liability or defending under a reservation of rights clause, except where such denial or defense would not, individually or in the aggregate, result in a Material Adverse Change. Neither the Company, the Partnership nor any subsidiary has been refused insurance coverage sought or applied for and neither the Company, the Partnership nor any subsidiary has reason to believe that it or any subsidiary will not be able (i) to renew its existing insurance coverage as and when such policies expire or (ii) to obtain comparable coverage from similar institutions as may be necessary or appropriate to conduct its business as now conducted and at a cost that would not result in a Material Adverse Change.

(w) The Company and the Partnership have not taken and will not take, directly or indirectly, any action designed to or that might be reasonably expected to cause or result in, or which has constituted or which 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 Shares.

(x) The Common Shares are registered pursuant to Section 12(b) of the Exchange Act and have been approved for listing on the New York Stock Exchange (the “NYSE”). The Shares and the Confirmation Shares, if any, have been approved for listing on the NYSE, subject only to official notice of issuance. The Company has taken no action designed to terminate the registration of the Common Shares under the Exchange Act or to cause the delisting of 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.

(y) The Company has not distributed and will not distribute any written offering material in connection with the offering and sale of the Shares other than the Registration Statement, the Disclosure Package and the Prospectus. The Company will file with the Commission any Issuer Free Writing Prospectuses in the time and manner required under Rule 433(d) under the Securities Act Regulations.

(z) Neither the Company, the Partnership nor any of their subsidiaries nor, to the knowledge of the Company or the Partnership, any trustee, officer, agent, employee or affiliate of the Company, the Partnership or any of their subsidiaries is aware of or has taken any action, directly or indirectly, that would result in a violation of such persons of the Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “FCPA”), including, without limitation, making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, or other property, gift, promise to give or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA and the Company, the Partnership, their subsidiaries and, to the knowledge of the Company and the Partnership, their affiliates have conducted their businesses in compliance with the FCPA and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, continued compliance therewith.

(aa) There are no business relationships or related-party transactions involving the Company, the Partnership or any subsidiary of either or any other person required to be described in the Registration Statement and the Prospectus that have not been described as required.

(bb) The Company and each of its subsidiaries have established and maintain disclosure controls and procedures (as such term is defined in Rule 13a-15 under the Exchange Act Regulations); such disclosure controls and procedures are designed to ensure that the information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is accumulated and communicated to management of the Company and its subsidiaries, including their respective principal executive officers and principal financial officers, as appropriate, to allow timely decisions regarding required disclosure to be made; and such disclosure controls and procedures are effective in all material respects to perform the functions for which they were established. Since the date of the most recent balance sheet of the Company and its consolidated subsidiaries reviewed or audited by BDO USA, LLP and the audit committee of the board of trustees of the Company, (i) the Company has not been advised of (A) any material weaknesses in the design or operation of internal controls that would adversely affect the ability of the Company or any of its subsidiaries to record, process, summarize and report financial data, or any material weaknesses in internal controls or (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the internal controls of the Company and each of its subsidiaries, and (ii) since that date, there have been no changes in internal controls or in other factors that would materially affect internal controls, including any corrective actions with regard to significant deficiencies and material weaknesses. The Company, the Partnership and each of their subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles as applied in the United States and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(cc) During the period of at least the last 12 calendar months prior to the date of this Agreement, the Applicable Time and each Settlement Date, the Company has filed with the Commission all documents and other material required to be filed pursuant to Sections 13, 14 and 15(d) under the Exchange Act; during the period of at least the last 12 calendar months preceding the filing of the Registration Statement or any post-effective amendment thereto, the Company has filed with the Commission all documents and other material required to be filed pursuant to Sections 13, 14 and 15(d) under the Exchange Act.

(dd) Except as (x) otherwise described in the Registration Statement, the Disclosure Package and the Prospectus or (y) would not, individually or in the aggregate, result in a Material Adverse Change: (i) neither the Company, the Partnership, nor any of their subsidiaries is in violation of any federal, state, local or foreign law or regulation relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including without limitation, laws and regulations relating to emissions, discharges, releases or threatened releases of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum and petroleum products (collectively, "Materials of Environmental Concern"), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of Environmental Concern (collectively, "Environmental Laws"), which violation includes, but is not limited to, noncompliance with any permits or other governmental authorizations required for the operation of the business of the Company, the Partnership or their subsidiaries under applicable Environmental Laws, or noncompliance with the terms and conditions thereof, nor has the Company, the Partnership or any of their subsidiaries received any written communication, whether from a governmental authority, citizens group, employee or otherwise, that alleges that the Company, the Partnership or any of their subsidiaries is in violation of any Environmental Law; (ii) there is no claim, action or cause of action filed with a court or governmental authority, no investigation with respect to which the Company or the Partnership has received written notice, and no written notice by any person or entity alleging potential liability for investigatory costs, cleanup costs, governmental responses costs, natural resources damages, property damages, personal injuries, attorneys' fees or penalties arising out of, based on or resulting from the presence, or release into the environment, of any Materials of Environmental Concern at any location owned, leased or operated by the Company, the Partnership or any of their subsidiaries, now or in the past (collectively, "Environmental Claims"), pending or, to the best of the Company's and the Partnership's knowledge, threatened against the Company, the Partnership or any of their subsidiaries or any person or entity whose liability for any Environmental Claim the Company, the Partnership or any of their subsidiaries has retained or assumed either contractually or by operation of law; and (iii) to the Company's and the Partnership's knowledge, there are no past or present actions, activities, circumstances, conditions, events or incidents, including, without limitation, the release, emission, discharge, presence or disposal of any Materials of Environmental Concern, that reasonably could result in a violation of any Environmental Law or form the basis of a potential Environmental Claim against the Company, the Partnership or any of their subsidiaries or against any person or entity whose liability for any Environmental Claim the Company, the Partnership, or any of their subsidiaries has retained or assumed either contractually or by operation of law. Except as set forth in the Registration Statement, the Disclosure Package and the Prospectus, neither the Company, the Partnership nor any subsidiary has been named as a "potentially responsible party" under the Comprehensive Environmental Responses Compensation and Liability Act of 1980, as amended.

(ee) In the ordinary course of its business, the Company and the Partnership conduct a periodic review of the effect of Environmental Laws on the business, operations and properties of the Company, the Partnership and their subsidiaries, in the course of which it identifies and evaluates associated costs and liabilities (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties). On the basis of such review and the amount of its established reserves, the Company and the Partnership have reasonably concluded that such associated costs and liabilities would not, individually or in the aggregate, result in a Material Adverse Change.

(ff) The Company, the Partnership and their subsidiaries and any “Employee Benefit Plan” (as defined under the Employee Retirement Income Security Act of 1974, as amended, and the regulations and published interpretations thereunder (collectively, “ERISA”)) established or maintained by the Company, the Partnership and their subsidiaries or their ERISA Affiliates (as defined in this Section 1(ff)) are in compliance in all material respects with ERISA. “ERISA Affiliate” means, with respect to the Company, the Partnership or a subsidiary, any member of any group of organizations described in Sections 414(b), (c), (m) or (o) of the Code, of which the Company, the Partnership or such subsidiary is a member. No “reportable event” (as defined under ERISA) has occurred or is reasonably expected to occur with respect to any Employee Benefit Plan established or maintained by the Company, the Partnership, their subsidiaries or any of their ERISA Affiliates. No Employee Benefit Plan established or maintained by the Company, the Partnership, their subsidiaries or any of their ERISA Affiliates, if such Employee Benefit Plan were terminated, would have any “amount of unfunded benefit liabilities” (as defined under ERISA). Neither the Company, the Partnership, their subsidiaries nor any of their ERISA Affiliates has incurred or reasonably expects to incur any liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any Employee Benefit Plan or (ii) Sections 412, 4971, 4975 or 4980B of the Code. Each Employee Benefit Plan established or maintained by the Company, the Partnership, their subsidiaries or any of their ERISA Affiliates that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or failure to act, which would cause the loss of such qualification.

(gg) Except as disclosed in the Registration Statement, the Disclosure Package and the Prospectus, there is no broker, finder or other party that is entitled to receive from the Company or the Partnership, any brokerage or finder’s fee or other fee or commission as a result of any transactions contemplated by this Agreement and any Confirmation.

(hh) At the original effectiveness of the Registration Statement at the earliest time after the original effectiveness of the Registration Statement that the Company or another offering participant made a bona fide offer (within the meaning of Rule 164(h)(2) of the Securities Act Regulations) of the Shares and as of the date of the execution and delivery of this Agreement (with such date being used as the determination date for purposes of this clause), the Company was not and is not an “ineligible issuer” (as defined in Rule 405 under the Securities Act), without taking account of any determination by the Commission pursuant to Rule 405 under the Securities Act Regulations that it is not necessary that the Company be considered an ineligible issuer.

(ii) There are no outstanding loans, advances (except normal advances for business expenses in the ordinary course of business) or guarantees or indebtedness by the Company, the Partnership or any of their subsidiaries to or for the benefit of any of the officers or trustees of the Company or any of their family members, except as disclosed in the Registration Statement, the Disclosure Package and the Prospectus.

(jj) The Company and the Partnership have not been advised, and have no reason to believe, that they and each of their subsidiaries are not conducting business in compliance with all applicable laws, rules and regulations of the jurisdictions in which it is conducting business, except where failure to be so in compliance would not result in a Material Adverse Change.

(kk) There are no transfer taxes or other similar fees or charges under federal law or the laws of any state, or any political subdivision thereof, required to be paid in connection with the execution and delivery of this Agreement, any Confirmation or the issuance or sale of the Shares or any Confirmation Shares.

(ll) 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, the Disclosure Package and the Prospectus.

(mm) 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 any provision of the Sarbanes-Oxley Act of 2002 and the rules and regulations promulgated in connection therewith (the "Sarbanes-Oxley Act"), including Section 402 of the Sarbanes-Oxley Act related to loans and Sections 302 and 906 thereof related to certifications. The Company is in compliance with the current listing standards of the NYSE.

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

(oo) Neither the Company, the Partnership nor any of their subsidiaries nor, to the knowledge of the Company, the Partnership, any trustee, officer, agent, employee or affiliate of the Company or the Partnership or any of their subsidiaries is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department.

(pp) The limited partnership agreement of the Partnership, including any amendments thereto, has been duly and validly authorized, executed and delivered by the Company and, to the best knowledge of the Company, all the partners of the Partnership and constitutes a valid and binding agreement, enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or by general principles of equity.

(qq) Neither the Company nor any of its subsidiaries nor, to the best of the Company's knowledge, any employee of the Company or any of its subsidiaries, has made any contribution or other payment to any official of, or candidate for, any federal, state or foreign office in violation of any law or of the character necessary to be disclosed in the Registration Statement, the Disclosure Package and the Prospectus in order to make the statements therein, in the light of the circumstances under which such statements were made, not misleading;

(rr) The Registration Statement is not the subject of a pending proceeding or examination under Section 8(d) or 8(e) of the Securities Act, and the Company is not the subject of a pending proceeding under Section 8A of the Securities Act in connection with the offering of the Shares.

(ss) Any statistical and market-related data included in the Registration Statement, the Disclosure Package and the Prospectus are based on the Company's own research or derived from external sources that, in either case, the Company believes to be reliable and accurate, and the Company has obtained the written consent to the use of such data from such sources to the extent required.

(tt) The Company has not relied upon the Agents, the Forward Purchasers or their legal counsel for any legal, tax or accounting advice in connection with the offering and sale of the Shares or the issuance of any Confirmation Shares.

(uu) The Common Shares are an "actively traded security" exempted from the requirements of Rule 101 of Regulation M under the Exchange Act by subsection (c)(1) of such rule.

(vv) Each Confirmation (if any) will have been as of its date, duly authorized, executed and delivered by the Company, and when executed and delivered by the Forward Purchaser, such Confirmation will constitute a valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium or other similar laws relating to or affecting creditors' rights generally or by general equity principles (regardless of whether enforcement is considered in a proceeding in equity or at law). The description of the Confirmations set forth in the Disclosure Package, Prospectus and any Issuer Free Writing Prospectus is correct in all material respects.

(ww) Any certificate signed by an officer of the Company or the Partnership and delivered to the Agents, the Forward Purchasers or their counsel shall be deemed to be a representation and warranty by the Company to each Agent and each Forward Purchaser as to the matters set forth therein as of the date or dates indicated in such certificate.

(xx) (A) There has been no security breach or incident, unauthorized access or disclosure, or other compromise of or relating to the Company's, the Partnership's or their subsidiaries' information technology and computer systems, networks, hardware, software, data and databases (including the data and information of their respective customers, employees, suppliers, vendors and any third party data maintained, processed or stored by the Company, the Partnership and their subsidiaries, and any such data processed or stored by third parties on behalf of the Company, the Partnership and their subsidiaries), equipment or technology (collectively, "IT Systems and Data"); (B) none of the Company, the Partnership nor their subsidiaries have been notified of, and have no knowledge of any event or condition that would result in, any security breach or incident, unauthorized access or disclosure or other compromise to their IT Systems and Data and (C) the Company, the Partnership and their subsidiaries have implemented appropriate controls, policies, procedures, and technological safeguards to maintain and protect the integrity, continuous operation, redundancy and security of their IT Systems and Data reasonably consistent with industry standards and practices, or as required by applicable regulatory standards, except as would not, in the case of each of (A) through (C), reasonably be expected to have a material adverse effect on the Company, the Partnership, and their subsidiaries, taken as a whole. The Company, the Partnership and their 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, internal policies and contractual obligations relating to the privacy and security of IT Systems and Data and to the protection of such IT Systems and Data from unauthorized use, access, misappropriation or modification.

Section 2. Sale and Delivery of Shares.

(a) Subject to the terms and conditions set forth herein, the Company agrees to (1) issue and sell through the Agent acting as sales agent or directly to the Agent acting as principal pursuant to a Terms Agreement from time to time, and each Agent agrees to use its commercially reasonable efforts to sell as sales agent for the Company, the Shares and (2) from time to time in consultation with a Forward Purchaser and the applicable Agent (which shall be either the same entity as the Forward Purchaser or an affiliate of the Forward Purchaser), instruct such Agent to borrow, offer and sell Shares, as forward seller, in each case, in accordance with the terms of this Section 2 and as contemplated by a Confirmation that the Company shall execute and deliver to the Forward Purchaser prior to the applicable Agent's offer and sale of Shares. Sales of the Shares, if any, made through the Agent acting as sales agent or by the Agent acting as principal, will be made by means of ordinary brokers' transactions on the NYSE or other national securities exchange, by means of negotiated transactions or otherwise at market prices prevailing at the time of sale, at prices related to prevailing market prices or negotiated transactions, or as otherwise agreed with the Agent.

(b) The Shares are to be sold by the Company and the Agent, through whom the sale of Shares is effected on a given day, on any trading day (other than a day on which the NYSE is scheduled to close prior to its regular weekday closing time, each, a “Trading Day”) that the Company has satisfied its obligations under Section 6 of this Agreement and that the Company has instructed such Agent to make such sales pursuant to a placement notice substantially in the form attached hereto as Annex II. On any Trading Day, the Company shall sell Shares through only one of the Agents, but in no event through more than one of the Agents, and the Company shall give at least one Business Day prior written notice by facsimile or email to the Agents to notify them of any change of the Agent through whom the sale of Shares will be effected. For the avoidance of doubt, the foregoing limitation shall not apply to sales solely to employees or security holders of the Company or its subsidiaries, or to a trustee or other person acquiring such securities for the accounts of such persons in which any Agent is acting for the Company in a capacity other than as Agent under this Agreement. On any Trading Day, the Company may instruct the Agent through whom sales of Shares are effected on that day by telephone (confirmed promptly by facsimile or email, which confirmation will be promptly acknowledged by such Agent) as to the maximum number of Shares and aggregate gross sales price to be sold by the Agent on such day (in any event not in excess of the number available for issuance under the Prospectus and the currently effective Registration Statement) and the minimum price per Share at which such Shares may be sold. Such instruction shall also specify whether such Shares (i) will be sold by or through an Agent in accordance with Section 2(a)(1) of this Agreement or (ii) borrowed and sold through the applicable Agent, as forward seller, in connection with hedging a forward stock purchase transaction pursuant to a Confirmation in accordance with Section 2(a)(2) of this Agreement. With respect to an instruction under Section 2(b)(ii) of this Agreement, such instruction shall also include, for purposes of (and as defined under) the related Confirmation, the proposed “Maturity Date,” the percentage for purposes of the “Initial Forward Price,” the proposed “Spread,” the proposed initial “Stock Loan Fee,” the proposed maximum “Stock Loan Fee,” the proposed “Hedge Completion Date,” the proposed “Forward Price Reduction Dates” and the proposed “Forward Price Reduction Amounts” (together, the “Proposed Confirmation Terms”). Each placement notice and each other instruction are subject to acceptance by the applicable Agent. Subject to the terms and conditions hereof and the receipt of written confirmation of the Company by such Agent, the Agent shall use its commercially reasonable efforts, consistent with its normal trading and sales practices for similar transactions and applicable law and regulation, to sell as sales agent (whether acting as agent of the Company or as forward seller on behalf of any Forward Purchaser) all of the Shares so designated by the Company in a placement notice or other instruction accepted by such Agent. With respect to any placement notice or other instruction accepted by an Agent as forward seller, such Agent shall use commercially reasonable efforts, consistent with its normal trading and sales practices for similar transactions and applicable law and regulation, to borrow the number of Shares designated by the Company. Any Confirmation to be entered into between the Company and a Forward Purchaser under Section 2(a)(2) of this Agreement in connection with an instruction provided by the Company under Section 2(b)(ii) of this Agreement and accepted by the applicable Agent under this Section 2 shall include each of the Proposed Confirmation Terms when delivered by the Forward Purchaser to the Company for execution unless the Company and such Forward Purchaser have agreed otherwise in writing prior to the delivery of such Confirmation for execution. The Company and each of the Agents acknowledge and agree that (i) there can be no assurance that the Agents will be successful in selling any Shares as sales agent or in borrowing and selling Shares as forward seller; (ii) the Agents will incur no liability or obligation to the Company or any other person or entity if it does not sell Shares for any reason other than a failure by an Agent to use its commercially reasonable efforts consistent with its normal trading and sales practices for similar transactions and applicable law and regulation to sell such Shares as required by this Agreement; and (iii) the Agents shall be under no obligation to purchase Shares on a principal basis except as otherwise specifically agreed by an Agent and the Company pursuant to a Terms Agreement. In the event of a conflict between the terms of this Agreement and the terms of any Confirmation or any Terms Agreement, the terms of such Confirmation or such Terms Agreement will control.

