



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549-3628

October 11, 2012

**Via Facsimile (404) 881-7777 & U.S. Mail**

Rosemarie A. Thurston, Esq.  
Alston & Bird LLP  
One Atlantic Center  
1201 West Peachtree Street  
Atlanta, GA 30309-3424

**Re: Jones Lang LaSalle Income Property Trust, Inc.**

Dear Ms. Thurston:

We are responding to your letter dated October 11, 2012 addressed to Michele M. Anderson and Daniel Duchovny, as supplemented by telephone conversations with our staff, regarding your request for no-action relief. To avoid having to recite or summarize the facts set forth in your letter, a copy of that letter is attached to this response. Unless otherwise noted, capitalized terms in this response have the same meaning as in your letter.

Based on the facts and representations made in your letter, conversations with our staff, and your opinion that the proposed transaction does not constitute an issuer tender offer subject to Rule 13e-4 of the Exchange Act, the Division of Corporation Finance (the "Division") will not recommend that the Securities and Exchange Commission (the "Commission") take enforcement action under Rule 13e-4 if the Company repurchases shares from its stockholders under the Repurchase Plan in the manner described in your letter. In issuing this no-action relief, we considered the following facts, among others:

- All material information relating to the Repurchase Plan will be fully and timely disclosed to all stockholders. The terms of the Repurchase Plan were fully disclosed in the prospectus as well as the proxy statement mailed to stockholders in connection with the Classification and will be disclosed in any prospectus used for subsequent offerings, and the NAV per share for each class will always be available on the Company's website and toll-free information line;
- The Company will not solicit repurchases under the Repurchase Plan other than through the prospectus for the Offering and prospectus supplements disclosing the NAV per share of each class of shares. The role of the Company in effectuating repurchases under the Repurchase Plan will be ministerial;

- The shares will be repurchased daily under the Repurchase Plan at the daily NAV per share of the class of shares being repurchased and the Company will file prospectus supplements with the Commission with such frequency as is required by the Securities Act disclosing the historical NAV per share of each class of shares and also provide each day the NAV per share for each class of shares on its website and toll-free information line. Subject to the terms of the Repurchase Plan, the Company will be obligated to repurchase shares at the published NAV per share for the applicable class of shares;
- Repurchases will be made on a daily basis. The repurchase price normally will be paid in cash no later than three business days following a repurchase request and will be the same for all shares of the same class repurchased on a given day;
- Repurchases under the Repurchase Plan will be limited in any calendar quarter to shares whose aggregate value (based on the repurchase price per share on the day the repurchase is effected) is 5% of the combined NAV of all classes of shares of common stock as of the last day of the previous calendar quarter, which means that in any 12-month period, the Repurchase Plan will limit repurchases to approximately 20% of the Company's total NAV. In addition, until the Company's aggregate NAV has first reached \$600 million, repurchases of shares of all classes in the aggregate will be limited to 25% of the gross offering proceeds from the Effective Date to the last day of the previous calendar quarter;
- Repurchases under the Repurchase Plan are on a first-come, first-serve basis during each calendar quarter and stockholders will be paid promptly for the shares repurchased; all repurchase requests received on a day the quarterly cap is reached, however, will be redeemed *pro rata*;
- Stockholders may cancel any repurchase request submitted before 4:00 p.m. EST on a business day before 4:00 p.m. EST on the same day by notifying a customer service representative at the Company's toll-free information line;
- Modifications, including any reduction to the quarterly limitation on repurchases, and suspensions of the Repurchase Plan will be promptly disclosed in a prospectus supplement (or post-effective amendment if required by the Securities Act), or special or periodic report filed by the Company, as well as on the Company's website;
- There will be no established regular trading market for the Company's common stock. The Repurchase Plan will be terminated in the event the Company's shares are listed on a national securities exchange or included for quotation in a national securities market, or in the event a secondary market for the Company's common shares develops;
- If the quarterly volume limitation is reached on or before the third business day of a calendar quarter, repurchase requests during the next quarter will be satisfied based on a Per Stockholder Allocation. The Per Stockholder Allocation requirement will remain in effect for each succeeding quarter for which the total repurchases for the immediately

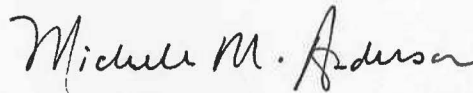
preceding quarter exceeded 4% of the Company's aggregate NAV on the last business day of such preceding quarter;

- The Repurchase Plan is intended to remain indefinitely open for the life of the Company unless modified or suspended by the board of directors. The Company is structured as a perpetual-life entity and has no intention to list its shares for trading on an exchange or other trading market; and
- The Repurchase Plan is open to all stockholders, except that holders of Class E Shares are not eligible to participate in the Repurchase Plan until one year after their shares have converted to Class M Shares.

The foregoing no-action position is based solely on the facts presented and the representations made in your letter dated October 11, 2012, as supplemented by telephone conversations with our staff. The relief is strictly limited to the application of the rules listed above to this transaction. You should discontinue this transaction pending further consultations with the staff if any of the facts or representations set forth in your letter change.

Finally, we direct your attention to the anti-fraud and anti-manipulation provision of the federal securities laws, particularly Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws rests with the Company. The Division expresses no view with respect to any other questions that the proposed transaction may raise, including but not limited to, the adequacy of disclosure concerning and the applicability of any other federal or state laws to the proposed transaction.

Sincerely,



Michele M. Anderson  
Chief  
Office of Mergers and Acquisitions  
Division of Corporation Finance

# ALSTON & BIRD LLP

One Atlantic Center  
1201 West Peachtree Street  
Atlanta, Georgia 30309-3424

404-881-7000  
Fax: 404-881-7777  
www.alston.com

Rosemarie A. Thurston

Direct Dial: 404-881-4417

rosemarie.thurston@alston.com

October 11, 2012

Ms. Michele M. Anderson, Chief  
Mr. Daniel Duchovny, Special Counsel  
Office of Mergers and Acquisitions  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

**Re: Jones Lang LaSalle Income Property Trust, Inc.  
Request for No-Action Relief Under Rule 13e-4**

Dear Ms. Anderson:

Alston & Bird LLP is counsel to Jones Lang LaSalle Income Property Trust, Inc. (the "Company") in connection with its Registration Statement on Form S-11 under the Securities Act of 1933, as amended (the "Securities Act") (Registration Number 333-177963), initially filed with the Securities and Exchange Commission (the "Commission") on November 14, 2011, as amended from time to time (the "Registration Statement"), to register the offer and sale of up to \$3,000,000,000 of its shares of common stock, in an initial public offering (the "Offering"), of which \$2,700,000,000 of shares will be offered to the public in a primary offering and \$300,000,000 of shares will be offered to stockholders of the Company pursuant to the Company's distribution reinvestment plan. The Registration Statement was declared effective by the Commission on October 1, 2012 (the "Effective Date"). The Company will offer to the public two classes of common stock: Class A common stock (the "Class A Shares") and Class M common stock (the "Class M Shares"). The Class A Shares and the Class M Shares will have different selling commissions and ongoing fees. No selling commissions or distribution fees will be paid with respect to Class M shares. The Company will offer to sell any combination of Class A and Class M shares with a dollar value up to the maximum offering amount.

On September 27, 2012, all of the Company's previously outstanding and undesignated shares of common stock were classified as Class E common stock (the "Class E Shares") (the "Classification"). In addition, on the Effective Date, the Company paid a stock dividend to holders of Class E Shares consisting of a number of Class E Shares that caused the net asset value (the "NAV") per Class E share to equal \$10.00 on the Effective Date. The Class E Shares

will automatically convert into Class M Shares on October 1, 2013, one year after the Effective Date.

The Company, which was formed as a Maryland corporation on May 28, 2004 as Excelsior LaSalle Property Fund, Inc., owns a diversified portfolio of high quality, income-producing office, retail, industrial and multifamily properties located in the United States and Canada. The Company is externally advised and has elected status as a real estate investment trust (“REIT”). The Company does not intend to register as an investment company under the Investment Company Act of 1940, as amended.

The Company considers itself to be a perpetual-life investment vehicle because it has no finite date for liquidation and no intention to list its shares of common stock for trading on a national securities exchange or other over-the-counter trading market. Although the Company has registered a fixed amount of its shares pursuant to the Registration Statement, it intends to effectively conduct a continuous offering of an unlimited amount of shares of common stock over an unlimited time period by filing a new registration statement prior to the end of the three-year period described in Rule 415 under the Securities Act. This perpetual-life structure is aligned with the Company’s overall objective of investing in real estate and real estate-related assets with a long-term view towards making regular cash distributions and generating capital appreciation consistent with a broadly diversified investment focus.

