



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

DIVISION OF  
CORPORATION FINANCE

September 12, 2016

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

Via E-mail

Andrew R. Keller, Esq.  
Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, NY 10017

**Re: Blackstone Real Estate Income Trust, Inc.  
Request for No-Action Relief Under Rule 13e-4**

Dear Mr. Keller:

We are responding to your letter dated September 12, 2016, addressed to Ted Yu and David 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 Securities and Exchange Commission take enforcement action under Rule 13e-4 if the Company repurchases shares from its stockholders under the Repurchase Plan in the manner described in your letter. In issuing this no-action letter, we considered the following facts, among others:

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

- The shares will be repurchased monthly under the Repurchase Plan at a price which will generally be equal to the NAV per share for the applicable class of shares for the prior month, and the Company will file prospectus supplements with the Commission with such frequency as is required by the Securities Act disclosing the historical NAV per share of each class of shares and also provide each month the Transaction Price and the NAV per share for each class of shares on its website and toll-free information line. Subject to the terms of the Repurchase Plan, the Company will be obligated to repurchase shares at the Transaction Price per share for the applicable class of shares;
- Repurchases will be made on a monthly basis. The repurchase price normally will be paid in cash no later than three business days following the last calendar day of the applicable month and will be the same for all shares of the same class repurchased on a given month;
- Repurchases under the Repurchase Plan will be limited in any calendar month to shares whose aggregate value (based on the repurchase price per share for the month the repurchase is effected) is 2% of the combined NAV of all classes of 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 repurchase price per share for the month the repurchase is effected) is 5% of the combined NAV of all classes of 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 Repurchase Plan for such month will be made on a *pro rata* basis;
- Stockholders may withdraw any repurchase request before the last calendar day of any month by notifying the Company's transfer agent on the Company's toll-free information line before 4:00 p.m. Eastern time on the last business day of the month;
- Material modifications, including any reduction to the monthly or quarterly limitations on repurchases, and suspensions of the Repurchase Plan will be promptly disclosed in a prospectus supplement (or post-effective amendment if required by the Securities Act), or special or periodic report filed by the Company, as well as on the Company's website;
- There will be no established regular trading market for the Company's common stock. The Repurchase Plan will be terminated if the Company's shares are listed on

a national securities exchange or included for quotation in a national securities market, or in the event a secondary market for the Company's shares develops;

- The Repurchase Plan is intended to remain open indefinitely for the life of the Company unless modified or suspended by the board of directors. The Company is structured as a perpetual-life entity and has no intention to list its shares for trading on an exchange or other trading market; and
- The Repurchase Plan is open to all stockholders.

The foregoing no-action position is based solely on the representations and the facts presented in your letter dated September 12, 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 rules listed above to this transaction. You should discontinue this transaction pending further consultations with the staff if any of the facts or representations set forth in your letter change. 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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September 12, 2016

Mr. Ted Yu, Chief  
Mr. David 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: Blackstone Real Estate Income Trust, Inc.  
Request for No-Action Relief Under Rule 13e-4**

Dear Messrs. Yu and Orlic:

We are counsel to Blackstone Real Estate Income Trust, Inc. (the "Company") in connection with its draft Registration Statement on Form S-11 under the Securities Act of 1933, as amended (the "Securities Act") (Registration No. 377-01255), initially confidentially submitted to the Securities and Exchange Commission (the "SEC") on February 1, 2016, as amended from time to time (the "Registration Statement"), to register the offer and sale of up to \$5,000,000,000 of its shares of common stock in an initial public offering (the "Offering"), of which \$4,000,000,000 of shares will be offered to the public in a primary offering and \$1,000,000,000 of shares will be offered to stockholders of the Company pursuant to the Company's distribution reinvestment plan. The Company will offer to the public four classes of common stock: Class T common stock (the "Class T Shares"), Class S common stock (the "Class S Shares"), Class D common stock (the "Class D Shares") and Class I common stock (the "Class I Shares"). The Class T Shares, the Class S Shares, the Class D Shares and the Class I Shares will have different selling commissions, dealer manager fees and ongoing stockholder servicing fees. The Class T Shares will have selling commissions, dealer manager fees and stockholder servicing fees, the Class S Shares will have selling commissions and stockholder servicing fees, the Class D Shares will have no selling commissions and lower stockholder servicing fees, and no selling commissions or stockholder servicing fees will be paid with respect to Class I shares. The Company will offer to sell any combination of Class T Shares, Class S Shares, Class D Shares and Class I Shares with a dollar value up to the maximum offering amount. The Company will not sell any shares until the date it has received and accepted purchase orders for at least \$150,000,000 in any combination of purchases of Class T Shares, Class S Shares, Class D Shares and Class I Shares and the Company's board of directors has authorized the release of these funds to the Company (the "Minimum Offering Date"). Prior to the Minimum Offering Date, subscriptions will be placed in an interest-bearing escrow account.

The Company was formed as a Maryland corporation on November 16, 2015 for the purpose of investing primarily in stabilized income-oriented commercial real estate in the United States. The Company is externally advised and intends to qualify and elect to be treated as a real

estate investment trust (“REIT”) under the Internal Revenue Code of 1986, as amended. 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 current 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 is registering a fixed amount of its shares pursuant to the Registration Statement, it intends to effectively conduct a continuous offering of an unlimited amount of shares of common stock over an unlimited time period by filing a new registration statement prior to the end of the three-year period described in Rule 415 under the Securities Act. This perpetual-life structure is aligned with the Company’s overall objective of investing in real estate and real estate-related securities to enable the Company to provide income in the form of regular cash distributions, while preserving and protecting invested capital and realizing appreciation in net asset value (“NAV”).