(c) Notwithstanding the foregoing, the Company shall not authorize the issuance and sale of, and the Agents as sales agents or forward sellers shall not sell, any Shares (i) at a price lower than the minimum price therefor authorized from time to time or (ii) in a number or with an aggregate gross sales price in excess of the number or gross sales price, as the case may be, of Shares authorized from time to time to be issued and sold under this Agreement, in each case, by the Company's board of trustees, a duly authorized committee of the Company's board of trustees or an executive officer of the Company pursuant to express authorization granted by the Company's board of trustees or a committee thereof or in a number in excess of the number of Shares approved for listing on the NYSE, and in each case notified to the Agents and the Forward Purchasers in writing. In addition, the Company or the Agents may, upon notice to the other party hereto by telephone (confirmed promptly by facsimile or email, which confirmation will be promptly acknowledged), suspend the offering of the Shares with respect to which the Agents are acting as sales agent or as forward seller for any reason and at any time; *provided, however*, that such suspension or termination shall not affect or impair the parties' respective obligations with respect to the Shares sold hereunder prior to the giving of such notice.

(d) The gross sales price of any Shares sold pursuant to this Agreement by the Agent acting as sales agent or as forward seller, or directly to an Agent acting as principal, shall be the market price prevailing at the time of sale for shares of the Company's Common Shares sold by such Agent on the NYSE or otherwise, at prices relating to prevailing market prices or at negotiated prices multiplied by the number of Shares sold. In connection with sales pursuant to Section 2(a)(1) of this Agreement, the compensation payable to the Agents for sales of Shares with respect to which an Agent acts as sales agent for the Company shall be at a mutually agreed rate, not to exceed 2.0% of the gross sales price (the "Gross Proceeds") of the Shares sold by such Agent pursuant to this Agreement. In connection with sales pursuant to Section 2(a)(2) of this Agreement, the compensation payable to such Agent for sales of Shares with respect to which the Agent acts as forward seller on behalf of the Forward Purchaser will not exceed 1.5% of the Gross Proceeds and the applicable Confirmation and shall be paid by the Company through the "Initial Forward Price" under the applicable Confirmation. The Company may sell Shares to the Agents as principal at a price agreed upon at the relevant Applicable Time and pursuant to a separate Terms Agreement. The remaining proceeds, after further deduction for any transaction fees, transfer taxes or similar taxes or fees imposed by any governmental, regulatory or self-regulatory organization in respect of such sales, shall constitute the net proceeds to the Company or a Forward Purchaser, as applicable, for such Shares (the "Net Proceeds"). The Agents shall notify the Company as promptly as practicable if any deduction referenced in the preceding sentence will be required. Notwithstanding the foregoing, in the event the Company engages the Agents for a sale of Shares that would constitute a "distribution," within the meaning of Rule 100 of Regulation M under the Exchange Act, the Company and the Agents will agree to compensation that is customary for the Agent with respect to such transactions.

(e) If acting as sales agent for the Company hereunder, the Agent through whom sales are effected shall provide written confirmation to the Company following the close of trading on the NYSE each day on which Shares are sold under this Agreement setting forth the number of Shares sold on such day, the aggregate gross sales proceeds of the Shares, the aggregate Net Proceeds to the Company and the aggregate compensation payable by the Company to the Agent with respect to such sales. If acting as forward seller hereunder, the Agent shall provide written confirmation setting forth the number of borrowed Shares sold on such day, the aggregate gross sales proceeds of such Shares, the aggregate Net Proceeds to the applicable Forward Purchaser and the then-current "Initial Forward Price" under any Confirmation with respect to which Shares have been sold on such day following the close of trading on the NYSE on such day.

(f) Under no circumstances shall the aggregate gross sales price or number, as the case may be, of Shares sold pursuant to this Agreement or any Terms Agreement exceed the aggregate gross sales price or number, as the case may be, of Common Shares (i) set forth in the second paragraph of this Agreement, (ii) available for issuance under the Prospectus and the then currently effective Registration Statement or (iii) authorized from time to time to be issued and sold under this Agreement or any Terms Agreement by the Company's board of trustees, a duly authorized committee thereof or an executive officer of the Company pursuant to express authorization granted by the Company's board of trustees or a committee thereof, or approved for listing on the NYSE, and in each case referred to in this Section 2(e)(iii), notified to the Agents and the Forward Purchasers in writing. In addition, under no circumstances shall any Shares with respect to which the Agent acts as sales agent be sold at a price lower than the minimum price therefor authorized from time to time by the Company's board of trustees, a duly authorized committee thereof or an executive officer of the Company pursuant to express authorization granted by the Company's board of trustees or a committee thereof and notified to the Agents and the Forward Purchasers in writing.

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

(h) Settlement for sales of Shares pursuant to this Section 2 will occur on the second Business Day that is also a Trading Day following the trade date on which such sales are made, unless another date shall be agreed to by the Company and the Agent selling such Shares. On each date of settlement for the sale of Shares to or through an Agent pursuant to Section 2(a)(1) of this Agreement (each such day, a "Direct Settlement Date"), or through an Agent acting as forward seller pursuant to Section 2(a)(2) of this Agreement (each such day, a "Forward Settlement Date" and, together with a Direct Settlement Date, each a "Settlement Date"), the Shares sold to or through the Agent for settlement on such date shall be delivered by the Company or by or on behalf of the Forward Purchaser, as the case may be, to the Agent against payment of the Gross Proceeds or Net Proceeds from the sale of such Shares. Settlement for all Shares shall be effected by book-entry delivery of Shares to the applicable Agent's account at The Depository Trust Company against payment by the Agent of the Gross Proceeds or Net Proceeds from the sale of such Shares in same day funds delivered to an account designated by the Company or the Forward Purchaser, as applicable. If the Company shall default on its obligation to deliver Shares on any Settlement Date, the Company shall (i) indemnify and hold the Agent selling such Shares harmless against any loss, claim or damage arising from or as a result of such default by the Company and (ii) pay such Agent any commission to which it would otherwise be entitled absent such default. If an Agent breaches this Agreement by failing to deliver the applicable Net Proceeds on any Settlement Date for Shares delivered by the Company, such Agent will pay the Company interest based on the effective overnight federal funds rate until such proceeds, together with such interest, have been fully paid. In the event that the Agent delivers the Gross Proceeds to the Company or the Forward Purchaser at a Settlement Date, the compensation payable to such Agent for sales shall be set forth and invoiced in a periodic statement from the Agent to the Company or the Forward Purchaser, and payment of such amounts shall be made promptly by the Company or the Forward Purchaser after its receipt thereof.

(i) Notwithstanding any other provision of this Agreement and unless otherwise agreed to by the parties hereto in writing, the Company shall not offer, sell or deliver, or request the offer or sale of, any Shares and, by notice to the Agents given by telephone (confirmed promptly by facsimile or email), shall cancel any instructions for the offer or sale of any Shares, and the Agents shall not be obligated to offer or sell any Shares, (i) during any period in which the Company's insider trading policy, as it exists on the date of the Agreement, would prohibit the purchases or sales of the Company's Common Shares by its officers or trustees, (ii) during any other period in which the Company is, or could be deemed to be, in possession of material non-public information or (iii) except as provided in Section 2(j) below, at any time from and including the date (each, an "Announcement Date") on which the Company shall issue a press release containing, or shall otherwise publicly announce, its earnings, revenues or other results of operations (each, an "Earnings Announcement") through and including the time that is 24 hours after the time that the Company files (a "Filing Time") a Quarterly Report on Form 10-Q or an Annual Report on Form 10-K that includes consolidated financial statements as of and for the same period or periods, as the case may be, covered by such Earnings Announcement.

(j) If the Company wishes to offer, sell or deliver Shares at any time during the period from and including an Announcement Date through and including the time that is 24 hours after the corresponding Filing Time, the Company shall (i) prepare and deliver to the Agents and the Forward Purchasers (with a copy to their counsel) a Current Report on Form 8-K which shall include substantially the same financial and related information as was set forth in the relevant Earnings Announcement (other than any earnings projections, similar forward-looking data and officers' quotations) (each, an "Earnings 8-K"), in form and substance reasonably satisfactory to the Agents and the Forward Purchasers, and obtain the consent of the Agents and the Forward Purchasers to the filing thereof (such consent not to be unreasonably withheld), (ii) provide the Agents and the Forward Purchasers with the officers' certificate, opinions and letters of counsel and accountants' letter called for by Sections (3)(j), (k) and (l) of this Agreement; respectively, (iii) afford the Agents and the Forward Purchasers the opportunity to conduct a due diligence review in accordance with Section 3(o) of this Agreement and (iv) file such Earnings 8-K with the Commission, then the provisions of Section 2(i)(iii) of this Agreement shall not be applicable for the period from and after the time at which the foregoing conditions shall have been satisfied (or, if later, the time that is 24 hours after the time that the relevant Earnings Announcement was first publicly released) through and including the time that is 24 hours after the Filing Time of the relevant Quarterly Report on Form 10-Q or Annual Report on Form 10-K, as the case may be. For purposes of clarity, the parties hereto agree that (A) the delivery of any officers' certificate, opinions and letters of counsel and accountants' letter pursuant to this Section 2(j) 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, legal opinions and letters and accountants' letters as provided in Section 3 of this Agreement and (B) this Section 2(j) shall in no way affect or limit the operation of the provisions of Section 2(i)(i) and Section 2(i)(ii), which shall have independent application.

(k) At each Applicable Time, Settlement Date, Registration Statement Amendment Date, Company Periodic Report Date, Company Earnings Report Date and Request Date, the Company shall be deemed to have affirmed each representation and warranty contained in this Agreement. Any obligation of the Agents to use their commercially reasonable efforts to sell the Shares on behalf of the Company as sales agent shall be subject to the continuing accuracy of the representations and warranties of the Company herein, to the performance by the Company of its obligations hereunder and to the continuing satisfaction of the additional conditions specified in Section 6 of this Agreement.

(l) The Company agrees that any offer to sell, any solicitation of an offer to buy, or any sales or delivery of Shares shall only be effected by or through one Agent on any single given day, and the Company shall in no event request that multiple Agents sell Shares on the same day.

(m) In the event that either (i) an Agent, as forward seller, is unable to borrow and deliver any Shares 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 (ii) in the commercially reasonable judgment of such Agent, such Agent would incur a stock loan fee that is greater than the rate specified in the applicable Confirmation under "Stock Borrow Event," then the obligation herein of the applicable Agent with respect to sales of Shares as forward seller with respect to such instruction shall only extend to the aggregate number of Shares that such Agent is able to so borrow below such fee.

Section 3. Covenants. The Company agrees with the Agents and the Forward Purchasers:

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

(b) Promptly from time to time to take such action as the Agents or the Forward Purchasers may reasonably request to qualify the Shares and any Confirmation Shares for offering and sale under the securities laws of such jurisdictions as the Agents and the Forward Purchasers may request and to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the sale of the Shares, *provided* that in connection therewith the Company shall not be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction; and to promptly advise the Agents and the Forward Purchasers of the receipt by the Company of any notification with respect to the suspension of the qualification of the Shares or any Confirmation Shares for offer or sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose.

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

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

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

(f) To use the Net Proceeds received by it from the sale of the Shares and any Confirmation Shares pursuant to this Agreement, any Confirmation or any Terms Agreement, in the manner specified in the Disclosure Package.

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

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

(i) At each Applicable Time, each Settlement Date, each Registration Statement Amendment Date, each Company Earnings Report Date, each Request Date and each Company Periodic Report Date and each date on which Shares are delivered to the Agents pursuant to a Terms Agreement, the Company shall be deemed to have affirmed each representation, warranty, covenant and other agreement contained in this Agreement or any Terms Agreement. "Company Periodic Report Date" shall mean each date on which an Annual Report on Form 10-K, a Quarterly Report on Form 10-Q or an amendment to either such Annual Report or Quarterly Report is filed by the Company in respect of any quarter in which sales of Shares were made by or through the Agents under this Agreement or any Terms Agreement.

(j) Upon commencement of the offering of Shares under this Agreement and each time Shares are delivered to the Agents as principal on a Settlement Date and promptly after each (i) date the Registration Statement or the Prospectus shall be amended or supplemented (other than (A) by an amendment or supplement providing solely for the determination of the terms of the Shares, (B) in connection with the filing of a prospectus supplement that contains solely the information set forth in Section 3(r), (C) in connection with the filing of any current reports on Form 8-K (other than an Earnings 8-K and any other current reports on Form 8-K which contain capsule financial information, financial statements, supporting schedules or other financial data, including any current report on Form 8-K under Item 2.02 of such form that is considered “filed” under the Exchange Act) or (D) by a prospectus supplement relating to the offering of other securities (including, without limitation, other Common Shares) (each such date, a “Registration Statement Amendment Date”), (ii) date on which an Earnings 8-K shall be filed with the Commission as contemplated by Section 2(j) of this Agreement (a “Company Earnings Report Date”) and (iii) Company Periodic Report Date, and promptly after each reasonable request by the Agents or the Forward Purchasers (it being understood that the Agents or the Forward Purchasers shall be deemed to have made such request at any time a placement notice is outstanding) (each date specified in (i) – (iii) of this Section 3(j), a “Request Date” and each of the date of the commencement of the offering of Shares under this Agreement, each such Settlement Date and each Registration Statement Amendment Date, Company Earnings Report Date, Company Periodic Report Date and Request Date is hereinafter called a “Representation Date”), the Company will furnish or cause to be furnished to the Agents and the Forward Purchasers (with a copy to their counsel) a certificate dated the date of delivery thereof to the Agents and the Forward Purchasers (or, in the case of an amendment or supplement to the Registration Statement or the Prospectus (including, without limitation, by the filing of any document under the Exchange Act that is incorporated by reference therein), the date of the effectiveness of such amendment to the Registration Statement or the date of filing with the Commission of such supplement or incorporated document, as the case may be), in form and substance reasonably satisfactory to the Agents, the Forward Purchasers and their counsel, to the effect that the statements contained in the certificate referred to in Section 6(h) of this Agreement which was last furnished to the Agents and the Forward Purchasers are true and correct as of the date of such certificate as though made at and as of the date of such certificate (except that such statements shall be deemed to relate to the Registration Statement, the Prospectus and the Disclosure Package as amended and supplemented to the date of such certificate) or, in lieu of such certificate, a certificate of the same tenor as the certificate referred to in Section 6(h), but modified as necessary to relate to the Registration Statement, the Prospectus and the Disclosure Package as amended and supplemented to the date of such certificate. As used in this Section 3(j), to the extent there shall be an Applicable Time on or following the applicable Representation Date, “promptly” shall be deemed to be on or prior to the next succeeding Applicable Time. For the avoidance of doubt, so long as a placement notice issued by the Company is not presently outstanding, the Company shall not be required to deliver the information required under this subsection; the information required hereunder is only required to be delivered prior to the next issuance of a placement notice. The Company’s right to send a placement notice following a Representation Date shall be conditioned upon the Agents’ and the Forward Purchasers’ receipt of the deliverables required under this subsection.

(k) Upon commencement of the offering of Shares under this Agreement and each time the Shares are delivered to the Agents as principal on a Settlement Date, and promptly after each other Representation Date, the Company will furnish or cause to be furnished to the Agents and the Forward Purchasers (with a copy to their counsel) the written opinion and letter of each counsel to the Company (who shall be reasonably acceptable to the Agents and the Forward Purchasers), dated the date of delivery thereof to the Agents and the Forward Purchasers (or, in the case of an amendment or supplement to the Registration Statement or the Prospectus (including, without limitation, by the filing of any document under the Exchange Act that is incorporated by reference therein), the date of the effectiveness of such amendment to the Registration Statement or the date of filing with the Commission of such supplement or incorporated document, as the case may be), in form and substance reasonably satisfactory to the Agents, the Forward Purchasers and their counsel, of the same tenor as the opinions and letters referred to in Section 6(b), Section 6(c), Section 6(d), Section 6(e) and Section 6(f) of this Agreement, but modified as necessary to relate to the Registration Statement, the Prospectus and the Disclosure Package as amended and supplemented to the date of such opinion and letter or, in lieu of any such opinion and letter, counsel last furnishing such opinion and letter to the Agents and the Forward Purchasers shall furnish the Agents and the Forward Purchasers (with a copy to their counsel) with a letter substantially to the effect that the Agents and the Forward Purchasers may rely on such counsel’s last opinion and letter to the same extent as though each were dated the date of such letter authorizing reliance (except that statements in such last opinion and letter shall be deemed to relate to the Registration Statement, the Prospectus and the Disclosure Package as amended and supplemented to the date of such letter authorizing reliance). As used in this paragraph, to the extent there shall be an Applicable Time on or following the applicable Representation Date, “promptly” shall be deemed to be on or prior to the next succeeding Applicable Time. For the avoidance of doubt, so long as a placement notice issued by the Company is not presently outstanding, the Company shall not be required to deliver the information required under this subsection; the information required hereunder is only required to be delivered prior to the next issuance of a placement notice. The Company’s right to send a placement notice following a Representation Date shall be conditioned upon the Agents’ and the Forward Purchasers’ receipt of the deliverables required under this subsection.

(l) Upon commencement of the offering of Shares under this Agreement, and at the time Shares are delivered to the Agents as principal on a Settlement Date, and promptly after each other Representation Date, the Company will cause BDO USA, LLP, or other independent accountants reasonably satisfactory to the Agents and the Forward Purchasers, to furnish to the Agents and the Forward Purchasers a letter, dated the date of effectiveness of such amendment or the date of filing of such supplement or other document with the Commission, as the case may be, in form reasonably satisfactory to the Agents, the Forward Purchasers and their counsel, of the same tenor as the letter referred to in Section 6(g) of this Agreement, but modified as necessary to relate to the Registration Statement, the Disclosure Package and the Prospectus, as amended and supplemented, or to the document incorporated by reference into the Prospectus, to the date of such letter. As used in this paragraph, to the extent there shall be an Applicable Time on or following the applicable Representation Date, “promptly” shall be deemed to be on or prior to the next succeeding Applicable Time. For the avoidance of doubt, so long as a placement notice issued by the Company is not presently outstanding, the Company shall not be required to deliver the information required under this subsection; the information required hereunder is only required to be delivered prior to the next issuance of a placement notice. The Company’s right to send a placement notice following a Representation Date shall be conditioned upon the Agents’ and the Forward Purchasers’ receipt of the deliverables required under this subsection.

(m) The Company consents to the Agents and the Forward Purchasers trading in the Company’s Common Shares for the Agents’ and the Forward Purchasers’ own accounts and for the account of their respective clients at the same time as sales of Shares occur pursuant to this Agreement, any Confirmation or any Terms Agreement.