The Offering provides for the sale, on a daily basis following the Effective Date, of Class A Shares and Class M Shares at a price equal to the Company’s NAV per share for the applicable class of shares, calculated for each class by dividing the NAV for such class by the number of shares of such class outstanding as of the close of business on such day (after giving effect to any share sales or repurchases to be effected on such day), plus, for Class A shares only, applicable selling commissions. The NAV for each class of shares, including the Class E Shares, will be calculated at the close of each business day in accordance with valuation guidelines approved by the Company’s board of directors. A fundamental feature of the Offering is the Company’s share repurchase plan (the “Repurchase Plan”), which serves as the primary source of liquidity for stockholders and is not contingent on the sale of a certain number of shares in a given period.<sup>1</sup> Following a one-year holding period, holders of Class A Shares and Class M Shares will be offered the opportunity to request that the Company repurchase their shares on a daily basis at a price that may vary each trading day based on NAV.<sup>2</sup> The Repurchase Plan is similar to the repurchase plans of other perpetual-life, non-listed REITs with respect to which the Commission has recently granted no-action relief.<sup>3</sup> Like these other REITs, the Company has

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<sup>1</sup> The Repurchase Plan meets the conditions for exemption from Rule 102(a) of Regulation M, as articulated in the Commission’s letter to Alston & Bird LLP dated October 22, 2007 granting class relief for non-listed REIT share redemption programs (Regulation M Rule 102 – TP File No. 08-06).

<sup>2</sup> After the Class E Shares convert to Class M Shares one year after the Effective Date, they will be eligible for repurchase pursuant to the Repurchase Plan following a one year waiting period from the conversion date.

<sup>3</sup> See Dividend Capital Total Realty Trust Inc. SEC No-Action Letter, 2012 WL 2903983 (July 12, 2012); Cole Real Estate Income Strategy (Daily NAV), Inc. SEC No-Action Letter, 2011 WL 6071983 (Dec. 6, 2011); American Realty Capital Daily Net Asset Value Trust, Inc. SEC No-Action Letter, 2011 WL 2938525 (July 21, 2011); Clarion Partners Property Trust Inc. SEC No-Action Letter, 2012 WL 1999926 (Feb. 24, 2012); and Clarion Partners Property Trust Inc. SEC No-Action Letter, 2011 WL 1999926 (May 17, 2011).

been structured to address well-known shortcomings associated with traditional non-listed REITs, principally (1) lack of liquidity; (2) the rigidities implicit in a closed-end, finite-life, fixed price investment; and (3) high fees. The Company's structure is designed to benefit investors by (A) providing investors the flexibility to increase or decrease their investments in the Company as their individual situations change; (B) minimizing the risk that their long-term investment goals will conflict with short-term liquidity needs; and (C) allowing investors to seek returns of their capital and monetize any investment gain at a time of their choice, rather than being forced to wait for a terminal liquidity event outside their control. Shares repurchased by the Company will become authorized but unissued shares and will not be resold to the public unless their sale is first registered with the Commission under the Securities Act and under appropriate state securities laws or otherwise sold in compliance with such laws.

### **NO-ACTION REQUEST UNDER RULE 13e-4**

The Company has adopted the Repurchase Plan in an effort to provide stockholders with liquidity with respect to their investments in the Company's shares. The Company believes that many features of its Repurchase Plan are substantially similar to repurchase plans of other companies with respect to which the staff of the Division of Corporation Finance of the Commission (the "Staff") has granted no-action relief relative to the issuer tender offer rules found in Rule 13e-4 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

Four features of the Repurchase Plan are similar to the features of the repurchase plans with respect to which, as described above, the Staff has granted no-action relief. First, the repurchase price will vary based on the daily NAV per share of the class of shares being repurchased. Second, the repurchase of shares during any given calendar quarter will be limited to shares whose aggregate value (based on the repurchase price per share on the day the repurchase is effected) is 5% of the combined NAV of all classes of shares as of the last day of the previous calendar quarter, which means that in any 12-month period, the Repurchase Plan will limit repurchases to approximately 20% of the Company's total NAV.<sup>4</sup> Third, repurchases will be made using the "forward-pricing" mechanism described below. Fourth, Class A Shares and Class M Shares are eligible for repurchase only after a one-year holding period.

An additional feature of the Repurchase Plan is unique and has not been the subject of no-action relief by the Staff. Until the Company's aggregate NAV has first reached \$600 million, repurchases of Class A Shares and Class M Shares in the aggregate may not exceed 25% of the gross proceeds received by the Company from the commencement of the Offering through the last day of the prior calendar quarter. However, as discussed below, we respectfully submit that this feature should not be an obstacle to granting no-action relief to the Company for operation of the Repurchase Plan because we do not believe that repurchases pursuant to the Repurchase Plan implicate the concerns that the issuer tender offer rules were adopted to

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<sup>4</sup> The Repurchase Plan's limitation is applied quarterly rather than annually. The 5% limitation is determined for each quarter based upon the combined NAV of all classes of shares as of the last day of the previous calendar quarter. Because the Issuer anticipates that the combined NAV will change over time, each quarter's limitation is expected to be different from the limitation in other quarters. As a result, the Company describes its annual limitation in approximate terms.

address. Specifically, the Repurchase Plan, which offers stockholders no premium, has no set termination date and provides stockholders with adequate substantive disclosure upon which to base a decision to request a repurchase of their shares, will not have the effect of pressuring uninformed stockholders to request repurchase of their shares.

The Company requests that the Staff issue the Company a letter stating that it will not recommend that the Commission take enforcement action under Rule 13e-4 with respect to repurchases of Class A Shares and Class M Shares made under the Repurchase Plan.

## **OVERVIEW OF THE COMPANY AND THE REPURCHASE PLAN**

### ***The Company***

The Company is externally managed by its advisor, LaSalle Investment Management, Inc. (the “Advisor”), a subsidiary of its sponsor, Jones Lang LaSalle Incorporated (NYSE: JLL) (the “Sponsor”). The dealer manager for the Offering is LaSalle Investment Management Distributors, LLC (the “Dealer Manager”). The Dealer Manager is not required to sell any specific number or dollar amount of the shares, but will use its reasonable best efforts to sell the shares offered in the primary offering.

The Company and its subsidiaries own interests in and manage a diversified portfolio of 34 high-quality, income-producing office, retail, industrial and multifamily properties located in the United States and Canada. The Company’s aggregate NAV as of June 30, 2012 was \$234,721,114. The Company expects that over time, its portfolio will be globally diversified through the acquisition of additional properties outside of the United States. Although the Company intends to continue to invest primarily in real estate properties, it also intends to acquire debt and equity interests backed principally by real estate (“real estate-related assets”).

After the Company has raised substantial proceeds in the Offering and its NAV has first reached \$800 million, it will seek to have up to 80% of its assets invested in properties; up to 25% of its assets invested in real estate-related assets; and up to 15% of its assets invested in cash, cash equivalents and other short-term investments.

### ***The Repurchase Plan***

#### **Purpose of the Repurchase Plan**

The Company adopted a Repurchase Plan in an effort to provide the holders of Class A Shares and Class M Shares with liquidity with respect to their investment in the Company’s common stock, subject to specified limitations. Through the Repurchase Plan, holders of Class A Shares and Class M Shares can liquidate all or a portion of their investment. The Repurchase Plan is an important feature of the investment in the shares, since the Company expects the Repurchase Plan will serve as its stockholders’ sole meaningful source of liquidity. Without an effective repurchase plan, stockholders in the Company would generally be required to hold their shares for an indefinite time period because (1) there will be no established trading market for the shares upon issuance, (2) the Company does not anticipate that a secondary

trading market will develop, and (3) unlike traditional non-listed REITs, the Company is not required to consummate a transaction providing liquidity to its stockholders by a future date (such as listing its common stock on a securities exchange, merger with a publicly traded company or liquidation).

The Company is aware that a limited secondary market has in some cases developed for traditional non-listed REITs. However, these markets are very small and inefficient. Additionally, third parties have also made “mini-tender offers” to stockholders in non-listed REITs. These limited secondary markets and mini-tender offers to date have generally resulted in purchase prices that are typically at a substantial discount to the offering price for the shares and the prices offered in repurchase plans made available by the issuers. Mini-tender offers are also subject to potential manipulation by the purchaser, and stockholders often receive limited disclosure about the terms, structure and conditions of the offer. The Company believes that the mini-tender offers further evidence that sufficient liquidity options may not always exist for stockholders in non-listed REITs with traditional repurchase plans and that stockholders in these types of non-listed REITs often suffer financially as a result. The Company also notes that the lack of liquidity is often cited in the investment community as a primary disadvantage of investing in non-listed REITs, as most non-listed REITs are closed-end entities (with set dates for a terminal liquidity event) and offer repurchase plans that are subject to substantial limitations on repurchases. The Company believes that many investment professionals and investors consider the traditional non-listed REIT repurchase plans to be inadequate to provide stockholders with a viable liquidity option. Because the Company intends to engage in a continuous offering of its shares of an unlimited duration, a repurchase plan that provides a source of liquidity is especially important to the Company, because, absent this feature, potential investors would be reluctant to purchase shares in the Offering. In addition, the Repurchase Plan is necessary to provide liquidity to existing stockholders who have only had limited liquidity for their shares through tender offers.

The Offering and the Repurchase Plan are designed to provide investors with an investment vehicle that the Company believes is a superior alternative to traditional non-listed REITs. Unlike traditional non-listed REIT offerings, the price of the Company’s shares will be based on the underlying fair value of its assets, rather than an arbitrary dollar amount. The Repurchase Plan provides the Company’s stockholders with greater liquidity than traditional non-listed REITs by allowing stockholders to request the Company to repurchase all or a portion of their shares on a daily basis, with less restrictive limitations on the aggregate number of shares that may be repurchased in any particular period and no limitation on the sources of cash used by the Company to fund repurchases (as compared to the typical non-listed REIT repurchase plan in which the sources of cash are limited to proceeds from the sale of additional shares through the distribution reinvestment plan).

