



DIVISION OF  
CORPORATION FINANCE

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

August 15, 2012

Peter M. Fass, Esq.  
Proskauer Rose LLP  
Eleven Times Square  
New York, New York 10036

**Re: United Realty Trust Incorporated Request for No-Action Relief under Rule 13e-4**

Dear Mr. Fass:

We are responding to your letter dated August 15, 2012 addressed to Michele M. Anderson and Daniel F. Duchovny, as supplemented by telephone conversations with our staff, regarding your request for no-action relief. To avoid having to recite or summarize the facts set forth in your letter, a copy of that letter is attached to this response. Unless otherwise noted, capitalized terms in this response have the same meaning as in your letter.

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

- All material information relating to the Repurchase Program will be fully and timely disclosed to all stockholders. The terms of the Repurchase Program will be fully disclosed in the prospectus, as well as any prospectuses used for subsequent offerings, and, following the NAV Pricing Start date, the NAV per Common Share will always be available on the Company's website and toll-free, automated telephone line;
- The Company will not solicit repurchases under the Repurchase Program other than through the prospectus for the Offering and , following the NAV Pricing Start date, prospectus supplements disclosing the NAV per Common Share. The role of the Company in effectuating repurchases under the Repurchase Program will be ministerial;
- Prior to the NAV Pricing Start date, Common Shares will be repurchased at a price related to, and not exceeding, the public offering price of the Common Shares at the time of repurchase, and not exceeding the offering price per Common Share under the DRIP;

- Following the NAV Pricing Start date, the Common Shares will be repurchased daily under the Repurchase Program at 95% of the daily NAV per Common Share. The Company will provide the NAV per Common Share on its website and toll-free, automated telephone line and, subject to the terms of the Repurchase Program, will be obligated to repurchase Common Shares at the published NAV per Common Share subject to the terms of the Repurchase Program. The Company will file prospectus supplements with the Commission that will disclose the daily NAV per Common Share since it was last reported in a prospectus supplement;
- Repurchases will be made on a daily basis. The repurchase price normally will be paid in cash no later than three business days following the repurchase request day and will be the same for all Common Shares repurchased on a given day;
- Prior to the NAV Pricing Start Date, the Company will limit the Common Shares repurchased during any calendar quarter to 1.25% of the weighted average number of Common Shares outstanding during the previous calendar quarter, or approximately 5% of the weighted average number of Common Shares outstanding in any 12-month period;
- Following the NAV Pricing Start Date, repurchases under the Repurchase Program will be limited in any calendar quarter to Common Shares whose aggregate value (based on the repurchase price per Common Share on the day the repurchase is effected) is 5% of the Company's NAV as of the last day of the previous calendar quarter or an aggregate limit of approximately 20% of the Company's total NAV for a 12-month period;
- Repurchases under the Repurchase Program are on a first-come, first-served basis during each calendar quarter given that stockholder repurchases will be paid promptly; however, if the quarterly limitation is reached, if the Repurchase Program is suspended, or if funds available for repurchase are not sufficient to accommodate all requests, Common Shares will be repurchased according to the following pre-established order of priority: (1) *pro rata* as to repurchases upon the death of a stockholder; (2) next, *pro rata* as to repurchases by stockholders who demonstrate, in the discretion of the Company's board of directors, a bankruptcy or other involuntary exigent circumstance, as approved by the Company's board of directors; (3) next, *pro rata* as to repurchases by stockholders subject to a mandatory distribution requirement under such stockholder's IRA; and (4) finally, *pro rata* as to all other repurchase requests;
- Stockholders may cancel any redemption request submitted before 4:00 p.m. Eastern Time on a business day before 4:00 p.m. Eastern Time on the same day by notifying a customer service representative at the Company's toll-free, automated telephone line;
- Material modifications, including any reduction to the quarterly limitation on repurchases, and suspensions of the Repurchase Program will be disclosed promptly

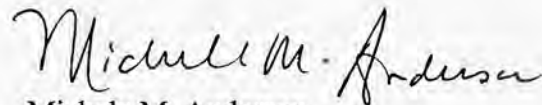
to stockholders in a prospectus supplement or special or periodic report filed by the Company, as well as on the Company's website, and, as required by the Securities Act, in post-effective amendments to its Registration Statement;

- There will be no established regular trading market for the Company's Common Shares. The Repurchase Program will be terminated if the Company's Common Shares are listed on a national securities exchange or included for quotation on a national securities market, or in the event a secondary market for the Company's Common Shares develops; and
- The Repurchase Program is intended to remain indefinitely open for the life of the Company unless modified or suspended by the board of directors.

The foregoing no-action position is based solely on the facts presented and the representations made in your letter dated August 15, 2012, as supplemented by telephone conversations with our staff. 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.

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

Sincerely,



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



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August 15, 2012

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

**Re: United Realty Trust Incorporated  
Request for No-Action Relief Under Rule 13e-4**

Ladies and Gentlemen:

Proskauer Rose LLP is counsel to United Realty Trust Incorporated (the "Company") in connection with its Registration Statement on Form S-11 under the Securities Act of 1933, as amended (the "Securities Act") (Registration Number 333-178651), originally filed with the Securities and Exchange Commission (the "Commission") on December 21, 2011, as amended (the "Registration Statement"), to register the offer and sale of up to 120,000,000 shares of common stock ("Common Shares"), in an initial public offering (the "Offering"), of which 100,000,000 Common Shares will be offered to the public in a primary offering and 20,000,000 Common Shares will be offered to stockholders of the Company pursuant to the Company's distribution reinvestment program ("DRIP"). The Registration Statement has not yet been declared effective. If the Company does not sell at least 200,000 Common Shares to purchasers who are not affiliated with the Company or United Realty Advisors Holdings, LLC (the "Sponsor") by the date that is one year from the date of initial effectiveness of the Registration Statement (the "Minimum Offering Date"), the Offering will terminate and the Company will promptly return all funds in the Company's escrow account (including interest), and the Company will stop selling Common Shares. 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 8, 2011 for the purpose of investing primarily in interests in real estate located in the United States, with a primary focus on the eastern United States, in order to build a diversified portfolio consisting primarily of office, industrial, retail and hospitality properties, single-tenant properties, multifamily properties, age-restricted residences and in other real estate-related assets. The Company is an externally advised investment vehicle that will operate and seek to qualify as a real estate investment trust ("REIT"). The Company does not intend to register as an investment company under the Investment Company Act of 1940, as amended.

The Company intends to begin the process of achieving a liquidity event not later than six to nine years after the termination of the Offering. A liquidity event could include a sale of the Company's assets, the sale or merger of the Company or a listing of its Common Shares on a national securities exchange. Market conditions and other factors could cause the Company to delay its liquidity event beyond the ninth anniversary of the termination of the Offering. Even after it decides to pursue a liquidity event, the Company will be under no obligation to conclude its liquidity event within a set timeframe. The Company understands that should the staff of the Division of Corporation Finance of the Commission (the "Staff") grant the no-action relief that the Company requests in this letter, such relief will terminate upon the occurrence of a liquidity event.

The Company is offering the first 5,000,000 Common Shares at \$9.50 per Common Share, plus applicable selling commissions and dealer manager fee of \$0.95 per Common Share, for a total offering price of \$10.45 per Common Share. The company is offering the remaining 95,000,000 Common Shares at \$10.00 per Common Share plus applicable selling commissions and dealer manager fee of \$1.00 per Common Share, for a total offering price of \$11.00 per Common Share. After the Minimum Offering Date and the NAV Pricing Start Date<sup>1</sup>, the offering price under the DRIP will be equal to the Company's daily net asset value ("NAV") on each business day that the New York Stock Exchange is open, divided by the number of Common Shares outstanding as of the end of business on such day without giving effect to any Common Share repurchases and reinvestments of distributions effected on such day ("NAV per Common Share"). Following the NAV Pricing Start Date, the Company's NAV per Common Share will be calculated at the close of each business day based in part on the appraisals of the Company's properties performed by an independent valuer and in accordance with valuation guidelines established by the Company's board of directors. A fundamental feature of the Offering is the share repurchase program (the "Repurchase Program"), which serves as the primary source of liquidity for stockholders and is not contingent on the sale of a certain number of Common Shares in a given period.<sup>2</sup> Prior to the NAV pricing start date, stockholders may request the repurchase of their Common Shares (a) in the case of "hardship," as defined below, at the total offering price paid, or (b) in the sole discretion of the Company's advisor, United Realty Advisors, LP (the "Advisor"), at a price of 92% of the total offering price paid, but in neither event at a price greater than the offering price per Common Share under the DRIP. Following the NAV Pricing Start Date, similar to the offering of Clarion Partners Property Trust Inc.