The Offering provides for the sale, on a monthly basis following the Minimum Offering Date, of Class T Shares, Class S Shares, Class D Shares and Class I Shares at a transaction price (the “Transaction Price”), determined on a monthly basis, which will generally be equal to the NAV per share for the applicable class of shares for the prior month, calculated for each class by dividing the NAV for such class by the number of shares of such class outstanding as of the close of the last calendar day of each month (after giving effect to any share sales or repurchases to be effected for such month), plus applicable selling commissions and dealer manager fees. The Company may use a Transaction Price other than the prior month’s NAV in cases where the Company believes there has been a material change (positive or negative) to the Company’s NAV per share since the end of the prior month. The NAV for each class of shares will be calculated at the close of the last calendar day of each month in accordance with valuation guidelines approved by the Company’s board of directors. A fundamental feature of the Offering is the Company’s share repurchase plan (the “Repurchase Plan”), which will serve as the primary source of liquidity for stockholders.<sup>1</sup> Repurchases under the Repurchase Plan are not contingent on the sale of a certain number of shares in a given period. Following the Minimum Offering Date, holders of Class T Shares, Class S Shares, Class D Shares and Class I Shares will be offered the opportunity to request that the Company repurchase their shares on a monthly basis at a price that may vary each month based on the Transaction Price, subject to a 5% discount for shares repurchased within one year of purchase. The Repurchase Plan is similar to the repurchase/redemption plans of other perpetual-life, non-listed REITs with respect to which the staff of the Division of Corporation Finance of the SEC (the “Staff”) has recently granted no-action relief.<sup>2</sup> Like these other REITs, the Company has been structured to address well-known

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<sup>1</sup> The Repurchase Plan meets the conditions for exemption from Rule 102(a) of Regulation M, as articulated in the 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).

<sup>2</sup> See 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); Cole Real Estate Income Strategy (Daily NAV), Inc. SEC No-Action Letter, 2011 WL 6071983 (Dec. 6, 2011); American Realty Capital Daily Net Asset Value Trust, Inc. SEC No-Action Letter, 2011 WL 2938525 (July 21, 2011); Clarion Partners Property Trust

shortcomings associated with traditional non-listed REITs, principally (1) lack of liquidity; (2) the rigidities implicit in a closed-end, finite-life, fixed price investment; and (3) high fees. The Company's structure is designed to benefit investors by (A) providing investors the flexibility to increase or decrease their investments in the Company as their individual situations change; (B) minimizing the risk that their long-term investment goals will conflict with short-term liquidity needs; and (C) allowing investors to seek returns of their capital and monetize any investment gain at a time of their choice, rather than being forced to wait for a terminal liquidity event outside their control. Shares repurchased by the Company will become authorized but unissued shares and will not be resold to the public unless their sale has been 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 Repurchase Plan in an effort to provide stockholders with liquidity with respect to their investments in the Company's shares. The Company believes that many features of its Repurchase Plan are substantially similar to repurchase/redemption plans of other companies with respect to which 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").

The features of the Repurchase Plan are similar to the features of the repurchase/redemption plans with respect to which, as described above, the Staff has granted no-action relief, with certain variations described below that the Company does not believe impact the analysis of whether the Repurchase Plan constitutes an issuer tender offer. The Repurchase Plan provides for monthly repurchases, the repurchase price will vary based on the Transaction Price of the class of shares being repurchased as of the opening of the repurchase date, and the repurchase of shares at the end of any calendar month will be limited to shares whose aggregate value (based on the repurchase price per share for the month the repurchase is effected) is 2% of the combined NAV of all classes as of the last calendar day of the previous month and in any calendar quarter will be limited to shares whose aggregate value (based on the repurchase price per share for the month the repurchase is effected) is 5% of the combined NAV of all classes of shares as of the last calendar day of the previous calendar quarter. As a result, we respectfully submit that repurchases pursuant to the Repurchase Plan do not implicate the concerns that the issuer tender offer rules were adopted to address. Specifically, the Repurchase Plan, which offers stockholders no premium, will have no set termination date and provides 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 Class T Shares, Class S Shares, Class D Shares and Class I Shares made under the Repurchase Plan.

## OVERVIEW OF THE COMPANY AND THE REPURCHASE PLAN

### *The Company*

The Company is externally managed by its advisor, BX REIT Advisors L.L.C. (the “Adviser”), and sponsored by an affiliate of the Adviser, The Blackstone Group L.P. The dealer manager for the Offering is Blackstone Advisory Partners, L.P. (the “Dealer Manager”). The Dealer Manager is not required to sell any specific number or dollar amount of the shares, but will use its “best efforts” to sell the shares offered in the primary offering.

The Company will seek to invest primarily in stabilized income-oriented commercial real estate in the United States. The Company’s property investments will focus on a range of asset types, which may include office, hotel, industrial, multifamily and retail assets, as well as others, including, without limitation, healthcare, student housing, senior living, data centers, manufactured housing and storage properties. To a lesser extent, the Company also plans to invest in real estate-related securities to provide a source of liquidity for the Repurchase Plan, cash management and other purposes. The Company’s real estate-related securities investments will focus on non-distressed public and private real estate debt, including, but not limited to, commercial mortgage-backed securities, mortgages, loans, mezzanine and other forms of debt, and may also include preferred equity. Additionally, while the Company does not intend to make open market purchases of common stock in public equity REITs or other companies focused on owning real property, it may make such investments in companies with mortgages as one of their core businesses. After the Company has raised substantial proceeds in the Offering, it will seek to invest at least 80% of its assets in properties and up to 20% of its assets in real estate-related securities.

### *The Repurchase Plan*

#### Purpose of the Repurchase Plan

The Company intends to adopt a Repurchase Plan in an effort to provide the holders of Class T Shares, Class S Shares, Class D Share and Class I Shares with liquidity with respect to their investment in the Company’s common stock, subject to specified limitations. Through the Repurchase Plan, holders of Class T Shares, Class S Shares, Class D Shares and Class I Shares can liquidate all or a portion of their investment. The Repurchase Plan is an important feature of the investment in the shares, since the Company expects the Repurchase Plan will serve as its stockholders’ sole meaningful source of liquidity. Without an effective repurchase plan, stockholders in the Company would generally be required to hold their shares for an indefinite time period because (1) there will be no established trading market for the shares upon issuance, (2) the Company does not anticipate that a secondary trading market (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 cases 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 plans made available by the issuers. Mini-tender offers are also subject to potential manipulation by the purchaser, and stockholders often receive limited disclosure about the terms, structure and conditions of the offer. The Company believes that the mini-tender offers further evidence that sufficient liquidity options may not always exist for stockholders in non-listed REITs with traditional repurchase plans and that stockholders in these types of non-listed REITs often suffer financially as a result. The Company also notes that lack of liquidity is often cited in the investment community as a primary disadvantage of investing in non-listed REITs, as most non-listed REITs are closed-end entities (with set dates for a terminal liquidity event) and offer repurchase plans that are subject to substantial limitations on repurchases. The Company believes that many investment professionals and investors consider the traditional non-listed REIT repurchase plans to be inadequate to provide stockholders with a viable liquidity option. Because the Company intends to engage in a continuous offering of its shares of an unlimited duration, a repurchase plan that provides a source of liquidity is especially important to the Company, because, absent this feature, potential investors would be reluctant to purchase shares in the Offering.