#### The Daily NAV Calculation and the Repurchase Plan

The purchase price for Class A Shares and Class M Shares will vary from day to day, and on any given day will be equal to the Company’s NAV per share for such class, plus, for Class A shares only, applicable selling commissions of up to 3.5% of the total price per share.



The Company's NAV will be calculated by the Advisor in accordance with a comprehensive set of valuation guidelines approved by the Company's board of directors. At the end of each business day that the New York Stock Exchange is open for unrestricted trading, before taking into consideration additional issuances of shares of common stock, repurchases or class-specific expense accruals for that day, any change in the Company's aggregate NAV (whether an increase or decrease) will be allocated among each class of shares based on each class's relative percentage of the previous aggregate NAV. Changes in the daily NAV will reflect factors including, but not limited to, the Company's portfolio income, interest expense, unrealized/realized gains (losses) on assets and accruals for the advisory fee. The portfolio income will be calculated and accrued on the basis of data extracted from (1) the annual budget for each property and at the corporate level, including organization and offering expenses incurred following the Effective Date and certain operating expenses, (2) material, unbudgeted non-recurring income and expense events such as capital expenditures, prepayment penalties, assumption fees, tenant buyouts, lease termination fees and tenant turnover with respect to the Company's properties when the Advisor becomes aware of such events and the relevant information is available and (3) material property acquisitions and dispositions occurring during the month. For the first month following a property acquisition, the Company will calculate and accrue portfolio income with respect to such property based on the performance of the property before the acquisition and the contractual arrangements in place at the time of the acquisition. On an ongoing basis, the Advisor will adjust the accruals to reflect actual operating results and to appropriately reflect the outstanding receivable, payable and other account balances resulting from the accumulation of daily accruals for which financial information is available. The daily accrual of portfolio income will also include reimbursements to the Advisor and the Dealer Manager for organization and offering expenses incurred prior to the Effective Date and paid on behalf of the Company, which the Company will reimburse over the 36 months following the Effective Date. All organization and offering costs incurred following the Effective Date will be recognized as expenses when incurred. Following the allocation of income and expenses as described above, NAV for each class will be adjusted for additional issuances of common stock, repurchases, and class-specific expense accruals, such as the dealer manager fee and distribution fee, to determine the current day's NAV. The share classes may have different expense accruals associated with the advisory fee the Company will pay the Advisor because the performance component of the advisory will be calculated separately with respect to each class. At the close of business on the date that is one business day after each record date for any declared distribution, the NAV for each class will be reduced to reflect the accrual of the Company's liability to pay the distribution to stockholders of record of each class as of the record date. NAV per share for each class will be calculated by dividing such class's NAV at the end of each trading day by the number of shares outstanding for that class on such day.

Because each day's purchase and repurchase price is based on the NAV per share for the applicable share class, the purchase price and the repurchase price for Class A Shares and Class M Shares will be the same, except that (1) the purchase price for Class M shares will exclude selling commissions that may be charged on purchases of Class A shares and (2) the NAV for Class A Shares will be reduced over time as a result of the daily accrual of the distribution fee, which will accrue daily in an amount equal to  $1/365^{\text{th}}$  of 0.50% of the NAV for the Class A Shares.

Under the Repurchase Plan, and subject to specified limitations, stockholders may request that the Company repurchase all or any portion of their shares on any business day at the published NAV per share for the class of shares being repurchased. The repurchase price will be equal to the NAV per share of the class of shares being repurchased calculated at the end of the business day that the Company's transfer agent receives and processes the repurchase request, unless such request is received and processed after the close of business, in which case the repurchase price will be equal to the NAV per share calculated on the next business day. Following the Effective Date, at the end of each business day, the Company will post the NAV per share for each class of shares for that business day on the Company's public website at [www.lasalle.com/JLLIPT](http://www.lasalle.com/JLLIPT) and make publicly available the NAV per share for each class of shares on the Company's toll-free, automated information line. Subject to the terms of the Repurchase Plan, the Company will be obligated to repurchase Class A Shares and Class M Shares at their published NAV per share. The Company's website will contain the current prospectus, including all supplements thereto. The Company will also disclose its NAV per share for each business day of the preceding month in prospectus supplements it files with the SEC on a monthly basis and will file post-effective amendments to its Registration Statement as required by the Securities Act. In addition, the Company will also disclose, on a quarterly basis in a prospectus supplement filed with the SEC, the primary valuation components of its NAV. Each of the Company's prospectus supplements will provide the historical NAV per share for each class of shares since it was last reported in a prospectus supplement.

#### Valuation of the Company's Assets and Liabilities

The Company's board of directors, including a majority of its independent directors, has adopted valuation guidelines that contain a comprehensive set of methodologies that will be used by the Advisor and the Company's independent valuation advisor when valuing the Company's assets and its liabilities in connection with the calculation of NAV. These valuation methodologies are largely based upon standard industry practices used by institutional, private open-end real estate funds and are described in detail in the prospectus for the Offering.

The overarching principle behind the Company's valuation guidelines is to produce a valuation that represents a fair and accurate estimate of the fair value of the Company's investments or the price that would be received for the investments in an arm's-length transaction between market participants, less the Company's liabilities. One fundamental element of the valuation process, the valuation of the Company's properties, will be managed by the Company's independent valuation advisor, a valuation firm selected by the Advisor and approved by the Company's board of directors, including a majority of its independent directors.

The Advisor will calculate the value of the Company's assets as directed by the valuation guidelines based upon information received from various sources, including the independent valuation advisor. From the independent valuation advisor, the Advisor will receive appraisals of all of the Company's properties. Publicly traded debt and equity real estate related securities (such as bonds and shares issued by public REITs) that are not restricted as to salability or transferability will be valued by the Advisor on the basis of publicly available information provided by third parties. Investments in privately placed debt instruments and securities of real estate-related operating businesses (other than joint ventures), such as real estate development or

management companies, will be valued by the Advisor at cost (purchase price plus all related acquisition costs and expenses, such as legal fees and closing costs) and thereafter will be revalued each quarter at fair value. Individual investments in mortgages, mortgage participations and mezzanine loans will be valued by the Advisor at cost and may be revalued by the Advisor from time to time. The Advisor will receive from third parties each day the value of the Company's cash, cash equivalents and other short-term investments. The Company's liabilities will be valued at cost.

The daily NAV calculation will include the most recent appraisals of the Company's properties. Appraisals will be conducted by the Company's independent valuation advisor each quarter and updated between quarters to the extent the Advisor determines that a material change in value has occurred. In addition, the independent valuation advisor, at its discretion, may perform an interim appraisal to confirm the estimated property value that was previously communicated to the Advisor. Materiality levels, which will be recommended by the Advisor and approved by the Company's board of directors, will be based on the size of the Company's overall portfolio. At the beginning of each calendar year, the Advisor will develop a valuation plan, reviewed by the Company's board of directors, with the objective of having each wholly owned property valued each quarter by the independent valuation advisor. Appraisals will be conducted in accordance with the Code of Ethics and Uniform Standards of Professional Appraisal Practices (USPAP), the real estate appraisal industry standards created by The Appraisal Foundation. Each appraisal must be reviewed, approved and signed by an individual with the professional designation of MAI (Member of the Appraisal Institute).

The Company's board of directors will review the valuation guidelines at least annually and may adopt changes if it (1) determines that such changes are likely to result in a more accurate reflection of NAV or a more efficient or less costly procedure for the determination of NAV without having a material adverse effect on the accuracy of such determination or (2) otherwise reasonably believes a change is appropriate for the determination of NAV.

While the methodologies contained in the valuation guidelines will be designed to operate reliably within a wide variety of circumstances, it is possible that in certain unanticipated situations or after the occurrence of certain extraordinary events (such as a terrorist attack or an act of nature), the Advisor's ability to calculate NAV may be impaired or delayed, including in circumstances where there is a delay in accessing or receiving information from vendors or other reporting agents upon which the Advisor may rely upon in determining the daily value of the Company's NAV. In special situations when, in the Advisor's reasonable judgment, the administration of the valuation guidelines would otherwise result in a valuation that does not represent a fair and accurate estimate of the value of the Company's investment or the price that would be received for the Company's investment in an arm's-length transaction between market participants in an orderly transaction, the Advisor and, to the extent of the independent valuation advisor's responsibilities with respect to the valuation of the Company's real properties, the independent valuation advisor, may apply alternative methodologies; provided, that the Advisor and, if applicable, the independent valuation advisor, must notify the Company's board of directors of any alternative methodologies utilized and their impact on the overall valuation of the Company's investment at the next scheduled board meeting. Notwithstanding the foregoing, the board of directors may suspend the Offering and the Repurchase Plan if it determines that the

calculation of NAV is materially incorrect or there is a condition that restricts the valuation of a material portion of the Company's assets.