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<sup>1</sup> "NAV Pricing Start Date" is defined as the earliest to occur of: (a) the Company investing in assets with an aggregate cost, including the Company's pro rata share of debt attributable to such assets, in excess of \$1 billion; (b) the Company raising net offering proceeds of in excess of \$650 million in its primary offering; and (c) the date that is 29 months following the commencement of the Offering.

<sup>2</sup> The Repurchase Program meets the conditions for exemption from Rule 102(a) of Regulation M as articulated in the Commission's letter to Alston & Bird LLP, dated October 22, 2007, granting class relief for non-listed REIT share repurchase programs.

(“Clarion”), with respect to which the Staff (as defined below) recently granted no-action relief,<sup>3</sup> investors will be offered the opportunity to present their Common Shares for repurchase on a daily basis at a price that may vary each trading day based on NAV. This distinguishes the Offering from the non-listed REIT offerings, other than Clarion (and two other issuers of which the Company is aware that have repurchase programs similar to Clarion’s), currently available to public investors. The Company has been structured to address well-known shortcomings associated with traditional non-listed REITs, principally: (1) lack of liquidity; and (2) the rigidities implicit in a closed-end, fixed-price investment. The Company’s structure is designed to benefit investors by: (A) providing investors the flexibility to increase, through the DRIP, or decrease, through the Repurchase Program, 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 them 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 Common Shares and will be retained as treasury stock. Common Shares the Company acquires through the Repurchase Program may be reissued in compliance with the Securities Act and applicable state securities laws.

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

The Company has adopted the Repurchase Program in an effort to provide stockholders with liquidity with respect to their investments in the Company’s Common Shares. The Company believes that many features of its Repurchase Program are substantially similar to repurchase programs 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”).

Two features of the Repurchase Program are similar to the features of the repurchase programs of traditional non-listed REITs with respect to which the Staff has granted no-action relief.<sup>4</sup> First, during the Offering, prior to the NAV Pricing Start Date, Common Shares will be repurchased at a price related to, and not to exceed, the offering price under the primary offering or under the DRIP. Second, prior to the NAV Pricing Start Date, the Company will limit the Common Shares repurchased during any calendar quarter to 1.25% of the weighted average

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<sup>3</sup> See Clarion Partners Property Trust Inc. (May 17, 2011). See also American Realty Capital Daily Net Asset Value Trust, Inc. (July 21, 2011) and Cole Real Estate Income Strategy (Daily NAV), Inc. (December 6, 2011).

<sup>4</sup> See Wells REIT II, Inc. (June 26, 2007); Hines Real Estate Investment Trust, Inc. (Sept. 7, 2006); Apple REIT Six, Inc. (June 30, 2006); Boston Capital Real Estate Investment Trust, Inc. (Feb. 10, 2005); Behringer Harvard REIT I, et al., (Oct. 26, 2004); Paladin Realty Income Properties, Inc. (Oct. 14, 2004); Orange Hospitality, Inc. (Sept. 9, 2004); Hines Real Estate Investment Trust, Inc. (June 18, 2004); CNL Income Properties, Inc. (Mar. 11, 2004); Inland Western Retail Real Estate Trust, Inc. (Aug. 25, 2003); T REIT, Inc. (June 4, 2001); and CNL American Properties Fund, Inc. (Aug. 13, 1998).

number of Common Shares outstanding during the previous calendar quarter, or approximately 5% of the weighted average number of Common Shares outstanding in any 12-month period.

Three features of the Repurchase Program differ from the repurchase programs for other non-listed REITs, but are similar to the features of Clarion's share repurchase program, with respect to which the Staff recently granted no-action relief.<sup>5</sup> First, the repurchase price will vary based on the daily NAV per Common Share; second, the repurchase of Common Shares during any given calendar quarter is limited to Common Shares whose aggregate value (based on the repurchase price per Common Share on the day the repurchase is effected) is 5% of the Company's NAV as of the last day of the previous calendar quarter, which means that in any 12-month period, the Repurchase Program will limit repurchases to approximately 20% of the Company's NAV;<sup>6</sup> and third, repurchases will be made using the "forward-pricing" mechanism described below. As discussed below, the Company respectfully submits that, as was the case with Clarion, these features should not be an obstacle to granting no-action relief to the Company for operation of the Repurchase Program because the Company does not believe that repurchases pursuant to the Repurchase Program implicate the concerns that the issuer tender offer rules were adopted to address. Specifically, the Repurchase Program, which offers stockholders no premium, has no set termination date (but will terminate when and if the Company achieves a liquidity event, which the Company has no definite plans to do) and provides stockholders with adequate substantive disclosure upon which to base a decision to present their Common Shares for repurchase, will not have the effect of pressuring uninformed stockholders to present their Common Shares for repurchase.

The Company requests that the Staff issue the Company a letter stating that it will not recommend that the Commission take enforcement action under Rule 13e-4 with respect to repurchases of the Company's Common Shares made under the Repurchase Program.

## OVERVIEW OF THE COMPANY AND THE REPURCHASE PROGRAM

### *The Company*

The Company is externally managed by the Advisor, an affiliate of the Sponsor. The dealer manager for the primary offering is Allied Beacon Partners, Inc. (the "Dealer Manager"). The Dealer Manager is not required to sell any specific number or dollar amount of Common Shares, but will use its best efforts to sell the Common Shares offered in the primary offering.

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<sup>5</sup> See Clarion Partners Property Trust Inc. (May 17, 2011). See also American Realty Capital Daily Net Asset Value Trust, Inc. (July 21, 2011) and Cole Real Estate Income Strategy (Daily NAV), Inc. (December 6, 2011).

<sup>6</sup> The Repurchase Program's limitation is applied quarterly rather than annually. The 5% limitation is determined for each quarter based upon the Company's NAV as of the last day of the previous calendar quarter. Because the Company anticipates that the NAV will change over time, each quarter's limitation is expected to be different from the limitation in other quarters. As a result, the Company describes its annual limitation in approximate terms.

The Company will seek to build a diversified portfolio consisting primarily of office, industrial, retail and hospitality properties, single-tenant properties, multifamily properties, age-restricted residences and other real estate-related assets. The Company expects to build a portfolio intended to generate current income and to provide capital preservation, capital appreciation and portfolio diversification. The Company expects to invest approximately 80% of its funds in direct real estate investments and other equity interests, and approximately 20% of its funds in debt interests.

## ***The Repurchase Program***

### Purpose of the Repurchase Program

The Company adopted a Repurchase Program in an effort to provide its stockholders with liquidity with respect to their investment in the Company's Common Shares, subject to specified limitations. Through the Repurchase Program, stockholders can liquidate all or, subject to certain minimum amounts that are required to be presented for repurchase, as described below under "—Funding and Limitations of the Repurchase Program," a portion, of their investment. The Company's Repurchase Program is an important feature of the investment in the Common Shares, since the Company expects the Repurchase Program will serve as its stockholders' sole meaningful source of liquidity unless and until the Company achieves a liquidity event, the timing of which is uncertain. Without an effective repurchase program, stockholders in the Company would generally be required to hold their Common Shares for an indefinite time period because (1) there will be no established trading market for the Common Shares upon issuance and (2) the Company anticipates that a secondary trading market will not develop prior to a liquidity event. While, similar to other non-listed REITs, the Company has stated its intention to begin the process of achieving a liquidity event within six to nine years after the termination of the Offering, the Company is structured to appeal to investors that desire liquidity and to present investors with an alternative to other non-listed REITs, by providing an option, following the NAV Pricing Start Date, to have Common Shares repurchased based on daily NAV.

The Company is aware that a limited secondary market has in some cases developed for traditional non-listed REITs. However, these markets are very small and inefficient. Additionally, third parties have also made "mini-tender offers" to stockholders in non-listed REITs. These limited secondary markets and mini-tender offers to date have generally resulted in purchase prices that are typically at a substantial discount to the offering price for the shares and the prices offered in repurchase programs made available by the issuers. Mini-tender offers are also subject to potential manipulation by the purchaser, and stockholders often receive limited disclosure about the terms, structure and conditions of the offer. The Company believes that the mini-tender offers further evidence that sufficient liquidity options may not always exist for stockholders in non-listed REITs with traditional repurchase programs and that stockholders in these types of non-listed REITs often suffer financially as a result. The Company also notes that the lack of liquidity is often cited in the investment community as a primary disadvantage of investing in non-listed REITs, as most non-listed REITs are closed-end entities (with set dates



for a terminal liquidity event) and offer repurchase programs that are subject to substantial limitations on repurchases. The Company believes that many investment professionals and investors consider the traditional non-listed REIT repurchase programs to be inadequate to provide stockholders with a viable liquidity option. The Company has been structured to provide an alternative investment vehicle for investors that desire liquidity. A repurchase program that provides a source of liquidity is important to the Company and to investors that have this investment objective.