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

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

(p) The Company will not, without (i) giving the Agents at least one Business Day's prior written notice specifying the nature of the proposed sale and the date of such proposed sale and (ii) the Agents suspending activity under this program for such period of time as requested by the Company or as deemed appropriate by the Agents in light of the proposed sale, (A) offer, pledge, announce the intention to sell, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant for the sale of, lend or otherwise transfer or dispose of, directly or indirectly, any 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 the issuance or sale by the Company of (v) the Shares to be offered and sold through the Agents pursuant to this Agreement or any Terms Agreement, (w) any Confirmation Shares pursuant to a Confirmation, (x) Common Shares issuable pursuant to the Company's dividend reinvestment plan as it may be amended or replaced from time to time by a substantially similar plan, (y) equity incentive awards approved by the board of trustees of the Company or the compensation committee thereof or the issuance of Common Shares upon exercise thereof, and (z) Common Shares issuable upon conversion of securities outstanding at the time of the execution of this Agreement.

(q) If immediately prior to the third anniversary (the "Renewal Deadline") of the initial effective date of the Registration Statement, any of the Shares remain unsold, the Company will, prior to the Renewal Deadline file, if it has not already done so and is eligible to do so, a new automatic shelf registration statement relating to the Shares, in a form satisfactory to the Agents and the Forward Purchasers. If the Company is no longer eligible to file an automatic shelf registration statement, the Company will, prior to the Renewal Deadline, if it has not already done so, file a new shelf registration statement relating to the Shares, in a form satisfactory to the Agents and the Forward Purchasers, and will use its best efforts to cause such registration statement to be declared effective within 60 days after the Renewal Deadline. The Company will take all other action necessary or appropriate to permit the offer and sale of the Shares to continue as contemplated in the expired registration statement relating to the Shares. References herein to the Registration Statement shall include such new automatic shelf registration statement or such new shelf registration statement, as the case may be.

(r) Promptly following the end of each of the Company's fiscal quarters, the Company shall be required to file a prospectus supplement with the Commission, disclosing the number of Shares sold by or through the Agents under this Agreement or any Terms Agreement, the net proceeds received by the Company with respect to sales of the Shares pursuant to this Agreement relating to such quarter and any other information required by applicable law, together with any other information that the Company reasonably believes is required to comply with the Securities Act or any rules or regulations thereunder. In the alternative, to the extent permitted by the rules and regulations of the Commission, the Company in its sole discretion may make the disclosures in its Annual Report on Form 10-K or Quarterly Report on Form 10-Q filed by the Company for any quarter in which sales of Shares were made by or through the Agents under this Agreement or any Terms Agreement. At any of the Agents' or Forward Purchasers' request, if applicable, the Company shall furnish copies of any such Prospectus and Prospectus Supplement and each Permitted Free Writing Prospectus (to the extent not previously delivered or filed on EDGAR or any successor system thereto) to the Agents via e-mail in ".pdf" format on such filing date to an e-mail account designated by the Agents; and, at any of the Agents' or Forward Purchasers' request, if applicable, the Company will furnish copies of such Prospectus and Prospectus Supplement to each exchange or market on which sales were effected as may be required by the rules or regulations of such exchange or market.

(s) In connection with entering into any Confirmation, the Company will not acquire any long position (either directly or indirectly, including through an Affiliate or through a derivative transaction) with respect to Common Shares. For purposes of the foregoing, "Affiliate" means, with respect to any person or entity, any other person or entity directly or indirectly controlling, controlled by, or under common control with such person or entity. For purposes of this definition, "control" when used with respect to any person or entity means ownership of 50% or more of the voting power or value of such person or entity.

Section 4. Free Writing Prospectus.

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

(b) Each Agent represents and agrees that, without the prior consent of the Company, it has not made and will not make any offer relating to the Shares that would constitute a free writing prospectus required to be filed with the Commission.

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

Section 5. Payment of Expenses.

(a) The Company agrees to pay all costs, fees and expenses incurred in connection with the performance of its obligations hereunder, under each Confirmation and under each Terms Agreement, as applicable, and in connection with the transactions contemplated hereby and thereby, including without limitation (i) all expenses incident to the issuance and delivery of the Shares and any Confirmation Shares (including all printing and engraving costs), (ii) all fees and expenses of the registrar and transfer agent of the Common Shares, (iii) all necessary issue, transfer and other stamp taxes in connection with the issuance and sale of the Shares to the Agents and any Confirmation Shares to the Forward Purchasers, (iv) all fees and expenses of the Company's counsel, independent public or certified public accountants and other advisors, (v) all costs and expenses incurred in connection with the preparation, printing, filing, shipping and distribution of the Registration Statement (including financial statements, exhibits, schedules, consents and certificates of experts), each Issuer Free Writing Prospectus and the Prospectus, and all amendments and supplements thereto, this Agreement and any Confirmations, (vi) all filing fees and expenses incurred by the Company (including attorneys' fees), the Agents or the Forward Purchasers in connection with qualifying or registering (or obtaining exemptions from the qualification or registration of) all or any part of the Shares and any Confirmation Shares for offer and sale under the state securities or blue sky laws or the provincial securities laws of Canada, and, if requested by the Agents or Forward Purchasers, preparing and printing a "Blue Sky Survey" or memorandum, and any supplements thereto, advising the Agents and the Forward Purchasers of such qualifications, registrations and exemptions, but not, however, legal fees and expenses of counsel for the Agents and the Forward Purchasers incurred in connection with any of the foregoing, (vii) the filing fees incident to, and the reasonable fees and expenses of counsel for the Agents and the Forward Purchasers in connection with, FINRA's review and approval of the Agents' and the Forward Purchasers' participation in the offering and distribution of the Shares, (viii) the fees and expenses associated with listing of the Shares and any Confirmation Shares on the NYSE; and (ix) all other costs and expenses incident to the performance of its obligations hereunder which are not otherwise specifically provided for in this Section 5. It is understood, however, that, except as provided in this Section 5 and Section 7 of this Agreement, the Agents will pay all of their own costs and expenses, including the fees of their counsel, transfer taxes on resale of any of the Shares by it, and any advertising expenses connected with any offers it may make.

(b) If an aggregate amount of Shares equal to \$15,000,000 have not been offered and sold under this Agreement collectively by BofA Securities, Inc., Barclays Capital Inc., Wells Fargo Securities, LLC, Goldman Sachs & Co. LLC, Citigroup Global Markets Inc., Jefferies LLC and SunTrust Robinson Humphrey, Inc. by the first anniversary of the date of this Agreement (or such earlier date on which the Company terminates this Agreement), the Company shall reimburse each of the Agents and each of the Forward Purchasers for all of their reasonable out-of-pocket expenses, including the reasonable fees and disbursements of a single counsel for the Agents and the Forward Purchasers incurred by it in connection with the offering contemplated by this Agreement and any Confirmation. Fees reimbursed pursuant to this subsection shall not exceed \$250,000 in the aggregate. The Agents and the Forward Purchasers shall be solely responsible for allocating any reimbursement received pursuant to this subsection among themselves.

Section 6. Conditions of Agents' Obligations. The obligations of the Agents hereunder shall be subject, in each of their sole discretion, to the condition that all representations and warranties and other statements of the Company herein or in certificates of any officer of the Company delivered pursuant to the provisions hereof are true and correct as of the time of the execution of this Agreement, the date of any executed Terms Agreement and as of each Representation Date, Applicable Time and Settlement Date, to the condition that the Company shall have performed all of its obligations hereunder theretofore to be performed, and the following additional conditions:

(a) The Prospectus Supplement shall have been filed with the Commission pursuant to Rule 424(b) under the Securities Act on or prior to the date hereof and in accordance with Section 3(a) of this Agreement, any other material required to be filed by the Company pursuant to Rule 433(d) under the Securities Act shall have been filed with the Commission within the applicable time periods prescribed for such filings by Rule 433; the Registration Statement shall have been filed by the Company with the Commission not earlier than three years prior to the date hereof and became effective upon filing in accordance with Rule 462(e) of the Securities Act Regulations, and no stop order suspending the effectiveness of the Registration Statement or any part thereof shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the Commission and no notice of objection of the Commission to the use of the form of the Registration Statement or any post-effective amendment thereto pursuant to Rule 401(g)(2) under the Securities Act shall have been received; no stop order suspending or preventing the use of the Prospectus or any Issuer Free Writing Prospectus shall have been initiated or threatened by the Commission; and all requests for additional information on the part of the Commission shall have been complied with to the reasonable satisfaction of the Agents and the Forward Purchasers.

(b) On every date specified in Section 3(k) of this Agreement (including, without limitation, on every Request Date), Sidley Austin LLP, counsel for the Agents and the Forward Purchasers, shall have furnished to the Agents and the Forward Purchasers such written opinion or opinions, dated as of such date, with respect to such matters as the Agents and the Forward Purchasers may reasonably request, and such counsel shall have received such papers and information as they may reasonably request to enable them to pass upon such matters. In said opinion, Sidley Austin LLP may rely as to all matters of Maryland law on the opinion of Venable LLP.

(c) On every date specified in Section 3(k) of this Agreement (including, without limitation, on every Request Date), Goodwin Procter LLP, counsel for the Company, shall have furnished to the Agents and the Forward Purchasers a written opinion or opinions, dated as of such date, substantially in the forms set forth in Exhibits A-1-A and A-1-B attached hereto and in form and substance satisfactory to the Agents and the Forward Purchasers.

(d) On every date specified in Section 3(k) of this Agreement (including, without limitation, on every Request Date), Jason Blacksberg, Esq., General Counsel for the Company, shall have furnished to the Agents and the Forward Purchasers a written opinion or opinions, dated as of such date, substantially in the form set forth in Exhibit A-2 attached hereto and in form and substance satisfactory to the Agents and the Forward Purchasers.

(e) On every date specified in Section 3(k) of this Agreement (including, without limitation, on every Request Date), Seyfarth Shaw LLP, counsel for the Company, shall have furnished to the Agents and the Forward Purchasers a written opinion or opinions, dated as of such date, substantially in the form set forth in Exhibit A-3 attached hereto and in form and substance satisfactory to the Agents and the Forward Purchasers.

(f) On every date specified in Section 3(k) of this Agreement (including, without limitation, on every Request Date), Venable LLP, Maryland counsel for the Company, shall have furnished to the Agents and the Forward Purchasers a written opinion or opinions, dated as of such date, substantially in the form set forth in Exhibit A-4 attached hereto and in form and substance satisfactory to the Agents and the Forward Purchasers.

(g) At the dates specified in Section 3(l) of this Agreement (including, without limitation, on every Request Date), BDO USA LLP, the independent accountants of the Company who have certified the financial statements of the Company and its subsidiaries included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus, shall have furnished to the Agents and the Forward Purchasers a letter dated as of the date of delivery thereof and addressed to the Agents and the Forward Purchasers in form and substance reasonably satisfactory to the Agents and the Forward Purchasers and their counsel, containing statements and information of the type ordinarily included in accountants' "comfort letters" to agents and underwriters with respect to the financial statements of the Company and its subsidiaries included or incorporated by reference in the Registration Statement, the Disclosure Package and the Prospectus.

(h) (i) Upon commencement of the offering of Shares under this Agreement and on such other dates as reasonably requested by the Agents and the Forward Purchasers, the Company will furnish or cause to be furnished promptly to the Agents and the Forward Purchasers a placement notice in the form attached hereto as Annex II stating the maximum number of Shares and aggregate gross sales price to be sold by the Agent on such day (in any event not in excess of the number or aggregate gross sales price available for issuance under the Prospectus and the currently effective Registration Statement, as authorized from time to time to be issued and sold under this Agreement or any Terms Agreement by the Company's board of trustees, or a duly authorized committee thereof, or in a number in excess of the number of Shares and any Confirmation Shares approved for listing on the NYSE) the minimum price per Share at which such Shares may be sold and such other terms as contemplated by Annex II, or, in connection with any amendment, revision or modification of such minimum price or maximum Share number or amount, a new certificate with respect thereto and (ii) on each date specified in Section 3(j) or other term (including, without limitation, on every Request Date), the Agents and the Forward Purchasers shall have received a certificate of executive officers of the Company, one of whom shall be the Chief Financial Officer, Chief Accounting Officer, Treasurer, or Executive Vice President in the area of capital markets and investments, dated as of the date thereof, to the effect that (A) there has been no Material Adverse Change since the date as of which information is given in the Prospectus as then amended or supplemented or the Disclosure Package, (B) the representations and warranties in Section 1 of this Agreement are true and correct as of such date. (C) the Company has complied with all of the agreements entered into in connection with the transactions contemplated herein and satisfied all conditions on its part to be performed or satisfied and (D) the condition set forth in Section 6(a) has been satisfied.

(i) Since the date of the latest audited financial statements then included or incorporated by reference in the Prospectus and the Disclosure Package, no Material Adverse Change shall have occurred.

(j) The Company shall have complied with the provisions of Section 3(c) of this Agreement with respect to the timely furnishing of prospectuses.

(k) On such dates as reasonably requested by the Agents and the Forward Purchasers, the Company shall have conducted due diligence sessions, in form and substance satisfactory to the Agents and the Forward Purchasers.

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

(m) The Shares and any Confirmation Shares shall have received approval for listing on the NYSE prior to the first Settlement Date.

(n) Counsel for the Agents and the Forward Purchasers shall have been furnished with such documents and opinions as they may require in order to evidence the accuracy of any of the representations or warranties, or the fulfillment of any of the conditions, contained herein, in any Confirmation or in any applicable Terms Agreement; and all proceedings taken by the Company in connection with the issuance and sale of the Shares as contemplated herein or in any applicable Terms Agreement, the Confirmation Shares as contemplated in any Confirmation and in connection with the other transactions contemplated by this Agreement, any such Confirmation or any such Terms Agreement shall be reasonably satisfactory in form and substance to the Agents, the Forward Purchasers, as applicable, and their counsel.

(o) Prior to any offers or sales of Shares by an Agent as forward seller, the Company shall have executed and delivered the completed Confirmation for such sales to the applicable Forward Purchaser and such Agent, in a form satisfactory to such Forward Purchaser and Agent.

Section 7. Indemnification and Contribution.

(a) The Company and the Partnership, jointly and severally, agree to indemnify, defend and hold harmless each Agent, each Forward Purchaser, their affiliates, as such term is defined in Rule 501(b) of the Securities Act Regulations, their selling agents and each person, if any, who controls an Agent and a Forward Purchaser within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, and the successors and assigns of all of the foregoing persons from and against any loss, damage, expense, liability or claim (including, but not limited to, the reasonable cost of investigation), as incurred, that any Agent, any Forward Purchaser or any such person may incur under the Securities Act, the Exchange Act, federal or state statutory law or regulation, the common law or otherwise, insofar as such loss, damage, expense, liability or claim arises out of or is based upon (i) any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement or in any application or other document executed by or on behalf of the Company or the Partnership or based on written information furnished by or on behalf of the Company or the Partnership filed in any jurisdiction in order to qualify the Shares and any Confirmation Shares under the securities or blue sky laws thereof or filed with the Commission, 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, (ii) any untrue statement or alleged untrue statement of a material fact contained in the Base Prospectus, the Prospectus Supplement, any Issuer Free Writing Prospectus, the Disclosure Package or the Prospectus or any omission or alleged omission to state in any such document a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading or (iii) any act or failure to act or any alleged act or alleged failure to act by any Agent or any Forward Purchaser in connection with, or relating in any manner to, the Shares, any Confirmation Shares or the offering contemplated hereby and thereby, and which is included as part of or referred to in any loss, damage, expense, liability, claim or action arising out of or based upon matters covered by clause (i) or (ii) above (*provided* that neither the Company nor the Partnership shall be liable under this clause (iii) to the extent it is finally judicially determined by a court of competent jurisdiction that such loss, damage, expense, liability, claim or action resulted directly from any such acts or failures to act undertaken or omitted to be taken by any Agent or any Forward Purchaser through its gross negligence or willful misconduct), except insofar as any such loss, damage, expense, liability or claim arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in and in conformity with information furnished in writing by or on behalf of an Agent or its related Forward Purchaser to the Company expressly for use with reference to the Agent or such Forward Purchaser in the Disclosure Package or the Prospectus or arises out of or is based upon any omission or alleged omission to state in any such document a material fact in connection with such information required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

If any action, suit or proceeding (together, a “Proceeding”) is brought against an Agent or a Forward Purchaser or any such person in respect of which indemnity may be sought against an indemnifying party pursuant to the foregoing paragraph, such Agent, such Forward Purchaser or such person shall promptly notify such indemnifying party in writing of the institution of such Proceeding and such indemnifying party shall assume the defense of such Proceeding, including the employment of counsel reasonably satisfactory to such indemnified party and payment of all fees and expenses; *provided, however*, that the omission to so notify such indemnifying party shall not relieve such indemnifying party from any liability that it may have to such Agent, such Forward Purchaser or any such person or otherwise, except to the extent such indemnifying party has been materially prejudiced by such failure; *provided, further*, that the failure to notify such indemnifying party shall not relieve it from any liability it may have to such Agent, such Forward Purchaser or any such person otherwise than under this Section 7(a). An Agent, a Forward Purchaser or such controlling person shall have the right to employ its or their own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of such Agent, such Forward Purchaser or such person unless the employment of such counsel shall have been authorized in writing by such indemnifying party in connection with the defense of such Proceeding or such indemnifying party shall not have, within a reasonable period of time in light of the circumstances, employed counsel reasonably satisfactory to the Agents and the Forward Purchasers to have charge of the defense of such Proceeding or such indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them which are in conflict with or in addition to those available to such indemnifying party (in which case such indemnifying party shall not have the right to direct the defense of such Proceeding on behalf of the indemnified party or parties, but such indemnifying party may employ counsel and participate in the defense thereof but the fees and expenses of such counsel shall be at the expense of such indemnifying party), in any of which events such fees and expenses shall be borne by such indemnifying party and paid as incurred (it being understood, however, that such indemnifying party shall not be liable for the expenses of more than one separate counsel (other than local counsel) in any one Proceeding or series of related Proceedings in the same jurisdiction representing the indemnified parties who are parties to such Proceeding). An indemnifying party shall not be liable for any settlement of any such Proceeding effected without its written consent (which shall not be unreasonably withheld) but if settled with the written consent of the indemnifying party, the indemnifying party agrees to indemnify and hold harmless such Agent, such Forward Purchaser and any such person from and against any loss or liability by reason of such settlement. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by this Section 7, the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened Proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such Proceeding and does not include an admission of fault, culpability or a failure to act, by or on behalf of such indemnified party.

(b) The Agents agree, severally and not jointly, to indemnify, defend and hold harmless the Company, its officers, employees and trustees, the Partnership and any person who controls the Company or the Partnership within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any loss, damage, expense, liability or claim (including, but not limited to, the reasonable cost of investigation), as incurred, which, jointly or severally, the Company, the Partnership or any such person may incur under the Securities Act, the Exchange Act, federal or state statutory law or regulation, the common law or otherwise, insofar as such loss, damage, expense, liability or claim arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in and in conformity with information furnished in writing by or on behalf of an Agent or its related Forward Purchaser to the Company expressly for use with reference to the Agent or such Forward Purchaser in the Disclosure Package or the Prospectus Supplement or arising out of or based upon any omission or alleged omission to state in any such document a material fact in connection with such information 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.