The Offering and the Repurchase Plan are designed to provide investors with an investment vehicle that the Company believes is a superior alternative to traditional non-listed REITs. Unlike traditional non-listed REIT offerings, the price of the Company’s shares after the Minimum Offering Date will be based on the underlying fair value of its assets, rather than an arbitrary dollar amount. In cases where the Transaction Price is not equal to the prior month’s NAV, the Company intends to select a Transaction Price that it believes best represents the current NAV per share. However, due to the timing required for determining a Transaction Price, such estimate of the NAV per share will not necessarily be determined in accordance with the Company’s valuation procedures and may differ from the actual NAV per share as of the end of the current month, which will under normal circumstances be disclosed within 15 calendar days after month end. The Repurchase Plan 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 repurchases (as compared to the typical traditional non-listed REIT repurchase plan in which the sources of cash are limited to proceeds from the sale of additional shares through the distribution reinvestment plan).

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

The Company’s board of directors, including a majority of its independent directors, will adopt valuation guidelines that contain a comprehensive set of methodologies that will be used by the Adviser and the Company’s independent valuation advisor when estimating the values of the Company’s assets and liabilities for purposes of calculating NAV. These guidelines are designed to produce a fair and accurate estimate of the price that would be received for the Company’s investments in an arm’s-length transaction between a willing buyer and a willing seller in possession of all material information about the Company’s investments. The Company’s independent valuation advisor will review the Company’s valuation guidelines and



methodologies related to investments in real property with the Adviser and the Company's board of directors at least annually. From time to time, the Company's board of directors, including a majority of its independent directors, may adopt changes to the valuation guidelines if it (1) determines that such changes are likely to result in a more accurate reflection of NAV or a more efficient or less costly procedure for the determination of NAV without having a material adverse effect on the accuracy of such determination or (2) otherwise reasonably believes a change is appropriate for the determination of NAV.

Each property will be valued by an independent third-party appraisal firm within the first two full months after acquisition and no less than annually thereafter. Each third-party appraisal is performed in accordance with the Uniform Standards of Professional Appraisal Practice and reviewed by the independent valuation advisor for reasonableness. Upon conclusion of the appraisal, the independent third-party appraisal firm prepares a written report with an estimated range of gross market value of the property. Concurrent with the appraisal process, the Adviser values each property and, taking into account the appraisal, among other factors, determines the appropriate valuation within the range provided by the independent third-party appraisal firm. Each appraisal must be reviewed, approved and signed by an individual with the professional designation of MAI (a Designated Member of the Appraisal Institute). The Company believes its policy of obtaining appraisals by independent third parties will meaningfully enhance the accuracy of the Company's NAV calculation. Any appraisal provided by an independent third-party appraisal firm will be performed in accordance with the Company's valuation guidelines and will not be considered in the Adviser's valuation of the applicable property until the Company's independent valuation advisor has confirmed the reasonableness of such appraisal.

The Adviser will update the valuations of the Company's properties monthly, based on the then most recent annual third-party appraisals and current market data and other relevant information, with review and confirmation for reasonableness by the independent valuation advisor provided in a negative assurance letter. The Adviser will monitor the Company's properties for events that the Adviser believes may be expected to have a material impact on the most recent estimated values of such property and will notify the independent valuation advisor of such events.

Real estate-related securities and derivatives will be valued by the Adviser based on market quotations or at fair value determined in accordance with GAAP. Market quotations may be obtained from third-party pricing service providers or broker-dealers. When reliable market quotations for real estate-related securities are available from multiple sources, the Adviser will use commercially reasonable efforts to use two or more quotations and will value such real estate-related securities based on the average of the quotations obtained. Pursuant to the valuation guidelines adopted by the Company's board of directors, if market quotations are not readily available (or are otherwise not reliable for a particular investment), the fair value will be determined in good faith by the Adviser.

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 Adviser'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 Adviser 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 Repurchase 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.

#### NAV and NAV Per Share Calculation

On the date that the Class T Shares, Class S Shares, Class D Share and Class I Shares are first offered to the public, the purchase price for the Class T Shares, Class S Shares, Class D Share and Class I Shares will be \$10.00 per share, plus applicable upfront selling commissions and dealer manager fees. Following the Minimum Offering Date, the purchase price for Class T Shares, Class S Shares, Class D Share and Class I Shares will be equal to the Company's Transaction Price (which under normal circumstances will be equal to the prior month's NAV per share), for such class, as determined monthly, plus, for Class S Shares and Class T Shares, applicable upfront selling commissions and dealer manager fees of up to 3.5% of the NAV per share.

At the Minimum Offering Date, NAV for each class of shares will be equal to the net proceeds received by the Company during the escrow period to purchase shares in each respective class, less the Company's liabilities. Thereafter, beginning with the first full calendar month after the Minimum Offering Date, at the end of each month, before taking into consideration additional issuances or repurchases of shares of common stock or class-specific stockholder servicing fees for that month, any change in the Company's aggregate NAV (whether an increase or decrease) will be allocated among each class of shares based on each class's relative percentage of the previous aggregate NAV. Changes in the Company's monthly NAV will reflect, among other things, accruals of the Company's net portfolio income, interest expense, the management fee, any accrued performance participation, distributions, unrealized/realized gains and losses on assets, any applicable organization and offering costs and any expense reimbursements. The net portfolio income will be calculated and accrued on the basis of data extracted from (1) the monthly budget for each property and at the Company's operating partnership level, (2) material nonrecurring events, including, but not limited to, capital expenditures, prepayment penalties, assumption fees, tenant buyouts, lease termination fees and tenant turnover with respect to the Company's properties when the Adviser becomes aware of such events and the relevant information is available and (3) material property acquisitions and dispositions occurring during the month. On an ongoing basis, based on annual independent third-party real estate appraisals as adjusted as described above, where applicable, the Adviser will adjust the accruals to reflect actual operating results and the outstanding receivable, payable and other account balances resulting from the accumulation of monthly accruals for which financial information is available.