The Offering and the Repurchase Program are designed to provide investors with an investment vehicle that the Company believes is a superior alternative to traditional non-listed REITs. Unlike in traditional non-listed REIT offerings, after the NAV Pricing Start Date, the repurchase price of the Company's Common Shares under the Repurchase Program and the offering price under the DRIP will be based on the underlying fair value of the Company's assets, rather than an arbitrary dollar amount. The Repurchase Program provides the Company's stockholders with greater liquidity than do traditional non-listed REITs by allowing stockholders to present for repurchase all or, subject to certain minimum amounts that are required to be repurchased, a portion, of their Common Shares on a daily basis, with less restrictive limitations on the aggregate number of Common Shares that may be repurchased in any particular period and no limitation on the sources of cash used by the Company to fund repurchases (as compared to the typical non-listed REIT repurchase program in which the sources of cash are limited to proceeds from the sale of additional shares through the distribution reinvestment program).

### The Daily NAV Calculation and the Repurchase Program

On the date that the Company's Common Shares are first offered to the public, the Company will offer the first 5,000,000 Common Shares at \$9.50 per Common Share, plus applicable selling commissions and dealer manager fee of \$0.95 per Common Share, for a total offering price of \$10.45 per Common Share. The Company will offer the remaining 95,000,000 Common Shares at a price of \$10.00 per Common Share, plus applicable selling commissions and dealer manager fee of \$1.00 per Common Share, for a total offering price of \$11.00 per Common Share. Following the NAV Pricing Start Date, the repurchase price for Common Shares under the Repurchase Program will vary from day to day, and on any given day will be at a price equal to 95% of the Company's NAV per Common Share.

The Company's NAV will be calculated by the Advisor in accordance with a comprehensive set of valuation guidelines approved by the Company's board of directors. Following the NAV Pricing Start Date, to calculate the Company's daily NAV per Common Share, the Advisor will determine the net value of the Company's operating partnership's real estate and real estate-related assets, based in part on a valuation by an independent valuer. Changes in the Company's daily NAV will reflect factors including, but not limited to, the Company's portfolio income, interest expense and unrealized/realized gains (losses) on assets, and accruals for the asset management fee. The portfolio income will be calculated and accrued on the basis of data extracted from (a) the annual budget for each property and at the company

level, including organization and offering expenses incurred following the offering commencement date and certain operating expenses, (b) material, unbudgeted non-recurring income and expense events such as capital expenditures, prepayment penalties, assumption fees, tenant buyouts, lease termination fees and tenant turnover with respect to the Company's properties when the Advisor becomes aware of such events and the relevant information is available and (c) material property acquisitions and dispositions occurring during the month. Commencing on the NAV Pricing Start Date, for the first month following a property acquisition, the Company will calculate and accrue portfolio income with respect to such property based on its performance before the acquisition and the contractual arrangements in place at the time of the acquisition, as identified and reviewed through the Company's due diligence and underwriting process in connection with the acquisition. The Advisor will update the Company's budgets and adjust its accruals to reflect actual operating results and to reflect outstanding receivable, payable and other account balances resulting from the accumulation of daily accruals for which financial information is available. Under GAAP, the Company would be required to recognize organization and offering costs and acquisition fees and expenses as an expense when incurred. However, solely for purposes of calculating NAV, such organization and offering costs and acquisition fees and expenses will be amortized over a five-year period and a proportionate amount will be deducted on a daily basis. After subtracting such liabilities from the value of the operating partnership's assets, the Advisor will multiply that amount by the Company's percentage ownership interest in the operating partnership. Following the allocation of income and expenses as described above, NAV will be adjusted for reinvestments of distributions, repurchases of Common Shares, and expense accruals to determine the day's NAV. The result of this calculation will be the Company's NAV as of the close of such business day. The daily NAV per Common Share will be determined by dividing NAV by the number of outstanding Common Shares, prior to giving effect to any Common Share purchases or repurchases on such day.

Following the NAV Pricing Start Date, at the end of each business day, the Company will post the NAV per Common Share for that business day on the Company's public website at [www.unitedrealtytrust.com](http://www.unitedrealtytrust.com) and make publicly available the NAV per Common Share on the Company's toll-free, automated telephone line. Subject to the terms of the Repurchase Program, the Company will be obligated to repurchase Common Shares at its published NAV per Common Share. The Company will also disclose its NAV per Common Share in prospectus supplements it files with the Commission with such frequency as is required by the Securities Act and will file post-effective amendments to its Registration Statement as required by the Securities Act. Each of the Company's prospectus supplements will provide the historical NAV per Common Share since it was last reported in a prospectus supplement.

Under the Repurchase Program, stockholders may request that the Company repurchase all or, subject to certain minimum amounts that are required to be presented for repurchase, any portion, of their Common Shares on any business day. Following the NAV Pricing Start Date, the repurchase price will be equal to 95% of the NAV per Common Share calculated at the end of the business day that the Company's transfer agent receives and processes the repurchase

request, unless such request is received and processed after 4:00 p.m. Eastern time, in which case the repurchase price will be equal to 95% of the NAV per Common Share calculated on the next business day.

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

The Company's board of directors will adopt valuation guidelines that will be used by the Company's independent valuation expert when valuing the Company's assets and its liabilities in connection with the calculation of NAV. These valuation guidelines will be largely based upon standard industry practices. The valuation guidelines are described in detail in the prospectus for the Offering, will be available on the Company's website, and will be sent to a stockholder on request.

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

The Company's independent valuation expert will provide an estimate of the market value of each property at least annually, with appraisals scheduled over the course of a year so that approximately 25% of all properties are appraised each quarter. In calculating its estimate, the expert will use all reasonably available material information that it deems relevant, including information from the Advisor, the independent expert's own sources or data, market information or physical inspection of each property. The expert may also review information such as trends in capitalization rates, discount rates, interest rates, leasing rates and other economic factors. The independent valuation expert will use all available information to analyze the cash flow from and characteristics of each property in the Company's portfolio and will use this information to estimate projected cash flows for the portfolio as a whole. In order to calculate an estimate of the portfolio's market value, the expert will analyze the portfolio's projected cash flows using a discounted cash flow approach. Alternatively, the independent expert will consider other valuation methodologies in addition to the discounted cash flow approach, as necessary; *provided*, that all additional valuation methodologies, opinions and judgments used by the expert will be consistent with the Company's valuation guidelines and the recommendations set forth in the Uniform Standards of Professional Appraisal Practice and the requirements of the Code of Professional Ethics and Standards of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

Commencing on the NAV Pricing Start Date, all newly acquired wholly owned properties will initially be valued at cost (purchase price plus all related acquisition costs and expenses) and thereafter will join the annual appraisal cycle during the first full quarter in which

the Company owns the property. Acquisition costs and expenses incurred in connection with the acquisition of multiple wholly owned properties that are not directly related to any single wholly owned property generally will be allocated among the applicable wholly owned properties *pro rata* based on relative values.

To the extent that the Company's board of directors or the Advisor becomes aware of facts or circumstances at a specific property that may result in a material change in value, the Advisor or the board of directors will order a new appraisal of the property, which will be prepared by the Company's independent valuation expert. Our independent valuer will generally perform the appraisals, but in its discretion, may engage other independent valuation firms to provide appraisals on certain of our properties.

The Advisor will also estimate the market value of the Company's real estate-related liabilities by using industry-accepted methodologies. For example, mortgage loans collateralized by the Company's real estate will usually be valued by comparing the differences between the contractual loan terms and current market loan terms, which usually involves the present value of any outstanding payments and maturity amount at a market-based interest rate. The interest rate will reflect associated risks, including loan-to-value ratio, remaining term, the quality of the collateral and credit risk. The Advisor may base its determination on the independent valuation expert or other independent valuation experts in making this determination.

The board of directors will oversee the independent expert and will review and approve the expert's quarterly valuations. The Advisor will review the Company's valuation guidelines and methodologies the board of directors at least annually. Any changes to the Company's valuation guidelines require the approval of the Company's board of directors, including a majority of the Company's independent directors. The board of directors will also have the right to replace the independent valuer at any time by majority vote, and the board of directors also will be required to approve any changes to the Company's valuation guidelines.

The Advisor will review the quarterly valuation established by the independent valuation expert for consistency with the Company's valuation guidelines and the reasonableness of the expert's conclusions. The independent valuation expert may consider the Advisor's input, but the expert will be responsible for establishing the final quarterly estimates of market value. At least annually, the Company's board of directors will meet with representatives of the valuation expert to receive their recommendations and to evaluate whether the valuation complies with the Company's valuation guidelines. In the exercise of its business judgment, the Company's board of directors will have sole discretion to accept or revise the quarterly valuation. The board of directors may elect to engage additional experts to review the valuation.

