



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

April 26, 2017

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

Alice L. Connaughton, Esq.
Greenberg Traurig, LLP
2101 L Street, N.W.
Suite 1000
Washington, DC 20037

**RE: Hines Global REIT II, Inc.
Request for No-Action Relief under Rule 13e-4**

Dear Ms. Connaughton:

We are responding to your letter dated April 26, 2017, addressed to Ted Yu and Daniel Duchovny, 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 view 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 Class I and Class J shares from its stockholders under the New Redemption Plan 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 New Redemption Plan will be fully and timely disclosed to all Class I and Class J stockholders. The terms of the New Redemption Plan 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 New Redemption Plan 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 pursuant to the New Redemption Plan 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 New Redemption Plan will be ministerial;

- The shares will be repurchased monthly under the New Redemption Plan at the most recently determined NAV per share subject to a discount for the Early Redemption Period. 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 New Redemption Plan will be made on a monthly basis. Qualifying stockholders who desire to have their shares repurchased by the Company must have their requests and documentation received by the second to last business day of the applicable month. The repurchase price normally will be paid in cash no later than three business days after the Redemption Date;
- If the Company is unable to repurchase all shares requested to be repurchased during a particular month, repurchases under the New Redemption Plan for such month will be made on a pro rata basis;
- Stockholders may withdraw any repurchase request, provided that such a withdrawal request must be received by the Company's transfer agent at least two business days prior to the Redemption Date;
- Material modifications, including any reduction to the monthly or quarterly limitations on repurchases, and suspensions of the New Redemption Plan, 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 New Redemption 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 Class I shares or Class J shares develops;
- The New Redemption Plan is intended to remain open indefinitely for the life of the Company unless modified, suspended or terminated by the board of directors. The Company's charter provides that it is formed for an unlimited duration and the Company has no intention of listing its shares for trading on an exchange or other trading market; and
- The New Redemption Plan is open to all Class I and Class J stockholders, subject to a discount for the Early Redemption Period.

The foregoing no-action position is based solely on the representations and the facts presented in your letter dated April 26, 2017 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,

/s/ Ted Yu

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

April 26, 2017

VIA EMAIL

Mr. Ted Yu, Chief
Mr. Daniel Duchovny, Special Counsel
Securities and Exchange Commission
Office of Mergers and Acquisitions
Division of Corporation Finance
100 F Street, NE
Washington, D.C. 20549

**Re: Hines Global REIT II, Inc.
Request for No-Action Relief Under Rule 13e-4**

Dear Messrs. Yu and Duchovny:

We are counsel to Hines Global REIT II, 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 No. 333-191106), initially filed with the Securities and Exchange Commission (the “SEC”) on September 11, 2013, as amended from time to time, to register the offer and sale of up to \$2,500,000,000 of its shares of common stock, in an initial public offering (the “Offering”), of which \$2,000,000,000 of shares are being offered to the public in a primary offering and \$500,000,000 of shares will be offered to stockholders of the Company pursuant to the Company’s distribution reinvestment plan. The registration statement was declared effective on August 20, 2014. The Company currently offers in its continuous public offering two classes of its common stock which are designated as Class A shares and Class T shares. The Company registered the Class A shares and Class T shares under Section 12(g) of the Exchange Act on March 23, 2016.

The Company was formed as a Maryland corporation on July 31, 2013 for the purpose of investing in commercial real estate and real estate interests in the United States

and internationally. The Company is externally advised and has elected to be treated as a real estate investment trust (“REIT”).

The Company filed a post-effective amendment to its registration statement on February 6, 2017 (the “Post-Effective Amendment”) reflecting that the Company is reclassifying its common stock in order to add two additional classes of common shares, which it is referring to as Class I shares and Class J shares. The Class I shares and Class J shares will have the same basic rights and privileges as the Company’s other shares of common stock. The Class I shares will differ from the other classes with respect to the sales load, consisting of dealer manager fees and the annual distribution and stockholder servicing fees, and with respect to the new redemption program discussed below (“New Redemption Plan”). The Class J shares will not be offered for sale by the Company as part of the Offering. Class I shares will convert into Class J shares upon certain triggering events set forth in the Company’s charter, as disclosed in the Post-Effective Amendment. Immediately following any conversion of a Class I Share, such Class I Share will cease to be outstanding and will become an authorized but unissued Class I Share. The Class J shares will be eligible for redemption under the New Redemption Plan.

The Offering provides for the sale, on a continuous basis, of Class A, Class T and Class I shares at a fixed offering price, which is determined based upon the net asset value (“NAV”) per share for the applicable class of shares plus applicable selling commissions, dealer manager fees and estimated organization and offering costs. Commencing with the first quarter following the first quarter in which the Company sells a Class I share, the NAV per share for each class of shares will be calculated quarterly in accordance with valuation guidelines approved by the Company’s board of directors. A fundamental feature of the Offering is the Company’s share redemption program, which serves as the primary source of liquidity for stockholders. The Company currently has a redemption program (“Existing Redemption Plan”) for its Class A and Class T shares that provides for monthly redemptions at the most recently announced NAV per share. The Company will provide the New Redemption Plan only for Class I shares and Class J shares, holders of which will be offered the opportunity to request that the Company repurchase their shares on a monthly basis at the most recently announced NAV per share, subject to a 5% discount for shares repurchased within one year of purchase of the Class I shares (“Early