If any Proceeding is brought against the Company, the Partnership or any such person in respect of which indemnity may be sought against an indemnifying party pursuant to the foregoing paragraph, the Company, the Partnership or such person shall promptly notify such indemnifying party in writing of the institution of such Proceeding and such indemnifying party shall assume the defense of such Proceeding, including the employment of counsel reasonably satisfactory to such indemnified party and payment of all fees and expenses; *provided, however*, that the omission to so notify such indemnifying party shall not relieve such indemnifying party from any liability that it may have to the Company, the Partnership or any such person or otherwise, except to the extent such indemnifying party has been materially prejudiced by such failure; *provided, further*, that the failure to notify such indemnifying party shall not relieve it from any liability it may have to the Company, the Partnership or any such person otherwise than under this Section 7(b). The Company, the Partnership or such controlling person shall have the right to employ its or their own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of the Company, the Partnership or such person unless the employment of such counsel shall have been authorized in writing by such indemnifying party in connection with the defense of such Proceeding or such indemnifying party shall not have, within a reasonable period of time in light of the circumstances, employed counsel reasonably satisfactory to the Company, the Partnership or such person to have charge of the defense of such Proceeding or such indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them which are in conflict with or in addition to those available to such indemnifying party (in which case such indemnifying party shall not have the right to direct the defense of such Proceeding on behalf of the indemnified party or parties, but such indemnifying party may employ counsel and participate in the defense thereof but the fees and expenses of such counsel shall be at the expense of such indemnifying party), in any of which events such fees and expenses shall be borne by such indemnifying party and paid as incurred (it being understood, however, that such indemnifying party shall not be liable for the expenses of more than one separate counsel (other than local counsel) in any one Proceeding or series of related Proceedings in the same jurisdiction representing the indemnified parties who are parties to such Proceeding). An indemnifying party shall not be liable for any settlement of any such Proceeding effected without its written consent (which shall not be unreasonably withheld) but if settled with the written consent of the indemnifying party, the indemnifying party agrees to indemnify and hold harmless the Company, the Partnership and any such person from and against any loss or liability by reason of such settlement. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by this Section 7(b), the indemnifying party agrees that it shall be liable for any settlement of any proceeding effected without its written consent if (i) such settlement is entered into more than 30 days after receipt by such indemnifying party of the aforesaid request and (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened Proceeding in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party, unless such settlement includes an unconditional release of such indemnified party from all liability on claims that are the subject matter of such Proceeding and does not include an admission of fault, culpability or a failure to act, by or on behalf of such indemnified party.

(c) If the indemnification provided for in this Section 7 is unavailable to an indemnified party under Section 7(a) or Section 7(b) of this Agreement in respect of any losses, damages, expenses, liabilities or claims referred to therein, then in order to provide just and equitable contribution in such circumstance, each applicable indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, damages, expenses, liabilities or claims (i) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Partnership on the one hand and the related Agent(s) and the related Forward Purchaser(s) on the other hand from the offering of the applicable Shares or (ii) if, but only if, the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company and the Partnership on the one hand and of any Agent and the related Forward Purchaser on the other in connection with the statements or omissions which resulted in such losses, damages, expenses, liabilities or claims, as well as any other relevant equitable considerations. The relative benefits received by the Company and the Partnership on the one hand and the related Agent(s) and the related Forward Purchaser(s) on the other shall be deemed to be in the same proportion as the total Net Proceeds from the sale of the applicable Shares pursuant to this Agreement received by the Company bear to the total commissions received by such Agent(s) from such sale (and, solely for purposes of the foregoing, the Company shall be deemed to have received Net Proceeds from the sale of Shares sold through any Agent, acting as forward seller, in connection with a Confirmation entered into by the related Forward Purchaser, in an amount equal to the proceeds that would have been received by the Company upon full physical settlement of the Confirmation Shares under such Confirmation, assuming that the aggregate amount payable by such Forward Purchaser to the Company for such Confirmation Shares is equal to the aggregate amount of Net Proceeds received by such Forward Purchaser from the sale of such Shares through such Agent), in each case before deducting expenses. The relative fault of the Company and/or the Partnership on the one hand and of any Agent and/or any Forward Purchaser on the other shall be determined by reference to, among other things, whether the untrue statement or alleged untrue statement of a material fact or omission or alleged omission relates to information supplied by the Company or the Partnership or by each such Agent's, such Forward Purchaser's and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid or payable by a party as a result of the losses, damages, expenses, liabilities and claims referred to in this subsection shall be deemed to include any legal or other fees or expenses reasonably incurred by such party in connection with investigating, preparing to defend or defending any claim or Proceeding.

(d) The Company, the Partnership, the Agents and the Forward Purchasers agree that it would not be just and equitable if contribution pursuant to this Section 7 were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in subsection (c) above. Notwithstanding the provisions of this Section 7, no Agent shall be liable or responsible for, or be required to contribute, any amount pursuant to this Section 7 in excess of the amount of the commissions received by the Agent in connection with its sale of the applicable Shares 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. The obligation of an Agent to contribute pursuant to this Section 7 shall be several in proportion to the number of applicable Shares sold to or through such Agent and not joint.

(e) The indemnity and contribution agreements contained in this Section 7 and the covenants, warranties and representations of the Company and the Partnership contained in this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of the Agents or the Forward Purchasers, the directors and officers or any person (including each partner, officer, trustee or director of such person) who controls any Agent or any Forward Purchaser within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, or by or on behalf of the Company or the Partnership, their trustees, officers or partners or any person who controls the Company or the Partnership within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act, and shall survive any termination of this Agreement or the issuance and delivery of the Shares. The Company, the Partnership, each Agent and each Forward Purchaser agree to promptly notify each other upon the commencement of any Proceeding against it and, in the case of the Company and the Partnership, against any of the Company's or the Partnership officers, trustees or partners in connection with the issuance and sale of the Shares, or in connection with the Disclosure Package or Prospectus.

Section 8. Representations, Warranties and Agreements to Survive Delivery. The respective indemnities, agreements, representations, warranties and other statements of the Company and of the Agents, as set forth in this Agreement or made by or on behalf of them, respectively, pursuant to this Agreement, shall remain in full force and effect, regardless of any investigation (or any statement as to the results thereof) made by or on behalf of the Agents, the Forward Purchasers or any of their officers, directors or controlling person, or the Company, or any officer or director or controlling person of the Company, and shall survive delivery of and payment for the Shares.

Section 9. No Advisory or Fiduciary Relationship. The Company and the Partnership acknowledge and agree that (i) the Agents and the Forward Purchasers are acting solely in the capacity of an arm's-length contractual counterparty to the Company and the Partnership with respect to the offering of Shares contemplated hereby (including in connection with determining the terms of such offering) and (ii) the Agents and the Forward Purchasers have not assumed an advisory or fiduciary responsibility in favor of the Company or the Partnership with respect to the offering contemplated hereby or the process leading thereto (irrespective of whether the Agents or the Forward Purchasers have advised or are currently advising the Company on other matters) or any other obligation to the Company except the obligations expressly set forth in this Agreement and (iii) the Company and the Partnership have each consulted its own legal and financial advisors to the extent it deemed appropriate. The Company and the Partnership each agree that it will not claim that the Agents or the Forward Purchasers have rendered advisory services of any nature or respect, or owe a fiduciary or similar duty to the Company or the Partnership, in connection with such transaction or the process leading thereto. This Agreement supersedes all prior agreements and understandings (whether written or oral) between the Company, the Partnership, the several Agents, the several Forward Purchasers, or any of them, with respect to the subject matter hereof. The Company and the Partnership hereby waive and release, to the fullest extent permitted by law, any claims that the Company and the Partnership may have against the several Agents or the several Forward Purchasers with respect to any breach or alleged breach of agency or fiduciary duty.

Section 10. Research Analyst Independence. The Company and the Partnership acknowledge that the Agents' and the Forward Purchasers' research analysts and research departments are required to be independent from their respective investment banking divisions and are subject to certain regulations and internal policies, and that such research analysts may hold views and make statements or investment recommendations and/or publish research reports with respect to the Company and/or the offering that differ from the views of their respective investment banking divisions. The Company and the Partnership hereby waive and release, to the fullest extent permitted by law, any claims that the Company or the Partnership may have against the Agents or the Forward Purchasers with respect to any conflict of interest that may arise from the fact that the views expressed by their independent research analysts and research departments may be different from or inconsistent with the views or advice communicated to the Company or the Partnership by such Agents' and such Forward Purchasers' investment banking divisions. The Company and the Partnership acknowledge that each of the Agents and the Forward Purchasers is a full service securities firm and as such from time to time, subject to applicable securities laws, may effect transactions for its own account or the account of its customers and hold long or short positions in debt or equity securities of the companies that may be the subject of the transactions contemplated by this Agreement.

Section 11. Termination.

(a) The Company shall have the right, by giving written notice as hereinafter specified, to terminate this Agreement in its sole discretion at any time. Any such termination shall be without liability of any party to any other party, except that (i) with respect to any pending sale through an Agent as sales agent or with respect to any pending sale to an Agent pursuant to a Terms Agreement or any offering or resale of any Shares purchased or to be purchased by the Agent pursuant to a Terms Agreement, the obligations of the Company, including in respect of compensation of the Agent, shall remain in full force and effect notwithstanding such termination; and (ii) the provisions of Section 1, Section 5(b), Section 7, Section 8, Section 15 and Section 16 of this Agreement shall remain in full force and effect notwithstanding such termination.

(b) Each Agent and each Forward Purchaser shall have the right, by giving written notice as hereinafter specified, to terminate this Agreement in its sole discretion at any time, but solely with respect to such Agent or Forward Purchaser, as applicable. Any such termination shall be without liability of any party to any other party except that the provisions of Section 1, Section 5(b), Section 7, Section 8, Section 15 and Section 16 of this Agreement shall remain in full force and effect notwithstanding such termination.

(c) This Agreement shall remain in full force and effect until and unless terminated pursuant to Section 11(a) or Section 11(b) above or otherwise by mutual agreement of the parties; *provided* that any such termination by mutual agreement or pursuant to this Section 11(c) shall in all cases be deemed to provide that Section 1, Section 5(b), Section 7, Section 8, Section 15 and Section 16 of this Agreement shall remain in full force and effect.

(d) Any termination of this Agreement shall be effective on the date specified in such notice of termination; *provided* that such termination shall not be effective until the close of business on the date of receipt of such notice by the Agents, the Forward Purchasers or the Company, as the case may be. If such termination shall occur prior to the Settlement Date for any sale of Shares, such sale shall settle in accordance with the provisions of Section 2(h) of this Agreement.

(e) In the case of any purchase by the Agents pursuant to a Terms Agreement, the Agents may terminate this Agreement, at any time at or prior to the Settlement Date (i) if there has been, since the time of execution of the Agreement or since the respective dates as of which information is given in the Prospectus or Disclosure Package, any material adverse change in the condition, financial or otherwise, or in the earnings, 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 Agents, impracticable or inadvisable to market the Shares or to enforce contracts for the sale of Shares, or (iii) if trading in any securities of the Company has been suspended or materially limited by the Commission or the NYSE, or if trading generally on the American Stock Exchange or the NYSE or Nasdaq has been suspended or materially limited, or minimum or maximum prices for trading have been fixed, or maximum ranges for prices have been required, by any of said exchanges or by such system or by order of the Commission, the FINRA or any other governmental authority, or (iv) a material disruption has occurred in commercial banking or securities settlement or clearance services in the United States, or (v) if a banking moratorium has been declared by either Federal or New York authorities.

(f) Notwithstanding anything to the contrary contained in this Agreement, no termination of this Agreement shall effect the validity, effectiveness or enforceability of any executed Confirmation, and any such executed Confirmation shall remain in full force and effect notwithstanding such termination (subject to the terms and conditions of such Confirmation).

Section 12. Sales to Affiliates. The parties hereto acknowledge that the transactions contemplated hereunder are subject to Rule 312.03(b) of the NYSE Listed Company Manual.

Section 13. Notices. All statements, requests, notices and agreements hereunder shall be in writing, and if to an Agent or a Forward Purchaser, as applicable, shall be delivered or sent by mail, telex or facsimile transmission to:

BofA Securities, Inc.
One Bryant Park
New York, New York 10036
Facsimile: 646-855-3073
Attention: Syndicate Department and ECM Legal

Barclays Capital Inc.
745 Seventh Avenue
New York, New York 10019
Facsimile: 646-834-8133
Attention: Syndicate Registration

Barclays Capital Inc.
745 Seventh Avenue
New York, New York 10019
Attention: Director of Litigation, Office of the General Counsel

Wells Fargo Securities, LLC
375 Park Avenue
New York, New York 10152
Facsimile: 212-214-5918
Attention: Equity Syndicate Department and the Special Equities Desk

Goldman Sachs & Co. LLC
200 West Street
New York, New York 10282
Phone No.: 866-471-2526
Attention: Registration Department

Citigroup Global Markets Inc.
388 Greenwich Street, New York, New York, 10013
Fax No: 1-646-291-1469
Attention: General Counsel

Jefferies LLC
520 Madison Avenue
New York, New York 10022
Attention: General Counsel

SunTrust Robinson Humphrey, Inc.
3333 Peachtree Road NE, 11th Floor
Atlanta, Georgia 30326
Facsimile: (404) 926-5872
Attention: Equity Capital Markets

and

Bank of America, N.A.
One Bryant Park
New York, New York 10036
Attention: Rohan Handa
Email: rohan.handa@baml.com

Barclays Bank PLC
c/o Barclays Capital Inc.
745 Seventh Avenue
New York, NY 10019
Attn: syed.imteaz@barclays.com
Facsimile: (+1) 917-522-0458
Email: syed.imteaz@barclays.com

Citibank, N.A.
390 Greenwich Street, 6th Floor
New York, New York 10013
Attention: Dustin Sheppard
Telephone: (212) 723-5770
Email: dustin.c.cheppard@citi.com

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

Jefferies LLC
520 Madison Avenue
New York, New York 10022
Attention: Equity Derivatives Middle Office
Email: eqderiv_mo@jefferies.com; CorpEqDeriv@jefferies.com; shan@jefferies.com

Wells Fargo Bank, National Association
375 Park Avenue, 4th Floor
New York, New York 10152
Attention: Equity Syndicate Department and the Special Equities Desk
Facsimile: (212) 214-5918

and if to the Company to:

Acadia Realty Trust
411 Theodore Fremd Avenue, Suite 300
Rye, New York 10580
White Plains, New York 10605
Facsimile: 914-288-2138
Attention: General Counsel

and if to the Partnership:

Acadia Realty Limited Partnership
411 Theodore Fremd Avenue, Suite 300
Rye, New York 10580
Facsimile: 914-288-2138
Attention: General Counsel

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

Section 14. Parties. Subject to the last sentence of this Section 14, this Agreement shall be binding upon, and inure solely to the benefit of, the Agents, the Forward Purchasers and the Company and, to the extent provided in Sections 7 and 8 of this Agreement, the officers and trustees of the Company, the Agents or the Forward Purchasers and each person who controls the Company, the Agents or the Forward Purchasers, and their respective heirs, executors, administrators, successors and assigns, and no other person shall acquire or have any right under or by virtue of this Agreement.

Section 15. Submission to Jurisdiction; Waiver of Jury Trial. No proceeding related to this Agreement or any Terms Agreement or any transactions contemplated hereby or thereby may be commenced, prosecuted or continued in any court other than the courts of the State of New York located in the City and County of New York or in the United States District Court for the Southern District of New York, which courts shall have jurisdiction over the adjudication of such matters, and the Company consents to the jurisdiction of such courts and personal service with respect thereto. The Company waives all right to trial by jury in any proceeding (whether based upon contract, tort or otherwise) in any way arising out of or relating to this Agreement or any Terms Agreement. The Company agrees that a final judgment in any such proceeding brought in any such court shall be conclusive and binding upon the Company and may be enforced in any other courts to whose jurisdiction the Company is or may be subject, by suit upon such judgment.

Section 16. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO ITS PRINCIPLES OF CONFLICTS OF LAW.

Section 17. Counterparts. This Agreement, and any Terms Agreement may be executed by any one or more of the parties hereto and thereto in any number of counterparts, each of which shall be deemed to be an original, but all such respective counterparts shall together constitute one and the same instrument. This Agreement and any Terms Agreement may be delivered by any party by facsimile or other electronic transmission.

Section 18. Severability. The invalidity or unenforceability of any Section, paragraph or provision of this Agreement or any Terms Agreement shall not affect the validity or enforceability of any other Section, paragraph or provision hereof or thereof, as the case may be. If any Section, paragraph or provision of this Agreement or any Terms Agreement is for any reason determined to be invalid or unenforceable, there shall be deemed to be made such minor changes (and only such minor changes) as are necessary to make it valid and enforceable.

Section 19. Recognition of the U.S. Special Resolution Regimes.

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

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

For purposes of this Section 16, a “BHC Act Affiliate” has the meaning assigned to the term “affiliate” in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k). “Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b). “Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable. “U.S. Special Resolution Regime” means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

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 among the Agents, the Forward Purchasers and the Company in accordance with its terms.

Very truly yours,

ACADIA REALTY TRUST

By: /s/ Jason Blacksberg
Name: Jason Blacksberg
Title: Senior Vice President, General Counsel, Chief Compliance Officer and Secretary

ACADIA REALTY LIMITED PARTNERSHIP

By: ACADIA REALTY TRUST
Its sole general partner

By: /s/ Jason Blacksberg
Name: Jason Blacksberg
Title: Senior Vice President and General Counsel

Accepted as of the date hereof:

BofA Securities, Inc.

By: /s/ William Conkling
Name: William Conkling
Title: Managing Director, Investment Banking

Citigroup Global Markets Inc.

By: /s/ Zhifeng Tao
Name: Zhifeng Tao
Title: VP

Jefferies LLC

By: /s/ Michael Ludlowe
Name: Michael Ludlowe
Title: Managing Director, ECM

Wells Fargo Securities, LLC

By: /s/ Thomas Yates
Name: Thomas Yates
Title: Managing Director

As Agents

Bank of America, N.A.

By: /s/ William Conkling
Name: William Conkling
Title: Managing Director, Investment Banking

Citibank, N.A.

By: /s/ Zhifeng Tao
Name: Zhifeng Tao
Title: VP

Barclays Capital Inc.

By: /s/ Nicholas Cunningham
Name: Nicholas Cunningham
Title: Managing Director

Goldman Sachs & Co. LLC

By: /s/ Goldman Sachs & Co. LLC
Name: Todd Eagle
Title: Managing Director

SunTrust Robinson Humphrey, Inc.

