



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

DIVISION OF  
CORPORATION FINANCE

December 21, 2016

**Response of the Office of Mergers and Acquisitions  
Division of Corporation Finance**

Via E-mail

Dennis O. Garris, Esq.  
Alston & Bird LLP  
The Atlantic Building  
950 F Street, NW  
Washington, DC 20004-1404

**Re: Rich Uncles NNN REIT, Inc.  
Request for No-Action Relief under Rule 13e-4**

Dear Mr. Garris:

We are responding to your letter dated December 21, 2016, addressed to Ted Yu and David L. Orlic, as supplemented by telephone conversations with the staff, regarding your request for no-action relief. To avoid having to recite or summarize the facts set forth in your letter, we attach the enclosed copy of your letter. Unless otherwise noted, capitalized terms in this response letter have the same meaning as in your letter.

On the basis of the representations and the facts presented in your letter and your opinion that the proposed transaction does not constitute an issuer tender offer subject to Exchange Act Rule 13e-4, the Division of Corporation Finance will not recommend that the Commission take enforcement action under Rule 13e-4 if the Company repurchases common shares from its stockholders under the Repurchase Program in the manner described in your letter. In issuing this no-action letter, we considered the following facts, among others:

- All material information relating to the Repurchase Program will be fully and timely disclosed to all stockholders. The terms of the Repurchase Program will be fully disclosed in the prospectus as well as any prospectus used for subsequent offerings, and the repurchase price and NAV per share will always be available on the Company's website and toll-free information line;
- The Company will not solicit repurchases under the Repurchase Program other than through the prospectus for the Offering and through supplements and amendments thereto disclosing the NAV per share. Stockholders desiring to request repurchase of all or a portion of their shares 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 Program is ministerial;

- The shares will be repurchased monthly under the Repurchase Program at the most recently determined NAV per share subject to any applicable short-term holding discounts. The Company will file supplements and amendments to the Registration Statement with the Commission with such frequency as is required by the Securities Act, along with current reports and quarterly and annual reports with information disclosing the most recently determined NAV per share and also make information regarding the NAV per share available on its website and toll-free information line;
- Repurchases under the Repurchase Program will be made on a monthly basis. Qualifying stockholders who desire to have their shares repurchased by the Company must give notice to the Advisor at least two business days prior to the end of a month. The repurchase price normally will be paid in cash no later than the third business day after the end of a month in which a repurchase request was received and not withdrawn;
- Net repurchases or gross repurchases (depending on which option the Board has chosen) under the Repurchase Program will be limited pursuant to the Modified Repurchase Limitation. In order for the Board to change the application of the Modified Repurchase Limitation from net repurchases to gross repurchases or vice versa, the Company will provide notice to stockholders in a prospectus supplement or current or periodic report filed by the Company, as well as in a press release or on the Company's website, at least 10 calendar days before the first business day of the quarter for which the new test will apply;
- If the Company is unable to repurchase all shares requested to be repurchased during a particular month, repurchases under the Repurchase Program for such month will be made on a pro rata basis;
- Stockholders may withdraw any repurchase request, provided that such request must be received by the Advisor at least two business days prior to the end of the month;
- Material modifications, including any reduction to the monthly or quarterly limitations on repurchases, and suspensions of the Repurchase Program, will be promptly disclosed in a prospectus supplement (or post-effective amendment if required by the Securities Act) or current 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 Program 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 Program is intended to remain open indefinitely for the life of the Company unless modified or suspended by the Board. 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 Program is open to all stockholders, subject to short-term trading discounts.

The foregoing no-action position is based solely on the representations and the facts presented in your letter dated December 21, 2016 and does not represent a legal conclusion with respect to the applicability of the statutory or regulatory provisions of the federal securities laws. The relief is strictly limited to the application of the rule 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. In addition, this position is subject to modification or revocation if at any time the Commission or the Division determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

We also direct your attention to the anti-fraud and anti-manipulation provisions of the federal securities laws, including Sections 10(b) and 14(e) 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 participants in this transaction. 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, this transaction.

Sincerely,



Ted Yu  
Chief, Office of Mergers & Acquisitions  
Division of Corporation Finance

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December 21, 2016

Mr. Ted Yu, Chief  
David L. Orlic, 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: RICH UNCLES NNN REIT, INC.  
Request for No-Action Relief under Rule 13e-4**

Dear Messrs. Yu and Orlic:

Alston & Bird LLP is special counsel to Rich Uncles NNN REIT, Inc. (the “Company”). The Company is engaged in an initial public offering (the “Offering”) pursuant to a Registration Statement on Form S-11 (Registration Number 333-205684), as amended from time to time (the “Registration Statement”), under the Securities Act of 1933, as amended (the “Securities Act”). The Registration Statement was initially filed with the Securities and Exchange Commission (the “Commission”) on July 15, 2015, to register the offer and sale of up to 100,000,000 of its shares of common stock, of which 90,000,000 common shares will be offered to the public in a primary offering and 10,000,000 common 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 June 1, 2016 (the “Effective Date”).

The Company was formed as a Maryland corporation on May 14, 2015. The Company expects to use the net proceeds from the sale of its shares to invest in single-tenant, income-producing corporate properties leased under long-term net leases. The Company is externally advised and intends to qualify and elect to be taxed as a real estate investment trust (a “REIT”) under the Internal Revenue Code of 1986, as amended, beginning with the taxable year ended December 31, 2016. 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 its shares of common stock over an unlimited time period by filing an uninterrupted series of new registration statements prior to the expiration of each three-year offering in accordance with Rule 415 promulgated under the Securities Act. This perpetual-life structure is aligned with the Company's overall objective of investing in real estate assets with a long-term view towards making regular cash distributions and generating capital appreciation.