Although the Company's primary goal in establishing its valuation guidelines is to produce a valuation that represents a reasonable estimate of the market value of the Company's investments, or the price that would be received upon the sale of the Company's investments in market transactions, the independent valuation expert will use methodologies based on

judgments, assumptions and opinions about future events that may or may not prove to be correct, and if different judgments, assumptions or opinions were used, a different estimate would likely result. Furthermore, the Company's published NAV per Common Share may not fully reflect certain extraordinary events because the Company may not be able to quantify the financial impact of such events on its portfolio right away. The independent valuation expert and the Advisor will monitor the Company's portfolio between valuations to determine whether there have been any extraordinary events that may have materially changed the estimated market value of the portfolio and they will determine the appropriate adjustment to be made, if necessary. It is not known whether repurchasing or non-repurchasing stockholders will benefit from such disparity.

### Timing and Settlement

All repurchase requests received and processed by the Company's transfer agent during a given day will be settled at the price determined after the close of business on the repurchase request day. Following the NAV Pricing Start Date, the offering price under the DRIP will be the Company's daily NAV per Common Share, and the repurchase price per Common Share will be equal to 95% of the Company's NAV per Common Share as of the close of business on the day the repurchase request is received and processed (which will generally be the day the repurchase request is received and processed if such request is received by 4:00 p.m. Eastern time, or the next business day if the repurchase request is received and processed on a day that is not a business day or after 4:00 p.m. Eastern time on a business day). The Company normally will pay repurchase proceeds, less any applicable tax or other withholding required by law, no later than the third business day following the repurchase request day. Although following the NAV Pricing Start Date a stockholder will not know at the time he or she requests the repurchase of Common Shares the exact price at which such repurchase request will be processed, the stockholder may cancel the repurchase request before it has been processed by notifying a customer service representative available on the Company's toll-free, automated telephone line. Repurchase requests submitted before 4:00 p.m. Eastern time on a business day must be cancelled before 4:00 p.m. Eastern time on the same day. Repurchase requests received after 4:00 p.m. Eastern time on a business day, or at any time on a day that is not a business day, must be cancelled before 4:00 p.m. Eastern time on the next business day. If the Company files a pricing supplement disclosing a change in the NAV per Common Share by more than 5% from the NAV per Common Share disclosed in the last filed prospectus or pricing supplement, all stockholders whose repurchase requests have not been processed will have the right to rescind the repurchase transaction within ten days of such filing. If the repurchase request is not cancelled or rescinded before the applicable time described above, the stockholder will be contractually bound to the repurchase of the Common Shares and will not be permitted to cancel the request prior to the payment of repurchase proceeds.

In contrast to the market prices of exchange-traded securities, which often fluctuate as a result of, among other things, supply and demand in the trading market, following the NAV Pricing Start Date, the purchase price of the Company's Common Shares under the DRIP and the

repurchase price of the Company's Common Shares under the Repurchase Program will reflect NAV and will not change based on the level of demand for new Common Shares under the DRIP or the volume of requests for repurchase of outstanding Common Shares. NAV per Common Share will be calculated at the end of each business day using the valuation policies and procedures described earlier and none of the Company, the Advisor, the Dealer Manager or any financial intermediary will be able to change the manner in which NAV is determined, other than by first modifying the valuation guidelines as described above, nor will they have any discretion to set a "clearing" price. Because a substantial portion of the Company's portfolio will be in investments in stabilized commercial real estate, it is not anticipated that the NAV per Common Share will fluctuate materially from one day to the next, so the previous day's NAV per Common Share will likely be a good indicator of the repurchase price.

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

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

#### Funding and Limitations of the Repurchase Program

Repurchase programs of traditional non-listed REITs that have received no-action relief from the Staff generally contain all of the following restrictions: Shares may not be repurchased within one year of the purchase; the repurchase price is usually subject to a discount depending on the length of time the shares have been held; the number of shares repurchased for all

stockholders during the calendar year is limited to a small percentage of the weighted-average outstanding shares during the prior calendar year (usually 5%); and funds available to fund repurchases are limited to proceeds from the distribution reinvestment program. Thus, for traditional non-listed REITs, substantial liquidity may not be provided for 7 to 10 years when the company effects a liquidity transaction, such as listing on a national securities exchange, merger with a publicly traded company or liquidation.

In contrast, following the NAV Pricing Start Date, the Company's Repurchase Program will provide stockholders with a much greater opportunity for liquidity. Prior to the NAV Pricing Start Date, the Company will follow a traditional model by limiting the Common Shares repurchased during any calendar quarter to 1.25% of the weighted average number of Common Shares outstanding during the previous calendar quarter, or approximately 5% of the weighted average number of Common Shares outstanding in any 12-month period. However, following the NAV Pricing Start Date, the Repurchase Program will permit the repurchase of Common Shares during any given calendar quarter of Common Shares whose aggregate value (based on the repurchase price per Common Share on the day the repurchase is effected) is 5% of the Company's NAV as of the last day of the previous calendar quarter, which means that in any 12-month period, the Repurchase Program will limit repurchases to approximately 20% of the Company's total NAV. In general, a stockholder or his or her estate, heir or beneficiary may present for repurchase fewer than all the Common Shares then owned, except that the minimum number of Common Shares that must be presented for repurchase must be at least 25% of the holder's Common Shares. However, if the repurchase request is made within 180 days of the event giving rise to "hardship," defined as: (i) the death of a stockholder; (ii) the bankruptcy of a stockholder; (iii) a mandatory distribution under a stockholder's IRA; or (iv) another involuntary exigent circumstance as approved by the board of directors, the minimum amount of a stockholder's Common Shares that may be presented for repurchase will be 10%; *provided, however,* that with respect to future repurchases, any such stockholder must present for repurchase at least 25% of such stockholder's remaining Common Shares.<sup>7</sup> Only the modification, suspension or termination of the Repurchase Program by the Company's board of directors would cause the Company to repurchase fewer than all Common Shares presented for repurchase in a quarter whose aggregate value is within the 5% limitation. Under normal circumstances, the Company intends to maintain the following percentages of the overall value of its portfolio in liquid assets: (1) 15% of NAV up to \$333 million; (2) 10% of NAV between \$333 million and \$667 million; and (3) 5% of NAV in excess of \$667 million.

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<sup>7</sup> In order to effectuate the minimum-amount requirements, the Company will establish procedures pursuant to which its transfer agent will compare the number of Common Shares that a stockholder presents for repurchase against the number of Common Shares held by such stockholder as reflected on the transfer agent's books and records. If a stockholder presents for repurchase a number of Common Shares that is less than the minimum number that may be presented for repurchase, the transfer agent will notify the stockholder in writing that the request cannot be accepted, and will calculate and set forth in the written notice the minimum number of Common Shares that the stockholder must present in order to meet the minimum-amount requirement.

The Company has disclosed throughout its prospectus that the Company may not always have sufficient liquid resources to satisfy all repurchase requests. In an effort to have adequate cash available to support the Repurchase Program, the Company may reserve borrowing capacity under a line of credit. The Company could then borrow against this line of credit in part to repurchase Common Shares presented for repurchase during periods when the Company does not have sufficient proceeds from the sale of Common Shares in the Offering to fund all repurchase requests.

Repurchases under the Repurchase Program will be on a first-come, first-served basis during each calendar quarter because stockholder repurchases will be paid promptly. If repurchase requests reach the quarterly limitation on a given day during a quarter, if the Repurchase Program is suspended, or if funds available for the Repurchase Program are not sufficient to accommodate all repurchase requests, Common Shares will be repurchased as follows: (1) *pro rata* as to repurchases upon the death of a stockholder; (2) next, *pro rata* as to repurchases by stockholders who demonstrate, in the discretion of the Company's board of directors, a bankruptcy or other involuntary exigent circumstance, as approved by the Company's board of directors; (3) next, *pro rata* as to repurchases by stockholders subject to a mandatory distribution requirement under such stockholder's IRA; and (4) finally, *pro rata* as to all other repurchase requests.<sup>8</sup> Unlike Clarion, which provides for absolute *pro rata* repurchases for stockholders requesting repurchase on the date the quarterly limitation is reached, the Company has established the foregoing order of priority since stockholders may be subject to different personal circumstances. But within each group of similarly situated stockholders, repurchases will be *pro rata*. All repurchase requests unsatisfied due to any of the limitations of the Repurchase Program must be resubmitted after the start of the next quarter or upon the commencement of the Repurchase Program, as applicable.

On the first business day during any quarter in which the Company has reached that quarter's repurchase limitation, the Company will publicly disclose such fact through a filing with the Commission and a posting on the Company's website in order to notify stockholders that it will not accept additional repurchase requests during such quarter. In such event, unless the board of directors determines to suspend the Repurchase Program for any of the reasons described below, the Repurchase Program will automatically and without stockholder notification resume on the first day of the calendar quarter following the quarter in which repurchases were suspended due to reaching such quarter's volume limitation.