By: /s/ Keith Carpenter
Name: Keith Carpenter
Title: Director

Barclays Bank PLC

By: /s/ Nicholas Cunningham
Name: Nicholas Cunningham
Title: Managing Director

Goldman Sachs & Co. LLC

By: /s/ Goldman Sachs & Co. LLC
Name: Todd Eagle
Title: Managing Director

Jefferies LLC

Wells Fargo Bank, National Association

By: /s/ Michael Judlowe
Name: Michael Judlowe
Title: Managing Director, ECM

By: /s/ Thomas Yates
Name: Thomas Yates
Title: Managing Director

As Forward Purchasers, solely as the recipients and/or beneficiaries of certain representations, warranties, covenants and indemnities set forth in this Agreement

Exhibit A-1-A

[Omitted]

A-4-1

Exhibit A-1-B

[Omitted]

A-4-1

Exhibit A-2

[Omitted]

A-4-1

Schedule A
Significant Subsidiaries of the Company

Acadia Realty Limited Partnership
Acadia Strategic Opportunity Fund II LLC
Acadia Strategic Opportunity Fund III LLC
Acadia Strategic Opportunity Fund IV LLC
Acadia Strategic Opportunity Fund V LLC

Exhibit A-3

[Omitted]

A-4-1

Exhibit A-4

[Omitted]

A-4-1

Annex I

ACADIA REALTY TRUST

Common Shares of Beneficial Interest
(\$0.001 par value)

TERMS AGREEMENT

[ADDRESS OF AGENT]

Ladies and Gentlemen:

Acadia Realty Trust, a Maryland real estate investment trust (the “Company”), proposes, subject to the terms and conditions stated herein and in the ATM Equity Offering Sales Agreement, dated [●], 2019 (the “Sales Agreement”), between the Company, Acadia Realty Limited Partnership, [AGENT], as agent, forward seller and/or principal (the “Agent”) and [FORWARD PURCHASER], as forward purchaser (the “Forward Purchaser”), to issue and sell to the Agent the securities specified in the Schedule hereto (the “Purchased Securities”), and solely for the purpose of covering overallocments, to grant to the Agent the option to purchase the additional securities specified in the Schedule hereto (the “Additional Securities”).¹ Capitalized terms used herein and not defined have the respective meanings ascribed thereto in the Sales Agreement.

The Agent shall have the right to purchase from the Company all or a portion of the Additional Securities as may be necessary to cover over-allotments made in connection with the offering of the Purchased Securities, at the same purchase price per share to be paid by the Agent to the Company for the Purchased Securities; *provided* that the purchase price payable by the Agent for any Additional Securities shall be reduced by an amount per share equal to any dividends or distributions paid or payable by the Company on the Purchased Securities but not payable on such Additional Securities. This option may be exercised by the Agent at any time (but not more than once) on or before the thirtieth day following the date hereof, by written notice to the Company. Such notice shall set forth the aggregate number of shares of Additional Securities as to which the option is being exercised, and the date and time when the Additional Securities are to be delivered (such date and time being herein referred to as the “Option Closing Date”); *provided, however*, that the Option Closing Date shall not be earlier than the Time of Delivery (as set forth in the Schedule hereto) nor earlier than the second Business Day after the date on which the option shall have been exercised nor later than the fifth Business Day after the date on which the option shall have been exercised. Payment of the purchase price for the Additional Securities shall be made at the Option Closing Date in the same manner and at the same office as the payment for the Purchased Securities. For purposes of clarity, the parties hereto agree that any Option Closing Date shall be a “time on which Shares are delivered to the Agent” within the meaning of Sections 3(i), (j), (k) and (l) of the Sales Agreement.¹

¹ Include only if the Agent has an over-allotment option.

Each of the provisions of the Sales Agreement not specifically related to (a) the solicitation by the Agent, as agent of the Company, of offers to purchase securities or (b) the Confirmations, Confirmation Shares and related transactions is incorporated herein by reference in its entirety, and shall be deemed to be part of this Terms Agreement to the same extent as if such provisions had been set forth in full herein. Each of the representations and warranties set forth therein shall be deemed to have been made at and as of the date of this Terms Agreement [and] [,] the Applicable Time [and any Option Closing Date]*, except that each representation and warranty in Section 1 of the Sales Agreement which makes reference to the Prospectus (as therein defined) shall be deemed to be a representation and warranty as of the date of the Sales Agreement in relation to the Prospectus, and also a representation and warranty as of the date of this Terms Agreement [and] [,] the Settlement Date [and any Option Closing Date]1 in relation to the Prospectus as amended and supplemented to relate to the Purchased Securities.

An amendment to the Registration Statement (as defined in the Sales Agreement), or a supplement to the Prospectus, as the case may be, relating to the Purchased Securities [and the Additional Securities]*, in the form heretofore delivered to the Agent is now proposed to be filed with the Securities and Exchange Commission.

Subject to the terms and conditions set forth herein and in the Sales Agreement which are incorporated herein by reference, the Company agrees to issue and sell to the Agent and the latter agrees to purchase from the Company the number of shares of the Purchased Securities at the time and place and at the purchase price set forth in the Schedule hereto.

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 Agent and the Company in accordance with its terms.

THIS TERMS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

[Intentionally Left Blank]

Very truly yours,

ACADIA REALTY TRUST

By: _____

Name:

Title:

Accepted as of the date hereof:

[AGENT]

By: _____

Name:

Title:

[If Agent is Wells Fargo Securities, LLC, the Term Agreement shall be sent to and accepted by one of the following individuals at the following electronic mail addresses:

Billy Wright, bwright@eastdilsecured.com
Christopher Flouhouse, chris.flouhouse@wellsfargo.com
Rohit Mehta, Rohit.Mehta2@wellsfargo.com
Jennifer Lynch, Jennifer.lynch@wellsfargo.com]

Annex II

Model placement notice from the Company to the Agents (may be delivered by e-mail):

From: []
Cc: []
To: []
Subject: Equity Distribution—Placement Notice

Ladies and Gentlemen:

Pursuant to the terms and subject to the conditions contained in the ATM Equity Offering Sales Agreement among Acadia Realty Trust (the “Company”), Acadia Realty Limited Partnership (the “Operating Partnership”), BofA Securities, Inc., Barclays Capital Inc., Wells Fargo Securities, LLC, Goldman Sachs & Co. LLC, Citigroup Global Markets Inc., Jefferies LLC and SunTrust Robinson Humphrey, Inc. (each an “Agent”) and [•], [•], [•], [•], [•] and [•] (each a “Forward Purchaser”), dated [•], 2019 (the “Agreement”), I hereby request on behalf of the Company that [SPECIFY AGENT] sell common shares of beneficial interest, par value \$0.01 per share of the Company, subject to the following terms:

Number of Shares to be sold	[•] _____
Minimum gross sales price at which each Share may be sold	\$(•) _____
Agency or Principal Basis	[Agency] [Principal] _____
Regular Settlement or Forward Basis	[Regular Settlement][Forward Basis] _____
[Compensation to Agent (if different than the Agreement)]	[•] _____
[Date(s) on which Shares may be sold]	[•] _____
[Maturity Date]	[•] _____
[Initial Forward Price]	[•]% _____
[Spread]	[•] _____

[Initial Stock Loan Fee]	[•] basis points _____
[Maximum Stock Loan Fee]	[•] basis points _____
[Hedge Completion Date]	[•] _____

_____ [Forward Price Reduction Dates] _____	_____ [Forward Price Reduction Amounts] _____
[•], 20[•]	\$[•]
[•], 20[•]	\$[•]
[•], 20[•]	\$[•]

The Company hereby confirms that, as of the date of this Placement Notice, neither the Prospectus, nor any Issuer Free Writing Prospectus, when taken together with the Prospectus, includes an untrue statement of a material fact or omits 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.

[ADDITIONAL SALES PARAMETERS MAY BE ADDED]

E-mail from an Agent to the Company:

[Required on days when selling is expected to take place *and* a placement notice in the above form has not been received for that day. Note: the above model placement notice contains a “10b-5” representation (see second paragraph of model placement notice); to the extent selling is to take place on a day other than the day the placement notice is delivered, the selling Agent requires a confirmatory e-mail from the Company that “brings down” the 10b-5 representation. Below is a form of e-mail requesting a Company confirmation, followed by a form of e-mail that may be used by the Company to supply the requested confirmation. To the extent the Company is unwilling or unable to provide the confirming email on any day that selling is to take place (other than a day a placement notice is delivered), selling is not permitted.]

In connection with your instructions that we sell up to [•] AKR Common Shares at prices not less than \$[•] per share, pursuant to Section 2 of the ATM Equity Offering Sales Agreement, dated [•], 2019 (the “Agreement”), among Acadia Realty Trust (the “Company”), Acadia Realty Limited Partnership, BofA Securities, Inc., Barclays Capital Inc., Wells Fargo Securities, LLC, Goldman Sachs & Co. LLC, Citigroup Global Markets Inc., Jefferies LLC and SunTrust Robinson Humphrey, Inc. (each an “Agent”) and [•], [•], [•], [•] and [•], **please confirm by reply e-mail** that the Company’s Prospectus (as defined in the Agreement), including the documents incorporated by reference therein, as of the date of this e-mail, does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

Confirming e-mail from the Company to an Agent:

Pursuant to your e-mail request, [●] hereby confirms that, as of the date of this e-mail, Acadia Realty Trust's Prospectus (as defined in the Agreement referred to in your e-mail), including the documents incorporated by reference therein, does not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

[If Agent is Wells Fargo Securities, LLC, the placement notice shall be sent to and accepted by one of the following individuals at the following electronic mail addresses:

Mark Horgan, mhorgan@eastdilsecured.com
Christopher Flouhouse, chris.flouhouse@wellsfargo.com
Rohit Mehta, rohit.mehta2@wellsfargo.com
Jennifer Lynch, Jennifer.lynch@wellsfargo.com]²

2 Wells Fargo to confirm contacts

Annex III

[Form of Confirmation begins on following page]

Date: [*], 20[*]

To: Acadia Realty Trust
411 Theodore Fremd Avenue, Suite 300
Rye, New York, 10580

From: [DEALER NAME AND NOTICE INFORMATION]

Re: Registered Forward Transaction

Ladies and Gentlemen:

The purpose of this letter agreement (this “Confirmation”) is to confirm the terms and conditions of the transaction entered into between us on the Trade Date specified below (the “Transaction”). This Confirmation constitutes a “Confirmation” as referred to in the ISDA Master Agreement specified below.

1. The definitions and provisions contained in the 2006 ISDA Definitions (the “2006 Definitions”) and the 2002 ISDA Equity Derivatives Definitions (the “2002 Definitions” and, together with the 2006 Definitions, the “Definitions”), each as published by the International Swaps and Derivatives Association, Inc., are incorporated into this Confirmation. In the event of any inconsistency between the 2002 Definitions and the 2006 Definitions, the 2002 Definitions will govern. In the event of any inconsistency between the Definitions and this Confirmation, this Confirmation will govern.

Each party further agrees that this Confirmation, the Pricing Supplement (as defined below) delivered hereunder and the Agreement (as defined below) together evidence a complete binding agreement between Party A and Party B as to the subject matter and terms of the Transaction to which this Confirmation relates, and shall supersede all prior or contemporaneous written or oral communications with respect thereto. This Confirmation, together with any other Confirmations for registered forward transactions entered into between Party A and Party B in connection with the Sales Agreement (as defined below) (each, an “Additional Confirmation”) shall supplement, form a part of, and be subject to an agreement in the form of the 2002 ISDA Master Agreement (the “Agreement”) as if Party A and Party B had executed an agreement in such form on the Trade Date. In the event of any inconsistency between the Agreement, this Confirmation, the Pricing Supplement, the 2006 Definitions and the 2002 Definitions, the following will prevail for purposes of the Transaction in the order of precedence indicated: (i) the Pricing Supplement, (ii) this Confirmation; (iii) the 2002 Definitions; (iv) the 2006 Definitions and (v) the Agreement. The parties hereby agree that no Transaction other than the Transaction to which this Confirmation relates and the Transactions to which the Additional Confirmations, if any, relate (each, an “Additional Transaction”), shall be governed by the Agreement. For purposes of the 2002 Definitions, the Transaction is a Share Forward Transaction.

Party A and Party B each represent 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.

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

General Terms:

Party A:	[DEALER NAME]
Party B:	Acadia Realty Trust
Trade Date:	[*], 20[*]

Effective Date: The first day occurring on or after the Trade Date on which Shares that are sold through [AGENT NAME], acting as forward seller for Party A (in such capacity, the “Agent”) pursuant to the ATM Equity Offering Sales Agreement, dated May 31, 2019 between Party A, Party B, the Agent and the other parties thereto (the “Sales Agreement”), settle.

Base Amount: The aggregate number of Shares sold through the Agent, acting as forward seller for Party A pursuant to the Sales Agreement, during the period from and including the Trade Date through and including the Hedge Completion Date; provided, however, that on each Settlement Date, the Base Amount shall be reduced by the number of Settlement Shares for such Settlement Date.

Maturity Date: The earlier of (i) [DATE]¹ (or, if such date is not a Scheduled Trading Day, the next following Scheduled Trading Day) and (ii) the date on which the Base Amount is reduced to zero.

Hedge Completion Date: The earliest of (i) the date specified in writing as the Hedge Completion Date by Party B, (ii) any “Settlement Date” (under and as defined in the Sales Agreement) with respect to the full Base Amount and (iii) the 20th Scheduled Trading Day following, but not including, the Trade Date. No later than 7:00 pm, New York time, on the Hedge Completion Date, Party A will furnish Party B with a pricing supplement (the “Pricing Supplement”) substantially in the form of Annex B hereto specifying the Hedge Completion Date, the Base Amount as of the Hedge Completion Date (the “Initial Base Amount”) and the Initial Forward Price, each determined in accordance with the terms hereof.

Forward Price: On the Hedge Completion Date, the Initial Forward Price, and on any other day, the Forward Price as of the immediately preceding calendar day multiplied by the sum of (i) 1 and (ii) the Daily Rate for such day; provided that on each Forward Price Reduction Date, the Forward Price in effect on such date shall be the Forward Price otherwise in effect on such date, minus the Forward Price Reduction Amount for such Forward Price Reduction Date.

Notwithstanding anything to the contrary contained herein, to the extent Party B delivers Shares hereunder on or after a Forward Price Reduction Date and at or before the record date for an ordinary cash dividend with an ex-dividend date corresponding to such Forward Price Reduction Date, the Calculation Agent shall adjust the Forward Price, in a good faith and commercially reasonable manner, to preserve the economic intent of the parties hereto (taking into account Party A’s commercially reasonable hedge positions in respect of the Transaction).

¹ Insert Maturity Date specified by Party B in instruction under the Sales Agreement. To be a date no later than the second anniversary of the Trade Date.

Initial Forward Price:	[*] ² of the volume weighted average price at which the Shares are sold through the Agent acting as forward seller for Party A pursuant to the Sales Agreement during the period from and including the Trade Date through and including the Hedge Completion Date; provided that, the Calculation Agent shall adjust, in a good faith and commercially reasonable manner, such price to (x) reflect on each day during such period (i) the sum of 1 and the Daily Rate for such day multiplied by the then-Initial Forward Price as of such day and (ii) the number of Shares sold on or prior to such day and (y) reduce the then-Initial Forward Price by the relevant Forward Price Reduction Amount on each Forward Price Reduction Date occurring on or before the Hedge Completion Date.
Daily Rate:	For any day, a rate equal to (i)(A) the Overnight Bank Rate for such day, minus (B) the Spread, divided by (ii) 360.
Overnight Bank Rate:	For any day, the rate set forth for such day opposite the caption “Overnight Bank Funding Rate”, as such rate is displayed on the page “OBFR01 <Index> <GO>” on the BLOOMBERG Professional Service, or any successor page; provided that, if no rate appears on any day on such page, the rate for the immediately preceding day for which a rate does so appear shall be used for such day.
Spread:	[*] ³ basis points.
Prepayment:	Not Applicable.
Variable Obligation:	Not Applicable.
Forward Price Reduction Date:	Each date (other than the Trade Date) set forth on Schedule I under the heading “Forward Price Reduction Date.”
Forward Price Reduction Amount:	For each Forward Price Reduction Date, the Forward Price Reduction Amount set forth opposite such date on Schedule I.
Shares:	Common stock, USD 0.001 par value per share, of Party B (also referred to herein as the “Issuer”) (Exchange identifier: “AKR”).
Exchange:	New York Stock Exchange.
Related Exchange(s):	All Exchanges.

² Insert percentage equal to 100 minus the agreed upon commission (which shall not exceed 2%), as specified by Party B in instruction under the Sales Agreement.

³ Insert Spread specified by Party B in instruction under the Sales Agreement.

Clearance System:

DTC.

Calculation Agent:

Party A. In the event the Calculation Agent makes any calculations, adjustments or determinations pursuant to this Confirmation, the Agreement or the Equity Definitions, the Calculation Agent shall promptly provide an explanation in reasonable detail of the basis for any such calculation, adjustment or determination to Party B (including any quotations, market data or information from external sources used in making such calculation, adjustment or determination, as the case may be, but without disclosing its proprietary models or other information that is subject to contractual, legal or regulatory obligations to not disclose such information); provided that following the occurrence of an Event of Default under Section 5(a)(vii) of the Agreement with respect to which Party A is the Defaulting Party, Party B shall have the right to designate a nationally recognized third-party dealer in over-the-counter corporate equity derivatives to act, during the period commencing on the date such Event of Default occurred and ending on the Early Termination Date with respect to such Event of Default, as the Calculation Agent. Whenever the Calculation Agent is required or permitted to act or to exercise judgment in any way with respect to any Transaction hereunder, including, without limitation, with respect to calculations, adjustments and determinations that are made in its sole discretion or otherwise, the Calculation Agent shall do so in good faith and in a commercially reasonable manner.

Settlement Terms:

Settlement Date:

Any Scheduled Trading Day following the Effective Date and up to and including the Maturity Date, as designated by (a) Party A pursuant to "Termination Settlement" below or (b) Party B in a written notice (a "Settlement Notice") that satisfies the Settlement Notice Requirements and is delivered to Party A at least (i) two Scheduled Trading Days prior to such Settlement Date, which may be the Maturity Date, if Physical Settlement applies, and (ii) 20 Scheduled Trading Days prior to such Settlement Date, which may be the Maturity Date, if Cash Settlement or Net Share Settlement applies; provided that (i) the Maturity Date shall be a Settlement Date if on such date the Base Amount is greater than zero and (ii) if Cash Settlement or Net Share Settlement applies and Party A shall have fully unwound its hedge during an Unwind Period by a date that is more than two Scheduled Trading Days prior to a Settlement Date specified above, Party A may, by written notice to Party B, specify any Scheduled Trading Day prior to such originally specified Settlement Date as the Settlement Date.

Settlement Shares:

With respect to any Settlement Date, a number of Shares, not to exceed the Base Amount, designated as such by Party B in the related Settlement Notice or by Party A pursuant to "Termination Settlement" below; provided that on the Maturity Date the number of Settlement Shares shall be equal to the Base Amount on such date.