The Adviser will agree to advance all of the Company's organization and offering expenses on the Company's behalf (other than selling commissions, dealer manager fees and stockholder servicing fees) through the first anniversary of the Minimum Offering Date. The Company will reimburse the Adviser for such advanced expenses ratably over the 60 months following the first anniversary of the Minimum Offering Date. For purposes of calculating the Company's NAV, the organization and offering expenses paid by the Adviser through the first anniversary of the Minimum Offering Date will not be recognized as expenses or as a component of equity and reflected in the Company's NAV calculations until the Company reimburses the Adviser for these costs.

Following the aggregation of the net asset values of the Company's investments, the addition of any other assets (such as cash on hand), the deduction of any other liabilities and the allocation of income and expenses, a third-party firm will incorporate any class-specific adjustments to the Company's NAV, including additional issuances and repurchases of the Company's common stock and accruals of class-specific stockholder servicing fees. When the Company determines its monthly NAV, NAV for each class will be reduced to reflect the accrual of the Company's liability to pay the distribution to the Company's stockholders of record of each class as of the record date. NAV per share for each class is calculated by dividing such class's NAV at the end of each month by the number of shares outstanding for that class at the end of such month.

As a result of the process described above and under "Valuation of the Company's Assets and Liabilities" above, particularly with respect to real estate-related securities, the monthly NAV calculation will be available under normal circumstances within 15 calendar days after the end of the applicable month.

#### Timing and Settlement

Under the Repurchase Plan, and subject to specified limitations, stockholders may request that the Company repurchase all or any portion of their shares as of the opening of the last calendar day of each full calendar month following the Minimum Offering Date (the "Repurchase Date") at the Transaction Price for the class of shares being repurchased. The repurchase price will be equal to the Transaction Price of the class of shares being repurchased as of the applicable Repurchase Date (subject to any short-term trading discount). 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 Repurchase Date at the Transaction Price applicable to that month (subject to any short-term trading discount), unless such request is withdrawn prior to that Repurchase 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 current 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 last business day of the applicable month. Settlements of share repurchases will be made within three business days after the Repurchase Date.

As discussed above, the Transaction Price for each month will under normal circumstances be equal to the NAV per share for the applicable class of shares as of the end of the prior month, and will be made publicly available within 15 calendar days after the end of the applicable month. However, unforeseen circumstances may arise over the indefinite life of the Company that may result in the NAV calculation as of the close of the last calendar day of the prior month not being available within that timeframe in any particular month. In addition, the Transaction Price for any month may be a price other than the prior month's NAV per share, including by updating a previously disclosed Transaction Price for that month, in cases where the Company believes there has been a material change (positive or negative) to the NAV per share since the end of the prior month. In the unlikely case that the Transaction Price for the applicable month is not made available by the tenth business day prior to the 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.

A stockholder may make a repurchase request for a particular Repurchase Date before the Transaction Price is made available, but such stockholder will know the price at least ten business days prior to the last business day of the month and, as a result, will have at least a ten business day period to consider the transaction price before the deadline to submit a repurchase request (the first day of the ten business day period is the day the transaction 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 and before the last business day of the month by notifying the Company's transfer agent, directly or through the stockholder's financial intermediary. Stockholders who make their repurchase request after the tenth business day prior to the last business day of the month will know the Transaction Price at the time of their request.

Following the Minimum Offering Date, the Company's monthly Transaction Price and NAV per share for each class will be posted on its website ([www.bxreit.com](http://www.bxreit.com)) promptly after it has become available and will also be available through the Company's toll-free information line. Subject to the terms of the Repurchase Plan, to the extent it determines to repurchase Class T Shares, Class S Shares, Class D Shares and Class I Shares in any month, the Company will be obligated to repurchase such shares at their published Transaction Price. 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 its Transaction Price and NAV per share for each month in prospectus supplements it files with the SEC on a monthly basis and will file post-effective amendments to its Registration Statement as required by the Securities Act. In addition, the Company will also disclose, on a monthly basis in a prospectus supplement filed with the SEC, the primary valuation components of its NAV. Each of the Company's prospectus supplements will provide the historical NAV per share for each class of shares since it was last reported in a prospectus supplement.

In contrast to the market prices of exchange-traded securities, which often fluctuate as a result of, among other things, supply and demand in the trading market, the purchase and repurchase prices of the Company's shares will reflect NAV and will not change based on the level of demand for new shares or the volume of requests for repurchase of outstanding shares.

As described above, NAV per share of each class of shares will be determined as of the last calendar day of each month using the Company's valuation policies and procedures and none of the Company, the Adviser, the Dealer Manager or any financial intermediary will be able to change the manner in which NAV is determined, other than by first modifying the valuation guidelines as described above, nor will they have any discretion to set a "clearing" price. Because a substantial portion of the Company's portfolio will be in investments in stabilized commercial real estate, after the Company's ramp-up period it is not anticipated that the NAV per share will often fluctuate materially from one month to the next.

The Company's ability to use a Transaction Price other than the prior month's NAV per share allows it to use a Transaction Price that it believes is more representative of the current NAV than the prior month's NAV would be in cases where there has been a material change since the end of the prior month. This also serves to protect the Company and its stockholders from market timing by opportunistic, short-term investors. For example, if a material event related to the Company or the real estate markets generally became known to the market that would be expected to materially change the Company's NAV per share, and the Company used the prior month's NAV as the Transaction Price, current investors would have an opportunity to exit the Company, and new or existing investors would have an opportunity to enter or increase their holdings in the Company, at the previous month's NAV based on knowledge of events that have taken place since then, which may cause the current month's NAV to be higher or lower than the previous month's NAV. If instead the Company is able to use a Transaction Price that it believes is more representative of the current month's NAV, this opportunity for short-term arbitrage would not exist. Market timing harms legitimate, long-term investors because market timers capture an unfair share of gains or avoid their fair share of losses.

#### Funding and Limitations of the Repurchase Plan

The Repurchase Plan will permit the repurchase during any calendar month of Class T Shares, Class S Shares, Class D Share and Class I Shares whose aggregate value (based on the repurchase price per share for the month the repurchase is effected) is 2% of the combined NAV of all classes as of the last calendar day of the previous month 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 combined NAV of all classes of 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. Under normal circumstances, the Company intends to maintain an allocation to real estate-related securities of up to 20% of its NAV. However, the Company has disclosed in its prospectus 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 Repurchase 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 Repurchase 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 combined NAV of all classes 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 combined NAV of all classes of shares as of the last calendar day of the prior calendar quarter.