A fundamental feature of the Offering is the Company's share repurchase program (the "Repurchase Program"), which is to be the primary source of liquidity for stockholders.<sup>1</sup> Repurchases under the Repurchase Program are not contingent on the sale of a certain number of shares in a given period. Rather, pursuant to the current terms of the Repurchase Program, the Company may repurchase, during any 12-month period, up to 5% of the weighted-average number of its shares outstanding during the prior 12 months (the "Repurchase Limitation"). However, because the Repurchase Program is the primary source of liquidity for the Company's stockholders, the Company desires to increase the number of shares that stockholders may have repurchased by the Company thereunder. Accordingly, the Company now proposes to modify the Repurchase Limitation in two respects (together, the "Modified Repurchase Limitation"). First, the Company proposes to limit repurchases per month to no more than 2% of the Company's most recently determined aggregate net asset value ("NAV"), which the Company intends to calculate on an annual basis beginning with a calculation as of December 31, 2016, and for any calendar quarter to no more than 5% of the Company's most recently determined aggregate NAV, which means the Company will be permitted to repurchase up to an aggregate limit of approximately 20% of the Company's aggregate NAV in any 12-month period.<sup>2</sup>

Second, the Company proposes to measure the foregoing repurchase limitations based on net repurchases received by the Company during a quarter or month, as applicable. The term "net repurchases" means the excess of the Company's share repurchases (capital outflows) over the proceeds from the sale of its shares (capital inflows). Thus, for any given calendar quarter, the maximum amount of repurchases during that quarter will be equal to (1) 5% of the Company's most recently determined aggregate NAV, plus (2) proceeds from sales of new shares in the Offering (including purchases pursuant to the Company's distribution reinvestment plan) since the beginning of the current calendar quarter, less (3) repurchase proceeds paid since the beginning of the current calendar quarter. The same would apply for a given month, except that repurchases in a month would be subject to the 2% limit described above, and netting would be measured on a monthly basis.

As a general matter, if repurchases were not measured on a net basis, the quarterly or monthly repurchase limitations could limit repurchases for the given period despite the Company receiving a net inflow for that period, which is at odds with the objectives of a perpetual-life, non-

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<sup>1</sup> The Repurchase Program 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> The Company is currently offering only one class of its common stock.

listed REIT and does not advance the investor protection goals underlying the tender offer rules. However, while the Company currently expects the modified Repurchase Program to provide that the Modified Repurchase Limitation will initially be applied to net repurchases for any calendar quarter, the Company's board of directors (the "Board") may choose whether the 5% quarterly limit will be applied to "gross repurchases," *i.e.*, without netting against capital inflows, rather than to net repurchases. If repurchases for a given quarter are measured on a gross basis rather than on a net basis, the 5% quarterly limit could limit the amount of shares redeemed in a given quarter despite the Company receiving a net capital inflow for that quarter. In order for the Board to change the basis of repurchases from net to gross, or vice versa, the Company will provide notice to stockholders in a prospectus supplement or current or periodic report filed by the Company, as well as in a press release or on the Company's website, at least 10 days before the first business day of the quarter for which the new test will apply. The determination to measure repurchases on a gross basis, or vice versa, will only be made for an entire quarter, and not particular months within a quarter.

The Modified Repurchase Limitation, along with any related changes to the Repurchase Program, would not take effect until January 1, 2017, at which time the Company anticipates that shares will be sold in the Offering at a price equal to the Company's NAV per share, rather than at the current fixed price of \$10.00 per share. Such changes would be reflected in a prospectus supplement, a current or periodic report and in whatever other manner the Commission or the staff of the Division of Corporation Finance of the Commission (the "Staff") requires.

The Repurchase Program is similar to the repurchase/redemption plans of other perpetual-life, non-listed REITs with respect to which the Staff has granted no-action relief.<sup>3</sup> Like these other REITs, the Company has 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 of their control. Shares repurchased by the Company will become authorized but unissued shares and will not be resold to the public unless their sale has been 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**

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<sup>3</sup> See Blackstone Real Estate Income Trust, Inc. (September 12, 2016); RREEF Property Trust, Inc. SEC No-Action Letter, 2013 WL 65987 (Jan. 4, 2013); Jones Lang LaSalle Income Property Trust, Inc. SEC No-Action Letter, 2012 WL 5450035 (Oct. 11, 2012); Dividend Capital Total Realty Trust Inc. SEC No-Action Letter, 2012 WL 2903983 (July 12, 2012) (describing net and gross redemptions); Cole Real Estate Income Strategy (Daily NAV), Inc. SEC No-Action Letter, 2011 WL 6071983 (Dec. 6, 2011) (describing net and gross redemptions); 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) (describing net and gross redemptions); and Clarion Partners Property Trust Inc. SEC No-Action Letter, 2011 WL 1999926 (May 17, 2011).

As discussed in greater detail below, the Repurchase Program, as amended by the Modified Repurchase Limitation, should not result in the Repurchase Program being deemed an issuer tender offer under Rule 13e-4 promulgated under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Rather, the Repurchase Program, as amended by the Modified Repurchase Limitation, is substantially identical in several critical respects to repurchase/redemption programs of other perpetual-life, non-listed REITs, including those with respect to which the Staff has previously granted no-action relief under Rule 13e-4. Namely, (i) the Repurchase Program provides for monthly repurchases, (ii) the repurchase price will be the Company’s most recently determined and published NAV per share as of the time of repurchase<sup>4</sup> and (iii) the number of shares to be repurchased on a net or gross basis will be limited pursuant to the Modified Repurchase Limit. As a result, we respectfully submit that repurchases pursuant to the Repurchase Program do not implicate the concerns that the issuer tender offer rules were adopted to address. Specifically, the Repurchase Program, which offers stockholders no premium, will have no set termination date, provides stockholders with adequate substantive disclosure upon which to base a decision to repurchase their shares, and will not have the effect of pressuring uninformed stockholders to repurchase their shares.