Redemption Period”). Upon request, the Company may waive the discount during the Early Redemption Period in the case of the death or disability of the stockholder. The discount also will be waived with respect to shares issued pursuant to the distribution reinvestment plan and shares issued by the Company as stock dividends, if any. Both the New Redemption Plan and the Existing Redemption Plan meet the conditions for exemption from Rule 102(a) of Regulation M, as articulated in the SEC’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). 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 SEC 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 will adopt the New Redemption Plan in an effort to provide stockholders with liquidity with respect to their investments in the Company’s Class I shares (and the Class J shares into which the Class I shares may convert, as described above). The Company believes that many features of the New Redemption Plan are substantially similar to redemption plans of other companies with respect to which the staff of the Division of Corporation Finance of the SEC (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”).¹ In addition, the New Redemption Plan shares similarities with other redemption plans with respect to which the Staff has granted no-action relief.² The Company does not believe that the variations described below impact the analysis of whether the New Redemption Plan constitutes an issuer tender offer. Specifically, the New Redemption Plan provides for monthly repurchases, the redemption price will vary based on the NAV per share of the class of shares being repurchased (which NAV per share will be established quarterly), and the repurchase of

¹ See Rich Uncles NNN REIT, Inc., SEC No-Action Letter (Dec. 21, 2016); Blackstone Real Estate Income Trust, Inc., SEC No-Action Letter (Sept. 12, 2016); and Dividend Capital Total Realty Trust Inc., SEC No-Action Letter (July 12, 2012).

² See RREEF Property Trust, Inc., SEC No-Action Letter (Jan. 4, 2013); Jones Lang LaSalle Income Property Trust, Inc., SEC No-Action Letter (Oct. 11, 2012); Cole Real Estate Income Strategy (Daily NAV), Inc., SEC No-Action Letter (Dec 6, 2011); American Realty Capital Daily Net Asset Value Trust, Inc., SEC No-Action Letter (July 21, 2011); Clarion Partners Property Trust Inc., SEC No-Action Letter (Feb 24, 2012); and Clarion Partners Property Trust Inc., SEC No-Action Letter (May 17, 2011).

shares at the end of any calendar month will be limited to shares whose aggregate value (based on the redemption price per share in effect when the repurchase is effected) is 2% of the aggregate NAV of all Class I shares and Class J shares as of the last calendar day of the previous month and will be limited in any calendar quarter to shares whose aggregate value (based on the redemption price per share in effect when the repurchase is effected) is 5% of the aggregate NAV of all Class I shares and Class J shares as of the last calendar day of the prior calendar quarter. As a result, we respectfully submit that repurchases pursuant to the New Redemption Plan do not implicate concerns that the issuer tender offer rules were adopted to address. Specifically, the New Redemption Plan, which offers stockholders no premium, will have no set termination date and will provide stockholders with adequate substantive disclosure upon which to base a decision to repurchase their shares, will not have the effect of pressuring uninformed stockholders to repurchase their shares.

The Company requests that the Staff issue the Company a letter stating that it will not recommend that the SEC take enforcement action under Rule 13e-4 with respect to repurchases of shares made under the New Redemption Plan.

OVERVIEW OF THE COMPANY AND THE NEW REDEMPTION PLAN

The Company

The Company is externally managed by its advisor, Hines Global REIT II Advisors LP (the “Advisor”), and sponsored by an affiliate of the Advisor, Hines Interests Limited Partnership. The dealer manager for the Offering is Hines Securities, Inc. (the “Dealer Manager”). The Dealer Manager is not required to sell any specific number or dollar amount of shares, but will use its “best efforts” to sell the shares offered in the primary offering.

As of February 28, 2017, the Company had received gross proceeds of approximately \$172.8 million through the sale of 17.4 million Class A shares and \$118.2 million through the sale of 12.5 million Class T shares to the public in connection with this offering, including \$5.7 million and \$1.6 million of Class A shares and Class T shares, respectively, issued under the distribution reinvestment plan. As of February 28, 2017, the Company owned six real estate investments which contain, in the aggregate, 2.6 million square feet of leaseable space.

The New Redemption Plan

Purpose of the New Redemption Plan

The Company intends to adopt the New Redemption Plan in an effort to provide the holders of Class I shares (and the Class J shares into which the Class I shares may convert) with liquidity with respect to their investment in the Company's common stock, subject to specified limitations. Through the New Redemption Plan, stockholders can liquidate all or a portion of their investment. The New Redemption Plan is an important feature of the investment in these shares, since the Company expects that the New Redemption Plan will serve as these stockholders' sole meaningful source of liquidity. Without an effective redemption plan, these stockholders 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 and (2) the Company does not anticipate that a secondary trading market will develop.

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 redemption 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 redemption plans and that stockholders in these types of non-listed REITs may 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 do not have set termination dates and offer redemption plans that are subject to substantial limitations on repurchases. The Company believes that many investment professionals and investors have concluded that the redemption plans offered by the traditional non-listed REITs are inadequate to provide stockholders with a viable liquidity option.

The offering of Class I shares and the New Redemption Plan are designed to provide investors with greater liquidity by allowing stockholders to request the Company to repurchase 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 repurchases (as compared to limiting the sources of cash to proceeds from the sale of additional shares through the distribution reinvestment plan).