The board of directors' primary objective regarding the Repurchase Plan is to maintain the uninterrupted repurchase of shares in order to provide stockholders with liquidity 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 Plan to ensure its effective operation. Those fiduciary duties require that, as with any decision made by the board, any decision to modify or suspend the Repurchase Plan be made in good faith, with a reasonable belief that the action is in the best interests of the Company and its stockholders, and with the care of an ordinarily prudent person in a like position under similar circumstances. The Company believes that the board's responsibility to monitor and, under unusual or compelling circumstances, suspend the repurchase of shares is necessary to ensure the integrity and long-term operation of the Repurchase Plan. Accordingly, should repurchase requests, in the business judgment of the board of directors, place an undue burden on the Company's liquidity, adversely affect the Company's operations or risk having an adverse impact on stockholders whose shares are not repurchased, then the Company's board of directors may modify or suspend the Repurchase Plan if it deems such action to be in the best interest of the Company's stockholders. In addition, the board of directors may determine to suspend the Repurchase Plan due to regulatory changes, changes in law or if the board of directors becomes aware of undisclosed material information that it believes should be publicly disclosed before shares are repurchased. Material modifications, including any reduction to the monthly or quarterly limitations on repurchases, and suspensions to the Repurchase 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 indefinite life of the Company, a degree of flexibility in the administration of the Repurchase Plan is necessary and warranted to ensure that the board can discharge its fiduciary duties to promote the long-term efficacy of the Repurchase Plan, while also ensuring the equitable treatment of stockholders who do and do not request repurchase of their shares. Notwithstanding the foregoing, the board of directors has no current intention to modify or suspend the Repurchase Plan and expects that the Repurchase Plan will continue indefinitely. In addition, the Company will seek confirmation of the no-action relief requested hereby if the board proposes to (1) modify the Repurchase Plan from monthly to less frequent repurchases, (2) reduce the repurchase price to an amount that reflects a discount to the Transaction Price (other than the short-term trading discount set forth in the Repurchase Plan) or (3) modify other aspects of the Repurchase Plan upon which the Company's request for no-action relief is predicated other than immaterial modifications for the proper administration and operation of the Repurchase Plan which are consistent with the factual and legal representations contained in this letter.

#### Disclosure

The Company does not intend to publicize separately the existence of the Repurchase Plan or engage in any activity to encourage stockholders to submit requests for repurchase of their shares other than disclosures 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/repurchase price disclosure in stockholder communications after the commencement of the Offering and the provision of the Transaction Price and 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 shares of the Company's common stock as to whether to participate in the Repurchase Plan. The prospectus for the Offering will contain a comprehensive description of all terms, conditions and features of the Repurchase Plan and will be updated to reflect any material modifications made during the Offering. As a result, with the exception of the repurchase price, an investor will have all of the material information necessary to make a repurchase decision at the time the investor makes an investment decision.

### LEGAL DISCUSSION

#### *Reasons for No-Action Relief*

The Company's request for no-action relief is substantially similar to the no-action requests of other perpetual-life non-listed REITs that have recently commenced similar public offerings.<sup>3</sup> The Company's request for no-action relief includes: (1) a limitation on the number of shares of all classes that will be repurchased, (2) the pricing of repurchases based on a Transaction Price, a NAV-based price determined prior to the Repurchase Date that is used for

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<sup>3</sup> See *supra* note 2.

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 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.

The Company acknowledges that the relief granted to other non-listed REITs has generally been for either daily NAV non-listed REITs<sup>4</sup> or non-listed REITs that offer quarterly repurchases for limited numbers of shares at an arbitrary fixed price rather than at NAV (although certain REITs that rely on the relief related to arbitrary fixed price REITs also plan to make quarterly repurchases based on NAV).<sup>5</sup> The Company's Repurchase Plan, in contrast, provides for monthly repurchases using a repurchase price that under normal circumstances will be based on the prior month's NAV. 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 Plan constitutes an issuer tender offer. See "Rule 13e-4 No-Action Request—The Repurchase Plan is not an Issuer Tender Offer" and "—Analysis of the Wellman Factors" below.

The Company has adopted its NAV-based pricing methodology with the objective of having its shares sold and repurchased monthly at a price that reflects the value of its investments. Absent extraordinary circumstances, the price at which the Company sells new shares and repurchases outstanding shares will not be affected by the volume of sales and repurchases. Stockholders may request the repurchase of all or a portion of their shares on 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 Repurchase 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 Repurchase Plan at the time they purchase their shares by means of prospectus disclosure, and will be informed in writing of any changes to the plan, the Company will not affirmatively solicit participation by its stockholders in the Repurchase Plan. Stockholders desiring to present all or a portion of their shares for repurchase will do so of their own volition and not at the behest, invitation or encouragement of the Company.

The role of the Company in effectuating repurchases under the Repurchase Plan will be ministerial and will merely facilitate the stockholders' decision to exit from their investment in

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<sup>4</sup> See *supra* note 2.

<sup>5</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).



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 Repurchase Plan in the event the shares are listed on a national securities exchange or included for quotation on a national securities market, or in the event a secondary market (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 Repurchase Plan is not an Issuer Tender Offer

We believe that the Repurchase Plan is not an "issuer tender offer" subject to Rule 13e-4. We reach this conclusion based on an analysis of the factors expressed in *Wellman v. Dickinson*, 475 F. Supp. 783 (S.D.N.Y. 1979), and applied in subsequent cases by the SEC and its staff in determining what constitutes a tender offer, as well as the fact that the terms of the Repurchase Plan will be fully disclosed to potential investors of Class T Shares, Class S Shares, Class D Share and Class I Shares prior to the purchase of shares of the Company's common stock. Stockholders will be aware of the most recent monthly Transaction Price and NAV per share for each class of shares through the Company's website and toll-free information line, and the historical monthly NAV per share through the Company's prospectus supplements. Once the Transaction Price for the applicable Repurchase Date is made available through the Company's website, toll-free information line and prospectus supplement, stockholders do not require additional information regarding the Repurchase Plan. Stockholders will be given sufficient time after the Transaction 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 repurchase. Because the Repurchase Plan is not a tender offer, the structural protections generally afforded to stockholders in a tender offer under the tender offer rules are unnecessary for the protection of investors.