The Company thus 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 the amendment of the Repurchase Program to implement the Modified Repurchase Limitation.

## **OVERVIEW OF THE COMPANY, THE OFFERING AND THE REPURCHASE PROGRAM**

### *The Company and the Offering*

The Company was formed as a Maryland corporation on May 14, 2015 and intends to be taxed as a REIT beginning with the taxable year ended December 31, 2016. The Company expects to use the net proceeds from the sale of its shares to invest in single-tenant, income-producing corporate properties leased under long-term net leases. The Company’s goal is to generate a relatively predictable and stable current stream of income for its stockholders and the potential for long-term capital appreciation in the value of its properties. The Company is externally managed by Rich Uncles NNN REIT Operator, LLC, its advisor (the “Advisor”), which is wholly owned by the Company’s sponsor, Rich Uncles, LLC (the “Sponsor”).

Unlike other non-listed REITs, the Company will sell shares in its primary offering directly to investors via the internet and not through registered broker-dealers and investment advisors. Because of this approach to distribution, the Company does not charge investors selling commissions, dealer manager fees or similar distribution-related fees. The Company will, however, reimburse the Sponsor for actual organizational and offering expenses up to 3% of gross proceeds from the Offering. As a result of the Company’s direct-to-investor distribution approach, the amount of offering proceeds available for investment in the Company’s targeted real estate investments is 97% of gross offering proceeds, as opposed to traditional non-listed REITs where only 85% to 90% of gross offering proceeds are available for targeted investments.

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<sup>4</sup> In the unlikely event that a NAV per share is not available, the repurchase price will be \$10.00 per share.

The Company believes that this lower cost structure offers it a competitive advantage in its ability to achieve its investment objectives and provide attractive returns to its stockholders.

The Company is currently selling shares in the Offering at \$10.00 per share. However, the Company intends that, commencing January 1, 2017, shares will be sold in the Offering at a price equal to the Company's NAV per share, rather than at an arbitrary fixed price per share. The Company's NAV per share will be publicly disclosed at that time on its website, and in a prospectus supplement and Current Report on Form 8-K. The process by which the Company will determine its NAV and NAV per share is described in greater detail below.

### ***The Repurchase Program***

#### Purpose of the Repurchase Program

The Company adopted the Repurchase Program to provide its stockholders with liquidity with respect to their investment in the Company's common stock, subject to specified limitations. Through the Repurchase Program, the Company's stockholders can present to the Company for repurchase all or a portion of their shares. The Repurchase Program is an important feature of the investment in the shares, since the Company expects the Repurchase Program will serve as its stockholders' sole meaningful source of liquidity. Without an effective Repurchase Program, 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 (except for limited or sporadic quotations) will develop and (3) unlike traditional non-listed REITs, the Company is not required, and does not intend, 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 case developed for traditional non-listed REITs. However, these markets are very small and inefficient. Additionally, third parties have at times 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 programs 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 provide further evidence that sufficient liquidity options may not always exist for stockholders in non-listed REITs with traditional repurchase programs and that stockholders in these types of non-listed REITs often suffer financially as a result. The Company also notes that 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 programs that are subject to substantial limitations on repurchases. The Company believes that many investment professionals and investors consider the traditional non-listed REIT repurchase programs 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 program 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.

The Offering and the Repurchase Program 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, beginning on January 1, 2017, the price of the Company's shares will be based on the underlying fair value of its assets, rather than an arbitrary dollar amount. Additionally, the Repurchase Program provides the Company's stockholders with greater liquidity than traditional non-listed REITs by allowing stockholders to request the repurchase of all or a portion of their shares on a monthly 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 the repurchases (as compared to the typical traditional non-listed REIT repurchase program in which the sources of cash are limited to proceeds from the sale of additional shares through the distribution reinvestment plan).

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

The Company intends to calculate its NAV and NAV per share on an annual basis beginning with a calculation as of December 31, 2016. The Company's NAV will be calculated by the Board using a process that reflects (i) the annually estimated values of each of the Company's commercial real estate assets and related liabilities, (ii) the price of its liquid assets as of the last business day of each year, (iii) accrued stockholder distributions and (iv) estimated accruals, on a net basis, of the Company's operating revenues, expenses, debt service costs and fees.

To determine the Company's NAV, the Board will engage an independent valuation firm to value the Company's commercial real estate properties, liquid investments and commercial real estate-related liabilities. The Board intends to adopt valuation guidelines to be used by the independent valuation firm, which will be consistent with industry best practices for NAV calculation, including those adopted by the boards of other perpetual-life REITs.

The independent valuation firm will conduct its valuation of the Company's commercial real estate assets and liabilities as of the last business day of the calendar year. The estimates of the values of the Company's assets and liabilities will be reviewed by the Advisor for consistency with the Company's valuation guidelines and the overall reasonableness of the valuation conclusions. The independent valuation firm may consider any comments received from the Advisor with respect to its individual appraisal reports, but the final estimated values of the Company's assets and liabilities will be determined by the Board, including a majority of the Board's conflicts committee, which is comprised solely of independent directors.

After the Board has received the independent valuation firm's report, it has discretion to adjust the estimated value of the Company's assets and the liabilities based on the Board's independent judgment of property values or economic conditions of individual properties, local conditions or general economic conditions. The Company expects that such adjustments will be infrequent, consistent with industry custom and practice, and only made to reflect events with respect to an asset or liability that the Board believes would have a material impact on the most

recently estimated values and that have occurred between the time of the most recent valuation performed by the independent valuation firm and the Board's calculation of NAV. These adjustments generally would occur under the same circumstances that would cause the Company to adjust its NAV between regularly scheduled annual calculations of NAV, as described below. The Board will determine the appropriate adjustment to be made to an estimated value based on all currently available information and on reasonable assumptions and judgments that may or may not prove to be correct. Any such adjustment must be approved by a majority of the Board's conflicts committee.