#### Timing and Settlement

All repurchase requests received and processed by the Company's transfer agent during a given day will be settled at the price determined after the close of business on that day. The repurchase price per share received by a stockholder will be equal to the NAV per share of the class of shares being repurchased as of the close of business on the day the repurchase request is received and processed (which will generally be the day the repurchase request is received and processed or the next business day if the repurchase request is received and processed on a day that is not a business day or after the close of business on a business day). The Company will utilize a mutual fund-style technology platform for processing repurchase requests and anticipates that repurchases will be paid, less any applicable tax or other withholding required by law, on the first business day following the execution of a repurchase request. Although a stockholder will not know at the time he or she requests the repurchase of shares the exact price at which such repurchase request will be processed, the stockholder may cancel the repurchase request before it has been processed by notifying a customer service representative available on the Company's toll-free information line. Repurchase requests submitted before 4:00 p.m. Eastern Time on a business day must be cancelled before 4:00 p.m. on the same day. Repurchase requests received after 4:00 p.m. on a business day, or at any time on a day that is not a business day, must be cancelled before 4:00 p.m. on the next business day. If the repurchase request is not cancelled before the applicable time described above, the stockholder will be contractually bound to the repurchase of the shares and will not be permitted to cancel the request prior to the payment of repurchase proceeds.

In contrast to the market prices of exchange-traded securities, which often fluctuate as a result of, among other things, supply and demand in the trading market, the purchase and repurchase prices of the Company's shares will reflect NAV and will not change based on the level of demand for new shares or the volume of requests for repurchase of outstanding shares. NAV per share of each class of shares will be calculated at the end of each business day using the valuation policies and procedures described earlier and none of the Company, the Advisor, the Dealer Manager or any financial intermediary will be able to change the manner in which NAV is determined, other than by first modifying the valuation guidelines as described above, nor will they have any discretion to set a "clearing" price. Because a substantial portion of the Company's portfolio will be in investments in stabilized commercial real estate, it is not anticipated that the NAV per share will fluctuate materially from one day to the next, so the previous day's NAV per share will likely be a good indicator of the repurchase price.

The Repurchase Plan is designed to generally follow settlement practices that have been developed over time in the mutual fund industry to the extent such practices are applicable. As with mutual funds, NAV will be determined at the end of each business day and will apply to all requests for repurchase that have accumulated during the day. This pricing mechanism is commonly referred to as "forward-pricing." Under a forward-pricing mechanism, a stockholder will not know before the end of the day on which he or she makes a repurchase request the precise price at which his or her request will be settled.

Forward-pricing is not a matter of convenience or a mere “operational” model that the Company has developed for its own business purposes. Rather, it is a pricing model that has widespread use in mutual funds for the protection of investors. It evolved out of the fact that a mutual fund’s shares (excluding exchange traded funds or ETFs) are only priced once per day after the close of business, creating the potential to expose the fund and its stockholders to market timing by opportunistic, short-term investors. For example, if the price at which shares are sold on any given day was based on NAV as of the close of business on the previous day, current investors would have an opportunity to exit the fund, and new or existing investors would have an opportunity to enter or increase their holdings in the fund, at the previous day’s price based on knowledge of events that have taken place since then, which may cause the current day’s value of the fund’s shares to be higher or lower than the previous day’s price. Under a forward-pricing model, these opportunities to engage in market timing are eliminated. Market timing harms legitimate, long-term investors because market timers capture an unfair share of gains or avoid their fair share of losses. The Company has adopted a forward-pricing model as a necessary mechanism to prevent speculative trading detrimental to legitimate, long-term investors.

#### Funding and Limitations of the Repurchase Plan

Repurchase plans of traditional non-listed REITs that have received no-action relief from the Staff generally contain all of the following restrictions: shares may not be repurchased within one year of the purchase; the repurchase price is usually subject to a discount depending on the length of time the shares have been held; the number of shares repurchased for all stockholders during the calendar year is limited to a small percentage of the weighted-average outstanding shares during the prior calendar year (usually 5%); and funds available to fund repurchases are limited to proceeds from the distribution reinvestment plan. Thus, for traditional non-listed REITs, substantial liquidity may not be provided for seven to ten years when the companies effect a liquidity transaction, such as listing on a national securities exchange, merger with a publicly traded company or liquidation.

In contrast, like other perpetual-life, non-listed REITs whose repurchase plans have received no-action relief from the Staff, the Repurchase Plan will provide stockholders with a much greater opportunity for liquidity during the entire term of their investment. Although shares will not be eligible for repurchase for the first year after purchase except for death or disability of a stockholder, thereafter, the Repurchase Plan will permit the repurchase during any calendar quarter of Class A Shares and Class M Shares whose aggregate value (based on the repurchase price per share on the day the repurchase is effected) is up to 5% of the combined NAV of all classes of shares (including the Class E Shares which are not eligible for repurchase under the Repurchase Plan) as of the last day of the prior calendar quarter, which means that repurchases will be permitted up to an aggregate limit of approximately 20% of the Company’s total NAV in any 12-month period. In addition, until the Company’s total NAV has first reached \$600 million, repurchases of shares in the aggregate may not exceed 25% of the gross proceeds from the commencement of the Offering through the last day of the prior calendar quarter. The Company will disclose the amounts of the 5% and 25% limits described above for the current calendar quarter in the prospectus supplements that it will file on a quarterly basis to disclose the

primary valuation components of its NAV. Other than the limitations described above and the application of the Per Stockholder Allocation (defined and described below), only the suspension or termination of the Repurchase Plan by the Company's board of directors could cause the Company to repurchase less than all requested repurchases. Under normal circumstances, the Company intends to maintain an allocation to cash, cash equivalents, securities and other liquid assets of up to 15% of NAV.

The Company has disclosed throughout its prospectus that it may not always have sufficient liquid resources to satisfy all repurchase requests. The Company intends to fund repurchases from any available cash sources at its disposal, including available cash, proceeds from sales of shares, excess cash flow from operations, sales of liquid investments, incurrence of indebtedness and, if necessary, proceeds from the disposition of properties or real estate-related assets.

Repurchases under the Repurchase Plan are on a first-come, first-served basis during each calendar quarter because stockholder repurchases will be paid promptly. If repurchase requests reach either limitation on a given day during a quarter, available funds will be allocated *pro rata* based on the total number of shares subject to pending repurchase requests without regard to class.<sup>5</sup> All unsatisfied repurchase requests due to any of the limitations of the Repurchase Plan must be resubmitted after the start of the next quarter or upon the recommencement of the Repurchase Plan, as applicable.

On the first business day during any quarter in which the Company has reached that quarter's repurchase limitation, the Company will publicly disclose such fact through a filing with the Commission and a posting on the Company's website in order to notify stockholders that it will not accept additional repurchase requests during such quarter. In such event, unless the board of directors determines to suspend the Repurchase Plan or the Per Stockholder Allocation mechanism is triggered, each as described below, the Repurchase Plan will automatically and without stockholder notification resume on a first-come, first-served basis on the first day of the calendar quarter following the quarter in which repurchases were suspended due to reaching such quarter's volume limitation.

If the quarterly volume limitation is reached on or before the third business day of a calendar quarter, repurchase requests during the next quarter will be satisfied on a stockholder by stockholder basis (a "Per Stockholder Allocation") instead of a first-come, first-served basis. Pursuant to the Per Stockholder Allocation, each stockholder would be allowed to request

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<sup>5</sup> The redemption plans of American Realty Capital Daily Net Asset Value Trust, Inc. ("ARC"), Clarion Partners Property Trust Inc. ("Clarion"), Cole Real Estate Income Strategy (Daily NAV), Inc. ("Cole") and Dividend Capital Total Realty Trust Inc. ("Dividend Capital") also paid redemption requests *pro rata* on the day the limitation was reached; provided, however, that ARC allowed for the personal circumstances of certain stockholders to give them greater priority (e.g. death or disability). See American Realty Capital Daily Net Asset Value Trust, Inc. SEC No-Action Letter, 2011 WL 2938525 (July 21, 2011); Clarion Partners Property Trust Inc. SEC No-Action Letter, 2012 WL 1999926 (Feb. 24, 2012); Clarion Partners Property Trust Inc. SEC No-Action Letter, 2011 WL 1999926 (May 17, 2011); Cole Real Estate Income Strategy (Daily NAV), Inc. SEC No-Action Letter, 2011 WL 6071983 (Dec. 6, 2011); and Dividend Capital Total Realty Trust Inc. SEC No-Action Letter, 2012 WL 2903983 (July 12, 2012).

repurchase at any time during such quarter of a total number of shares not to exceed 5% of the shares of common stock the stockholder held as of the end of the prior quarter. The Per Stockholder Allocation requirement will remain in effect for each succeeding quarter for which the total repurchases for the immediately preceding quarter exceeded 4% of the Company's aggregate NAV on the last business day of such preceding quarter. If total repurchases during a quarter for which the Per Stockholder Allocation applies are equal to or less than 4% of the Company's aggregate NAV on the last business day of such preceding quarter, then repurchases will again be first-come, first-served for the next succeeding quarter and each quarter thereafter.

After the Class E Shares convert to Class M Shares on October 1, 2013, they will be eligible for repurchase pursuant to the Repurchase Plan following a one year waiting period from the conversion date. As a result, the holders of Class E Shares may seek to have their shares repurchased during the first quarter when they are eligible to participate in the Repurchase Plan. As the Company sells Class A Shares and Class M Shares pursuant to the Offering, the overall percentage of the Company's equity owned by the holders of Class E Shares will be reduced, thereby reducing the impact of repurchase requests by these holders on the overall limits of the Repurchase Plan. In addition, 21.5% of the Class E Shares are currently held by affiliates of the Company's Sponsor, and approximately 90% of these shares are subject to additional limitations as to repurchase that cause them to be ineligible for repurchase until not earlier than August 2017.