We also believe that the Repurchase Plan does not raise the same tender offer concerns under Rule 13e-4 that are addressed in the no-action requests by traditional non-listed REITs for repurchase plans that offer periodic repurchases for limited numbers of shares at an arbitrary

fixed price.<sup>6</sup> We believe the perpetual-life structure of the Repurchase Plan, a repurchase price that is based on the underlying fair value of the Company's NAV 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 reduces the pressure on stockholders with respect to making a repurchase request. There will not be a limited time period in which to repurchase. Stockholders may request the repurchase of all or a portion of their shares throughout the continuous offering, which has no anticipated termination date, at the monthly Transaction Price. 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 Plan's *pro rata* mechanism together with the perpetual-life structure of the Repurchase Plan, 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-traded 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-traded 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-traded REITs have mechanisms designed to remedy this inequity by giving stockholders the opportunity to achieve *pro rata* repurchases in later periods. The Company's Repurchase Plan 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 point 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*.

A stockholder may withdraw a repurchase request before the Repurchase Date by notifying the Company's transfer agent on the Company's toll-free information line before 4:00 p.m. Eastern time on the last business day of the applicable month. A stockholder may make a repurchase request for a particular Repurchase Date before the Transaction Price is made available, but such stockholder will know the price prior to the Repurchase Date and will have an opportunity to withdraw his or her request after the price is made available and before the last business day of the applicable month by notifying the Company's transfer agent, directly or through the stockholder's financial intermediary. Stockholders who make their repurchase request after the tenth business day prior to the last business day of the month will know the Transaction Price at the time of their request. In the unlikely case that the Transaction Price for the applicable month is not made available by the tenth business day prior to the last business day of the applicable 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.

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

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<sup>6</sup> See *supra* note 5.

the supply and demand of a security. Without these market pressures and because the price is based on the Company's NAV, the Company believes that, after the Company's ramp-up period, material fluctuations in the NAV per share on a month-to-month basis are unlikely. The Company believes that, although certain of the Company's real estate-related securities are subject to greater price fluctuations than its real properties, after the Company's ramp-up period, material fluctuations in NAV per share from one month to the next will be unlikely because the substantial majority of the Company's investments will be direct ownership of stabilized commercial real estate properties (which are generally not subject to volatile price fluctuations).

#### Analysis of the Wellman Factors

An analysis of the *Wellman* factors demonstrates that the Repurchase Plan should not be viewed as a tender offer.<sup>7</sup> Set forth below is an application of these factors to the Repurchase Plan.

(i) *Active and widespread solicitation of public stockholders for the shares of an issuer.* The Company will not engage in an active and widespread solicitation for the repurchase of its shares. The Repurchase Plan will be described in the prospectus and any communications to stockholders identifying changes to the plan will be communicated through reports the Company files with the SEC, a press release or via the Company's website. However, the Company believes that this disclosure is required by the Securities Act and is provided to make stockholders aware of the plan's existence. The Company will not make any other significant public communications about the Repurchase Plan except as contained in or related to the Offering prospectus and supplements, offering materials used in connection with the Offering, required communications in reports filed under the Exchange Act, the providing of the monthly Transaction Price and NAV per share of each class of shares on the Company's website and toll-free information line, and communications required by the plan itself. Stockholders desiring to 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 Plan will be ministerial and will merely facilitate the stockholder's full or partial exit from its investment in the Company.

(ii) *The offer to purchase is made at a premium over the prevailing market price.* No premium will be paid over the prevailing market price by the Company for the shares repurchased. The offering price will be the monthly Transaction Price for each class of shares, plus applicable selling commissions and dealer manager fees, and the repurchase price will be the monthly Transaction Price of the class of shares being repurchased. Subject to limited exceptions, shares repurchased within one year of the date of purchase will be subject to a short-term trading discount equal to 5% of the of the gross proceeds otherwise payable with respect to the repurchase. Further, there is no established regular trading market for the Company's common stock. The Repurchase Plan will be terminated in the event the Company's shares are listed on a national securities exchange or included for quotation in a national securities market.

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<sup>7</sup> The absence of one particular factor does not necessarily mean the non-existence of an issuer tender offer and depending upon the circumstances involved in the particular case, one or more of the factors may be found more compelling and determinative than the others. See *Wellman v. Dickinson*, 475 F. Supp. 783, 824 (S.D.N.Y. 1979).

Because there is no established trading market and the offering price and repurchase price each month are equal (except that selling commissions and dealer manager fees are not included in the calculation of the repurchase price), this factor does not apply.

(iii) *The solicitation is made for a substantial percentage of the issuer's stock.* As noted above, the Company will not actively solicit repurchases under the Repurchase Plan. Further, other no-action letters have been issued to non-listed REITs with repurchase plans similar to the Repurchase Plan. The Repurchase Plan limits repurchases in any calendar month to 2%, and in any calendar quarter to 5%, of the combined NAV of all classes of shares of common stock as of the last day of the previous calendar month or quarter, respectively. Other than the "five per centum" threshold contained in Section 14(d)(1) of the Exchange Act, we are not aware of any authority that defines what constitutes a "substantial percentage" of an issuer's stock. However, we believe that whether the Repurchase Plan constitutes an issuer tender offer subject to Rule 13e-4 does not hinge on the presence of a 5% limitation on the number of shares of the Company that can be repurchased over a 12-month period. We also believe there is no reasonable likelihood that the Repurchase Plan will have the effect of the Company repurchasing a substantial percentage of the shares of its common stock.

The Repurchase Plan merely provides stockholders with a means of liquidity in respect of their investment, as discussed previously in this letter. The Repurchase Plan does not exist for the same reasons that issuers typically conduct tender offers. The Company intends to continuously raise capital through a continuous public offering and invest the net proceeds in real properties and real estate-related 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 Plan, the maximum amount of shares that may be repurchased over a 12-month period is approximately 20% of the Company's 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 Plan are firm with respect to the process by which stockholders may request repurchase. While the repurchase price is not negotiable, it is not fixed at the same amount for the duration of the Repurchase Plan, but rather it is determined each month, under normal circumstances based on the prior month's NAV per share determined using an established methodology. The Company believes, however, that this feature does not compel the finding of a tender offer because the firmness of the terms of the Repurchase Plan will not increase pressure on stockholders to request repurchase of their shares. The pressure on stockholders that Rule 13e-4 attempts to eliminate is that which is caused by "a high premium with a threat that the offer will disappear within a certain time."<sup>8</sup> Where these factors exist, firmness of the terms of the offer may have the effect of exacerbating the pressure. However, as previously discussed, the Repurchase Plan will not offer stockholders a premium for their shares and the Company intends that the Repurchase Plan will exist indefinitely (subject to the authority of the board of directors in its reasonable discretion to suspend the plan under specified circumstances or to make modifications to promote its proper and fair operation).