Valuation of the Company's Assets and Liabilities

Commencing with the first quarter following the first quarter in which the Company sells a Class I share, the New Redemption Plan will be implemented and the Company will establish an NAV per share for each class of its common stock quarterly. The Company's NAV per share will be calculated in accordance with the Company's valuation policy, utilizing guidelines established by Investment Program Association Practice Guideline 2013-01 — "Valuation of Publicly Registered, Non-Listed REITs" issued April 29, 2013.

The Company's board of directors has adopted a valuation policy, pursuant to which the Company will provide an NAV per share for each class of the Company's common stock consistent with FINRA requirements and will disclose such NAV per share, as applicable, in its Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and/or in Current Reports on Form 8-K as well as in annual reports to stockholders. If the Company has an ongoing public offering at the time of such disclosure, it will also include the disclosure in the prospectus for the offering. The Company's board of directors has appointed a committee comprised of independent directors (the "Valuation Committee") to be responsible for the oversight of the valuation process, subject to the final approval of the board of directors. At a minimum, the NAV per share of each class of common stock will be based on the fair value of the Company's assets less liabilities under market conditions existing as of the date of the valuation.

Subject to the approval of the Valuation Committee and the board of directors, the Company will engage one or more independent third-party firms (an "independent valuation firm") for purposes of the independent valuation. The engagement of an independent valuation firm will be the Company's sole responsibility and the Company will have the sole discretion to

select the independent valuation firm to perform the independent valuation. The disclosure date of the NAV per share for each class of common stock based on an independent valuation will be no more than 45 days after the date as of which the independent valuation is determined.

As part of each independent valuation performed, the independent valuation firm periodically will obtain a new appraisal, utilizing recognized industry standards prescribed by the Uniform Standards of Professional Appraisal Practice or the similar industry standard for the country where the property appraisal is conducted, of each of the real estate properties the Company owns and will assign a discrete value for each property. All appraisals of properties will be conducted by appraisers possessing a Member Appraisal Institute designation or similar designation or, for international appraisals, by a public certified expert for real estate valuations, qualified to perform and oversee the appraisal work of the scope and nature required. The Company's consolidated real properties will be appraised approximately once every 12 calendar months, and in no event will more than 12 full calendar months pass between appraisals of the Company's consolidated real properties. In order to provide a smooth and orderly appraisal process, the Company will seek to have approximately 1/4th of the portfolio appraised each quarter, although the Company may have more or less appraised in a quarter. The acquisition cost of newly acquired properties will serve as their appraised value and thereafter will be part of the appraisal cycle described above such that they are appraised no more than 12 full calendar months after acquisition.

In establishing a new NAV per share, in addition to using the appraised values of the Company's real estate investments and values of its debt obligations, the Valuation Committee will include in its determination the values of other assets and liabilities such as cash, tenant and other receivables, accounts payable and accrued expenses, distributions payable and other assets and liabilities, all of which will be valued at cost. No liquidity discounts or discounts relating to the fact that the Company is externally managed will be applied to the NAV per share and no attempt will be made to value the Company an enterprise. The NAV per share for each class is calculated by dividing such class's NAV at the end of each quarter by the number of shares outstanding for that class at the end of such quarter.

The Company will obtain from the independent valuation firm a written report, which will set forth a summary analysis of the independent valuation firm's processes and methodologies undertaken in the valuation, a description of the scope of the reviews performed and any limitations thereto, the data and assumptions used for the review, the applicable industry standards used for the valuation, any other matters related to the valuation analysis and a conclusion as to a reasonable range of NAV and NAV per share for each class of common stock. The board of directors will be solely responsible for the final determination of NAV and NAV per share for each class of common stock. To the extent the valuation provided by the independent valuation firm is different from the valuation determined by the board of directors and disclosed by the Company, the Company will provide an explanation in its filings with the SEC and in its annual reports to stockholders.

While the methodologies contained in the Company's valuation guidelines are 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 significant disruption in relevant markets, a terrorist attack or an act of nature), the Company's ability to calculate NAV may be impaired or delayed, including, without limitation, circumstances where there is a delay in accessing or receiving information from vendors or other reporting agents upon which the Company may rely in determining the Company's NAV. In these circumstances, a more accurate valuation of the Company's NAV could be obtained by using different assumptions or methodologies. Accordingly, in special situations when, in the Advisor's reasonable judgment, the administration of the valuation guidelines would result in a valuation that does not represent a fair and accurate estimate of the value of the investment, alternative methodologies may be applied, provided that the Advisor must notify the Company's board of directors at the next scheduled board meeting of any alternative methodologies utilized and their impact on the overall valuation of the Company's investment. Notwithstanding the foregoing, the Company's board of directors may suspend the Offering and/or the New Redemption Plan if it determines that the calculation of NAV is materially incorrect or unreliable or there is a condition that restricts the valuation of a material portion of the Company's assets.

Timing and Settlement

Under the New Redemption Plan, and subject to specified limitations, stockholders may request that the Company repurchase all or any portion of their shares as of the close of business of the last calendar day of each full calendar month (the "Redemption Date") at the most recently announced NAV per share for the class of shares being repurchased. To have their shares repurchased, stockholders' repurchase requests and required documentation must be received in good order by 4:00 p.m. Eastern time on the second to last business day of the applicable month. If a repurchase request is received after such time, the repurchase order will be executed on the next month's Redemption Date at the NAV applicable to that quarter (subject to any short term holding discount), unless such request is withdrawn prior to that Redemption Date. Investors will generally have at least 20 business days (from the last business day of the previous month to the second to last business day of the applicable month) during which to decide whether to request a repurchase of their shares as of the end of the current month. Investors may withdraw their redemption requests before they have been processed by notifying a customer service representative available on the Company's toll-free information line before 4:00 p.m. Eastern time on the second to last business day of the applicable month. Settlements of share repurchases will be made within three business days after the Redemption Date.