Once the Board has determined the value of the Company's real estate and real estate-related assets and liabilities, the Advisor will then calculate the Company's "Preliminary NAV" by (i) adding any other assets held by the Company, which the Company expects to be limited to cash and cash equivalents and (ii) subtracting an estimate of any accrued liabilities of the Company, which the Company expects to be limited to accrued fees and reimbursements due to the Advisor and Sponsor, accrued distributions and certain legal, accounting and administrative costs.

This Preliminary NAV calculation will determine whether any subordinated participation fee is due to the Advisor and, if so, the amount of the subordinated participation fee.<sup>5</sup> If a subordinated participation fee is due to the Advisor, it will be deducted from the prior calculation and the result will be the Company's NAV as of the end of the calendar year.

The Company's NAV per share will then be determined by dividing the NAV as of the end of the calendar year by the number of shares of common stock outstanding as of such day.

Additionally, the Company may update its NAV per share, and correspondingly the price per share in the Offering and pursuant to the Repurchase Program, at any time between such annual calculations to reflect significant events that the Company determines have a material impact on its NAV, such as certain acquisitions or dispositions of real properties. However, because the Company's portfolio consists of commercial real estate, it expects that its NAV per share will rarely change absent material events such as major acquisitions or dispositions. The Company will report its NAV per share in filings required by the Securities Act and the Exchange

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<sup>5</sup> The subordinated participation fee is an annually measured performance fee subordinated to payment to stockholders of at least a 6.5% cumulative, non-compounded return on the highest previous offering price to the public for the Company's shares, after adjustment to reflect all return of capital distributions (such highest previous offering price the "Highest Prior NAV Per Share," and such return the "Preferred Return"). The subordinated participation fee is only due to the Advisor if the Preferred Return is achieved and is equal to the sum of:

- (i) 40% of the product of (a) the difference of (x) the Preliminary NAV per share minus (y) the Highest Prior NAV Per Share, multiplied by (b) the number of shares outstanding as of December 31 of the relevant annual period, but only if this results in a positive number, *plus*
- (ii) 40% of the product of: (a) the amount by which aggregate cash distributions to stockholders during the annual period, excluding return of capital distributions, divided by the weighted average number of shares outstanding for the annual period, calculated on a monthly basis, exceed the Preferred Return, multiplied by (b) the weighted average number of shares outstanding for the annual period, calculated on a monthly basis.

Act, or in separate written notices to its stockholders, as applicable. The Company will also disclose its most recently determined NAV per share on its website and make it available via a toll-free telephone number.

#### Share Repurchase Price

Under the Repurchase Program, the Company intends to repurchase shares held for at least three years at a price equal to 100% of the most recently determined and published NAV per share (or, prior to the publication of a NAV per share, at a price of \$10.00 per share).<sup>6</sup> At any time that the Company is offering its shares to the public, the repurchase price will never exceed the applicable per-share offering price.

The Company imposes the following modest short-term holding discounts under the Repurchase Program: shares held for less than one year are repurchased at 97% of the most recently published NAV per share or prior to the publication of a NAV per share, \$9.70 per share; shares held for at least one year but fewer than two years are repurchased at 98% of the most recently published NAV per share or prior to the publication of a NAV per share, \$9.80 per share; and shares held for at least two years but fewer than three years are repurchased at 99% of the most recently published NAV per share or prior to the publication of a NAV per share, \$9.90 per share.

#### Timing and Settlement of Share Repurchases

The Company repurchases shares monthly. Qualifying stockholders who desire to have their shares repurchased by the Company must give notice to the Advisor at least two business days prior to the end of a month. A stockholder may withdraw a repurchase request, provided that such withdrawal must also be received by the Advisor at least two business days prior to the end of a month. Thus, stockholders will generally have 20 business days (from the last business day of the previous month to the second-to-last business day of the current month) during which to decide whether to request a repurchase of their shares (and withdraw such request, if desired) as of the end of the current month. The Company will repurchase requested shares on the third business day after the end of a month in which a request for repurchase was received and not withdrawn.

In addition, the Company will publish the price at which shares will be repurchased on its website ([www.richuncles.com](http://www.richuncles.com)) and make the price available via a toll-free telephone number. Under normal circumstances, the Company expects to fulfill repurchase requests, subject to the 2% monthly and 5% quarterly repurchase limitations described herein. The Company's website will contain the current prospectus, including all supplements thereto. The Company will also disclose its NAV per share, when determined, in prospectus supplements it files with the SEC and will file post-effective amendments to its Registration Statement as required by the Securities Act. In addition, the prospectus supplements disclosing the Company's NAV per share will also disclose the primary valuation components of that NAV per share. Each of the Company's

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<sup>6</sup> As noted above, the Company intends to offer its shares at a price equal to its NAV per share beginning January 1, 2017.

prospectus supplements will provide the historical NAV per share since last reported in a prospectus supplement.

If the Company's NAV is adjusted during the year, the Company will publish the adjusted repurchase price (i.e., the new NAV per share) no later than ten business days prior to the second-to-last business day of the month in which such adjustment occurred. In the event the repurchase price is adjusted during the year, a stockholder may still make a repurchase request before the repurchase price is made available, but such stockholder will know the price at least ten business days prior to the second-to-last business day of the month and, as a result, will have at least ten business days to consider the repurchase price before the deadline to submit a repurchase request (the first day of the ten business day period is the day the repurchase price is made available and the tenth day of the period is the repurchase request deadline (the second-to-last business day of the month)). A stockholder will also have an opportunity to withdraw his or her request after the price is made available by notifying the Company. Stockholders who make their repurchase request after the tenth business day prior to the second-to-last business day of the month will know the repurchase price at the time of their request. In the unlikely case that the repurchase price is adjusted during the year and the adjusted repurchase price for the applicable month is not made available by the tenth business day prior to the second-to-last business day of the month (or is changed after such date), then no repurchase requests will be accepted for such month and stockholders who wish to have their shares repurchased the following month must resubmit their repurchase requests.