The board of directors' primary objective regarding the Repurchase Plan is to maintain the uninterrupted repurchase of shares in order to provide stockholders with liquidity in respect of their investment in the Company. Nonetheless, the board must exercise its oversight responsibilities in light of its fiduciary duties to all stockholders and must have the ability to suspend the repurchase of shares under the appropriate circumstances, as well as to make appropriate modifications to the Repurchase Plan to ensure its effective operation. Those fiduciary duties require that, as with any decision made by the board, any decision to modify or suspend the Repurchase Plan be made in good faith, with a reasonable belief that the action is in the best interests of the Company and its stockholders, and with the care of an ordinarily prudent person in a like position under similar circumstances. The Company believes that the board's responsibility to monitor and, under unusual or compelling circumstances, suspend the repurchase of shares is necessary to ensure the integrity and continuous operation of the Repurchase Plan. Accordingly, should repurchase requests, in the business judgment of the board of directors, place an undue burden on the Company's liquidity, adversely affect the Company's operations or risk having an adverse impact on stockholders whose shares are not repurchased, then the Company's board of directors may modify or suspend the Repurchase Plan if it deems such action to be in the best interest of the Company's stockholders. In addition, the board of directors may determine to suspend the Repurchase Plan due to regulatory changes, changes in law or if the board of directors becomes aware of undisclosed material information that it believes should be publicly disclosed before shares are repurchased. Material modifications, including any reduction to the quarterly limitation on repurchases, and suspensions will be promptly disclosed to stockholders in a prospectus supplement (or post-effective amendment if required by the Securities Act) or special or periodic reports filed by the Company. Material modifications will also be disclosed on the Company's website.

The Company believes that, in the face of such unforeseen circumstances as may arise over the indefinite life of the Company, a degree of flexibility in the administration of the Repurchase Plan is necessary and warranted to ensure that the board can discharge its fiduciary duties to promote the long-term efficacy of the Repurchase Plan, while also ensuring the equitable treatment of stockholders who do and do not request repurchase of their shares. Notwithstanding the foregoing, the board of directors has no current intention to modify or suspend the Repurchase Plan and expects that the Repurchase Plan will continue indefinitely. In addition, the Company will seek confirmation of the no-action relief requested hereby if the board proposes to (1) modify the Repurchase Plan from daily to less frequent repurchases, (2) reduce the repurchase price to an amount that reflects a discount to NAV per share or (3) modify other aspects of the Repurchase Plan upon which the Company's request for no-action relief is predicated other than immaterial modifications for the proper administration and operation of the Repurchase Plan which are consistent with the factual and legal representations contained in this letter.

### Disclosure

The Company does not intend to publicize separately the existence of the Repurchase Plan or engage in any activity to encourage stockholders to submit requests for repurchase of their shares other than disclosures required under federal securities laws, disclosure in offering materials used in connection with the Offering, procedural/repurchase price disclosure in stockholder communications after the commencement of the Offering and the provision of NAV per share on the Company's website and toll-free information line and in prospectus supplements filed with the Commission. Neither the Company nor any of its affiliates will make any recommendation to holders of shares of the Company's common stock as to whether to participate in the Repurchase Plan. The prospectus for the Offering contains a comprehensive description of all terms, conditions and features of the Repurchase Plan and will be updated to reflect any material modifications made during the Offering. As a result, with the exception of the repurchase price, an investor will have all of the material information necessary to make a repurchase decision at the time the investor makes an investment decision.

## LEGAL DISCUSSION

### *Reasons for No-Action Relief*

The Company's request for no-action relief is substantially similar to the no-action requests of other perpetual-life non-listed REITs that have recently commenced similar public offerings.<sup>6</sup> Like these perpetual non-listed REITs, the Company's request for no-action relief differs from previously granted no-action requests made by traditional non-listed REITs<sup>7</sup> with

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<sup>6</sup> See Dividend Capital Total Realty Trust Inc. SEC No-Action Letter, 2012 WL 2903983 (July 12, 2012); Cole Real Estate Income Strategy (Daily NAV), Inc. SEC No-Action Letter, 2011 WL 6071983 (Dec. 6, 2011); American Realty Capital Daily Net Asset Value Trust, Inc. SEC No-Action Letter, 2011 WL 2938525 (July 21, 2011); Clarion Partners Property Trust Inc. SEC No-Action Letter, 2012 WL 1999926 (Feb. 24, 2012); Clarion Partners Property Trust Inc. SEC No-Action Letter, 2011 WL 1999926 (May 17, 2011).

<sup>7</sup> The previously granted no-action requests made by non-listed REITs (other than Dividend Capital, Clarion, ARC and Cole) included redemptions either quarterly or monthly and for numbers of shares between 3% of the



respect to three representations made in such previous no-action requests: (1) a limitation on the number of shares of both classes that will be repurchased in any quarter whose aggregate value (based on the repurchase price per share on the day the repurchase is effected) is 5% of the combined NAV of both classes of shares as of the last day of the previous calendar quarter, which means that in any 12-month period, the Repurchase Plan will limit repurchases to approximately 20% of the Company's total NAV, (2) the daily pricing of repurchases based on a daily NAV per share calculation, and (3) the forward-pricing mechanism. These features are designed to offer greater liquidity to investors and provide investors with a repurchase price that is based on the underlying fair value of the Company's NAV rather than an arbitrary fixed price or a discount to NAV, as is the case in traditional non-listed REIT offerings currently available to public investors. An additional feature of the Repurchase Plan that is unique and has not been the subject of no-action relief by the Staff is that, until the Company's NAV has first reached \$600 million, repurchases of Class A Shares and Class M Shares in the aggregate may not exceed 25% of the gross proceeds received by the Company from the commencement of the Offering through the last day of the prior calendar quarter. While this aspect of the Repurchase Plan is different from previous no-action letters, it should not preclude no-action relief with respect to the Repurchase Plan because it has the result of placing a further limitation on the aggregate value of the Shares that may be repurchased in a given quarter.

The Company has a perpetual-life structure which is different from the traditional non-listed REITs which contemplate a finite term ending upon the consummation of a future liquidity event. The Company has adopted its NAV-based pricing methodology with the objective of having its shares sold and repurchased daily at a price that reflects the value of its investments, as determined by the Advisor. Absent extraordinary circumstances, the price at which the Company sells new shares and repurchases outstanding shares will not be affected by the volume of sales and repurchases. Stockholders may request the repurchase of all or a portion of their shares on any business day after a one-year holding period, or sooner upon the death or disability of a stockholder. However, if a significant or protracted imbalance develops between sales and repurchases or other extraordinary events occur (as described above), then the board of directors maintains the discretion to modify or suspend the Repurchase Plan to ensure viability of the investment for continuing stockholders.

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weighted average number of shares as of the beginning of a 12-month period and 10% of the number of outstanding shares on the same date of the prior year. *See* Hines Real Estate Investment Trust, Inc., SEC No-Action Letter, 2006 WL 3007365 (Sept. 7, 2006); Apple REIT Six, Inc., SEC No-Action Letter, 2006 WL 1880375 (June 30, 2006); Behringer Harvard REIT I, Inc., SEC No-Action Letter, 2004 WL 2439520 (Oct. 26, 2004); Paladin Realty Income Properties, Inc., SEC No-Action Letter, 2004 WL 2375781 (Oct. 22, 2004); Orange Hospitality, Inc., SEC No-Action Letter, 2004 WL 2065831 (Sept. 9, 2004); Hines Real Estate Investment Trust, Inc., SEC No-Action Letter, 2004 WL 1432321 (June 18, 2004); CNL Income Properties, Inc., SEC No-Action Letter, 2004 WL 892249 (Mar. 10, 2004); Inland Western Retail Real Estate Trust, Inc., SEC No-Action Letter, 2003 WL 22119707 (Aug. 25, 2003); T REIT Inc., SEC No-Action Letter, 2001 WL 649546 (June 4, 2001); and CNL American Properties Fund, Inc., SEC No-Action Letter, 1998 WL 476210 (Aug. 13, 1998). Each subject company was a non-listed REIT that proposed to maintain a redemption plan similar to the Repurchase Plan in that (1) it would allow for the redemption of outstanding shares at a redemption price equal to or less than the then current price at which the issuer was offering its shares to the public and (2) redemptions were only available after a one-year holding period.

Repurchases will not be solicited by the Company and will not be made with the purpose of trading in, and should not have the effect of manipulating or raising the offering price of, the Company's common stock. Although stockholders of the Company are made aware of the availability of the Repurchase Plan at the time they purchase their shares by means of prospectus disclosure, and will be informed in writing of any changes to the plan, the Company will not affirmatively solicit participation by its stockholders in the Repurchase Plan. Stockholders desiring to present all or a portion of their shares for repurchase will do so of their own volition and not at the behest, invitation or encouragement of the Company.

The role of the Company in effectuating repurchases under the Repurchase Plan will be ministerial and will merely facilitate the stockholders' decision to exit from their investment in the Company. Shares repurchased by the Company will become authorized but unissued shares and will not be resold to the public unless their sale is first registered with the Commission under the Securities Act and under appropriate state securities laws or otherwise sold in compliance with such laws. The Company will terminate the Repurchase Plan in the event the shares are listed on a national securities exchange or included for quotation on a national securities market, or in the event a secondary market for the Company's shares develops. However, the Company does not intend to list its shares for trading on any exchange or other trading market and does not expect that a secondary trading market will develop.