The redemption price for each month will under normal circumstances be equal to the NAV per share then in effect as of that Redemption Date. As indicated above, any new NAV will be disclosed within 45 days after the date it is determined and NAV calculations shall be made quarterly. In certain circumstances a stockholder may make a repurchase request for a particular Redemption Date before the NAV is made available, but the redemption price will be made available for a period of at least 10 business days ending on or before the second to last business day of each month and, as a result, such stockholder will have at least a ten business day period to consider the redemption price before the deadline to submit or withdraw a repurchase request (the first day of the ten business day period is the day the redemption price is made available and the tenth business day of the period is the deadline to submit or withdraw a repurchase request (the second to last business day of the month)).

The NAV per share will be posted on the Company's website (www.HinesSecurities.com/reits/hines-global-reit-2) promptly after it has become available and will also be available through the Company's toll-free information line. Under normal circumstances, the Company expects to fulfill repurchase requests, subject to the 2% monthly and 5% quarterly repurchase limitations. The Company's website will contain the current prospectus, including all supplements thereto. The Company will also disclose the NAV per share for each quarter 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 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 redemption price 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.

As described above, NAV per share will be determined each quarter using the Company's valuation policies and procedures 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. 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 often fluctuate materially from one quarter to the next.

Funding and Limitations of the New Redemption Plan

The New Redemption Plan will permit the repurchase during any calendar month of Class I shares and Class J shares whose aggregate value (based on the redemption price per share in effect when the repurchase is effected) is 2% of the aggregate NAV of such shares as of the last calendar day of the previous month and during any calendar quarter whose aggregate value (based on the redemption price per share in effect when the repurchase is effected) is up to 5% of the aggregate NAV of such shares as of the last calendar day of the prior calendar quarter.

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 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, 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 Class I shares (and the corresponding Class J shares into which the Class I shares may convert) and has no current intention to repurchase fewer shares than have been requested to be repurchased in any particular month, the Company 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 Redemption Date, 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 determines to repurchase some but not all of the shares submitted for repurchase during any month for any reason discussed in the prior two paragraphs, shares submitted for repurchase during such month will be repurchased on a *pro rata* basis. All unsatisfied repurchase requests due to any of the limitations described above must be resubmitted after the start of the next month or quarter, or upon the recommencement of the New Redemption Plan, as applicable.

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 likely be less than 2% of the aggregate NAV of all Class I shares and Class J shares as of the last calendar day of the previous month because the repurchases for that month, combined with the

repurchases in the previous two months, cannot exceed 5% of the aggregate NAV of all Class I shares and Class J shares as of the last calendar day of the prior calendar quarter.

The board of directors' primary objective regarding the New Redemption Plan is to maintain the uninterrupted repurchase of shares in order to provide Class I 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 New Redemption 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 New Redemption 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 long-term operation of the New Redemption 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 New Redemption 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 New Redemption 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 monthly or quarterly limitations on repurchases, and suspensions to the New Redemption Plan will be promptly disclosed to stockholders in a prospectus supplement (or post-effective amendment if required by the Securities Act) or special 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 life of the Company, a degree of flexibility in the administration of the New

Redemption Plan is necessary and warranted to ensure that the board can discharge its fiduciary duties to promote the long-term efficacy of the New Redemption 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 New Redemption Plan and expects that the New Redemption 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 New Redemption Plan from monthly to less frequent repurchases, (2) reduce the redemption price to an amount that reflects a discount to the NAV (other than the short term holding discount set forth in the New Redemption Plan) or (3) modify other aspects of the New Redemption 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 New Redemption 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 New Redemption Plan or engage in any activity to encourage stockholders to submit requests for repurchase of their shares other than disclosures described in this request for no-action relief or required under federal securities laws, disclosure in offering materials used in connection with the Offering, procedural/redemption price disclosure in stockholder communications during the Offering and the provision of the 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 holders of Class I shares and Class J shares of the Company's common stock as to whether to participate in the New Redemption Plan. The prospectus for the Offering will contain a comprehensive description of all terms, conditions and features of the New Redemption Plan and will be updated to reflect any material modifications made during the Offering. As a result, with the exception of the redemption 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

In response to recently adopted or effective regulations, non-traded public company products have been changing significantly in the last year. Numerous new share classes have been introduced, upfront fees have been restructured and, in many cases reduced, and new offerings are being introduced that address investors' desire for increased liquidity. In addition, FINRA rules now require that, after an initial period, share valuations be conducted annually, so there is much greater transparency with respect to value than previously existed in the industry. We believe that the Company can conduct redemptions for up to 5% of the aggregate NAV of the Class I shares and Class J shares quarterly, without such redemptions constituting tender offers under Rule 13e-4 under the Exchange Act.