#### Funding and Limitations of the Repurchase Program

The Repurchase Program, as amended by the Modified Repurchase Limitation, will permit the repurchase of shares, on a net repurchase or gross repurchase basis (depending on which option the Board has chosen) during any calendar month whose aggregate value (based on the repurchase price per share for the month the repurchase is effected) is 2% of the Company's most recently determined aggregate NAV and during any calendar quarter whose aggregate value (based on the repurchase price per share for the month the repurchase is effected) is up to 5% of the Company's most recently determined aggregate NAV. The Company currently expects the Repurchase Program, as amended, to provide that the Modified Repurchase Limitation will initially be applied to net repurchases. However, for any calendar quarter, the Board may choose whether the 5% quarterly limit will be applied to gross repurchases rather than to net repurchases. If repurchases for a given quarter are made measured on a gross basis rather than on a net basis, the 5% quarterly limit could limit the amount of shares redeemed in a given quarter despite the Company receiving a net capital inflow for that quarter. In order for the Board to change the basis of repurchases from net to gross, or vice versa, the Company will provide notice to stockholders in a prospectus supplement and current or periodic report, as well as in a press release or on the Company's website, at least 10 calendar days before the first business day of the quarter for which the new basis will apply. The determination to measure repurchases on a gross basis, or vice versa, will only be made for an entire quarter, and not particular months within a quarter.

The Company will also not repurchase shares if doing so would cause the Company to violate the restrictions on distributions under Maryland law, which prohibits distributions that would cause a corporation to fail to meet statutory tests of solvency.

The Company intends to fund repurchases from any available cash sources at its disposal, including available cash, cash flow from operations, the sale of real estate-related securities and other assets, borrowings or offering proceeds, and the Company has no limits on the amounts it may pay from such sources. However, the Company will amend its prospectus to disclose that it may repurchase fewer shares than have been requested to be repurchased in any particular month, or none at all, in its discretion, including due to the lack of readily available funds because of market conditions beyond its control, the need to maintain liquidity for its operations or because it has determined that investing in real property or other illiquid investments is a better use of its capital than repurchasing its shares. Although management of the Company believes it is important to provide the Company's stockholders with liquidity with respect to their investment in the Company's common stock and has no current intention to repurchase fewer shares than have been requested to be repurchased in any particular month, management believes it is equally important to have the flexibility to maintain liquidity for the Company's operations or invest the Company's capital as it determines is in the best interest of all of the Company's stockholders from time to time. Any determination to repurchase fewer shares than have been requested to be repurchased may be made immediately prior to the applicable date of repurchase, and will be disclosed subsequently to prospective investors and stockholders in periodic prospectus supplements and/or reports filed by the Company, or more frequently as required by applicable securities laws.

In the event that the Company repurchases some but not all of the shares submitted for repurchase during any month, shares submitted for repurchase during such month will be repurchased on a *pro rata* basis. Under the limits imposed by the Modified Repurchase Limitation, during a given quarter, if in each of the first two months of such quarter the 2% repurchase limit is reached and stockholders' repurchases are reduced *pro rata* for such months, then in the third and final month of that quarter, the applicable limit for such month will be less than 2% of the Company's most recently determined aggregate NAV because the repurchases for that month, combined with the repurchases in the previous two months, cannot exceed 5% of the Company's most recently determined aggregate NAV.

The Repurchase Program currently provides that if the Company does not repurchase all shares presented for repurchase, then the Company will treat the unsatisfied portion of the repurchase request as a new request for repurchase, unless the repurchase request is withdrawn, and such new request will be subject to the same limitations and treated the same as all other new repurchase requests. However, the Company hereby undertakes to amend the Repurchase Program to provide that all unsatisfied repurchase requests must be resubmitted after the start of the next month or quarter, or upon the recommencement of the Repurchase Program, as applicable.

The Board's primary objective regarding the Repurchase Program is to maintain the uninterrupted repurchase of shares in order to provide stockholders with liquidity with respect to 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 Program 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 Program 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 long-term operation of the Repurchase Program. Accordingly, should repurchase requests, in the business judgment of the Board, 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 Board may modify or suspend the Repurchase Program if it deems such action to be in the best interest of the Company's stockholders. In addition, the Board may determine to suspend the Repurchase Program due to regulatory changes, changes in law, or if the Board becomes aware of undisclosed material information that it believes should be publicly disclosed before shares are repurchased. Material modifications, including any reduction to the monthly or quarterly limitations on repurchases, and suspensions to the Repurchase Program will be promptly disclosed to stockholders in a prospectus supplement (or post-effective amendment if required by the Securities Act) or current or periodic report 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 Program is necessary and warranted to ensure that the Board can discharge its fiduciary duties to promote the long-term efficacy of the Repurchase Program, while also ensuring the equitable treatment of stockholders who do and do not request repurchase of their shares. Notwithstanding the foregoing, the Board has no current intention to modify or suspend the Repurchase Program, other than with respect to the implementation of the Modified Repurchase Limitation and the other related changes described herein, and expects that the Repurchase Program will continue indefinitely. In addition, the Company will seek confirmation of the no-action relief requested hereby if the Board proposes to (i) modify the Repurchase Program from monthly to less frequent repurchases, (ii) reduce the repurchase price to an amount that reflects a discount to NAV per share (except with respect to the short-term holding discounts of 1% to 3% described above), or (iii) modify other aspects of the Repurchase Program 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 Program which are consistent with the factual and legal representations contained in this letter.