The board of directors' primary objective regarding the Repurchase Program is to maintain uninterrupted repurchases of Common Shares in order to provide stockholders with liquidity in respect of their investment in the Company. Nonetheless, the board must exercise its oversight responsibilities in light of its fiduciary duties to all stockholders and must have the

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<sup>8</sup> This order of priority is similar to that set forth in American Realty Capital Daily Net Asset Value Trust, Inc. (July 21, 2011).



ability to suspend the repurchase of Common Shares under the appropriate circumstances, as well as to make appropriate modifications to the Repurchase Program to ensure its effective operation. Those fiduciary duties require that, as with any decision made by the board, any decision to modify or suspend the Repurchase Program be made in good faith, with a reasonable belief that the action is in the best interests of the Company and its stockholders, and with the care of an ordinarily prudent person in a like position under similar circumstances. The Company believes that the board's responsibility to monitor and, under unusual or compelling circumstances, suspend the repurchase of Common Shares is necessary to ensure the integrity and continuous operation of the Repurchase Program. Material modifications, including any reduction to the quarterly limitation on repurchases, and suspensions will be disclosed promptly to stockholders in a prospectus supplement or special or periodic reports filed by the Company with the Commission, as well as in a press release or on the Company's website, and, as required by the Securities Act, in post-effective amendments to its Registration Statement.

Events that may cause the Company's board of directors, in the exercise of its business judgment and fiduciary duties, to decide to suspend the Repurchase Program include: (1) unavailability of sufficient liquidity to fund repurchases or a prolonged and material imbalance between proceeds from sales of new Common Shares under the DRIP and the capital required to repurchase outstanding Common Shares; (2) material adverse developments in the financial markets, such as changes or developments involving prospective changes in national or international political, financial or economic conditions; (3) material disruptions in the markets for the types of commercial real estate properties and other real estate-related assets that the Company holds, such as extreme price volatility, disruption in the title recording or securities settlement processes, suspension of trading, banking moratorium or moratorium on exercising legal rights or remedies; (4) material regulatory changes or changes in law that impact the Company's operations; (5) the board of directors becoming aware of undisclosed material information that it believes should be publicly disclosed before Common Shares are repurchased; (6) the existence of a condition that restricts the valuation of a material portion of the Company's assets (such as a terrorist attack or an act of nature); (7) the Company entering into a definitive agreement to merge with another entity or sell all or substantially all of its assets or filing an application to list its Common Shares on a national securities exchange; or (8) fundamental changes in the business affairs or business prospects of the Company, such as termination of agreements with the Advisor or significant operational issues.

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 Repurchase Program is necessary and warranted to ensure that the board can discharge its fiduciary duties to promote the long-term efficacy of the Repurchase Program, while also ensuring the equitable treatment of both stockholders that are and that are not presenting their Common Shares for repurchase. Notwithstanding the foregoing, the board of directors has no current intention to modify or suspend the Repurchase Program and expects that the Repurchase Program will continue indefinitely for the life of the Company. In addition, the Company will seek confirmation of the no-action relief requested hereby if the board proposes to (1) modify the

Repurchase Program from daily to less frequent repurchases, or (2) modify other aspects of the Repurchase Program upon which the Company's request for no-action relief is predicated other than immaterial modifications for the proper administration and operation of the Repurchase Program which are consistent with the factual and legal representations contained in this letter.

## Disclosure

The Company does not intend to publicize separately the existence of the Repurchase Program or engage in any activity to encourage stockholders to submit repurchase requests other than disclosures required under federal securities laws, disclosures in offering materials used in connection with the Offering, procedural/repurchase price disclosures in stockholder communications after the commencement of the Offering and, following the NAV Pricing Start Date, the provision of daily NAV per Common Share in monthly pricing supplements that the Company will file with the Commission and post to the Company's website and toll-free, automated telephone line. Neither the Company nor any of its affiliates will make any recommendation to holders of Common Shares as to whether to participate in the Repurchase Program. The prospectus for the Offering will contain a comprehensive description of all terms, conditions and features of the Repurchase Program and will be updated to reflect any material modifications made during the Offering. Thus, with the exception of price, an investor will have all the material information necessary to make a repurchase decision at the time the investor purchases Common Shares.

## LEGAL DISCUSSION

### *Reasons for No-Action Relief*

With respect to repurchases prior to the NAV Pricing Start Date, the Company's request for no-action relief is substantially similar to previously granted no-action requests made by traditional non-listed REITs.<sup>9</sup> With respect to purchases following the NAV Pricing Start Date, the Company's request for no-action relief is substantially similar to the no-action request of

<sup>9</sup> The previously granted no-action requests made by traditional non-listed REITs (other than Clarion, American Realty Capital Daily Net Asset Value Trust, Inc. and Cole Real Estate Income Strategy (Daily NAV), Inc.) included repurchases 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 Wells REIT II, Inc. (June 26, 2007); Hines Real Estate Investment Trust, Inc. (Sept. 7, 2006); Apple REIT Six, Inc. (June 30, 2006); Behringer Harvard REIT I, Inc. (Oct. 26, 2004); Paladin Realty Income Properties, Inc. (Oct. 22, 2004); Orange Hospitality, Inc. (Sept. 9, 2004); Hines Real Estate Investment Trust, Inc. (June 18, 2004); CNL Income Properties, Inc. (Mar. 11, 2004); Inland Western Retail Real Estate Trust, Inc. (Aug. 25, 2003); T REIT, Inc. (June 4, 2001); and CNL American Properties Fund, Inc. (Aug. 13, 1998). Each subject company was a non-listed REIT that proposed to maintain a repurchase program similar to the Repurchase Program in that it would allow for the repurchase of outstanding shares at a repurchase price equal to or less than the then-current price at which the issuer was offering its shares to the public or, in some cases, equal to or less than the price the stockholder paid for the shares.

Clarion.<sup>10</sup> Like Clarion, the Company's request for no-action relief with respect to purchases following the NAV Pricing Start Date differs from previously granted no-action requests made by non-listed REITs with respect to three representations made in such previous no-action requests: (1) a limitation on the number of Common Shares that will be repurchased in any quarter to Common Shares whose aggregate value (based on the repurchase price per Common Share on the day the repurchase is effected) is 5% of the Company's NAV as of the last day of the previous calendar quarter, which means that in any 12-month period, the Repurchase Program will limit repurchases to approximately 20% of the Company's total NAV; (2) the daily pricing of repurchases varying based on the daily NAV per Common Share; and (3) the Company's forward-pricing mechanism. Because these aspects of the Repurchase Program are similar to those presented by Clarion in its no-action request,<sup>11</sup> they should not preclude no-action relief. These features are designed to (A) offer greater liquidity to investors, and (B) provide investors with a repurchase price that is based on the underlying fair value of the Company's assets. Also, the repurchase price following the NAV Pricing Start Date will not be at a premium to NAV per Common Share

Similar to other non-listed REITs, and unlike Clarion, the Company intends to begin the process of achieving a liquidity event within six to nine years after the termination of the Offering. Nevertheless, the Company believes that its NAV-based pricing methodology for the issuance of Common Shares under the DRIP and for the repurchase of Common Shares under the Repurchase Program following the NAV Pricing Start Date is an important feature, provides benefits to its stockholders, and should not preclude the requested no-action letter. The Company has adopted its NAV-based pricing methodology with the objective of having its Common Shares sold under the DRIP and repurchased daily under the Repurchase Program at a price that reflects the value of its investments, as determined by its Advisor. Absent extraordinary circumstances, the price at which the Company sells new Common Shares under the DRIP and repurchases outstanding Common Shares under the Repurchase Program will not be affected by the volume of sales and repurchases. Stockholders may choose to request the repurchase of none, all or, subject to certain minimum amounts that are required to be presented for repurchase, a portion, of their Common Shares on a daily basis. However, if a significant or protracted imbalance develops between sales under the DRIP and repurchases under the Repurchase Program or other extraordinary events occur (as described above), then the board of directors maintains the discretion to take action 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

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<sup>10</sup> See Clarion Partners Property Trust Inc. (May 17, 2011). See also American Realty Capital Daily Net Asset Value Trust, Inc. (July 21, 2011) and Cole Real Estate Income Strategy (Daily NAV), Inc. (December 6, 2011).

<sup>11</sup> See Clarion Partners Property Trust Inc. (May 17, 2011). See also American Realty Capital Daily Net Asset Value Trust, Inc. (July 21, 2011) and Cole Real Estate Income Strategy (Daily NAV), Inc. (December 6, 2011).