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

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 the prior month's NAV per share. In a typical tender offer, the offeror conceivably has both an incentive and the ability to set the offer price at a level that will maximize the chances of obtaining the desired volume of tenders, while minimizing the overall premium paid. Conversely, the Company, absent extenuating circumstances, will apply, each month, the same comprehensive set of valuation policies and procedures to ascertain the prior month's NAV per share. The Company 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 month. 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. The Company's incentive to set the repurchase price at a level that will maximize the chances of obtaining the desired volume of tenders while minimizing the overall premium paid will be mitigated (if not eliminated) by the fact the revised Transaction Price it selects will also serve as the basis for the offering price of the shares in the Offering, and in addition it can subsequently be compared to the final NAV per share determination for the applicable month. Therefore, the monthly repurchase price under the Repurchase Plan 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 Plan is not contingent on a fixed number of shares being repurchased. Stockholders may choose to request the Company to repurchase none, all or a portion of their shares on a monthly basis.

(vi) *The offer is open only for a limited period of time.* The Repurchase Plan is open for an indefinite period. The risk of manipulation and pressure to sell typically associated with tender offers are not present in the Repurchase Plan. This feature of the Repurchase Plan makes it most unlike a tender offer. In addition, for each month, the window during which a repurchase request can be made will generally be at least 20 business days (from the last business day of the previous month to the second to last business day of the current month). The Transaction Price will also be made available to investors at least ten business days prior to the last business day of the month. Investors may also have the opportunity to withdraw their repurchase request prior to the last business day 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 or the Company determines to repurchase fewer shares than have been requested to be repurchased in any particular month, 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 Plan and will not offer to repurchase shares at a premium. The role of the Company in effectuating repurchases under the Repurchase Plan will be purely ministerial. Because the Repurchase Plan will have no set termination date, stockholders will not feel rushed to make

decisions regarding participation in the plan. If a monthly or quarterly repurchase limitation is reached during any given month or the Company determines to repurchase fewer shares than have been requested to be repurchased in any particular month, all repurchases under the Repurchase Plan for such month will be made on a *pro rata* basis. If the Repurchase Plan reaches its monthly or quarterly cap, it will automatically reopen in the next calendar month. In addition, the combination of (1) disclosure of the Repurchase Plan as an integral element of the Offering at the time of the original investment decision with respect to Class T Shares, Class S Shares, Class D Share and Class I Shares, (2) the monthly regularity of repurchases and (3) 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.

The Company acknowledges that some features of the Repurchase Plan may, to a limited extent, encourage a stockholder to request repurchase of its shares at a particular time given the perpetual-life structure of the plan. Stockholders may feel pressure to request repurchase of their shares if the monthly NAV per share reaches a certain level at which stockholders may realize an attractive return above the amount of their initial investment. Stockholders may also 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 Repurchase Plan are first disclosed to purchasers of Class T Shares, Class S Shares, Class D Share and Class I Shares at the time the shares are purchased. As such, stockholders are informed of the terms of the Repurchase Plan substantially in advance of the time of their decision to participate in the Repurchase Plan, including that the Company may determine to repurchase fewer shares than have been requested to be repurchased in any particular month. Stockholders are therefore not presented with a “new” investment decision at the time they become eligible to request the Company to repurchase their shares under the plan. Additionally, the pressures inherent in the plan noted above exist regardless of whether the repurchase price is established monthly according to the NAV or daily or quarterly by the board of directors as is the case in other repurchase plans for which no-action relief has been granted by the Staff. Moreover, even if stockholders believe the Company may receive repurchase requests in a calendar month or quarter in excess of the established maximum for that month or quarter or that the Company may determine to repurchase fewer shares than have been requested to be repurchased in any particular month, as a result of the *pro rata* mechanism, they will be assured that they will be able to request repurchase for at least a portion of their shares during that month or quarter, regardless of the particular day during the month or quarter when the stockholder chooses to submit its repurchase request.

(viii) *A public announcement of an acquisition program prior to the accumulation of stock by a purchaser, followed by a rapid accumulation of a large amount of securities.*<sup>9</sup> The intent of the Repurchase Plan 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 Plan’s limits, may be requested to repurchase a significant number of shares over a short time pursuant to the Repurchase Plan depending on stockholders’ decisions to

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<sup>9</sup> 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.

exit the investment. Any such shares repurchased by the Company, however, would not be deemed outstanding for purposes of receiving dividends or voting on matters submitted to stockholders.

The Company will describe the Repurchase Plan in the prospectus and related offering materials, and when required, in filings made pursuant to the Exchange Act. The Company will promptly inform stockholders, as required by the Repurchase Plan, of any modification or suspension of the Repurchase Plan. The Company will also file prospectus supplements as required by the Securities Act disclosing the historical NAV per share of each class of shares and provide each month the Transaction Price and NAV per share of each class of shares on its website and toll-free information line. The Company believes, however, that the Repurchase Plan is not characteristic of a publicly-announced acquisition plan which is followed by a rapid accumulation of a large amount of stock. Though disclosure of the Repurchase Plan as described above constitutes a public announcement of its existence and precedes any repurchase, the Company believes that any repurchase of shares that might occur will not be driven by pressure exerted by the Company, as the Repurchase Plan imposes no deadline and offers no premium. Rather, any such accumulation would occur solely as a result of stockholders opting to exit from the investment at a particular Transaction Price 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>10</sup>

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

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

We also note that some courts have rejected a rigid application of the *Wellman* test and have, instead, applied what the Company considers a reasonable "totality of circumstances" analysis.<sup>11</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>12</sup>

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<sup>10</sup> See *Panter v. Marshall Field & Co.*, 646 F.2d 271, 286 (7th Cir. 1981) (ruling that where no deadline and no premium existed, stockholders "were simply not subjected to the proscribed pressures the Williams Act was designed to alleviate"); *Brascan*, 477 F. Supp. at 792 (ruling that without high premium and threat that the offer will disappear, large purchases in short time do not represent the kind of pressure the Williams Act was designed to prevent); *Kennecott Copper Corp. v. Curtiss-Wright Corp.*, 449 F. Supp. 951, 961 (S.D.N.Y. 1978) (ruling that where no deadline and no premium existed, there was no pressure, other than normal pressure of the marketplace, exerted on the stockholders), *aff'd in relevant part, rev'd in part*, 584 F.2d 1195, 1207 (2d Cir. 1978).