The Company's rationale for no-action relief is substantially similar to the no-action requests of the perpetual-life non-listed REITs that have adopted similar redemption plans.³ Like the perpetual non-listed REITs, the Company's request for no-action relief differs from previously granted no-action requests made by traditional non-listed REITs⁴ with respect to two representations made in such previous no-action requests: (1) a limitation on the number of shares that will be repurchased in any quarter whose aggregate value (based on the redemption price per share in effect when the repurchase is effected) is 5% of the aggregate NAV of such

³ See Rich Uncles NNN REIT, Inc., SEC No-Action Letter (Dec. 21, 2016); Blackstone Real Estate Income Trust, Inc., SEC No-Action Letter (Sept. 12, 2016); RREEF Property Trust, Inc., SEC No-Action Letter (Jan. 4, 2013); Jones Lang LaSalle Income Property Trust, Inc., SEC No-Action Letter (Oct. 11, 2012); Dividend Capital Total Realty Trust Inc., SEC No-Action Letter (July 12, 2012); Cole Real Estate Income Strategy (Daily NAV), Inc., SEC No-Action Letter (Dec. 6, 2011); American Realty Capital Daily Net Asset Value Trust, Inc., SEC No-Action Letter (July 21, 2011); Clarion Partners Property Trust Inc., SEC No-Action Letter (Feb. 24, 2012); and Clarion Partners Property Trust Inc., SEC No-Action Letter (May 17, 2011).

⁴ The previously granted no-action requests made by non-listed REITs (other than Rich Uncles, Blackstone, RREEF, Jones Lang LaSalle, Dividend Capital, Clarion, ARC and Cole) included redemptions either quarterly or monthly and for numbers of shares between 3% of the 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 (Sept. 7, 2006); Apple REIT Six, Inc., SEC No-Action Letter (June 30, 2006); Behringer Harvard REIT I, Inc., SEC No-Action Letter (Oct. 26, 2004); Paladin Realty Income Properties, Inc., SEC No-Action Letter (Oct. 22, 2004); Orange Hospitality, Inc., SEC No-Action Letter (Sept. 9, 2004); Hines Real Estate Investment Trust, Inc., SEC No-Action Letter (June 18, 2004); CNL Income Properties, Inc., SEC No-Action Letter (Mar. 10, 2004); Inland Western Retail Real Estate Trust, Inc., SEC No-Action Letter (Aug. 25, 2003); T REIT Inc., SEC No-Action Letter (June 4, 2001); and CNL American Properties Fund, Inc., SEC No-Action Letter (Aug. 13, 1998).

classes of shares as of the last day of the previous calendar quarter, which means that in any 12-month period, the New Redemption Plan will limit repurchases to approximately 20% of the aggregate NAV of such classes of shares and (2) repurchases based on the then-current NAV, rather than an arbitrary fixed price or discount to NAV. These features are designed to offer greater liquidity to investors and provide investors with a redemption 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.

We believe that the Company's proposed redemption plan shares many of the elements required under previous no-action letters that have been granted, including the recently issued Rich Uncles NNN REIT, Inc. ("Rich Uncles") SEC No-Action Letter (December 21, 2016) ("Rich Uncles Relief") and Blackstone Real Estate Income Trust, Inc. ("Blackstone") SEC No-Action Letter (September 12, 2016) ("Blackstone Relief"). In addition, similar to the no-action relief granted to Dividend Capital Total Realty Trust Inc. (now Dividend Capital Diversified Property Fund Inc.) ("DPF") on July 12, 2012 ("DPF Relief"), the relief will be requested for the new classes of common stock created and not with respect to the existing classes of common stock, although further relief may be requested at a later date. The primary differences between the Company's situation and the Rich Uncles, Blackstone and DPF situations are as follows. The Company will provide valuations on a quarterly basis, whereas Rich Uncles will provide valuations less frequently, on an annual basis, and Blackstone and DPF provide valuations on a monthly and daily basis, respectively. Second, when Blackstone and DPF each sought relief, Blackstone indicated that it intended to be a perpetual life REIT and DPF indicated that although its original intention had been to have a liquidity event with respect to its existing classes, it intended to be perpetual with respect to its new share classes. Although the Company's charter provides that it is formed for an unlimited duration, the Company's prospectus that has been used for the sale of Class A shares and Class T shares indicates that the Company expects to consider alternatives for providing liquidity (through a sale of its assets, a sale or merger of the Company, a listing of the Company's shares on a national securities exchange or a similar transaction) to its stockholders beginning five to eight years following the end of its public offering. The Company's Offering is expected to terminate on August 20, 2017 unless extended by the

Company's board of directors in accordance with securities laws. In any event, we do not believe that these differences from Rich Uncles, Blackstone and DPF (or from other non-traded public REITs which have been granted SEC relief) materially impact the analysis of whether the New Redemption Plan constitutes an issuer tender offer.

Absent extraordinary circumstances, the price at which the Company 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. 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 New Redemption Plan to ensure viability of the investment for continuing stockholders.