Settlement:	Physical Settlement, Cash Settlement or Net Share Settlement, at the election of Party B as set forth in a Settlement Notice delivered on or after the Effective Date (if applicable) that satisfies the Settlement Notice Requirements; provided that Physical Settlement shall apply (i) if no Settlement Method is validly selected, (ii) with respect to any Settlement Shares in respect of which Party A is unable, in its good faith and commercially reasonable judgment, to unwind its hedge for the Transaction by the end of the Unwind Period in a manner that, in the reasonable judgment of Party A, based on the advice of counsel, is consistent with Rule 10b-18 under the Exchange Act or due to the occurrence of Disrupted Days or to the lack of sufficient liquidity in the Shares on any Exchange Business Day during the Unwind Period relative to the liquidity on the Effective Date, (iii) to any Termination Settlement Date (as defined below under “Termination Settlement”), (iv) if the Maturity Date is a Settlement Date other than as the result of a valid Settlement Notice in respect of such Settlement Date or (v) if Party B has entered into an additional Share Forward or other equity derivative transaction (each, an “Additional Equity Derivative Transaction”), Party A determines, based on the advice of counsel, that it is unable to unwind its hedge for the Transaction in a manner consistent with Rule 10b-18 under the Exchange Act.
Settlement Notice Requirements:	Notwithstanding any other provision hereof, a Settlement Notice delivered by Party B that specifies Cash Settlement or Net Share Settlement will not be effective unless the Settlement Notice includes a representation by Party B substantially in the form set forth in clause (a) under the heading “Representations, Warranties and Agreements of Party B”.
Unwind Period:	The period from and including the first Exchange Business Day following the date Party B provides Settlement Notice for a valid election of Cash Settlement or Net Share Settlement in respect of a Settlement Date through the second Scheduled Trading Day preceding such Settlement Date (or the immediately preceding Exchange Business Day if such Scheduled Trading Day is not an Exchange Business Day and excluding any Disrupted Day); subject to “Termination Settlement” below. If any Exchange Business Day during an Unwind Period is a Disrupted Day, the Calculation Agent shall make commercially reasonable adjustments to the terms of the Transaction (including, without limitation, the Cash Settlement Amount, the number of Net Share Settlement Shares and the 10b-18 VWAP) to account for the occurrence of such Disrupted Day.
Market Disruption Event:	Section 6.3(a) of the 2002 Definitions is hereby amended by replacing the first sentence in its entirety with the following: “‘Market Disruption Event’ means in respect of a Share, 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 in its good faith and commercially reasonable manner, is material at any time during a Scheduled Trading Day.”

Early Closure: Section 6.3(d) of the 2002 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 Party A, in its good faith and commercially reasonable discretion, based on advice of counsel, determines makes it appropriate with regard to any legal, regulatory or self-regulatory requirements or related policies and procedures (that apply broadly to similar transactions for other issuers) for Party A to refrain from or decrease any market activity in connection with the Transaction. Subject to applicable legal requirements and Party A’s internal policies and guidelines, Party A shall promptly notify Party B upon the occurrence of a Regulatory Disruption and shall subsequently promptly notify Party B on the day Party A determines that the circumstances giving rise to such Regulatory Disruption have changed. Party A shall make its determination of a Regulatory Disruption in a manner consistent with the determinations made with respect to other issuers under similar facts and circumstances.

Exchange Act: The Securities Exchange Act of 1934, as amended from time to time.

Securities Act: The Securities Act of 1933, as amended from time to time.

Physical Settlement: On any Settlement Date in respect of which Physical Settlement applies, Party B shall deliver to Party A through the Clearance System the Settlement Shares for such Settlement Date, and Party A shall pay to Party B, by wire transfer of immediately available funds to an account designated by Party B, an amount in cash equal to the Physical Settlement Amount for such Settlement Date, on a delivery versus payment basis. If, on any Settlement Date, the Shares to be delivered by Party B to Party A 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 Party A, then the portion of the Physical Settlement Amount payable by Party A to Party B 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.

Physical Settlement Amount: For any Settlement Date in respect of which Physical Settlement applies, an amount in cash equal to the product of (i) the Forward Price on such Settlement Date and (ii) the number of Settlement Shares for such Settlement Date.

Cash Settlement: On any Settlement Date in respect of which Cash Settlement applies, if the Cash Settlement Amount for such Settlement Date is a positive number, Party A will pay such Cash Settlement Amount to Party B. If the Cash Settlement Amount is a negative number, Party B will pay the absolute value of such Cash Settlement Amount to Party A. Such amounts shall be paid on the Settlement Date by wire transfer of immediately available funds.

Cash Settlement Amount: For any Settlement Date in respect of which Cash Settlement applies, an amount determined by the Calculation Agent equal to the difference between (1) the product of (i) the difference between (A) the average Forward Price over the period beginning on, and including, the date that is one Settlement Cycle following the first day of the applicable Unwind Period and ending on, and including, such Settlement Date (calculated assuming no reduction to the Forward Price for any Forward Price Reduction Date that occurs during the Unwind Period), minus USD 0.015, and (B) the average of the 10b-18 VWAP prices per Share on each Exchange Business Day during such Unwind Period, and (ii) the number of Settlement Shares for such Settlement Date, and (2) the product of (i) the Forward Price Reduction Amount for any Forward Price Reduction Date that occurs during such Unwind Period, and (ii) the number of Settlement Shares with respect to which Party A has not unwound its hedge for the Transaction as of such Forward Price Reduction Date.

Net Share Settlement: On any Settlement Date in respect of which Net Share Settlement applies, if the number of Net Share Settlement Shares is a (i) negative number, Party A shall deliver a number of Shares to Party B equal to the absolute value of the Net Share Settlement Shares, or (ii) positive number, Party B shall deliver to Party A the Net Share Settlement Shares; provided that if Party A determines in its good faith and commercially reasonable judgment that it would be required to deliver Net Share Settlement Shares to Party B, Party A may elect to deliver a portion of such Net Share Settlement Shares on one or more dates prior to the applicable Settlement Date.

Net Share Settlement Shares: For any Settlement Date in respect of which Net Share Settlement applies, a number of Shares equal to (a) the number of Settlement Shares for such Settlement Date, minus (b) the quotient of (A) the difference between (1) the product of (i) the average Forward Price over the period beginning on, and including, the date that is one Settlement Cycle following the first day of the applicable Unwind Period and ending on, and including, such Settlement Date (calculated assuming no reduction to the Forward Price for any Forward Price Reduction Date that occurs during the Unwind Period), minus USD 0.015, and (ii) the number of Settlement Shares for such Settlement Date, and (2) the product of (i) the Forward Price Reduction Amount for any Forward Price Reduction Date that occurs during such Unwind Period, and (ii) the number of Shares with respect to which Party A has not unwound its hedge as of such Forward Price Reduction Date and (B) the average of the 10b-18 VWAP prices per Share on each Exchange Business Day during such Unwind Period.

10b-18 VWAP:

For any Exchange Business Day during the Unwind Period which is not a Disrupted Day, the volume-weighted average price reported on the Bloomberg Page “AKR <Equity> AQR SEC” (or any successor thereto) for such Exchange Business Day; provided, however, that if such price is unavailable for an Exchange Business Day or the Calculation Agent determines that such price does not correctly reflect the volume-weighted average price at which the Shares trade as reported in the composite transactions for the Exchange on such Exchange Business Day, excluding (i) trades that do not settle regular way, (ii) opening (regular way) reported trades on the Exchange on such Exchange Business Day, (iii) trades that occur in the last ten minutes before the scheduled close of trading on the Exchange on such Exchange Business Day and ten minutes before the scheduled close of the primary trading session in the market where the trade is effected, and (iv) trades on such Exchange Business Day that do not satisfy the requirements of Rule 10b-18(b)(3), the Calculation Agent shall, in a good faith, commercially reasonable manner, determine the 10b-18 VWAP for such Exchange Business Day based on the criteria specified above in this proviso.

Settlement Currency:

USD.

Failure to Deliver:

Inapplicable.

Adjustments:

Method of Adjustment:

Calculation Agent Adjustment.

Additional Adjustment:

If, in Party A's commercially reasonable judgment, the stock loan fee to Party A (or an affiliate thereof), excluding the federal funds or other interest rate component payable by the relevant stock lender to Party A or such affiliate (the “Stock Loan Fee”), over the immediately preceding one month period, of borrowing a number of Shares equal to the Base Amount to hedge its exposure to the Transaction exceeds a weighted average rate equal to [*]⁴ basis points per annum, the Calculation Agent shall reduce the Forward Price in order to compensate Party A for the amount by which the Stock Loan Fee exceeded a weighted average rate equal to [*]⁵ basis points per annum during such period. The Calculation Agent shall notify Party B in writing prior to making any such adjustment to the Forward Price and, upon the request of Party B, Party A shall provide an itemized list in reasonable detail of the Stock Loan Fees for the applicable one month period (including any quotations, market data or information from external sources used by Party A in developing such list, but without disclosing its proprietary models or other information that is subject to contractual, legal or regulatory obligations to not disclose such information).

⁴ Insert Initial Stock Loan Rate specified by Party B in instruction under the Sales Agreement.

⁵ Insert Initial Stock Loan Rate specified by Party B in instruction under the Sales Agreement.

Account Details:

Payments to Party A:	To be advised under separate cover or telephone confirmed prior to each Settlement Date.
Payments to Party B:	To be advised under separate cover or telephone confirmed prior to each Settlement Date.
Delivery of Shares to Party A:	To be advised.
Delivery of Shares to Party B:	To be advised.

3. Other Provisions:

Conditions to Effectiveness:

This Transaction shall be effective if and only if Shares are sold by the Agent acting as forward seller for Party A on or after the Trade Date and on or before the Hedge Completion Date pursuant to the Sales Agreement. If the Sales Agreement is terminated prior to any such sale of Shares thereunder, the parties shall have no further obligations in connection with this Transaction, other than in respect of breaches of representations or covenants on or prior to such date. For the avoidance of doubt, if the Sales Agreement is terminated prior to the Hedge Completion Date, this Confirmation shall remain in effect with respect to any Shares that had been sold by the Agent acting as forward seller for Party A on or after the Trade Date and prior to such termination.

Interpretive Letter:

Party B agrees and acknowledges that the Transaction is being entered into in accordance with the October 9, 2003 interpretive letter from the staff of the Securities and Exchange Commission to Goldman, Sachs & Co. (the "Interpretive Letter"). Party B represents that it is eligible to conduct a primary offering of Shares on Form S-3 and that the offering contemplated by the Sales Agreement complies with Rule 415 under the Securities Act.

Representations, Warranties and Agreements of Party B: Party B hereby represents and warrants to, and agrees with, Party A as of the date hereof that:

- (a) Party B represents to Party A on the Trade Date and on any date that Party B notifies Party A that Cash Settlement or Net Share Settlement applies to this Transaction, that (A) Party B is not aware of any material nonpublic information regarding Party B or the Shares, (B) each of its filings under the Securities Act, the Exchange Act or other applicable securities laws that were required to be filed have been filed in the prior 12 months and that, as of the date of this representation, when considered as a whole (with the more recent such filings deemed to amend inconsistent statements contained in any earlier such filings), there is no misstatement of material fact contained therein or omission of a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading and (C) Party B is not entering into this Confirmation nor making any election hereunder to create actual or apparent trading activity in the Shares (or any security convertible into or exchangeable for Shares) or to raise or depress or otherwise manipulate the price of the Shares (or any security convertible into or exchangeable for Shares) or otherwise in violation of the Exchange Act.

- (b) Any Shares, when issued and delivered in accordance with the terms of the Transaction, will be duly authorized and validly issued, fully paid and nonassessable, and the issuance thereof will not be subject to any preemptive or similar rights.
- (c) Party B 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 maximum number of Shares as shall be issuable at such time upon settlement of the Transaction as set forth below under the heading "Maximum Share Delivery". All Shares so issuable shall, upon such issuance, be accepted for listing or quotation on the Exchange.
- (d) Party B agrees to provide Party A prior written notice (an "Issuer Repurchase Notice") prior to executing any repurchase of Shares by Party B or any of its subsidiaries (or entering into any contract that would require, or give the option to, Party B or any of its subsidiaries, to purchase or repurchase Shares), whether out of profits or capital or whether the consideration for such repurchase is cash, securities or otherwise (an "Issuer Repurchase"), that alone or in the aggregate would result in the Base Amount Percentage (as defined below) being (i) equal to or greater than 4.5% of the outstanding Shares or (ii) greater by 0.5% or more than the Base Amount Percentage at the time of the immediately preceding Issuer Repurchase Notice (or in the case of the first such Issuer Repurchase Notice, greater than the Base Amount Percentage as of the later of the date hereof or the immediately preceding Settlement Date, if any). The "Base Amount Percentage" as of any day is the fraction (1) the numerator of which is the aggregate of the Base Amount and each "Base Amount" (as defined in the applicable Additional Confirmation and any Additional Equity Derivative Transaction) under any outstanding Additional Transactions and (2) the denominator of which is the number of Shares outstanding on such day.
- (e) No filing with, or approval, authorization, consent, license registration, qualification, order or decree of, any court or governmental authority or agency, domestic or foreign, is necessary or required for the execution, delivery and performance by Party B of this Confirmation and the consummation of the Transaction (including, without limitation, the issuance and delivery of Shares on any Settlement Date) except (i) such as have been obtained under the Securities Act, and (ii) as may be required to be obtained under state securities laws.
- (f) Party B agrees not to make any Issuer Repurchase if, immediately following such Issuer Repurchase, the Base Amount Percentage would be equal to or greater than 4.9%.
- (g) Party B is not insolvent, nor will Party B be rendered insolvent as a result of the Transaction.
- (h) Neither Party B nor any of its affiliated purchasers shall take any action (including, without limitation, any direct purchases by Party B or any of its affiliated purchasers or any purchases by a party to a derivative transaction with Party B or any of its affiliated purchasers), either under this Confirmation, under an agreement with another party or otherwise, that in the reasonable judgment of Party B is reasonably likely to cause any purchases of Shares by Party A or any of its affiliates in connection with any Cash Settlement or Net Share Settlement of the Transaction not to meet the conditions of the safe harbor provided by Rule 10b-18 under the Exchange Act if such purchases were made by Party B.

- (i) Party B will not engage in any “distribution” (as defined in Regulation M under the Exchange Act (“Regulation M”)) that would cause a “restricted period” (as defined in Regulation M) to occur during any Unwind Period.
- (j) Party B (i) is capable of evaluating investment risks independently, both in general and with regard to all transactions and investment strategies involving a security or securities, (ii) will exercise independent judgment in evaluating the recommendations of any broker-dealer or its associated persons, unless it has otherwise notified the broker-dealer in writing and (iii) has total assets of at least USD 50 million as of the date hereof.
- (k) Party B acknowledges and agrees that:
 - (i) during the term of the Transaction, Party A and its Affiliates may buy or sell Shares or other securities or buy or sell options or futures contracts or enter into swaps or other derivative securities in order to establish, adjust or unwind its hedge position with respect to the Transaction;
 - (ii) Party A and its Affiliates may also be active in the market for the Shares and Share-linked transactions other than in connection with hedging activities in relation to the Transaction;
 - (iii) Party A shall make its own determination as to whether, when or in what manner any hedging or market activities in Party B’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 10b-18 VWAP;
 - (iv) any market activities of Party A 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 10b-18 VWAP, each in a manner that may be adverse to Party B; and

- (v) the Transaction is a derivatives transaction in which it has granted Party A the right, under certain circumstances, to receive cash or Shares, as the case may be; Party A may purchase Shares for its own account at an average price that may be greater than, or less than, the effective price paid by Party B under the terms of the Transaction.
- (l) The assets of Party B do not constitute “plan assets” under the Employee Retirement Income Security Act of 1974, as amended, the Department of Labor Regulations promulgated thereunder or similar law.
- (m) Party B shall, at least one day prior to the first day of any Unwind Period, notify Party A of the total number of Shares purchased in Rule 10b-18 purchases of blocks pursuant to the once-a-week block exception contained in Rule 10b-18(b)(4) by or for Party B or any of its affiliated purchasers during each of the four calendar weeks preceding the first day of the Unwind Period and during the calendar week in which the first day of the Unwind Period occurs (“Rule 10b-18 purchase”, “blocks” and “affiliated purchaser” each being used as defined in Rule 10b-18).
- (n) During any Unwind Period, Party B shall (i) notify Party A prior to the opening of trading in the Shares on any day on which Party B makes, or expects to be made, any public announcement (as defined in Rule 165(f) under the Securities Act) of any merger, acquisition, or similar transaction involving a recapitalization relating to Party B (other than any such transaction in which the consideration consists solely of cash and there is no valuation period), (ii) promptly notify Party A following any such announcement that such announcement has been made, and (iii) promptly deliver to Party A following the making of any such announcement information indicating (A) Party B’s average daily Rule 10b-18 purchases (as defined in Rule 10b-18) during the three full calendar months preceding the date of the announcement of such transaction and (B) Party B’s block purchases (as defined in Rule 10b-18) effected pursuant to paragraph (b)(4) of Rule 10b-18 during the three full calendar months preceding the date of the announcement of such transaction. In addition, Party B shall promptly notify Party A of the earlier to occur of the completion of such transaction and the completion of the vote by target shareholders.
- (o) Party B 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.
- (p) Without limiting the generality of Section 13.1 of the 2002 Definitions, Party B acknowledges that Party A is not making any representations or warranties or taking any position or expressing any view with respect to the treatment of the Transaction under any accounting standards including ASC Topic 260, Earnings Per Share, ASC Topic 815, Derivatives and Hedging, or ASC Topic 480, Distinguishing Liabilities from Equity and ASC 815-40, Derivatives and Hedging – Contracts in Entity’s Own Equity (or any successor issue statements) or under FASB’s Liabilities & Equity Project.
- (q) Party B understands no obligations of Party A to it hereunder will be entitled to the benefit of deposit insurance and that such obligations will not be guaranteed by any affiliate of Party A or any governmental agency.

- (r) No federal, state or local 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 Party A or its affiliates owning or holding (however defined) Shares, other than Sections 13 and 16 under the Exchange Act.
- (s) On or prior to the Hedge Completion Date, upon obtaining knowledge of the occurrence of any event that would constitute an Event of Default or Potential Event of Default, Party B will so notify Party A in writing within one Scheduled Trading Day.
- (t) Party B (i) has such knowledge and experience in financial and business affairs as to be capable of evaluating the merits and risks of entering into the Transaction, (ii) has consulted with its own legal, financial, accounting and tax advisors in connection with the Transaction and (iii) is entering into the Transaction for a bona fide business purpose.
- (u) On or prior to the Hedge Completion Date, Party B is not and has not been the subject of any civil proceeding of a judicial or administrative body of competent jurisdiction that could reasonably be expected to impair materially Party B's ability to perform its obligations hereunder.
- (v) Ownership positions of Party B's common stock held by Party A or any of its affiliates solely in its capacity as a nominee or fiduciary do not constitute "beneficial ownership" or "direct or indirect ownership" Party A for the purposes of Article VI of the Declaration of Trust of Party B, as amended (the "Articles"), including without limitation Section 6.6 thereof.