#### Disclosure

The Company has not and does not intend to publicize separately the existence of the Repurchase Program 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 and repurchase price disclosure in stockholder communications and the provision of NAV per share on the Company's website and toll-free information line and in prospectus supplements filed with the SEC. Neither the Company nor any of its affiliates will make any recommendation to the Company's stockholders as to whether to participate in the Repurchase Program. The prospectus for the Offering contains a comprehensive description of all terms, conditions and

features of the Repurchase Program and will be updated to reflect any material modifications made during the Offering, including any modifications to the Repurchase Program or other terms of the Offering required by the Commission as a condition of the no-action relief requested herein. As a result, an investor will have all of the material information necessary to make a repurchase decision at the time the investor makes such a 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 conducted similar public offerings.<sup>7</sup> The Company's request for no-action relief includes: (i) a limitation on the number of shares of all classes that will be repurchased whether on a net or gross basis per the Modified Repurchase Limitation and (ii) the pricing of repurchases based on NAV per share, a price that is used for both the Offering and repurchases. These features are designed to offer liquidity to investors and provide investors with a repurchase price that is based on the underlying fair value of the Company's assets rather than an arbitrary fixed price or a discount to NAV per share, as is the case in traditional non-listed REIT offerings.

The Company acknowledges that the relief granted to other non-listed REITs has generally been for either (i) daily or monthly NAV non-listed REITs<sup>8</sup> or (ii) non-listed REITs that offer quarterly repurchases for limited numbers of shares at an arbitrary fixed price rather than at NAV per share (although certain REITs that rely on the relief related to arbitrary fixed price REITs also plan to make quarterly repurchases based on NAV at a future date following the determination of their NAV per share).<sup>9</sup> The Repurchase Program, in contrast, provides for monthly repurchases using a repurchase price that will be based on the Company's NAV per share beginning January 1, 2017. As described in more detail below, the Company does not believe these differences from other non-traded REITs' repurchase programs materially impact the analysis of whether the Repurchase Program constitutes an issuer tender offer. See "Rule 13e-4 No-Action Request—The Repurchase Program is not an Issuer Tender Offer" and "—Analysis of the *Wellman* Factors" below.

The Company has adopted its NAV-based pricing method with the objective of having its shares sold and repurchased monthly at a price that reflects the value of its investments. Absent

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<sup>7</sup> See *supra* note 3.

<sup>8</sup> See *supra* note 3.

<sup>9</sup> 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); CNL American Properties Fund, Inc., SEC No-Action Letter, 1998 WL 476210 (Aug. 13, 1998).

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 a monthly basis.

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 Program at the time they purchase their shares by means of prospectus disclosure, and will be informed in writing of any changes to the Repurchase Program, the Company will not affirmatively solicit participation by its stockholders in the Repurchase Program. 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 Program is ministerial and merely facilitates a stockholder's 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 has been 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 Program in the event its shares are listed on a national securities exchange or included for quotation on a national securities market, or in the event a secondary market (other than limited or sporadic quotations) for the Company's shares develops. However, the Company currently does not intend or expect that such events will occur.

#### ***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 Program is not an Issuer Tender Offer

The Repurchase Program, with the revisions described herein, including the Modified Repurchase Limitation, 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 the Staff in determining what constitutes a tender offer, as well as the fact that the terms of the Repurchase Program, as amended, will be fully disclosed to current and potential investors of the Company's common stock. Stockholders will be aware of the most current price at which shares will be repurchased through the Company's website and toll-free information line. If the repurchase price is adjusted during the year, stockholders will be given sufficient time after the adjusted



repurchase price is made available to submit their repurchase request or, if they had previously submitted their repurchase request, to withdraw such request if desired. No new investment decision is being made at the time of actual repurchase. Because the Repurchase Program 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 Program 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 programs that offer periodic repurchases for limited numbers of shares at an arbitrary fixed price.<sup>10</sup> We believe the perpetual-life structure of the Repurchase Program, a repurchase price that is based on the underlying fair value of the Company's NAV per share rather than an arbitrary fixed price, and the application of the *pro rata* repurchase mechanism if any repurchase limitation is exceeded or the Company determines to repurchase fewer shares than have been requested to be repurchased in any particular month reduce the pressure on stockholders with respect to making a repurchase request. There will not be a limited time period in which to make a repurchase request. Stockholders may request the repurchase of all or a portion of their shares throughout the continuous offering, which has no anticipated termination date, at NAV per share. In addition, repurchases will be reduced *pro rata* in the event the monthly or quarterly volume limitations are reached (unlike with daily NAV non-listed REITs, which are primarily on a first-come first-serve basis). The combination of the Repurchase Program's *pro rata* mechanism together with the perpetual-life structure of the Repurchase Program, which allows any stockholder whose repurchase request was not fully accepted in any particular month or quarter to request repurchase of such shares in the following month or quarter, as applicable, will alleviate any pressure to request repurchases at the beginning of a particular month or quarter.

Daily NAV non-listed REITs conduct repurchases on a daily basis but typically have quarterly limits on the amount of repurchases that will be made. As a result, daily NAV non-listed REITs accept repurchases on a first-come, first-serve basis and once the limit is reached, later repurchase requests will not be accepted. These daily NAV non-listed REITs have mechanisms designed to remedy this inequity by giving stockholders the opportunity to achieve *pro rata* repurchases in later periods. The Repurchase Program will not face this issue because, although it will have a monthly limit, it will conduct its purchases on a monthly basis. Therefore, stockholders that request a repurchase during a month will receive equal treatment regardless of what time in the month their request was made, and repurchase requests will not be accepted on a first-come, first-serve basis. If the repurchase limit is exceeded for a given month, each stockholder's repurchase amount for that month will be reduced *pro rata*.