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 New Redemption 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 New Redemption 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 New Redemption 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 has been registered with the SEC under the Securities Act and under appropriate state securities laws or otherwise sold in compliance with such laws. The Company will terminate the New Redemption 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 (other than limited or sporadic quotations) for the Company's shares develops. However, the Company currently 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 (other than limited or sporadic quotations) 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 SEC 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 New Redemption Plan is not an Issuer Tender Offer

We believe that the New Redemption 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 SEC and its Staff in considering what constitutes a tender offer, as well as the fact that the proposed terms of the New Redemption Plan, as described under “Overview of the Company and the New Redemption Plan,” above, are substantially similar to the facts cited in numerous no-action letters issued by the Staff including the Rich Uncles Relief, Blackstone Relief and DPF Relief. Since the terms of the New Redemption Plan will be fully disclosed to potential purchasers of Class I shares prior to the purchase of shares of the Company’s common stock and stockholders will be aware of the NAV per share of the Class I shares through the Company’s website, toll-free information line and prospectus supplements, stockholders do not require additional information regarding the New Redemption Plan at the time they decide to make a repurchase request. Stockholders will be given sufficient time after the NAV 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 repurchase. Because the New Redemption 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 New Redemption 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 redemption plans that offer periodic repurchases for limited numbers of shares at an arbitrary fixed price.⁵ The New Redemption Plan provides for the repurchase of the shares at the then-current NAV as opposed to at an arbitrary fixed-price or discount to NAV and 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 during the offering. As discussed above, this structure is very similar to the redemption plans of perpetual life non-listed REITs for which the Commission has granted no-action relief. In addition, in the event that redemption requests under the New Redemption Plan exceed the monthly or quarterly volume limitations, the shares will be purchased on a *pro rata* basis, rather than on a first-come, first-serve basis, which is the case with many daily NAV non-listed REITs. This *pro rata* feature, which enables any stockholder whose repurchase request was not fully accepted in any particular month to request repurchase in the following month, will alleviate any pressure to request repurchase at the beginning of a particular month or quarter.

A stockholder may withdraw a repurchase request until the date which is two business days before the Redemption Date by notifying the Company's transfer agent on the Company's toll-free information line before 4:00 p.m. Eastern time two business days before the end of the applicable month. In certain circumstances, a stockholder may make a repurchase request for a particular Redemption Date before the NAV is made available, but such stockholder will know the redemption price for a period of at least ten business days ending on or before the second to last business day of the applicable month and, as a result, such stockholder will have at least a ten business day period to consider the redemption price and to determine whether to withdraw the redemption request, as redemption requests must be made or withdrawn by notifying the Company's transfer agent, directly or through the stockholder's financial intermediary by the second to last business day of the month. Stockholders who make their repurchase request after

⁵ See *supra* note 4.

the tenth business day but on or prior to the second to last business day of the month will know the redemption price at the time of their request. 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 and without necessarily reflecting the underlying fair value of such security. Without these market pressures and because the price is based on the Company's NAV, we believe that the stockholders are not subject to the pressures that the tender offer rules are aimed at preventing.

Analysis of the Wellman Factors

An analysis of the Wellman factors demonstrates that the New Redemption Plan should not be viewed as a tender offer.⁶ Set forth below is an application of these factors to the New Redemption 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 New Redemption Plan will be described in the prospectus, and any communications to stockholders identifying changes to the plan will be communicated through supplements to the prospectus, reports the Company files with the SEC, press releases and/or the Company's website. The Company will not make any other significant public communications about the New Redemption Plan except as contained in or related to its prospectus and supplements, offering materials used in connection with the Company's public offerings, required communications in reports filed under the Exchange Act, the providing of the NAV per share of the 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 New Redemption Plan will be ministerial and will merely facilitate the stockholder's full or partial exit from its investment in the Company.

⁶ 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).

(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. With respect to the Class I shares, the offering price will be the then-current NAV per share, plus dealer manager fees (and also including certain offering and organizational expenses), and the redemption price will be the then-current NAV per share of the Class I shares (other than during the Early Redemption Period when it will be lower). As noted earlier, the Company is not offering Class J shares for sale in the Offering, so there is not an offering price for the Class J shares. Further, there is no established regular trading market for the Company's common stock. The New Redemption 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 redemption price is less than the offering price, if any, 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 New Redemption Plan. Further, the New Redemption Plan will limit repurchases in any calendar month to shares whose aggregate value (based on the redemption price per share in effect when the repurchase is effected) is 2% of the aggregate NAV of all Class I shares and Class J shares as of the last calendar day of the previous month and will limit repurchases in any calendar quarter to shares whose aggregate value (based on the redemption price per share in effect when the repurchase is effected) is 5% of the aggregate NAV of Class I shares and Class J shares as of the last calendar day of the previous calendar quarter, which means that in any 12-month period, repurchases are limited to approximately 20% of the aggregate NAV of the Class I shares and the Class J shares. Although Section 14(d)(1) of the Exchange Act recites a more than 5% threshold for applying certain requirements, we do not believe that whether the New Redemption Plan constitutes an issuer tender offer subject to Rule 13e-4 hinges on the presence of a 5% limitation on the number of shares of the Company that can be repurchased over a 12-month period.⁷ We also note that

⁷ The SEC has granted no-action relief in numerous situations in which proposed redemptions exceed a 5% threshold. *See* Rich Uncles Relief, Blackstone Relief, DPF Relief, Jones Lang LaSalle Income Property Trust, Inc., SEC No-Action Letter (Oct. 11, 2012), Cole Real Estate Income Strategy (Daily NAV), Inc., SEC No-Action Letter (Dec. 6, 2011); American Realty Capital Daily Net Asset Value Trust, Inc., SEC No-Action Letter (July 21, 2011); Clarion Partners Property Trust Inc., SEC No-Action Letter (Feb. 24, 2012); Clarion Partners Property Trust Inc.,

the Company will be offering multiple share classes of common stock so it is unlikely that the Company will be repurchasing a substantial percentage of the shares of its outstanding common stock.