Company's Common Shares. Although stockholders of the Company will be made aware of the availability of the Repurchase Program at the time they purchase their Common Shares by means of prospectus disclosure, and will be informed in writing of any changes to the program, the Company will not affirmatively solicit participation by its stockholders in the Repurchase Program. Stockholders desiring to present all or a portion of their Common Shares for repurchase will do so of their own volition and not at the behest, invitation or encouragement of the Company.

The role of the Company in effectuating repurchases under the Repurchase Program will be ministerial and will merely facilitate the stockholders' decision to exit from their investment in the Company. Common Shares repurchased by the Company will become authorized but unissued Common Shares and will not be resold to the public unless their sale is first registered with the Commission under the Securities Act and under appropriate state securities laws or otherwise sold in compliance with such laws. The Company will terminate the Repurchase Program in the event the Common Shares are listed on a national securities exchange or included for quotation on a national securities market, or in the event a secondary market for the Company's Common Shares develops, none of which may ever happen.

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

#### Rule 13e-4

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

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

The Company believes that the Repurchase Program is not an "issuer tender offer" subject to Rule 13e-4. The Company reaches this conclusion based on an analysis of the factors expressed in *Wellman v. Dickinson*, 475 F. Supp. 783 (S.D.N.Y. 1979), and applied in subsequent cases by the Commission and its staff in determining what constitutes a tender offer, as well as the fact that the terms of the Repurchase Program will be fully disclosed to potential investors prior to their purchase of the Company's Common Shares. Since stockholders will be aware of the Repurchase Program and its pricing structure at the time of purchase and, following the NAV Pricing Start Date, will be aware of the NAV per Common Share through the Company's website and toll-free, automated telephone line and prospectus supplements, stockholders will not require additional information regarding the Repurchase Program at the time they decide to make a repurchase request. No new investment decision will be made at the

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

The Company also believes that the operation of the Repurchase Program following the NAV Pricing Start Date does not raise the tender offer concerns under Rule 13e-4 that are addressed in the no-action requests by other non-listed REITs for repurchase programs that offer periodic repurchases for limited numbers of shares at an arbitrary fixed price. The Company believes that by staying open for an indefinite period of time during the life of the Company, the Repurchase Program does not pressure stockholders with respect to making a repurchase request. There will not be a limited time period in which to request repurchase. Following the NAV Pricing Start Date, stockholders, throughout the life of the Company, may choose to request the repurchase of none, all or, subject to certain minimum amounts that are required to be presented for repurchase, a portion, of their Common Shares on a daily basis, at a price equal to 95% of the daily NAV per Common Share.

Although, following the NAV Pricing Start Date, stockholders will not know the precise repurchase price (95% of the daily NAV per Common Share) at the time they request repurchase because of the forward-pricing model previously described herein, they will know the NAV per Common Share as of the previous day and all preceding days as may be of interest to them. By reviewing this information, stockholders will be able to anticipate the approximate price applicable to their repurchase based on their evaluation of the degree of recent historical pricing volatility. In addition, and as described above under “The Repurchase Program – Timing and Settlement,” a stockholder may cancel a repurchase request before it has been processed by notifying a customer service representative available on the Company’s toll-free, automated telephone line. The Common Shares are not subject to the same market supply and demand pressures as securities listed on an exchange or traded over the counter where the price of a security fluctuates based on the supply and demand of a security. Without these market pressures and because the price following the NAV Pricing Start Date will be based on the Company’s NAV, the Company believes that material fluctuations in the NAV per Common Share on a day-to-day basis are unlikely.

The Company believes that material fluctuations in NAV are unlikely because the portfolio will consist primarily of office, industrial, retail and hospitality properties, single-tenant properties, multifamily properties, age-restricted residences and other real estate-related assets, which are generally not subject to volatile price fluctuation. Based on the diversification of the intended portfolio, it is unlikely the repurchase price of the Company’s Common Shares will fluctuate materially from one day to the next, and the repurchase price for the prior business day is likely to serve as a good indicator of the repurchase price the stockholder will actually receive.

Additionally, the fact that, following the NAV Pricing Start Date, the Company and its stockholders will not know the exact repurchase price at the time of a repurchase request will be

disclosed to stockholders at the time they purchase Common Shares and make their investment decision.

### Analysis of the *Wellman* Factors

An analysis of the *Wellman* factors demonstrates that the Repurchase Program should not be viewed as a tender offer.<sup>12</sup> Set forth below is an application of these factors to the Repurchase Program.

(i) *Active and widespread solicitation of public stockholders for the shares of an issuer.* The Company will not engage in an active and widespread solicitation for the repurchase of its Common Shares. The Repurchase Program will be described in the prospectus, and any communications to stockholders identifying changes to the program will be communicated through a prospectus supplement, as well as in 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 program's existence. The Company will not make any other significant public communications about the Repurchase Program except as contained in or related to the Offering prospectus and supplements, offering materials used in connection with the Offering, required communications in reports filed under the Exchange Act, the providing of the daily NAV per Common Share on the Company's website and toll-free, automated telephone line following the NAV Pricing Start Date, and communications required by the program itself. Stockholders desiring to present all or a portion of their Common 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 Common Shares. The role of the Company in effectuating repurchases under the Repurchase Program will be ministerial and will merely facilitate the stockholder's full or partial exit from its investment in the Company.

(ii) *The offer to purchase is made at a premium over the prevailing market price.* No premium will be paid over the prevailing market price by the Company for the Common Shares repurchased. Prior to the NAV pricing start date, stockholders may request the repurchase of their Common Shares (a) in the case of "hardship," as defined above, at the total offering price paid, or (b) in the sole discretion of the Advisor, at a price of 92% of the total offering price paid, but in neither event at a price greater than the offering price per Common Share under the DRIP. Following the NAV Pricing Start Date, the offering price under the DRIP will be the Company's daily NAV per Common Share, and the repurchase price under the Repurchase Program will be equal to 95% of the daily NAV per Common Share. Further, there is no established regular trading market for the Company's Common Shares. The Repurchase Program will be terminated in the event the Company's Common Shares are listed on a national securities exchange or

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<sup>12</sup> The absence of one particular factor does not necessarily mean the non-existence of an issuer tender offer because, depending upon the circumstances involved in the particular case, one or more of the factors may be found more compelling and determinative than the others. *See Wellman*, 475 F. Supp. at 824.

included for quotation on a national securities market or in the event a secondary market for the Company's Common Shares develops. Because there is no trading market and the offering price under the DRIP is greater than the repurchase price under the Repurchase Program, this factor does not apply.

(iii) *The solicitation is made for a substantial percentage of the issuer's stock.* As noted above, the Company will not actively solicit repurchases under the Repurchase Program. Further, numerous no-action letters have been issued to non-listed REITs with repurchase programs similar to the Repurchase Program, except that those programs generally limit repurchases to 5% of the outstanding shares, measured at the beginning of the prior 12-month period (similar to the Company's Repurchase Program prior to the NAV Pricing Start Date). The Repurchase Program following the NAV Pricing Start Date will limit repurchases in any calendar quarter to 5% of the Company's NAV as of the last day of the previous calendar quarter, which means that, in any 12-month period, repurchases will be limited to approximately 20% of the Company's total NAV. Other than the "five per centum" threshold contained in Section 14(d)(1) of the Exchange Act, the Company is not aware of any authority that defines what constitutes a "substantial percentage" of an issuer's stock. However, the Company believes that concluding that the Repurchase Program as it will be structured following the NAV Pricing Start Date does not constitute an issuer tender offer subject to Rule 13e-4 does not hinge on the presence of a 5% limitation on the number of Common Shares of the Company that can be repurchased over a 12-month period. In the request underlying the Staff's no-action letter to Clarion, Clarion similarly asserted that concluding that a share redemption plan does not constitute an issuer tender offer subject to Rule 13e-4 does not hinge on the presence of a 5% limitation on the number of shares that can be redeemed over a 12-month period.<sup>13</sup> The Company also believes there is no reasonable likelihood that the Repurchase Program will have the effect of stockholders presenting for repurchase a substantial percentage of the Company's Common Shares.

The Repurchase Program merely provides stockholders with a means of liquidity in respect of their investment, as discussed previously in this letter. Further, the Repurchase Program does not exist for the same reasons that issuers typically conduct tender offers. The Repurchase Program is designed to offer stockholders an additional means of liquidity beyond the liquidity event that the Company may begin to effect within six to nine years after the termination of the Offering.