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 per share, the Company believes that material fluctuations in the NAV per share on during the year are unlikely.

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<sup>10</sup> See *supra* note 9.

Analysis of the *Wellman* Factors

An analysis of the *Wellman* factors demonstrates that the Repurchase Program should not be viewed as a tender offer.<sup>11</sup> Set forth below is an application of these factors to the Repurchase Program.

(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 Program is described in the Offering prospectus and any communications to stockholders identifying changes to the Repurchase Program 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 Repurchase Program's existence. The Company will not make any other significant public communications about the Repurchase Program 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, the providing of the monthly repurchase price on the Company's website and toll-free information line and communications required by the Repurchase Program itself. Stockholders desiring to request repurchase of all or a portion of their shares 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 Program 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. Both the price of shares in the Offering and under the Repurchase Program will generally be the Company's NAV per share (subject to the short-term holding discounts described herein). Further, there is no established regular trading market for the Company's common stock. The Repurchase Program 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 established trading market and the offering price and repurchase price each month are equal, 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 Program. Further, other no-action letters have been issued to non-listed REITs with repurchase programs similar to the Repurchase Program. The Repurchase Program, as amended by the Modified Repurchase Limitation, will limit repurchases, whether on a net or gross basis, in any calendar month to 2%, and in any calendar quarter to 5%, of the Company's most recently determined aggregate NAV. Other than the "five per centum" threshold contained in Section 14(d)(1) of the

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<sup>11</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*, 475 F. Supp. at 824.

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 Program 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 Program will have the effect of the Company repurchasing a substantial percentage of the shares of its common stock.

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

Under the Repurchase Program, as amended by the Modified Repurchase Limitation, the maximum amount of shares that may be repurchased over a 12-month period is approximately 20% of the Company’s aggregate NAV. However, this is a theoretical limit, and one which is not expected to occur.

*(iv) The terms of the offer are firm, rather than negotiable.* The terms of the Repurchase Program are firm with respect to the process by which stockholders may request repurchase. Moreover, while the repurchase price is not negotiable, it is not fixed at the same amount for the duration of the Repurchase Program, but rather is the Company’s NAV per share (subject to any applicable short-term discounts). In addition, while the Board will have flexibility to decide whether the Modified Repurchase Limitation applies to net repurchases or gross repurchases, this flexibility will be disclosed to stockholders and, in order to change the test, the Company will provide notice to stockholders in a prospectus supplement or current or periodic report filed by the Company, as well as in a press release or on the Company’s website, at least 10 calendar days before the first business day of the quarter for which the new test will apply. 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>12</sup> Where these factors exist, firmness of the terms of the offer may have the effect of exacerbating the pressure. This concern, however, is not present with respect to the Repurchase Program. However, as previously discussed, the Repurchase Program will not offer stockholders a premium for their shares and the Company intends for the Repurchase Program to exist indefinitely (subject to the authority of the Board in its reasonable discretion to suspend the repurchase of shares under the appropriate circumstances or to make modifications to the Repurchase Program to promote its proper and fair operation).

Additionally, NAV-based pricing should have the effect of mitigating pressure because stockholders will know that they can request to have their shares repurchased by the Company at the end of any month, under normal circumstances at NAV per share. In a typical tender offer, the

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<sup>12</sup> See *Brascan Ltd. v. Edper Equities*, 477 F. Supp. 773, 792 (S.D.N.Y. 1979).

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 will repurchase at NAV per share, and it will have discretion in the determination of the repurchase price only in cases where it believes there has been a material change to the NAV per share since the end of the prior year. The Company expects such cases to be rare, and in such cases, will estimate the current NAV per share after giving effect to such material change. Therefore, the monthly repurchase price under the Repurchase Program will be based upon criteria that are beyond the control of the Company.

(v) *The offer is contingent on the tender of a fixed number of shares.* The Repurchase Program 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 monthly basis.

(vi) *The offer is open only for a limited period of time.* The Repurchase Program 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 Program. For each month, the window during which a repurchase request can be made will generally be 20 business days (from the last business day of the previous month to the second-to-last business day of the current month). Any adjustments to the repurchase price during year will be made available to stockholders at least ten business days prior to the second-to-last business day of the month. Stockholders will also have the opportunity to withdraw their repurchase request, provided that such withdrawal must be received by the Advisor at least two business days prior to the end of the month.

In addition, because shares will be repurchased on a *pro rata* basis in the event the monthly or quarterly volume limitations are reached, stockholders will be able to request repurchase for at least a portion of their shares regardless of the particular day during the month or quarter when the stockholder chooses to submit its repurchase request and therefore will not be pressured to request repurchases at the beginning of a month or quarter.

(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 Program and will not offer to repurchase shares at a premium. The role of the Company in effectuating repurchases under the Repurchase Program is purely ministerial. Because the Repurchase Program will have no set termination date, stockholders will not feel rushed to make decisions regarding participation in the Repurchase Program. If the Company is unable to repurchase all shares that have been requested to be repurchased in any particular month, all repurchases under the Repurchase Program for such month will be made on a *pro rata* basis. If the Repurchase Program reaches its monthly or quarterly cap, it will automatically reopen in the next calendar month. In addition, the combination of (a) disclosure of the Repurchase Program as an integral element of the Offering at the time of the original investment decision, (b) the monthly regularity of repurchases and (c) the NAV-based pricing of the repurchase price and the comprehensive policies and procedures for determining NAV, collectively should act to decrease pressure on stockholders.