The New Redemption Plan merely provides stockholders with a means of liquidity in respect of their investment, as discussed previously in this letter. The New Redemption Plan does not exist for the same reasons that issuers typically conduct tender offers (e.g., to reacquire their own shares to increase earnings per share or for some similar purpose) and therefore does not raise the same concerns under Rule 13e-4 that are associated with such tender offers. The Company's primary objective is to invest in commercial real estate properties and real estate related investments and it will not be encouraging stockholders to utilize the redemption plan because the repurchase of shares diverts funds from its investment objective.

(iv) *The terms of the offer are firm, rather than negotiable.* The terms of the New Redemption Plan are firm with respect to the process by which stockholders may request repurchase. The redemption price is not negotiable. It is fixed at the then-current NAV for the shares (other than during the Early Redemption Period when it will be lower). Fixing the redemption prices at NAV 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."⁸ Where these factors exist, firmness in the terms of the offer may have the effect of exacerbating the pressure on stockholders to tender to their shares. However, as previously discussed, the New Redemption Plan will not offer stockholders a premium for their shares and the Company intends that the New Redemption Plan will exist indefinitely (subject to the authority of the board of directors in its reasonable discretion to amend or suspend the plan), thereby significantly reducing or eliminating the concerns under Rule 13e-4 that are associated with tender offers.

SEC No-Action Letter (May 17, 2011); Hines Real Estate Investment Trust, Inc., SEC No-Action Letter (Sept. 7, 2006).

⁸ See *Brascan Ltd. v. Edper Equities*, 477 F. Supp 773, 792 (S.D.N.Y. 1979).

In fact, the uniform NAV-based redemption 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 the then-current NAV per share at any time. 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, will always be offering no more than the then-current NAV per share as the redemption price of the shares.

In addition, in the event that the New Redemption Plan is oversubscribed in excess of the monthly or quarterly limits, the shares will be purchased on a *pro rata* basis, which will alleviate any pressure to request redemptions at the beginning of a month by ensuring that stockholders will be able to request redemption of their shares regardless of the particular day during the month when the stockholder chooses to submit its repurchase request.

(v) *The offer is contingent on the tender of a fixed number of shares.* The New Redemption 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.

(vi) *The offer is open only for a limited period of time.* The New Redemption 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 New Redemption Plan. This feature of the New Redemption 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 New Redemption Plan. The role of the Company in effectuating repurchases under the New Redemption Plan will be purely ministerial. Because the New Redemption Plan has no set termination date, stockholders will not feel rushed to make decisions regarding participation in the plan. All requests for repurchase submitted during a month will be processed at the end of the month and if any cap is reached, shares will be repurchased *pro rata*. In addition, the combination of (1) disclosure of the New Redemption Plan at the time of the original investment decision, (2) the *pro rata* allocation that is triggered when the New Redemption Plan is oversubscribed and (3) a redemption price that is always equal to (or during the Early Redemption

Period, less than) the then-current NAV per share, collectively should act to decrease pressure on stockholders. Stockholders may feel pressure to request repurchase of their shares if they believe the Company may receive repurchase requests in a calendar month or quarter in excess of the established maximum amount for that month or 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 New Redemption Plan are first disclosed to purchasers of shares at the time the Class I shares are purchased (which is expected to be substantially in advance of the time of their decision to participate in the New Redemption Plan). Additionally, the pressures inherent in the plan noted above exist regardless of whether the redemption price is established quarterly according to the NAV.

(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.*⁹ The intent of the New Redemption Plan is to provide the Company's stockholders with liquidity, not for the Company to re-acquire its own shares. The Company will only be able to acquire Class I shares subject to the New Redemption Plan's monthly and quarterly limits.

The Company will describe the New Redemption Plan in the prospectus, supplements and related offering materials, and when required, in filings made pursuant to the Exchange Act. The Company will promptly inform stockholders, as required by the New Redemption Plan, of any modification or suspension of the New Redemption Plan. The Company will also file prospectus supplements as required by the Securities Act disclosing the NAV per share of the Class I shares and provide current NAV information on its website and toll-free information line. We believe, however, that the New Redemption 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 New Redemption Plan as described above constitutes a public announcement of its existence and precedes any repurchase, we believe that any repurchase of shares will not be driven by pressure exerted by the Company, as the New Redemption Plan imposes no deadline and offers no premium. Rather, any such accumulation would occur solely

⁹ The *Wellman* case did not include the eighth factor but acknowledged the SEC had listed an eighth factor in *Hoover v. Fuqua Industries, Inc.* See *Wellman*, 475 F. Supp. at 824.

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. 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.¹⁰

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

The New Redemption 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 a "totality of circumstances" analysis.¹¹ 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.¹²

We believe that the New Redemption Plan withstands such a "totality of circumstances" analysis. Purchasers of Class I shares will be provided full disclosure of the plan before they purchase shares and invest in the Company and are informed that participation in the New Redemption Plan will be their only viable liquidity option if they want to sell their shares before the Company completes any liquidity event. Finally, the indefinite structure of the New Redemption Plan and the redemption price of the then-current NAV, which is expected to be less than the offering price but in no event will be a premium to market value, eliminate any undue

¹⁰ 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).

¹¹ See *Hanson Trust*; see also *Pin v. Texaco Inc.*, 793 F.2d 1448, 1454-55 (5th Cir. 1986) (applying same analysis to issuer tender offer case).