#### ***Rule 13e-4 – No-Action Request***

##### Rule 13e-4

Pursuant to Rule 13e-4 under the Exchange Act, an issuer with equity securities registered under Section 12 of the Exchange Act or that is required to file periodic reports with the Commission pursuant to Section 15(d) is required, in connection with any tender offer for its own equity securities, to make certain disclosures and comply with other procedures with respect to such offers. The provisions of Rule 13e-4 are intended to prevent fraudulent, deceptive or manipulative acts in connection with issuer tender offers, principally the time pressure and inadequate disclosures present in coercive tender offers.

##### The Repurchase Plan is not an Issuer Tender Offer

We believe that the Repurchase Plan is not an "issuer tender offer" subject to Rule 13e-4. We reach this conclusion based on an analysis of the factors expressed in *Wellman v. Dickinson*, 475 F. Supp. 783 (S.D.N.Y. 1979), and applied in subsequent cases by the Commission and its staff in determining what constitutes a tender offer, as well as the fact that the terms of the Repurchase Plan will be fully disclosed to potential investors of Class A Shares and Class M Shares prior to the purchase of shares of the Company's common stock. With respect to the holders of Class E Shares, the material terms of the Repurchase Plan have been disclosed to these stockholders in the proxy statement mailed to stockholders in connection with the Classification. Since stockholders will be aware of the NAV per share of each class of shares through the Company's website, toll-free information line and prospectus supplements, stockholders do not require additional information regarding the Repurchase Plan at the time they decide to make a repurchase request. No new investment decision is being made at the time

of repurchase. Because the Repurchase Plan is not a tender offer, the structural protections generally afforded to stockholders in a tender offer under the tender offer rules are unnecessary for the protection of investors.

We also believe that the Repurchase Plan does not raise the same tender offer concerns under Rule 13e-4 that are addressed in the no-action requests by traditional non-listed REITs for repurchase plans that offer periodic repurchases for limited numbers of shares at an arbitrary fixed price. We believe the perpetual-life structure of the Repurchase Plan and the application of the Per Stockholder Allocation mechanism reduce the pressure on stockholders with respect to making a repurchase request. There will not be a limited time period in which to request repurchase. Stockholders may elect to request the Company to repurchase all or a portion of their shares throughout the continuous offering (other than holders of Class E Shares who will become eligible under the Repurchase Plan when their shares automatically convert to Class M Shares one year after the Effective Date), which has no anticipated termination date, at the daily NAV per share. As discussed above, this structure is very similar to an open-end mutual fund to which the tender offer rules do not apply. In addition, in the event the quarterly volume limitation is reached in the first three business days of a quarter, the Per Stockholder Allocation mechanism will alleviate any pressure to request redemptions at the beginning of the subsequent quarter.

Although stockholders will not know the precise repurchase price (the NAV per share of the class of shares being repurchased) at the time they request repurchase because of the forward-pricing model previously described herein, the NAV per share of the class of shares being repurchased as of the previous day and all preceding days during the Offering will be disclosed to them through the Company's website and toll-free information line. By reviewing this information, stockholders will be able to anticipate the approximate price applicable to their repurchase based on their evaluation of the degree of recent historical pricing volatility. In addition and as described above under "The Repurchase Plan – Timing and Settlement," a stockholder may cancel a repurchase request before it has been processed by notifying a customer service representative available on the Company's toll-free information line. The shares are not subject to the same market supply and demand pressures as securities listed on an exchange or traded over the counter where the price of a security fluctuates based on the supply and demand of a security. Without these market pressures and because the price is based on the Company's NAV, the Company believes that material fluctuations in the NAV per share on a day-to-day basis are unlikely.

The Company further believes that material daily fluctuations in NAV per share are unlikely because the bulk of the Company's investments are and will continue to be direct ownership of stabilized commercial real estate properties (which are generally not subject to volatile price fluctuations), consisting of a broadly diversified portfolio by geography, property sector and type and tenant base (which should reduce the effect of price variances in any one subset of assets). Although certain of the Company's real estate-related assets are subject to greater price fluctuations than its real properties, real estate-related assets are only expected to comprise up to 25% of the Company's total portfolio. Thus, it is unlikely that the repurchase price of the Company's shares will fluctuate materially from one day to the next and the repurchase price for the prior business day is likely to serve as a good indicator of the repurchase

price the stockholder will actually receive. In addition, the fact that the Company and its stockholders will not know the exact repurchase price at the time of a repurchase request will be disclosed to stockholders at the time they purchase shares and make their investment decision.

#### Analysis of the Wellman Factors

An analysis of the *Wellman* factors demonstrates that the Repurchase Plan should not be viewed as a tender offer.<sup>8</sup> Set forth below is an application of these factors to the Repurchase Plan.

(i) *Active and widespread solicitation of public stockholders for the shares of an issuer.* The Company will not engage in an active and widespread solicitation for the repurchase of its shares. The Repurchase Plan is described in the prospectus and the proxy statement, and any communications to stockholders identifying changes to the plan will be communicated through reports the Company files with the Commission, a press release or via the Company's website. However, the Company believes that this disclosure is required by the Securities Act and is provided to make stockholders aware of the plan's existence. The Company will not make any other significant public communications about the Repurchase Plan except as contained in or related to the Offering prospectus and supplements, offering materials used in connection with the Offering, required communications in reports filed under the Exchange Act, including the definitive proxy statement mailed to stockholders in connection with the Classification, the providing of the daily NAV per share of each class of shares on the Company's website and toll-free information line, and communications required by the plan itself. Stockholders desiring to present all or a portion of their shares for repurchase will do so of their own volition and not at the behest, invitation or encouragement of the Company. The Company will not solicit or encourage stockholders to request repurchase of their shares. The role of the Company in effectuating repurchases under the Repurchase Plan will be ministerial and will merely facilitate the stockholder's full or partial exit from its investment in the Company.

(ii) *The offer to purchase is made at a premium over the prevailing market price.* No premium will be paid over the prevailing market price by the Company for the shares repurchased. The offering price will be the daily NAV per share for each class of shares, plus, for Class A shares only, applicable selling commissions, and the repurchase price will be the daily NAV per share of the class of shares being repurchased. Further, there is no established regular trading market for the Company's common stock. The Repurchase Plan will be terminated in the event the Company's shares are listed on a national securities exchange or included for quotation in a national securities market. Because there is no trading market and the offering price and repurchase price each day are equal (except that selling commissions are not included in the calculation of the repurchase price), this factor does not apply.

(iii) *The solicitation is made for a substantial percentage of the issuer's stock.* As noted above, the Company will not actively solicit repurchases under the Repurchase Plan.

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<sup>8</sup> The absence of one particular factor does not necessarily mean the non-existence of an issuer tender offer and depending upon the circumstances involved in the particular case, one or more of the factors may be found more compelling and determinative than the others. See *Wellman v. Dickinson*, 475 F. Supp. 783, 824 (S.D.N.Y. 1979).

Further, numerous no-action letters have been issued to traditional non-listed REITs with repurchase plans similar to the Repurchase Plan, except that those plans generally limit repurchases to 5% of the outstanding shares, measured at the beginning of the prior 12-month period. The Repurchase Plan limits repurchases in any calendar quarter to 5% of the combined NAV of all classes of shares of common stock as of the last day of the previous calendar quarter, which means that in any 12-month period, repurchases are limited to approximately 20% of the Company's total NAV. In addition, until the Company's total NAV has first reached \$600 million, repurchases of Class A Shares and Class M Shares in the aggregate may not exceed 25% of the gross proceeds received by the Company from the Effective Date through the last day of the prior calendar quarter. Other than the "five per centum" threshold contained in Section 14(d)(1) of the Exchange Act, we are not aware of any authority that defines what constitutes a "substantial percentage" of an issuer's stock. However, we believe that whether the Repurchase Plan constitutes an issuer tender offer subject to Rule 13e-4 does not hinge on the presence of a 5% limitation on the number of shares of the Company that can be repurchased over a 12-month period. We also believe there is no reasonable likelihood that the Repurchase Plan will have the effect of the Company repurchasing a substantial percentage of the shares of its common stock.

The Repurchase Plan merely provides stockholders with a means of liquidity in respect of their investment, as discussed previously in this letter. The Repurchase Plan does not exist for the same reasons that issuers typically conduct tender offers. The Company intends to continuously raise capital through a continuous public offering and invest the net proceeds in real properties and real estate-related assets. Repurchasing shares decreases funds available for such investments and reduces NAV, which creates a disincentive for the Company to repurchase shares.

(iv) *The terms of the offer are firm, rather than negotiable.* The terms of the Repurchase Plan are firm with respect to the process by which stockholders may request repurchase. While the repurchase price is not negotiable, it is not fixed at the same amount for the duration of the Repurchase Plan, but rather it is determined each day using an established methodology to arrive at NAV per share. The Company believes, however, that the possible existence of this factor does not compel the finding of a tender offer because the firmness of the terms of the Repurchase Plan will not increase pressure on stockholders to request repurchase of their shares. The pressure on stockholders that Rule 13e-4 attempts to eliminate is that which is caused by "a high premium with a threat that the offer will disappear within a certain time."<sup>9</sup> Where these factors exist, firmness in the terms of the offer may have the effect of exacerbating the pressure. However, as previously discussed, the Repurchase Plan will not offer stockholders a premium for their shares and the Company intends that the Repurchase Plan will exist indefinitely (subject to the authority of the board of directors in its reasonable discretion to suspend the plan under specified circumstances or to make modifications to promote its proper and fair operation).