(iv) *The terms of the offer are firm, rather than negotiable.* The terms of the Repurchase Program are firm with respect to the process by which stockholders may request repurchase. While the repurchase price is not negotiable, it is not fixed at the same amount for the duration of the Repurchase Program, but rather, following the NAV Pricing Start Date, it is

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<sup>13</sup> See Clarion Partners Property Trust Inc. (May 17, 2011). See also American Realty Capital Daily Net Asset Value Trust, Inc. (July 21, 2011) and Cole Real Estate Income Strategy (Daily NAV), Inc. (December 6, 2011).

determined each day using an established methodology to arrive at NAV per Common Share. The Company believes, however, that the possible existence of this factor does not compel the finding of a tender offer because the firmness of the terms of the Repurchase Program will not increase pressure on stockholders to present their Common Shares for repurchase. The pressure on stockholders that Rule 13e-4 attempts to eliminate is that which is caused by “a high premium with the threat that the offer will disappear as of a certain time.”<sup>14</sup> Where these factors exist, firmness in the terms of the offer may have the effect of exacerbating the pressure. However, as previously discussed, the Repurchase Program will not offer stockholders a premium for their Common Shares, either before or after the NAV Pricing Start Date, and the Company intends that the Repurchase Program will exist indefinitely during the life of the Company (subject to the authority of the board of directors in its reasonable discretion to suspend the program under specified circumstances or to make modifications to promote its proper and fair operation).

In fact, the uniform NAV-based price following the NAV Pricing Start Date should have the effect of mitigating pressure because stockholders will know that they can request that their Common Shares be repurchased at fair value at any time. The Company will not have discretion in the determination of the repurchase price, contrary to an issuer tender offer. In a typical tender offer, the offeror conceivably has both an incentive and the ability to set the offer price at a level that will maximize the chances of obtaining the desired volume of tenders, while minimizing the overall premium paid. Conversely, the Company, absent extenuating circumstances, will apply, day in and day out, the same comprehensive set of valuation policies and procedures to ascertain the NAV per Common Share following the NAV Pricing Start Date. Therefore, the daily repurchase price under the Repurchase Program following the NAV Pricing Start Date will be based upon criteria that are beyond the day-to-day control of the Company.

(v) *The offer is contingent on the tender of a fixed number of shares.* The Repurchase Program is not contingent on a fixed number of Common Shares being presented for repurchase. Stockholders may choose to request the repurchase of none, all or, subject to certain minimum amounts that are required to be presented for repurchase, a portion, of their Common Shares on a daily basis.

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

(vii) *The offeree is subjected to pressure to sell.* As noted above, the Company will not encourage, invite, solicit or in any way pressure stockholders to participate in the Repurchase Program. The role of the Company in effectuating repurchases under the Repurchase Program will be purely ministerial. Because the Repurchase Program has no set termination date,

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<sup>14</sup> See *Brascan Ltd. v. Edper Equities Ltd.*, 477 F. Supp. 773, 792 (S.D.N.Y. 1979).



stockholders will not feel rushed to make decisions regarding participation in the program. Repurchases under the Repurchase Program will be on a first-come, first-served basis during each calendar quarter because stockholder repurchases will be paid promptly and if the quarterly limitation is reached or if the Repurchase Program is suspended, Common Shares will be repurchased according to the pre-established order of priority set forth above. In addition, the combination of (1) disclosure of the Repurchase Program as an integral element of the Offering at the time of the original investment decision, (2) the daily regularity of repurchases, (3) the comprehensive policies and procedures for determining NAV following the NAV Pricing Start Date, and (4) “forward-pricing,” following the NAV Pricing Start Date, to minimize damage to long-term investors from market timing and opportunistic behavior by existing or new stockholders, collectively, should act to decrease pressure on stockholders. The Company acknowledges that some features of the Repurchase Program may, to a limited extent, encourage a stockholder to present Common Shares for repurchase at a particular time given that the program will be open indefinitely during the life of the Company. Following the NAV Pricing Start Date, stockholders may feel pressure to present Common Shares for repurchase if the daily NAV per Common Share reaches a level at which stockholders may realize an attractive return above the amount of their initial investment. Additionally, stockholders may feel pressure to present their Common shares for repurchase if they believe the Company may receive repurchase requests in a calendar quarter in excess of the established maximum amount for that quarter. However, the Company does 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. Furthermore, in view of the fact that stockholders may be able eventually to realize the value of their investment through a liquidity event, any pressure to request the repurchase of their Common Shares to take advantage of these factors may be reduced. As noted, the features of the Repurchase Program are first disclosed to stockholders when they make their initial decision to invest in the Company, rather than at the time of their decision to participate in the Repurchase Program. Thus, stockholders are not presented with a “new” investment decision at the time they become eligible to request the repurchase of their Common Shares under the program.

(viii) *A public announcement of a purchasing program preceding or accompanying rapid accumulation of large amounts of stock.*<sup>15</sup> The intent of the Repurchase Program is to afford the Company’s stockholders liquidity, not for the Company to re-acquire its own Common Shares. It is possible that the Company, subject to the Repurchase Program’s quarterly limits, may repurchase a significant number of Common Shares over a short time pursuant to the Repurchase Program depending on stockholders’ decisions to exit the investment. Any such Common Shares repurchased by the Company, however, would not be deemed outstanding for purposes of receiving distributions or voting on matters submitted to stockholders.

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<sup>15</sup> The *Wellman* case did not include this eighth factor but acknowledged the Commission had listed an eighth factor in *Hoover v. Fuqua Industries, Inc.*, 1979 WL 1244, 4 (N.D. Ohio). See *Wellman*, 475 F. Supp. at 824.

The Company will describe the Repurchase Program in the prospectus and related offering materials, and when required, in filings made pursuant to the Exchange Act. The Company will inform stockholders promptly, as required by the Repurchase Program, about any material modification, suspension or termination of the Repurchase Program. Following the NAV Pricing Start Date, the Company will also file prospectus supplements as required by the Securities Act disclosing the NAV per Common Share and provide each day the NAV per Common Share on its website and toll-free, automated telephone line. The Company believes, however, that the Repurchase Program is not characteristic of a publicly announced purchasing program that is followed by a rapid accumulation of a large amount of stock. Though disclosure of the Repurchase Program as described above constitutes a public announcement of its existence and precedes any repurchase, the Company believes that any repurchase of Common Shares that might occur will not be driven by pressure exerted by the Company, as the Repurchase Program imposes no deadline and offers no premium. Rather, any such accumulation would occur solely as a result of stockholders opting to exit from the investment of their own volition without pressure or prompting by the Company, which is not the type of untoward pressure the tender offer rules were designed to prohibit. Several courts have agreed that offers without a deadline or premium are not tender offers within the meaning of Rule 13e-4, as stockholders are not subjected to the pressure the rule was designed to mitigate.<sup>16</sup>

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

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

The Company also notes 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>17</sup> This analysis looks to all the circumstances surrounding the transaction to determine whether the chief objectives of the tender offer statutes are being met, specifically, to remove the element of secrecy and undue pressure associated with such

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<sup>16</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, a solicitation for a large percentage does not represent the kind of pressure the Williams Act was designed to prevent); and *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, no pressure was exerted on the stockholders), *aff'd in relevant part, rev'd in part*, 584 F.2d 1195, 1207 (2d Cir. 1978).

<sup>17</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 (5th Cir. 1986) (applying same analysis to issuer tender offer case).

transaction, and to provide stockholders with adequate information to make an informed investment decision in connection therewith.<sup>18</sup>

The Company believes that the Repurchase Program withstands such a “totality of circumstances” analysis. Stockholders are provided full disclosure of the program before they purchase Common Shares and invest in the Company and are informed that participation in the Repurchase Program will be their only viable liquidity option, other than a future liquidity event that the Company cannot guarantee will ever occur, if they want to sell their Common Shares. Also, the fact that the Repurchase Program will be open indefinitely during the life of the Company eliminates any of the undue pressure on stockholders that is typical in tender offers. The Company is of the opinion that the protections afforded stockholders by the tender offer rules are not needed for stockholders who participate in the Repurchase Program. The Company does not believe that a “substantial risk of ill-considered sales” made “by ill-informed shareholders” will exist for repurchases under the Repurchase Program if the Rule 13e-4 procedural protections are not implemented.<sup>19</sup>

The Company believes that under a “totality of circumstances” analysis, stockholders of the Company are not the “particular class of persons [that] need the protection of” the tender offer rules because the terms of the Repurchase Program will be fully disclosed at the time of purchase.<sup>20</sup> Finally, courts have specifically mentioned full disclosure, 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>21</sup> The Company notes that these protections are already inherent in the Repurchase Program even if Rule 13e-4 is inapplicable.

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

The Company respectfully requests that the Staff confirm that it will not recommend that the Commission take enforcement action under Rule 13e-4 with respect to repurchases of the Company’s Common Shares made under the Repurchase Program. The Repurchase Program as it is structured prior to the NAV Pricing Start Date is substantially similar to the share repurchase programs of traditional non-listed REITs with respect to which the Staff has previously granted no-action relief.<sup>22</sup> The Repurchase Program as it is structured following the NAV Pricing Start

<sup>18</sup> See, e.g., *Wellman*, 475 F. Supp. at 821–23; *Pin*, 793 F.2d at 1454; and *Hanson Trust*, 774 F.2d at 54–56.