¹² 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.

pressure on stockholders that is typical in tender offers. We believe that the protections afforded to stockholders by the tender offer rules are not needed for stockholders who participate in the New Redemption Plan. We do not believe that a “substantial risk of ill-considered sales” made “by ill-informed shareholders” will exist for repurchases under the New Redemption Plan if the Rule 13e-4 procedural protections are not implemented.¹³

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. 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-4.¹⁴ We note that these protections are already inherent in the New Redemption 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 SEC take enforcement action under Rule 13e-4 with respect to repurchases of any of the Company’s Class I shares and Class J shares under the New Redemption Plan. The New Redemption Plan is substantially similar to the redemption plans of the other non-listed REITs for which the Staff has granted no-action relief.¹⁵ We do not believe the fact that the Company is not structured as a perpetual life entity and repurchases shares based upon an NAV per share that is calculated quarterly, rather than annually or monthly, impact the analysis included in the no-action letters granted to the perpetual life non-listed REITs. In addition, other than the redemption price and differences in the limitation on the number of shares that can be repurchased during each calendar quarter and cumulatively, as noted above, the New Redemption Plan is otherwise substantially similar to redemption plans of traditional non-listed REITs for which the Staff granted no-action relief.¹⁶ We do not believe that monthly repurchases based upon the then-current NAV per share calculation, coupled with a higher limitation on the aggregate value of

¹³ See *Hanson Trust*, 774 F.2d at 58.

¹⁴ See *SEC v. Carter Hawley Hale Stores, Inc.*, 760 F.2d 945, 949 (9th Cir. 1985).

¹⁵ See *supra* note 3.

¹⁶ See *supra* note 4.

shares that can be repurchased in each calendar month or calendar quarter, 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 New Redemption Plan will be fully and timely disclosed to all Class I and Class J stockholders. Class J shares will not be sold to new investors, but rather will be issued to existing stockholders upon conversion of the Class I shares pursuant to the Company's charter. The terms of the New Redemption Plan will be fully disclosed in the prospectus, as well as any prospectus used for subsequent offerings, and the NAV per share will always be available on the Company's website and toll-free line.
- The Company will not solicit repurchases under the New Redemption Plan other than through the prospectus and prospectus supplements disclosing the NAV per share of the shares. Stockholders desiring to request repurchase of all or a portion of their shares pursuant to the New Redemption Plan will do so of their own volition and not at the behest, invitation or encouragement of the Company. The Company will file prospectus supplements with the SEC with such frequency as is required by Securities Act. The role of the Company in effectuating redemptions under the New Redemption Plan will be ministerial.
- Repurchases will be made on a monthly basis at a price which generally will be equal to the latest announced NAV per share for the class of shares being repurchased. The redemption price will normally be paid no later than three business days following the end of a month.
- Repurchases under the New Redemption Plan will be limited in any calendar month to Class I shares and Class J shares whose aggregate value (based on the redemption price per share in effect when the repurchase is effected) is 2% of the aggregate NAV of all Class I shares and Class J shares as of the last calendar day of the previous month and will be limited in any calendar quarter to Class I shares and Class J shares whose aggregate value (based on the redemption price per share in effect when the repurchase

is effected) is 5% of the aggregate NAV of Class I shares and Class J shares as of the last calendar day of the previous calendar quarter.

- If the monthly or quarterly volume limitation is reached in any given month or the Company determines to repurchase fewer shares than have been requested to be repurchased in any particular month, repurchases under the New Redemption Plan for such month will be on a *pro rata* basis.
- Stockholders may withdraw any repurchase request before the last calendar day of any month by notifying the Company on the Company's toll-free information line before 4:00 p.m. Eastern time on the second to last business day of the month.
- Material modifications, including any reduction to the monthly or quarterly limitations on repurchases, and suspensions of the New Redemption Plan will be promptly disclosed in a prospectus supplement (or post-effective amendment if required by the Securities Act), or special or periodic reports 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 New Redemption Plan will be terminated if the Company's shares are listed on a national securities exchange, included for quotation in a national securities market or in the event a secondary market (other than limited or sporadic quotations) for the Company's Class I shares or Class J shares develops.
- The New Redemption Plan will be available to all Class I and Class J stockholders from the time they purchase their Class I shares, although those who seek redemption during the Early Redemption Period will only be able to redeem their shares at 95.0% of the then-current NAV, except in the case of death or disability, where, upon request, the Company may waive the discount during the Early Redemption Period. The discount also will be waived with respect to shares issued pursuant to the distribution reinvestment plan and shares issued by the Company as stock dividends, if any. The discount is intended to offset the Company's costs resulting from such short-term hold and to discourage such activity.

- The New Redemption Plan is intended to be indefinitely open for the life of the Company unless modified, suspended or terminated by the board of directors of the Company or upon the occurrence of a liquidity event.

The Company believes the New Redemption 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 New Redemption Plan were not implemented.

Rule 13e-3 — Does Not Apply

Rule 13e-3 should not apply to the New Redemption 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 New Redemption 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 New Redemption Plan insofar as the New Redemption Plan has limitations on the amount of repurchases that may be made in each calendar month and each calendar quarter. If the extent of repurchases under the New Redemption 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 New Redemption Plan.

If you have any questions or need any additional information, please do not hesitate to contact me at (202) 331-3169.

Sincerely,



Alice L. Connaughton

cc: Ryan T. Sims