In fact, the uniform NAV-based price should have the effect of mitigating pressure because stockholders will know that they can request to have their shares repurchased by the Company at NAV per share at any time. The Company will not have discretion in the

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<sup>9</sup> See *Brascan Ltd. v. Edper Equities*, 477 F. Supp 773, 792 (S.D.N.Y. 1979).

determination of the repurchase price, contrary to an issuer tender offer. In a typical tender offer, the offeror conceivably has both an incentive and the ability to set the offer price at a level that will maximize the chances of obtaining the desired volume of tenders, while minimizing the overall premium paid. Conversely, the Company, absent extenuating circumstances, will apply, each day, the same comprehensive set of valuation policies and procedures to ascertain the NAV per share. Therefore, the daily repurchase price under the Repurchase Plan will be based upon criteria that are beyond the day-to-day control of the Company.

In addition, in the event the quarterly volume limitation is reached in the first three business days of a quarter, the Per Stockholder Allocation mechanism will alleviate any pressure to request redemptions at the beginning of subsequent quarter by ensuring that stockholders will be able to request redemption for 5% of their shares regardless of the particular day during the quarter when the stockholder chooses to submit its repurchase request.

(v) *The offer is contingent on the tender of a fixed number of shares.* The Repurchase Plan is not contingent on a fixed number of shares being repurchased. Stockholders may choose to request the Company to repurchase none, all or a portion of their shares on a daily basis.

(vi) *The offer is open only for a limited period of time.* The Repurchase Plan is open for an indefinite period. The risk of manipulation and pressure to sell typically associated with tender offers are not present in the Repurchase Plan. This feature of the Repurchase Plan makes it most unlike a tender offer.

(vii) *The offeree is subjected to pressure to sell.* As noted above, the Company will not encourage, invite, solicit or in any way pressure stockholders to participate in the Repurchase Plan. The role of the Company in effectuating repurchases under the Repurchase Plan will be purely ministerial. Because the Repurchase Plan has no set termination date, stockholders will not feel rushed to make decisions regarding participation in the plan. Repurchases under the Repurchase Plan will be on a first-come, first-served basis during each calendar quarter because repurchases will be paid promptly and all repurchase requests received on a day the quarterly cap is reached will be repurchased *pro rata*. If the Repurchase Plan reaches its cap in a calendar quarter, it will automatically reopen for repurchases the first day of the next calendar quarter. In addition, the combination of (1) disclosure of the Repurchase Plan as an integral element of the Offering at the time of the original investment decision with respect to Class A Shares and Class M Shares, (2) the daily regularity of repurchases, (3) the Per Stockholder Allocation mechanism that is triggered when the quarterly volume limitation is reached within the first three business days of any calendar quarter, (4) the comprehensive policies and procedures for determining NAV, and (5) “forward-pricing” to minimize damage to long-term investors from market timing and opportunistic behavior by existing or new stockholders, collectively should act to decrease pressure on stockholders. The Company acknowledges that some features of the Repurchase Plan may, to a limited extent, encourage a stockholder to request repurchase of its shares at a particular time given the perpetual-life structure of the plan. Stockholders may feel pressure to request repurchase of their shares if the daily NAV per share reaches a certain level at which stockholders may realize an attractive return above the amount of their initial investment. Or, stockholders may feel pressure to request repurchase of their shares if they believe the Company may receive repurchase requests in a calendar quarter in excess of the established maximum

amount for that quarter. However, we do not believe that these pressures are the types of pressures placed on offerees in a tender offer which the tender offer rules were intended to address. As noted, the features of the Repurchase Plan are first disclosed to purchasers of Class A Shares and Class M Shares at the time the shares are purchased and to holders of Class E Shares in connection with their approval of the Classification. As such, stockholders are informed of the terms of the Repurchase Plan substantially in advance of the time of their decision to participate in the Repurchase Plan. Stockholders are therefore not presented with a “new” investment decision at the time they become eligible to request the Company to repurchase their shares under the plan. Additionally, the pressures inherent in the plan noted above exist regardless of whether the repurchase price is established daily according to the NAV or monthly or quarterly by the board of directors as is the case in other repurchase plans for which no-action relief has been granted by the Commission. Moreover, even if stockholders believe the Company may receive repurchase requests in a calendar quarter in excess of the established maximum for that quarter, as a result of the Per Stockholder Allocation mechanism, they will be assured that they will be able to request repurchase for at least a portion of their shares in the subsequent quarter, regardless of the particular day during such subsequent quarter when they choose to submit their repurchase request.

(viii) *A public announcement of an acquisition program prior to the accumulation of stock by a purchaser, followed by a rapid accumulation of a large amount of securities.*<sup>10</sup> The intent of the Repurchase Plan is to provide the Company’s stockholders with liquidity, not for the Company to re-acquire its own shares. It is possible that the Company, subject to the Repurchase Plan’s quarterly limits, may repurchase a significant number of shares over a short time pursuant to the Repurchase Plan depending on stockholders’ decisions to exit the investment. Any such shares repurchased by the Company, however, would not be deemed outstanding for purposes of receiving dividends or voting on matters submitted to stockholders.

The Company will describe the Repurchase Plan in the prospectus and related offering materials, and when required, in filings made pursuant to the Exchange Act, including the proxy statement mailed to stockholders in connection with the Classification. The Company will promptly inform stockholders, as required by the Repurchase Plan, of any modification or suspension of the Repurchase Plan. The Company will also file prospectus supplements as required by the Securities Act disclosing the NAV per share of each class of shares and provide each day the NAV per share of each class of shares on its website and toll-free information line. The Company believes, however, that the Repurchase Plan is not characteristic of a publicly-announced acquisition plan which is followed by a rapid accumulation of a large amount of stock. Though disclosure of the Repurchase Plan as described above constitutes a public announcement of its existence and precedes any repurchase, the Company believes that any repurchase of shares that might occur will not be driven by pressure exerted by the Company, as the Repurchase Plan imposes no deadline and offers no premium. Rather, any such accumulation would occur solely as a result of stockholders opting to exit from the investment at a particular NAV per share of their own volition without pressure or prompting by the Company, which is not the type of untoward pressure the tender offer rules were designed to prohibit.

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<sup>10</sup> The *Wellman* case did not include the eighth factor but acknowledged the Commission had listed an eighth factor in *Hoover v. Fuqua Industries, Inc.* See *Wellman*, 475 F. Supp. at 824.

Several courts have agreed that offers without a deadline or premium are not tender offers within the meaning of Rule 13e-4, as stockholders are not subjected to the pressure the rule was designed to mitigate.<sup>11</sup>

Based on analysis of the eight factors discussed above, the Company believes that repurchases of the Company's shares pursuant to the Repurchase Plan do not implicate the concerns that the issuer tender offer rules were intended to address.

#### The Repurchase Plan Withstands a "Totality of Circumstances" Analysis

We also note that some courts have rejected a rigid application of the *Wellman* test and have, instead, applied what the Company considers a reasonable "totality of circumstances" analysis.<sup>12</sup> This analysis looks to all the circumstances surrounding the transaction to determine whether the chief objectives of the tender offer rules and regulations are being met, specifically, to remove the element of secrecy and undue pressure associated with such transaction and to provide stockholders with adequate information to make an informed investment decision in connection therewith.<sup>13</sup>

We believe that the Repurchase Plan withstands such a "totality of circumstances" analysis. Purchasers of Class A Shares and Class M Shares are provided full disclosure of the plan before they purchase shares and invest in the Company and are informed that participation in the Repurchase Plan will be their only viable liquidity option if they want to sell their shares. In addition, with respect to the holders of Class E Shares, the material terms of the Repurchase Plan will be disclosed to these stockholders in the proxy statement mailed to stockholders in connection with the Classification. Finally, the perpetual-life structure of the Repurchase Plan and the Per Stockholder Allocation mechanism eliminate any undue pressure on stockholders that is typical in tender offers. The Company believes that the protections afforded to stockholders by the tender offer rules are not needed for stockholders who participate in the Repurchase Plan. We do not believe that a "substantial risk of ill-considered sales" made "by ill-informed shareholders" will exist for repurchases under the Repurchase Plan if the Rule 13e-4 procedural protections are not implemented.<sup>14</sup>

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<sup>11</sup> See *Panter v. Marshall Field & Co.*, 646 F.2d 271, 286 (7th Cir. 1981) (ruling that where no deadline and no premium existed, stockholders "were simply not subjected to the proscribed pressures the Williams Act was designed to alleviate"); *Brascan*, 477 F. Supp. at 792 (ruling that without high premium and threat that the offer will disappear, large purchases in short time do not represent the kind of pressure the Williams Act was designed to prevent); *Kennecott Copper Corp. v. Curtiss-Wright Corp.*, 449 F. Supp. 951, 961 (S.D.N.Y. 1978) (ruling that where no deadline and no premium existed, there was no pressure, other than normal pressure of the marketplace, exerted on the stockholders), *aff'd in relevant part, rev'd in part*, 584 F.2d 1195, 1207 (2d Cir. 1978).