<sup>19</sup> See *Hanson Trust*, 774 F.2d at 58.

<sup>20</sup> See *id.* at 57 (applying the principle followed in *SEC v. Ralston Purina Co.*, 346 U.S. 119, 125 (1953)).

<sup>21</sup> See *SEC v. Carter Hawley Hale Stores, Inc.*, 760 F.2d 945, 949 (9th Cir. 1985).

<sup>22</sup> See *Wells REIT II, Inc.* (June 26, 2007); *Hines Real Estate Investment Trust, Inc.* (Sept. 7, 2006); *Apple REIT Six, Inc.* (June 30, 2006); *Boston Capital Real Estate Investment Trust, Inc.* (Feb. 10, 2005); *Behringer Harvard REIT I, et al.*, (Oct. 26, 2004); *Paladin Realty Income Properties, Inc.* (Oct. 14, 2004); *Orange Hospitality, Inc.*

Date is substantially similar to the share repurchase program of Clarion, for which the Staff has granted no-action relief.<sup>23</sup> Although Clarion has an indefinite life, whereas the Company intends to begin the process of achieving a liquidity event within six to nine years of the termination of the Offering, the Company does not believe that this distinction affects the analysis of the factors discussed above. Additionally, other than the repurchase price and the limitation on the number of Common Shares that can be repurchased during each calendar quarter, as noted above, the Repurchase Program following the NAV Pricing Start Date is substantially similar to repurchase programs for which the Staff has granted no-action relief.<sup>24</sup> The Company does not believe that daily repurchases based upon, prior to the NAV Pricing Start Date, a fixed price, and following the NAV Pricing Start Date, a daily NAV per Common Share calculation, coupled with a higher limitation on the aggregate value of Common Shares that can be repurchased in a calendar quarter following the NAV Pricing Start Date, impacts the analysis included in the other similar no-action letters. Factors that the Company believes address these objectives and support this request include:

- All material information relating to the Repurchase Program will be fully and timely disclosed to all stockholders. The terms of the Repurchase Program will be fully disclosed in the prospectus as well as any prospectus used for subsequent offerings and following the NAV Pricing Start Date, the NAV per Common Share will always be available on the Company's website and toll-free, automated telephone line.
- The Company will not solicit repurchases under the Repurchase Program other than through the prospectus for the Offering and following the NAV Pricing Start Date, the prospectus supplements disclosing the NAV per Common Share. Stockholders desiring to present all or a portion of their Common Shares for repurchase will do so of their own volition and not at the behest, invitation or encouragement of the Company. The role of the Company in effectuating repurchases under the Repurchase Program will be ministerial.

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(Sept. 9, 2004); Hines Real Estate Investment Trust, Inc. (June 18, 2004); CNL Income Properties, Inc. (Mar. 11, 2004); Inland Western Retail Real Estate Trust, Inc. (Aug. 25, 2003); T REIT, Inc. (June 4, 2001); and CNL American Properties Fund, Inc. (Aug. 13, 1998).

<sup>23</sup> See Clarion Partners Property Trust Inc. (May 17, 2011). See also American Realty Capital Daily Net Asset Value Trust, Inc. (July 21, 2011) and Cole Real Estate Income Strategy (Daily NAV), Inc. (December 6, 2011).

<sup>24</sup> See Wells REIT II, Inc. (June 26, 2007); Hines Real Estate Investment Trust, Inc. (Sept. 7, 2006); Apple REIT Six, Inc. (June 30, 2006); Boston Capital Real Estate Investment Trust, Inc. (Feb. 10, 2005); Behringer Harvard REIT I, et al., (Oct. 26, 2004); Paladin Realty Income Properties, Inc. (Oct. 14, 2004); Orange Hospitality, Inc. (Sept. 9, 2004); Hines Real Estate Investment Trust, Inc. (June 18, 2004); CNL Income Properties, Inc. (Mar. 11, 2004); Inland Western Retail Real Estate Trust, Inc. (Aug. 25, 2003); T REIT, Inc. (June 4, 2001); and CNL American Properties Fund, Inc. (Aug. 13, 1998).

- Prior to the NAV Pricing Start Date, Common Shares are repurchased at a price related to, and not exceeding, the public offering price of the Common Shares at the time of repurchase, and not exceeding the offering price per Common Share under the DRIP.
- Following the NAV Pricing Start Date, the Common Shares will be repurchased daily under the Repurchase Program at 95% of the daily NAV per Common Share 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 Common Share and also provide each day the NAV per Common Share on its website and toll-free, automated telephone line.
- Repurchases will be made on a daily basis. The repurchase price normally will be paid in cash no later than three business days following the repurchase request day and will be the same for all Common Shares repurchased on a given day.
- Prior to the NAV Pricing Start Date, the Company will limit the Common Shares repurchased during any calendar quarter to 1.25% of the weighted average number of Common Shares outstanding during the previous calendar quarter, or approximately 5% of the weighted average number of Common Shares outstanding in any 12-month period
- Following the NAV Pricing Start Date, repurchases under the Repurchase Program are limited in any calendar quarter to Common Shares whose aggregate value (based on the repurchase price per Common Share on the day the repurchase is effected) is 5% of the Company's NAV as of the last day of the previous calendar quarter, which means that in any 12-month period following the NAV Pricing Start Date, the Repurchase Program will limit repurchases to approximately 20% of the Company's total NAV.
- Repurchases under the Repurchase Program are on a first-come, first-served basis during each calendar quarter given that stockholder repurchases will be paid promptly; however, if the quarterly limitation is reached or if funds available for the Repurchase Program are not sufficient to accommodate all requests, Common Shares will be repurchased according to the pre-established order of priority set forth above.
- Stockholders may cancel any repurchase request submitted before 4:00 p.m. Eastern time on a business day before 4:00 p.m. Eastern time on the same day by notifying a customer service representative at the Company's toll-free, automated telephone line.
- Material modifications, including any reduction to the quarterly limitation on repurchases, and suspensions will be disclosed promptly to stockholders in a prospectus supplement or special or periodic reports filed by the Company with the Commission, as well as in a press release or on the Company's website, and, as required by the Securities Act, in post-effective amendments to its Registration Statement.
- There will be no established regular trading market for the Company's Common Shares. The Repurchase Program will be terminated if the Company's Common Shares are listed on a

national securities exchange or included for quotation on a national securities market, or in the event a secondary market for the Company's Common Shares develops.

- The Repurchase Program is intended to remain indefinitely open for the life of the Company unless modified or suspended by the board of directors. Although the Company intends to begin the process of effecting a liquidity event within six to nine years after the termination of the Offering, the Company has no definite date set for a liquidity event and cannot guarantee that a liquidity event will ever occur. Although listing of Common Shares on an exchange or other trading market is one of the potential liquidity events, the Company has no current intention to list its Common Shares for trading on an exchange or other trading market.
- The Repurchase Program is open to all stockholders on the same terms.

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

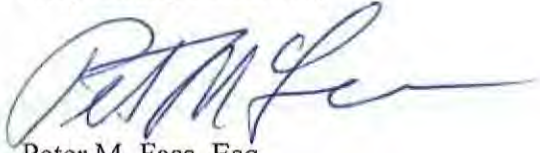
### ***Rule 13e-3 – Does Not Apply***

Rule 13e-3 should not apply to the Repurchase Program. Rule 13e-3 governs, among other transactions described in paragraph (a)(3)(i) of the rule, purchases of an equity security by the issuer of such security or by an affiliate of such issuer which have either a reasonable likelihood or a purpose of producing, either directly or indirectly, a "going private" transaction as described in paragraph (a)(3)(ii) of the rule. The Repurchase Program is not being undertaken for the purpose of causing the Company's Common Shares to become eligible for termination of registration under Rule 12g-4 or Rule 12h-6 or causing the Company's reporting obligations to become eligible for termination under Rule 12h-6 or suspension under Rule 12h-3 or Section 15(d) of the Exchange Act. Moreover, there is not a reasonable likelihood that any of the foregoing effects would result from the operation of the Repurchase Program inasmuch as the Repurchase Program has limitations on the amount of repurchases that may be made in each calendar quarter. If the extent of repurchases under the Repurchase Program is such that any of the effects described in paragraph (a)(3)(ii)(A) of Rule 13e-3 are to become reasonably likely, then the board of directors will undertake to modify or suspend the Repurchase Program.

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If you have any questions regarding this request, or if you need any additional information, please do not hesitate to contact me at (212) 969-3445.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Peter M. Fass", with a long horizontal flourish extending to the right.

Peter M. Fass, Esq.  
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