(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>13</sup> The intent of the Repurchase Program is to provide the Company's stockholders with ongoing liquidity, not for the Company to continuously re-acquire its own shares. It is possible that the Company, subject to the Repurchase Program's limits, may be requested to repurchase a significant number of shares over a short period of time 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 prospectus for the Offering contains a comprehensive description of all terms, conditions and features of the Repurchase Program and will be updated, when required, to reflect any material modifications made during the Offering. The Company will promptly inform stockholders, as required by the Repurchase Program, of any modification or suspension of the Repurchase Program, or if the application of the Modified Repurchase Limitation is switched from net repurchases to gross repurchases or vice versa. The Company will also provide the price at which shares will be repurchased on its website and toll-free information line. The Company believes, however, that the Repurchase Program 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 Program 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 Program 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 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. 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>14</sup>

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

#### The Repurchase Program 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"

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<sup>13</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.

<sup>14</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).

analysis.<sup>15</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>16</sup>

We believe that the Repurchase Program, as amended, withstands such a “totality of circumstances” analysis. Investors are provided with full disclosure of the Repurchase Program before they purchase shares and invest in the Company. Moreover, the perpetual-life structure of the Repurchase Program and the *pro rata* 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 Program. We do not believe that a “substantial risk of ill-considered sales” made “by ill-informed shareholders” will exist for repurchases under the Repurchase Program if the Rule 13e-4 procedural protections are not implemented.<sup>17</sup>

#### 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 Program. The Repurchase Program is substantially similar to the repurchase/redemption programs of other perpetual-life daily or monthly NAV non-listed REITs for which the Staff has granted no-action relief.<sup>18</sup> In addition, other than the repurchase price and the limitation on the number of shares that can be repurchased during each calendar month or quarter during the Offering, as noted above, the Repurchase Program is otherwise substantially similar to repurchase programs of traditional non-listed REITs for which the Staff granted no-action relief.<sup>19</sup> Factors that we believe address these objectives and support this request include:

- All material information relating to the Repurchase Program will be fully and timely disclosed to all stockholders. The terms of the Repurchase Program will be fully disclosed in the prospectus as well as any prospectus used for subsequent offerings and the repurchase price and NAV per share will always be available on the Company’s website and toll-free information line.
- The Company will not solicit repurchases under the Repurchase Program other than through the prospectus for the Offering and through supplements and amendments thereto

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<sup>15</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, 145455 (5th Cir. 1986) (applying same analysis to issuer tender offer case).

<sup>16</sup> See, e.g., *Wellman*, 475 F. Supp. at 821-23; *Pin*, 793 F. Supp. at 1454; *Hanson Trust*, 774 F.2d at 54-56.

<sup>17</sup> See *Hanson Trust*, 774 F.2d at 58.

<sup>18</sup> See supra note 3.

<sup>19</sup> See supra note 9.

disclosing the NAV per share of each class of shares. Stockholders desiring to request repurchase of all or a portion of their shares 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 Program is ministerial.

- The shares will be repurchased monthly under the Repurchase Program at the most recently determined NAV per share subject to any applicable short-term holding discounts. The Company will file supplements and amendments to the Registration Statement with the Commission with such frequency as is required by the Securities Act, along with current reports and quarterly and annual reports with information disclosing the most recently determined NAV per share and also make information regarding the NAV per share available on its website and toll-free information line.
- Repurchases under the Repurchase Program will be made on a monthly basis. Qualifying stockholders who desire to have their shares repurchased by the Company must give notice to the Advisor at least two business days prior to the end of a month. The repurchase price will be paid in cash no later than the third business day after the end of a month in which a repurchase request was received and not withdrawn.
- Net repurchases or gross repurchases (depending on which option the Board has chosen) under the Repurchase Program will be limited pursuant to the Modified Repurchase Limitation. In order for the Board to change the application of the Modified Repurchase Limitation from net repurchases to gross repurchases or vice versa, the Company will provide notice to stockholders in a prospectus supplement or current or periodic report filed by the Company, as well as in a press release or on the Company's website, at least 10 calendar days before the first business day of the quarter for which the new test will apply.
- If the Company is unable to repurchase all shares requested to be repurchased during a particular month, repurchases under the Repurchase Program for such month will be made on a *pro rata* basis.
- There will be no established regular trading market for the Company's common stock. The Repurchase Program 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 (other than limited or sporadic quotations) for the Company's shares develops.
- The Repurchase Program is intended to remain open indefinitely for the life of the Company unless modified or suspended by the Board. 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 Program is open to all stockholders, subject to short-term trading discounts equal to (i) 3% of the otherwise applicable repurchase amount with respect to the repurchase of shares held by the stockholder for less than one year; (ii) 2% of the otherwise applicable repurchase amount with respect to the repurchase of shares held by

the stockholder for more than one year but fewer than two years; and (iii) 1% of the otherwise applicable repurchase amount with respect to the repurchase of shares held by the stockholder for more than two years but less than three years. Such discounts are intended to offset the Company's costs resulting from short-term trading of its shares and to discourage market timing.

The Company believes the Repurchase Program 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 Program were not implemented.

***Rule 13e-3 — Does Not Apply***

Rule 13e-3 should not apply to the Repurchase Program. 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 Program, as amended, 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 Program insofar as the modifications to the Repurchase Program limit the amount of repurchases that may be made in each calendar month and quarter and the Company intends to operate as a 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.

Under the Repurchase Program, the maximum amount of shares that may be repurchased over a 12-month period is approximately 20% of the Company's aggregate NAV. However, this is a theoretical limit, and one which is not expected to occur.

If the extent of repurchases under the Repurchase Program, 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 will undertake to modify or suspend the Repurchase Program.

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If you have any questions or need any additional information, please do not hesitate to contact me at (202) 239-3452.

Very truly yours,



December 21, 2016  
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A handwritten signature in black ink, appearing to read "D. O. Garris". The signature is written in a cursive style with a large initial "D" and a distinct "G" at the end.

Dennis O. Garris

cc: Harold Hofer, Rich Uncles NNN REIT, Inc.  
Rosemarie A. Thurston, Alston & Bird LLP