<sup>12</sup> See *Hanson Trust PLC v. SCM Corp.*, 774 F.2d 47 (2d Cir. 1985); see also *Pin v. Texaco Inc.*, 793 F.2d 1448, 1454-55 (5th Cir. 1986) (applying same analysis to issuer tender offer case).

<sup>13</sup> See, e.g., *Wellman*, 475 F. Supp. at 821-23; *Pin*, 793 F. Supp. at 1454; and *Hanson Trust*, 774 F.2d at 54-56.

<sup>14</sup> See *Hanson Trust*, 774 F.2d at 58.



For the reasons described above, we believe that under a “totality of circumstances” analysis, the Company’s stockholders are not the “particular class of persons [that] need the protection of” the tender offer rules because the terms of the Repurchase Plan were fully disclosed at the time of purchase. Finally, courts have specifically mentioned full disclosure of the time in which to make investment decisions, withdrawal rights, and requirements for *pro rata* purchases of shares accepted in the event the offer is oversubscribed when referring to the substantive and procedural protections provided by Rule 13e-4.<sup>15</sup> We note that these protections are already inherent in the Repurchase Plan even if Rule 13e-4 is inapplicable.

#### Rule 13e-4 No Action Request

We respectfully request that the Staff confirm that it will not recommend that the Commission take enforcement action under Rule 13e-4 with respect to repurchases of any of the Company’s shares under the Repurchase Plan. The Repurchase Plan is substantially similar to the redemption plans of other perpetual-life non-listed REITs for which the Staff has granted no-action relief.<sup>16</sup> In addition, other than the repurchase price and the limitation on the number of shares that can be repurchased during each calendar quarter and cumulatively during the Offering, as noted above, the Repurchase Plan is otherwise substantially similar to repurchase plans for which the Staff granted no-action relief.<sup>17</sup> We do not believe that daily repurchases based upon a daily NAV per share calculation, coupled with a higher limitation on the aggregate value of shares that can be repurchased in a calendar quarter and an additional limitation on the aggregate value of shares that can be repurchased cumulatively during the Offering, impact the analysis included in the no-action letters granted to traditional non-listed REITs. Factors that we believe address these objectives and support this request include:

- All material information relating to the Repurchase Plan will be fully and timely disclosed to all stockholders. The terms of the Repurchase Plan were fully disclosed in the prospectus and the proxy statement that was mailed to stockholders in connection with the Classification and will be disclosed in any prospectus used for subsequent offerings. Furthermore, the NAV per share for each class will always be available on the Company’s website and toll-free information line.
- The Company will not solicit repurchases under the Repurchase Plan other than through the prospectus for the Offering and prospectus supplements disclosing the NAV per share of

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<sup>15</sup> See *SEC v. Carter Hawley Hale Stores, Inc.*, 760 F.2d 945, 949 (9th Cir. 1985).

<sup>16</sup> See Dividend Capital Total Realty Trust Inc. SEC No-Action Letter, 2012 WL 2903983 (July 12, 2012); Cole Real Estate Income Strategy (Daily NAV), Inc. SEC No-Action Letter, 2011 WL 6071983 (Dec. 6, 2011); American Realty Capital Daily Net Asset Value Trust, Inc. SEC No-Action Letter, 2011 WL 2938525 (July 21, 2011); Clarion Partners Property Trust Inc. SEC No-Action Letter, 2012 WL 1999926 (Feb. 24, 2012); Clarion Partners Property Trust Inc. SEC No-Action Letter, 2011 WL 1999926 (May 17, 2011).

<sup>17</sup> See Hines Real Estate Investment Trust, Inc. (Sept. 7, 2006); Apple REIT Six, Inc. (June 30, 2006); Boston Capital Real Estate Investment Trust, Inc. (Feb. 10, 2005); Behringer Harvard REIT I, et al., (Oct. 26, 2004); Paladin Realty Income Properties, Inc. (Oct. 14, 2004); Orange Hospitality, Inc. (Sept. 9, 2004); Hines Real Estate Investment Trust, Inc. (June 18, 2004); CNL Income Properties, Inc. (Mar. 10, 2004); Inland Western Retail Real Estate Trust, Inc. (Aug. 25, 2003); T REIT Inc., (June 4, 2001); and CNL American Properties Fund, Inc. (Aug. 13, 1998).

each class of shares. Stockholders desiring to present all or a portion of their shares for repurchase will do so of their own volition and not at the behest, invitation or encouragement of the Company. The role of the Company in effectuating repurchases under the Repurchase Plan will be ministerial.

- The shares will be repurchased daily under the Repurchase Plan at the daily NAV per share of the class of shares being repurchased and the Company will file prospectus supplements with the Commission with such frequency as is required by the Securities Act disclosing the historical NAV per share of each class of shares and also provide each day the NAV per share for each class of shares on its website and toll-free information line.
- Repurchases will be made on a daily basis. The repurchase price normally will be paid in cash no later than three business days following a repurchase request and will be the same for all shares of the same class repurchased on a given day.
- Repurchases under the Repurchase Plan will be limited in any calendar quarter to shares whose aggregate value (based on the repurchase price per share on the day the repurchase is effected) is 5% of the combined NAV of all classes of shares of common stock as of the last day of the previous calendar quarter, which means that in any 12-month period, the Repurchase Plan will limit repurchases to approximately 20% of the Company's total NAV. In addition, until the Company's aggregate NAV has first reached \$600 million, repurchases of shares of all classes in the aggregate will be limited to 25% of the gross offering proceeds from the Effective Date to the last day of the previous calendar quarter.
- Repurchases under the Repurchase Plan are on a first-come, first-served basis during each calendar quarter and stockholders will be paid promptly for the shares repurchased; all repurchase requests received on a day the quarterly cap is reached, however, will be repurchased *pro rata*.
- If the quarterly volume limitation is reached on or before the third business day of a calendar quarter, repurchase requests during the next quarter will be satisfied based on a Per Stockholder Allocation, pursuant to which each stockholder would be allowed to request repurchase at any time during such quarter of a total number of shares not to exceed 5% of the shares of common stock the stockholder held as of the end of the prior quarter. The Per Stockholder Allocation requirement will remain in effect for each succeeding quarter for which the total repurchases for the immediately preceding quarter exceeded 4% of the Company's aggregate NAV on the last business day of such preceding quarter.
- There will be no established regular trading market for the Company's common stock. The Repurchase Plan will be terminated if the Company's shares are listed on a national securities exchange or included for quotation on a national securities market, or in the event a secondary market for the Company's shares develops.
- The Repurchase Plan is intended to remain open indefinitely for the life of the Company unless modified or suspended by the board of directors. The Company is structured as a

perpetual-life entity and has no intention to list its shares for trading on an exchange or other trading market.

- The Repurchase Plan is open to all stockholders, except that holders of Class E Shares are not eligible to participate in the Repurchase Plan until one year after their shares have converted to Class M Shares.

The Company believes the Repurchase Plan as proposed would not result in the potential for the abuses Rule 13e-4 was intended to prevent and should not be subject to Rule 13e-4. Rather, the Company believes it would be a disservice to stockholders if the Repurchase Plan were not implemented.

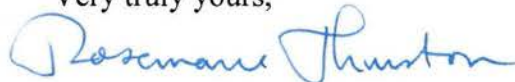
***Rule 13e-3 – Does Not Apply***

Rule 13e-3 should not apply to the Repurchase Plan. Rule 13e-3 governs, among other transactions described in paragraph (a)(3)(i) of the rule, purchases of an equity security by the issuer of such security or by an affiliate of such issuer which has either a reasonable likelihood or a purpose of producing, either directly or indirectly, a “going private” transaction as described in paragraph (a)(3)(ii) of the rule. The Repurchase Plan is not being undertaken for the purpose of causing the Company’s shares to become eligible for termination of registration under Rule 12g-4 or Rule 12h-6 or causing the Company’s reporting obligations to become eligible for termination under Rule 12h-6 or suspension under Rule 12h-3 or Section 15(d) of the Exchange Act. Moreover, there is not a reasonable likelihood that any of the foregoing effects would result from the operation of the Repurchase Plan insofar as the Repurchase Plan has limitations on the amount of repurchases that may be made in each calendar quarter and the Company intends to operate as an perpetual-life vehicle with no finite date set for liquidation by conducting a continuous offering of an unlimited amount of its shares that will be registered under the Securities Act in compliance with Rule 415 under the Securities Act over an unlimited time period. If the extent of repurchases under the Repurchase Plan, after considering offers and sales of new shares as part of such continuous offering, were such that any of the effects described in paragraph (a)(3)(ii)(A) of Rule 13e-3 becomes reasonably likely, then the board of directors will undertake to modify or suspend the Repurchase Plan.

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If you have any questions or need any additional information, please do not hesitate to contact me at (404) 881-4417.

Very truly yours,



Rosemarie A. Thurston

cc: Mr. C. Allan Swaringen, Jones Lang LaSalle Income Property Trust, Inc.  
Mr. Gordon G. Repp, Jones Lang LaSalle Income Property Trust, Inc.  
Mr. Jason W. Goode, Alston & Bird LLP