Covenant of Party B:

Subject to the circumstances described under "Private Placement Procedures", Party B acknowledges and agrees that any Shares delivered by Party B to Party A on any Settlement Date will be newly issued Shares and when delivered by Party A (or an affiliate of Party A) to securities lenders from whom Party A (or an affiliate of Party A) borrowed Shares in connection with hedging its exposure to the 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 such stock loan is effected by Party A or an affiliate of Party A. Accordingly, Party B agrees that the Shares that it delivers to Party A on each Settlement Date will not bear a restrictive legend and that such Shares will be deposited in, and the delivery thereof shall be effected through the facilities of, the Clearance System.

Covenants of Party A:

- (a) Unless the provisions set forth below under "Private Placement Procedures" shall be applicable, Party A shall use any Shares delivered by Party B to Party A on any Settlement Date to return to securities lenders to close out open Share loans created by Party A or an affiliate of Party A in the course of Party A's or such affiliate's hedging activities related to Party A's exposure under this Confirmation.
- (b) In connection with bids and purchases of Shares in connection with any Cash Settlement or Net Share Settlement of the Transaction, Party A shall use good faith efforts to conduct its activities, or cause its affiliates to conduct their activities, in a manner consistent with the requirements of the safe harbor provided by Rule 10b-18 under the Exchange Act, as if such provisions were applicable to such purchases aggregated with any analogous purchases occurring on the same day under any Additional Transaction.

Deadline for Designating an Early Termination Date and Payment Suspension:

If either party provides notice to the other party that there has occurred (1) an Event of Default as to which Party B is the Defaulting Party; (2) a Potential Event of Default with respect to Party B or (3) a Termination Event as to which Party B is the sole Affected Party, then, notwithstanding Section 9(f) of the Agreement and unless Party A and Party B otherwise agree in writing, after 30 calendar days have elapsed following such notice, (i) Party A shall have no further right to designate an Early Termination Date by reason of the aforementioned Event of Default or Termination Event and (ii) the aforementioned Event of Default or Potential Event of Default shall be deemed to cease to be continuing for the purposes of Section 2(a)(iii)(1) of the Agreement. Party A hereby agrees to provide any notice referred to in the preceding sentence as promptly as practicable after it determines, acting in good faith, that the aforementioned Event of Default, Potential Event of Default or Termination Event has occurred.

Insolvency Filing:

Notwithstanding anything to the contrary herein, in the Agreement, in the 2006 Definitions or in the 2002 Definitions, upon any Insolvency Filing in respect of the Issuer, the Transaction shall automatically terminate on the date thereof without further liability of either party to this Confirmation to the other party (except for any liability in respect of any breach of representation or covenant by a party under this Confirmation prior to the date of such Insolvency Filing).

Extraordinary Dividends:

If an ex-dividend date for an Extraordinary Dividend occurs on or after the Trade Date and on or prior to the Maturity Date (or, if later, the last date on which Shares are delivered by Party B to Party A in settlement of the Transaction), Party B shall pay an amount in cash equal to the product of such Extraordinary Dividend and the Base Amount to Party A on the earlier of (i) the date on which such Extraordinary Dividend is paid by the Issuer to holders of record of the Shares or (ii) the Maturity Date. "Extraordinary Dividend" means the per Share amount of any cash dividend or distribution declared by the Issuer with respect to the Shares that is specified by the board of directors of the Issuer as an "extraordinary" dividend.

Acceleration Events:

The following events shall each constitute an "Acceleration Event":

- (a) Stock Borrow Events. In the good faith and commercially reasonable judgment of Party A (i) Party A (or its affiliate) is unable, after using commercially reasonable efforts, to hedge its exposure to the Transaction because of the lack of sufficient Shares being made available for Share borrowing by lenders, or (ii) Party A (or its affiliate) would incur a Stock Loan Fee to borrow a number of Shares equal to the Base Amount of more than a rate of [*]⁶ basis points per annum (each, a "Stock Borrow Event");
- (b) Dividends and Other Distributions. On any day occurring after the Trade Date Party B declares a distribution, issue or dividend to existing holders of the Shares of (i) 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, (ii) share capital or securities of another issuer acquired or owned (directly or indirectly) by Party B as a result of a spin-off or other similar transaction or (iii) any other type of securities (other than Shares), rights or warrants or other assets, for payment (cash or other consideration) at less than the prevailing market price as determined by Party A;

⁶ Insert Maximum Stock Loan Rate specified by Party B in instruction under the Sales Agreement.

- (c) ISDA Early Termination Date. Party A notifies Party B that Party A has designated an Early Termination Date pursuant to Section 6 of the Agreement;
- (d) Other ISDA Events. The public announcement of any event that if consummated would result in an Extraordinary Event or the occurrence of any Change in Law or a Delisting; *provided* that in case of a Delisting, in addition to the provisions of Section 12.6(a) (iii) of the 2002 Definitions, it will also constitute a Delisting if the Exchange is located in the United States and the Shares are not immediately re-listed, re-traded or re-quoted on any of the New York Stock Exchange, the Nasdaq Global Select Market or the Nasdaq Global Market (or their respective successors); and *provided further* that the definition of “Change in Law” provided in Section 12.9(a) (ii) of the 2002 Definitions is hereby amended by (i) replacing the phrase “the interpretation” in the third line thereof with the phrase “, or public announcement of, the formal or informal interpretation” and (ii) replacing the parenthetical beginning after the word “regulation” in the second line thereof the words “(including, for the avoidance of doubt and without limitation, (x) any tax law or (y) adoption, effectiveness or promulgation of new regulations authorized or mandated by existing statute)”; or
- (e) Ownership Event. In the reasonable judgment of Party A, on any day, the Share Amount for such day exceeds the Applicable Share Limit for such day (if any applies).

For purposes of clause (e) above, the “Share Amount” as of any day is the number of Shares that Party A and any person whose ownership position would be aggregated with that of Party A (Party A or any such person, a “Party A Person”) under any law, rule, regulation, regulatory order or organizational documents or contracts of Party B (including without limitation Article VI of the Articles) that are, in each case, applicable to ownership of Shares (“Applicable Restrictions”), owns, beneficially owns, constructively owns, controls, holds the power to vote or otherwise meets a relevant definition of ownership under any Applicable Restriction, as determined by Party A in its reasonable discretion. The “Applicable Share Limit” means a number of Shares equal to (A) the minimum number of Shares that could give rise to reporting or registration obligations or other requirements (including obtaining prior approval from any person or entity) other than pursuant to the Exchange Act of a Party A Person, or could reasonably be expected to result in an adverse effect on a Party A Person, under any Applicable Restriction, as determined by Party A in its reasonable discretion, *minus* (B) 1% of the number of Shares outstanding.

Termination Settlement:

Upon the occurrence of any Acceleration Event, Party A shall have the right to designate, upon at least two Scheduled Trading Days’ notice, any Scheduled Trading Day following such occurrence to be a Settlement Date hereunder (a “Termination Settlement Date”) to which Physical Settlement shall apply, and to select the number of Settlement Shares relating to such Termination Settlement Date; *provided* that (i) in the case of an Acceleration Event arising out of an Ownership Event, the number of Settlement Shares so designated by Party A shall not exceed the number of Shares necessary to reduce the Share Amount to the Applicable Share Limit and (ii) in the case of an Acceleration Event arising out of a Stock Borrow Event the number of Settlement Shares so designated by Party A shall not exceed the number of Shares as to which such Stock Borrow Event exists. If, upon designation of a Termination Settlement Date by Party A pursuant to the preceding sentence, Party B fails to deliver the Settlement Shares relating to such Termination Settlement Date when due or otherwise fails to perform obligations within its control in respect of the Transaction, it shall be an Event of Default with respect to Party B and Section 6 of the Agreement shall apply. If an Acceleration Event occurs during an Unwind Period relating to a number of Settlement Shares to which Cash Settlement or Net Share Settlement applies, then on the Termination Settlement Date relating to such Acceleration Event, notwithstanding any election to the contrary by Party B, Cash Settlement or Net Share Settlement shall apply to the portion of the Settlement Shares relating to such Unwind Period as to which Party A has unwound its hedge and Physical Settlement shall apply in respect of (x) the remainder (if any) of such Settlement Shares and (y) the Settlement Shares designated by Party A in respect of such Termination Settlement Date. If an Acceleration Event occurs after Party B has designated a Settlement Date to which Physical Settlement applies but before the relevant Settlement Shares have been delivered to Party A, then Party A shall have the right to cancel such Settlement Date and designate a Termination Settlement Date in respect of such Shares pursuant to the first sentence hereof. If an event or circumstance is an Acceleration Event under both this Confirmation and any Additional Confirmation and the designation of a Termination Settlement Date under one such confirmation would cure the Acceleration Event under the other such confirmation, then Party A shall first designate a Termination Settlement Date under the confirmation with the first occurring Maturity Date before designating a Termination Settlement Date under the other confirmation.

Private Placement Procedures:

If Party B is unable to comply with the provisions of “Covenant of Party B” above because of a change in law or a change in the policy of the Securities and Exchange Commission or its staff, or Party A otherwise reasonably determines, based on advice of counsel, that any Settlement Shares to be delivered to Party A by Party B may not be freely returned by Party A or its affiliates to securities lenders as described under “Covenant of Party B” above, then delivery of any such Settlement Shares (the “Restricted Shares”) shall be effected pursuant to Annex A hereto, unless waived by Party A.

Rule 10b5-1:

It is the intent of Party A and Party B that following any election of Cash Settlement or Net Share Settlement by Party B, the purchase of Shares by Party A during any Unwind Period comply with the requirements of Rule 10b5-1(c)(1)(i)(B) of the Exchange Act and that this Confirmation shall be interpreted to comply with the requirements of Rule 10b5-1(c).

Party B acknowledges that (i) during any Unwind Period Party B shall not attempt to exercise any influence over how, when or whether to effect purchases of Shares by Party A (or its agent or affiliate) in connection with this Confirmation and (ii) Party B is entering into the Agreement and this Confirmation in good faith and not as part of a plan or scheme to evade compliance with federal securities laws including, without limitation, Rule 10b-5 promulgated under the Exchange Act.

Party B hereby agrees with Party A that during any Unwind Period Party B shall not communicate, directly or indirectly, any Material Non-Public Information (as defined herein) to any Derivatives Personnel (as defined below). For purposes of the Transaction, “Material Non-Public Information” means information relating to Party B or the Shares that (a) has not been widely disseminated by wire service, in one or more newspapers of general circulation, by communication from Party B to its shareholders or in a press release, or contained in a public filing made by Party B with the Securities and Exchange Commission and (b) a reasonable investor might consider to be of importance in making an investment decision to buy, sell or hold Shares. For the avoidance of doubt and solely by way of illustration, information should be presumed “material” if it relates to such matters as dividend increases or decreases, earnings estimates, changes in previously released earnings estimates, significant expansion or curtailment of operations, a significant increase or decline of orders, significant merger or acquisition proposals or agreements, significant new products or discoveries, extraordinary borrowing, major litigation, liquidity problems, extraordinary management developments, purchase or sale of substantial assets, or other similar information. For purposes of the Transaction, “Derivatives Personnel” means any employee on the trading side of the Equity Derivatives of Party A and does not include [*] or [*] (or any other person or persons designated from time to time by the Compliance Group of Party A).

Maximum Share Delivery:

Notwithstanding any other provision of this Confirmation, in no event will Party B be required to deliver on any Settlement Date, whether pursuant to Physical Settlement, Net Share Settlement, Termination Settlement or any Private Placement Settlement, more than a number of Shares equal to 1.5 times the Initial Base Amount, subject to reduction by the number of any Shares delivered by Party B on any prior Settlement Date and subject to adjustment from time to time in accordance with the provisions of this Confirmation and the Equity Definitions.

Transfer and Assignment:

Party A may assign or transfer all (but not less than all) of its rights or delegate all (but not less than all) of its duties hereunder to any affiliate of Party A; *provided that*, under the applicable law effective on the date of such transfer or assignment, Party B will not be required, as a result of such transfer or assignment, to pay to the transferee an amount in respect of an Indemnifiable Tax greater than the amount, if any, that Party B would have been required to pay Party A in the absence of such transfer or assignment; and Party B will not receive a payment from which an amount has been withheld or deducted, on account of a Tax in respect of which the other party is not required to pay an additional amount, unless Party B 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* (A) the affiliate's obligations hereunder are fully and unconditionally guaranteed by Party A or its parent or (B) the affiliate's long-term issuer rating is equal to or better than the credit rating of Party A at the time of such assignment or transfer. Notwithstanding the above or any other provision in this Confirmation to the contrary requiring or allowing Party A to purchase, sell, receive or deliver any Shares or other securities to or from Party B, Party A may designate any of its affiliates to purchase, sell, receive or deliver such Shares or other securities and otherwise to perform Party A's obligations in respect of the Transaction and any such designee may assume such obligations. Party A shall be discharged of its obligations to Party B to the extent of any such performance.

1) Notice:

Non-Reliance: Applicable.

Additional Acknowledgments: Applicable.

Agreements and Acknowledgments
Regarding Hedging Activities: Applicable.

4. The Agreement is further supplemented by the following provisions:

No Collateral or Setoff:

Notwithstanding Section 6(f) or any other provision of the Agreement or any other agreement between the parties to the contrary, the obligations of Party B hereunder are not secured by any collateral. Obligations under the Transaction shall not be set off against any other obligations of the parties, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and no other obligations of the parties shall be set off against obligations under the Transaction, whether arising under the Agreement, this Confirmation, under any other agreement between the parties hereto, by operation of law or otherwise, and each party hereby waives any such right of setoff. In calculating any amounts under Section 6(e) of the Agreement, notwithstanding anything to the contrary in the Agreement, (a) separate amounts shall be calculated as set forth in such Section 6(e) with respect to (i) the Transaction and (ii) all other Transactions, and (b) such separate amounts shall be payable pursuant to Section 6(d)(ii) of the Agreement.

Status of Claims in Bankruptcy:

Party A acknowledges and agrees that this confirmation is not intended to convey to Party A rights with respect to the transactions contemplated hereby that are senior to the claims of common stockholders in any U.S. bankruptcy proceedings of Party B; *provided, however*, that nothing herein shall limit or shall be deemed to limit Party A's right to pursue remedies in the event of a breach by Party B of its obligations and agreements with respect to this Confirmation and the Agreement; and *provided further* that nothing herein shall limit or shall be deemed to limit Party A's rights in respect of any transaction other than the Transaction.

Limit on Beneficial Ownership:

Notwithstanding any other provisions hereof, Party A shall not have the "right to acquire" (within the meaning of NYSE Rule 312.04(g)) Shares hereunder and Party A shall not be entitled to take delivery of any Shares deliverable hereunder (in each case, whether in connection with the purchase of Shares on any Settlement Date or any Termination Settlement Date, any Private Placement Settlement or otherwise) to the extent (but only to the extent) that, after such receipt of any Shares hereunder, (i) the Share Amount would exceed the Applicable Share Limit, (ii) the Section 16 Percentage would exceed 4.9% or (iii) Party A and each person subject to aggregation of Shares with Party A under Section 13 or Section 16 of the Exchange Act and rules promulgated thereunder (the "Party A Group") would directly or indirectly beneficially own (as such term is defined for purposes of Section 13 or Section 16 of the Exchange Act and rules promulgated thereunder) in excess of [*] Shares⁷ (the "Threshold Number of Shares"). Any purported delivery hereunder shall be void and have no effect to the extent (but only to the extent) that, after such delivery, (i) the Share Amount would exceed the Applicable Share Limit, (ii) the Section 16 Percentage would exceed 4.9% or (iii) Party A Group would directly or indirectly so beneficially own in excess of the Threshold Number of Shares. If any delivery owed to Party A hereunder is not made, in whole or in part, as a result of this provision, Party B's obligation to make such delivery shall not be extinguished and Party B shall make such delivery as promptly as practicable after, but in no event later than one Exchange Business Day after, Party A gives notice to Party B that, after such delivery, (i) the Share Amount would not exceed the Applicable Share Limit, (ii) the Section 16 Percentage would not exceed 4.9% and (iii) Party A Group would not directly or indirectly so beneficially own in excess of the Threshold Number of Shares. The "Section 16 Percentage" as of any day is the fraction, expressed as a percentage, (A) the numerator of which is the number of Shares that Party A and any of its affiliates or any other person subject to aggregation with Party A for purposes of the "beneficial ownership" test under Section 13 of the Exchange Act, or any "group" (within the meaning of Section 13 of the Exchange Act) of which Party A is or may be deemed to be a part beneficially owns (within the meaning of Section 13 of the Exchange Act), without duplication, on such day (or, to the extent that for any reason the equivalent calculation under Section 16 of the Exchange Act and the rules and regulations thereunder results in a higher number, such higher number) and (B) the denominator of which is the number of Shares outstanding on such day.

In addition, notwithstanding anything herein to the contrary, if any delivery owed to Party A hereunder is not made, in whole or in part, as a result of the immediately preceding paragraph, Party A shall be permitted to make any payment due in respect of such Shares to Party B in two or more tranches that correspond in amount to the number of Shares delivered by Party B to Party A pursuant to the immediately preceding paragraph.

Delivery of Cash:

For the avoidance of doubt, nothing in this Confirmation shall be interpreted as requiring Party B to deliver cash in respect of the settlement of this Transaction, except in circumstances where the required cash settlement thereof is permitted for classification of the contract as equity by ASC 815-40 (formerly EITF 00-19) as in effect on the Trade Date (including, without limitation, where Party B so elects to deliver cash or fails timely to elect to deliver Shares in respect of such settlement).

⁷ Insert number equal to 4.9% of the outstanding Shares as of the relevant Trade Date.

Wall Street Transparency and Accountability Act:

In connection with Section 739 of the Wall Street Transparency and Accountability Act of 2010 (the “WSTAA”), the parties hereby agree that neither the enactment of the WSTAA or any regulation under the WSTAA, nor any requirement under the WSTAA or an amendment made by the WSTAA, shall limit or otherwise impair either party’s otherwise applicable rights to terminate, renegotiate, modify, amend or supplement this Confirmation or the Agreement, as applicable, arising from a termination event, force majeure, illegality, increased costs, regulatory change or similar event under this Confirmation, the 2002 Definitions incorporated herein, or the Agreement (including, but not limited to, rights arising from any Acceleration Event or Illegality (as defined in the Agreement)).