<sup>11</sup> See *Hanson Trust PLC v. SCM Corp.*, 774 F.2d 47 (2d Cir. 1985); see also *Pin v. Texaco Inc.*, 793 F.2d 1448, 1454-55 (5th Cir. 1986) (applying same analysis to issuer tender offer case).

<sup>12</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.

We believe that the Repurchase Plan withstands such a “totality of circumstances” analysis. Purchasers of Class T Shares, Class S Shares, Class D Share and Class I Shares are provided full disclosure of the plan before they purchase shares and invest in the Company and are informed that participation in the Repurchase Plan will be their only viable liquidity option if they want to sell their shares. Finally, the perpetual-life structure of the Repurchase Plan 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 Plan. We do not believe that a “substantial risk of ill-considered sales” made “by ill-informed shareholders” will exist for repurchases under the Repurchase Plan if the Rule 13e-4 procedural protections are not implemented.<sup>13</sup>

For the reasons described above, we believe that under a “totality of circumstances” analysis, the Company’s stockholders are not the “particular class of persons [that] need the protection of” the tender offer rules because the terms of the Repurchase Plan were fully disclosed at the time of purchase. Finally, courts have specifically mentioned full disclosure of the time in which to make investment decisions, withdrawal rights, and requirements for *pro rata* purchases of shares accepted in the event the offer is oversubscribed when referring to the substantive and procedural protections provided by Rule 13e-4.<sup>14</sup> We note that these protections are already inherent in the Repurchase Plan (including the ability to withdraw the repurchase request prior to the Repurchase Date) 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 shares under the Repurchase Plan. Other than the Company’s ability to determine to repurchase fewer shares than have been requested to be repurchased in any particular month, the Repurchase Plan is substantially similar to the repurchase plans of other perpetual-life daily NAV non-listed REITs for which the Staff has granted no-action relief.<sup>15</sup> We do not believe that the additional flexibility of management to invest the Company’s capital as it determines is in the best interest of all of the Company’s stockholders from time to time impacts the analysis included in the no-action letters granted to daily NAV non-listed REITs. 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 Plan is otherwise substantially similar to repurchase plans of traditional non-listed REITs for which the Staff granted no-action relief.<sup>16</sup> We do not believe that monthly repurchases based upon a monthly Transaction Price impact the analysis included in the no-action letters granted to traditional and daily NAV non-listed REITs. Factors that we believe address these objectives and support this request include:

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<sup>13</sup> See *Hanson Trust*, 774 F.2d at 58.

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

<sup>15</sup> See *supra* note 2.

<sup>16</sup> See *supra* note 4.



- All material information relating to the Repurchase Plan will be fully and timely disclosed to all stockholders. The terms of the Repurchase Plan, including the Company's ability to determine to repurchase fewer shares than have been requested to be repurchased in any particular month, will be fully disclosed in the prospectus as well as any prospectus used for subsequent offerings and the Transaction Price and NAV per share for each class will always be available on the Company's website and toll-free information line.
- The Company will not solicit repurchases under the Repurchase Plan other than through the prospectus for the Offering and prospectus supplements disclosing the Transaction Price and 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 Plan will be ministerial.
- The shares will be repurchased monthly under the Repurchase Plan at the monthly Transaction Price of the class of shares being repurchased and the Company will file prospectus supplements with the SEC with such frequency as is required by the Securities Act disclosing the historical NAV per share of each class of shares and also provide each month the Transaction Price and NAV per share for each class of shares on its website and toll-free information line.
- Repurchases will be made on a monthly basis. The repurchase price normally will be paid in cash no later than three business days following the last calendar day of the applicable month and will be the same for all shares of the same class repurchased on a given month.
- Repurchases under the Repurchase Plan will be limited in any calendar month to shares whose aggregate value (based on the repurchase price per share for the month the repurchase is effected) is 2% of the combined NAV of all classes as of the last calendar day of the previous month and in any calendar quarter will be limited to shares whose aggregate value (based on the repurchase price per share for the month the repurchase is effected) is 5% of the combined NAV of all classes of 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 Repurchase Plan 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 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 (other than limited or sporadic quotations) for the Company's shares develops.
- The Repurchase Plan is intended to remain open indefinitely for the life of the Company unless modified or suspended by the board of directors. The Company is structured as a perpetual-life entity and has no intention to list its shares for trading on an exchange or other trading market.

- The Repurchase Plan is open to all stockholders. Those who have held their shares less than one year will be subject to a 5% short-term trading discount which is 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 Plan as proposed would not result in the potential for the abuses Rule 13e-4 was intended to prevent and should not be subject to Rule 13e-4. Rather, the Company believes it would be a disservice to stockholders if the Repurchase Plan were not implemented.

***Rule 13e-3 – Does Not Apply***

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

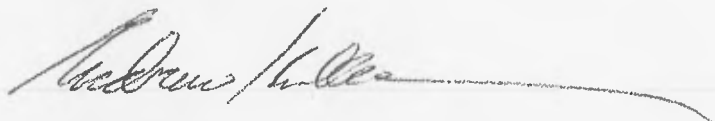
Under the Repurchase Plan, the maximum amount of shares that may be repurchased over a 12-month period is approximately 20% of the Company's NAV. However, this is a theoretical limit, and one which is not expected to occur.

If the extent of repurchases under the Repurchase Plan, after considering offers and sales of new shares as part of such continuous offering, were such that any of the effects described in paragraph (a)(3)(ii)(A) of Rule 13e-3 becomes reasonably likely, then the board of directors will undertake to modify or suspend the Repurchase Plan.

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If you have any questions or need any additional information, please do not hesitate to contact me at (212) 455-3577.

Very truly yours,



Andrew R. Keller

September 12, 2016

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cc: Mr. Frank Cohen, Blackstone Real Estate Income Trust, Inc.  
Ms. Judy Turchin, Blackstone Real Estate Income Trust, Inc.  
Mr. Leon Volchyok, Blackstone Real Estate Income Trust, Inc.