Miscellaneous:

- (a) Addresses for Notices. For the purpose of Section 12(a) of the Agreement:

Address for notices or communications to Party A:

[INSERT DEALER NAME AND NOTICE INFORMATION]

Address for notices or communications to Party B:

Acadia Realty Trust
411 Theodore Fremd Avenue, Suite 300
Rye, New York 10580
Attn: [*]
Telephone: [*]
Facsimile: [*]

- (b) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Confirmation. Each party (i) certifies that no representative, agent or attorney of the other party has represented, expressly or otherwise, that such other party would not, in the event of such a suit action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this Confirmation by, among other things, the mutual waivers and certifications herein.

- (c) Offices:

The Office of Party A for the Transaction is: [New York] [London] [OTHER]

The Office of Party B for the Transaction is: Inapplicable, Party B is not a Multibranch Party

Acknowledgements:

The parties hereto intend for:

- (a) the Transaction to be a “securities contract” as defined in Section 741(7) of Title 11 of the United States Code (the “Bankruptcy Code”), qualifying for the protections under Section 555 of the Bankruptcy Code;

- (b) a party's right to liquidate the Transaction and to exercise any other remedies upon the occurrence of any Event of Default under the Agreement with respect to the other party to constitute a "contractual right" as defined in the Bankruptcy Code;
- (c) Party A to be a "financial [institution] [participant]" within the meaning of Section 101(22) of the Bankruptcy Code; and
- (d) all payments for, under or in connection with the Transaction, all payments for the Shares and the transfer of such Shares to constitute "settlement payments" as defined in the Bankruptcy Code.

Severability:

If any term, provision, covenant or condition of this Confirmation, or the application thereof to any party or circumstance, shall be held to be invalid or unenforceable in whole or in part for any reason, the remaining terms, provisions, covenants, and conditions hereof shall continue in full force and effect as if this Confirmation had been executed with the invalid or unenforceable provision eliminated, so long as this Confirmation as so modified continues to express, without material change, the original intentions of the parties as to the subject matter of this Confirmation and the deletion of such portion of this Confirmation will not substantially impair the respective benefits or expectations of parties to the Agreement; provided, however, that this severability provision shall not be applicable if any provision of Section 2, 5, 6 or 13 of the Agreement (or any definition or provision in Section 14 to the extent that it relates to, or is used in or in connection with any such Section) shall be so held to be invalid or unenforceable.

Governing Law/Jurisdiction:

This Confirmation and any claim, controversy or dispute arising under or related to this Confirmation shall be governed by the laws of the State of New York without reference to the conflict of laws provisions thereof. 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.

Disclosure:

Effective from the date of commencement of discussions concerning the Transaction, each of Party A and Party B and each of their employees, representatives, or other agents may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all materials of any kind (including opinions or other tax analyses) relating to such tax treatment and tax structure.

[Risk Disclosure:

Party B represents and warrants that it has received, read and understands Party A's "Risk Disclosure Statement Regarding OTC Derivatives Products" and acknowledges the terms thereof as if it had signed the Risk Disclosure Statement Verification contained therein as of the date hereof.]⁸

Commodity Exchange Act and Accredited Investor Status:

[Each of Party A and Party B agrees and represents that it is an "eligible contract participant" as defined in Section 1a(18) of the U.S. Commodity Exchange Act, as amended (the "CEA"), the Agreement and the Transaction are subject to individual negotiation by the parties and have not been executed or traded on a "trading facility" as defined in Section 1a(51) of the CEA.][Each of Party A and Party B agrees and represents that it is an "eligible contract participant" as defined in Section 1a(18) of the U.S. Commodity Exchange Act, as amended (the "CEA"), and an "accredited investor" as defined in Section 2(a)(15)(ii) of the Securities Act, and is entering into each Transaction hereunder as principal and not for the benefit of any third party.]⁹

Tax Matters:

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

(i) Party A makes the following representations:

(A) [It [(or its regarded owner for U.S. federal income tax purposes)] is a "U.S. person" (as that term is used in section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) for U.S. federal income tax purposes.]¹⁰

(B) [It is a national banking association organized and existing under the laws of the United States of America, and is an exempt recipient under section 1.6049-4(c)(1)(ii)(M) of the United States Treasury Regulations.]

(ii) Party B makes the following representations:

(A) It is a "U.S. person" (as that term is used in section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) 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 section 1.6049-4(c)(1)(ii)(J) of the United States Treasury Regulations.

(c) Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. "Tax" and "Indemnifiable Tax", each 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.

⁸ To be customized for relevant Dealer.

⁹ To be customized for relevant Dealer.

¹⁰ Tax provisions to be customized for relevant Dealer.

- (d) HIRE Act. To the extent that either party to the Agreement with respect to this Transaction is not an adhering party to the ISDA 2015 Section 871(m) Protocol published by the International Swaps and Derivatives Association, Inc. on November 2, 2015 and available at www.isda.org, as may be amended, supplemented, replaced or superseded from time to time (the “871(m) Protocol”), the parties agree that the provisions and amendments contained in the Attachment to the 871(m) Protocol are incorporated into and apply to the Agreement with respect to this 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 this Transaction, references to “each Covered Master Agreement” in the 871(m) Protocol will be deemed to be references to the Agreement with respect to this Transaction, and references to the “Implementation Date” in the 871(m) Protocol will be deemed to be references to the Trade Date of this Transaction.
- (e) Tax documentation. For the purposes of Sections 4(a)(i) and 4(a)(ii) of the Agreement, each of Party A and Party B shall provide to the other party a valid and duly executed U.S. Internal Revenue Service Form W-9 or, in the case of Party A, Form [*] ¹¹, or any successor thereto, (i) on or before the date of execution of this Confirmation; (ii) promptly upon reasonable demand by the other party; and (iii) promptly upon learning that any such tax form previously provided by Party A or Party B, respectively, has become invalid, obsolete, or incorrect. Additionally, each of Party A and Party B shall, promptly upon request by the other party, provide such other tax forms and documents requested by the other party.

[U.S. Resolutions Stay Protocol:

The parties agree that 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 (the “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,” Party A shall be deemed a “Covered Entity” and Party B 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 paragraph. 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 Party A replaced by references to the covered affiliate support provider.

“QFC Stay Rules” means 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.]

¹¹ Tax form to be customized for relevant Dealer.

[QFC Stay Rules:

The parties agree that (i) to the extent that prior to the date hereof all 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 and each party shall be deemed to have the same status as Regulated Entity and/or Adhering Party as applicable to it under the Protocol; (ii) to the extent that prior to the date hereof the parties have executed a separate agreement the effect of which is to amend the qualified financial contracts between them to conform with the requirements of the QFC Stay Rules (the "Bilateral Agreement"), the terms of the Bilateral Agreement are incorporated into and form a part of the Agreement and each party shall be deemed to have the status of "Covered Entity" or "Counterparty Entity" (or other similar term) as applicable to it under the Bilateral Agreement; or (iii) if clause (i) and clause (ii) do not apply, the terms of Section 1 and Section 2 and the related defined terms (together, the "Bilateral Terms") of the form of bilateral template entitled "Full-Length Omnibus (for use between U.S. G-SIBs and Corporate Groups)" published by ISDA on November 2, 2018 (currently available on the 2018 ISDA U.S. Resolution Stay Protocol page at www.isda.org and, a copy of which is available upon request), the effect of which is to amend the qualified financial contracts between the parties thereto to conform with the requirements of the QFC Stay Rules, are hereby incorporated into and form a part of the Agreement, and for such purposes the Agreement shall be deemed a "Covered Agreement," Party A shall be deemed a "Covered Entity" and Party B shall be deemed a "Counterparty Entity." In the event that, after the date of the Agreement, all parties hereto become adhering parties to the Protocol, the terms of the Protocol will replace the terms of this paragraph. In the event of any inconsistencies between 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.

"QFC Stay Rules" means 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.]

Other Forwards / Dealers:

Party A acknowledges that Party B has entered or may enter in the future into one or more similar forward transactions for the Shares (each, an "Other Forward" and collectively, the "Other Forwards") with one or more dealers, and/or affiliates thereof (each, an "Other Dealer" and collectively, the "Other Dealers"). Party A and Party B agree that if Party B designates a "Settlement Date" with respect to one or more Other Forwards for which "Cash Settlement" or "Net Share Settlement" is applicable, and the resulting "Unwind Period" for such Other Forwards coincides for any period of time with an Unwind Period for this Transaction (the "Overlap Unwind Period"), Party B shall notify Party A 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 Party A shall be permitted to purchase Shares to unwind its hedge in respect of this 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 Party A by Party B at least one Scheduled Trading Day prior to such Overlap Unwind Period (which alternating Scheduled Trading Days, for the avoidance of doubt, may be every other Scheduled Trading Day if there is only one Other Dealer, every third Scheduled Trading Day if there are two Other Dealers, etc.).

[Remainder of page intentionally left blank]

Please confirm that the foregoing correctly sets forth the terms of our agreement by signing and returning this Confirmation.

Yours faithfully,

[DEALER NAME]

By: _____

Name:

Title:

Confirmed as of the date first written above:

ACADIA REALTY TRUST

By: _____

Name:

Title:

FORWARD PRICE REDUCTION DATES AND AMOUNTS

Forward Price Reduction Date¹²

Forward Price Reduction Amount¹³

Trade Date	USD 0.000
[*]	USD [*]
[*]	USD [*]
[*]	USD [*]
[*]	USD [*]
[*]	USD [*]

¹² Insert Forward Price Reduction Dates specified by Party B in instruction under the Sales Agreement.

¹³ Insert Forward Price Reduction Amounts specified by Party B in instruction under the Sales Agreement.

PRIVATE PLACEMENT PROCEDURES

- (i) If Party B delivers the Restricted Shares pursuant to this clause (i) (a “Private Placement Settlement”), then delivery of Restricted Shares by Party B shall be effected in customary private placement procedures with respect to such Restricted Shares reasonably acceptable to Party A; *provided that* if, on or before the date that a Private Placement Settlement would occur, Party B has taken, or caused to be taken, any action that would make unavailable either the exemption pursuant to Section 4(a)(2) of the Securities Act for the sale by Party B to Party A (or any affiliate designated by Party A) of the Restricted Shares or the exemption pursuant to Section 4(a)(1) or Section 4(a)(3) of the Securities Act for resales of the Restricted Shares by Party A (or any such affiliate of Party A) or Party B fails to deliver the Restricted Shares when due or otherwise fails to perform obligations within its control in respect of a Private Placement Settlement, it shall be an Event of Default with respect to Party B and Section 6 of the Agreement shall apply. The Private Placement Settlement of such Restricted Shares shall include customary representations, covenants, blue sky and other governmental filings and/or registrations, indemnities to Party A, due diligence rights (for Party A or any designated buyer of the Restricted Shares by Party A), opinions and certificates, and such other documentation as is customary for private placement agreements, all reasonably acceptable to Party A. In the case of a Private Placement Settlement, Party A shall, in its good faith discretion, adjust the number of Restricted Shares to be delivered to Party A hereunder and/or the Forward Price in a commercially reasonable manner to reflect the fact that such Restricted Shares may not be freely returned to securities lenders by Party A and may only be saleable by Party A at a discount to reflect the lack of liquidity in Restricted Shares. Notwithstanding the Agreement or this Confirmation, the date of delivery of such Restricted Shares shall be the Clearance System Business Day following notice by Party A to Party B of the number of Restricted Shares to be delivered pursuant to this clause (i). For the avoidance of doubt, delivery of Restricted Shares shall be due as set forth in the previous sentence and not be due on the Settlement Date or Termination Settlement Date that would otherwise be applicable.
- (ii) If Party B delivers any Restricted Shares in respect of the Transaction, Party B agrees that (i) such Shares may be transferred by and among Party A 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, Party B 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 Party A (or such affiliate of Party A) to Party B or such transfer agent of seller’s and broker’s representation letters customarily delivered by Party A 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 Party A (or such affiliate of Party A).

PRICING SUPPLEMENT

[DEALER NAME AND ADDRESS]

Acadia Realty Trust
411 Theodore Fremd Avenue, Suite 300
Rye, New York, 10580
Telephone: [*]
Facsimile: [*]

Ladies and Gentlemen:

This Pricing Supplement is the Pricing Supplement contemplated by the Registered Forward Transaction dated as of [], 20[] (the "Confirmation") between Acadia Realty Trust ("Party B") and [DEALER NAME] ("Party A").

For all purposes under the Confirmation,

- (a) the Hedge Completion Date is [];
- (b) the Base Amount shall be [], subject to further adjustment in accordance with the terms of the Confirmation; and
- (c) the Initial Forward Price shall be USD [].

Very truly yours,
[DEALER NAME]

By: _____
Name:
Title:



750 E. PRATT STREET SUITE 900 BALTIMORE, MD 21202
T 410.244.7400 F 410.244.7742 www.Venable.com

May 31, 2019

Acadia Realty Trust
411 Theodore Fremd Avenue
Suite 300
Rye, New York 10580

Re: Registration Statement on Form S-3

Ladies and Gentlemen:

We have served as Maryland counsel to Acadia Realty Trust, a Maryland real estate investment trust (the "Trust"), in connection with certain matters of Maryland law relating to the sale and issuance of common shares (the "Shares") of beneficial interest, par value \$.001 per share, of the Trust (the "Common Shares") having an aggregate gross sales price of up to \$250,000,000, which may be sold from time to time pursuant to that certain ATM Equity Offering Sales Agreement, dated as of the date hereof (the "Agreement"), by and among the Trust, Acadia Realty Limited Partnership, a Delaware limited partnership for which the Trust is the sole general partner, and BofA Securities, Inc., Barclays Capital Inc., Citigroup Global Markets Inc. (in its capacity as forward seller, acting as agent for Citibank, N.A.), Goldman Sachs & Co. LLC, Jefferies LLC, SunTrust Robinson Humphrey, Inc. and Wells Fargo Securities, LLC, each as sales agent, forward seller and/or principal, and Bank of America, N.A., Barclays Bank PLC, Citibank, N.A., Goldman Sachs & Co. LLC, Jefferies LLC and Wells Fargo Bank, National Association, each as forward purchaser. The Shares are covered by the above-referenced Registration Statement, and all amendments related thereto (the "Registration Statement"), filed by the Trust with the United States Securities and Exchange Commission (the "Commission") under the Securities Act of 1933, as amended (the "1933 Act"). The Shares will be issued from time to time in public offerings at market or negotiated prices pursuant to a Prospectus Supplement, dated May 31, 2019 (the "Prospectus Supplement").

In connection with our representation of the Trust, and as a basis for the opinion hereinafter set forth, we have examined originals, or copies certified or otherwise identified to our satisfaction, of the following documents (hereinafter collectively referred to as the "Documents"):

1. The Registration Statement and the related form of prospectus included therein in the form in which it was transmitted to the Commission under the 1933 Act;
 2. The Prospectus Supplement;
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3. The Declaration of Trust of the Trust, as amended (the "Declaration of Trust"), certified by the State Department of Assessments and Taxation of Maryland (the "SDAT");
4. The Amended and Restated Bylaws of the Trust, as amended, certified as of the date hereof by an officer of the Trust;
5. A certificate of the SDAT as to the good standing of the Trust, dated as of a recent date;
6. The Agreement;
7. The letter agreement in substantially the form attached as Annex III to the Agreement (the "Confirmation");
8. Resolutions adopted by the Board of Trustees of the Trust, or a duly authorized committee thereof (the "Resolutions"), relating to, among other matters, (i) the authorization of the registration, sale and issuance of the Shares and the delegation to specified trustees and a specified officer of the Trust (the "Authorized Persons") to determine certain terms of the Shares in accordance with the Resolutions and (ii) the authorization of the execution and delivery by the Company of the Agreement and any Confirmation, certified as of the date hereof by an officer of the Trust;
9. A certificate executed by an officer of the Trust, dated as of the date hereof; and
10. Such other documents and matters as we have deemed necessary or appropriate to express the opinion set forth below, subject to the assumptions, limitations and qualifications stated herein.

In expressing the opinion set forth below, we have assumed the following:

1. Each individual executing any of the Documents, whether on behalf of such individual or another person, is legally competent to do so.
 2. Each individual executing any of the Documents on behalf of a party (other than the Trust) is duly authorized to do so.
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3. Each of the parties (other than the Trust) executing any of the Documents has duly and validly executed and delivered each of the Documents to which such party is a signatory, and such party's obligations set forth therein are legal, valid and binding and are enforceable in accordance with all stated terms.

4. All Documents submitted to us as originals are authentic. The form and content of all Documents submitted to us as unexecuted drafts do not differ in any respect relevant to this opinion from the form and content of such Documents as executed and delivered. All Documents submitted to us as certified or photostatic copies conform to the original documents. All signatures on all Documents are genuine. All public records reviewed or relied upon by us or on our behalf are true and complete. All representations, warranties, statements and information contained in the Documents are true and complete. There has been no oral or written modification of or amendment to any of the Documents, and there has been no waiver of any provision of any of the Documents, by action or omission of the parties or otherwise.

5. The Shares will not be issued or transferred in violation of the restrictions on transfer and ownership contained in Article VI of the Declaration of Trust.

6. Upon the issuance of any of the Shares, the total number of Common Shares issued and outstanding will not exceed the total number of Common Shares that the Trust is then authorized to issue under the Declaration of Trust.

Based upon the foregoing, and subject to the assumptions, limitations and qualifications stated herein, it is our opinion that:

1. The Trust is a real estate investment trust duly formed and existing under and by virtue of the laws of the State of Maryland and is in good standing with the SDAT.

2. The issuance of the Shares has been duly authorized and, when issued and delivered by the Trust against payment of the consideration therefor in accordance with the Registration Statement, the Resolutions, the Agreement, any Confirmation and any instructions by the Authorized Persons, the Shares will be validly issued, fully paid and nonassessable.

The foregoing opinion is limited to the laws of the State of Maryland and we do not express any opinion herein concerning any other law. We express no opinion as to the applicability or effect of federal or state securities laws, including the securities laws of the State of Maryland, or as to federal or state laws regarding fraudulent transfers. To the extent that any matter as to which our opinion is expressed herein would be governed by the laws of any jurisdiction other than the State of Maryland, we do not express any opinion on such matter. The opinion expressed herein is subject to the effect of any judicial decision which may permit the introduction of parol evidence to modify the terms or the interpretation of agreements.

Acadia Realty Trust
May 31, 2019
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The opinion expressed herein is limited to the matters specifically set forth herein and no other opinion shall be inferred beyond the matters expressly stated. We assume no obligation to supplement this opinion if any applicable law changes after the date hereof or if we become aware of any fact that might change the opinion expressed herein after the date hereof.

This opinion is being furnished to you for submission to the Commission as an exhibit to the Trust's Current Report on Form 8-K relating to the Shares (the "Current Report"). We hereby consent to the filing of this opinion as an exhibit to the Current Report and to the use of the name of our firm therein. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the 1933 Act.

Very truly yours,

/s/ Venable LLP
