
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

**FORM S-11
FOR REGISTRATION**
*UNDER THE SECURITIES ACT OF 1933
OF SECURITIES OF CERTAIN REAL ESTATE COMPANIES*

GENERATION INCOME PROPERTIES, INC.
(Exact Name of Registrant as Specified in its Governing Instruments)

401 East Jackson Street, Suite 3300
Tampa, Florida 33602
813-448-1234
(Address, Including Zip Code, and Telephone Number,
Including Area Code, of Registrant's Principal Executive Offices)

David Sobelman
President and Chief Executive Officer
401 East Jackson Street, Suite 3300
Tampa, Florida 33602
813-448-1234
(Name, Address, Including Zip Code, and Telephone Number,
Including Area Code, of Agent for Service)

With copies to:

Curt Creely, Esq.
Carrie Long, Esq.
FOLEY & LARDNER LLP
100 North Tampa Street, Suite 2700
Tampa, FL 33602
Tel: (813) 229-2300
Fax: (813) 221-4210

Approximate date of commencement of proposed sale to the public: As soon as practicable after the effective date of this Registration Statement.

If any of the Securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If delivery of the prospectus is expected to be made pursuant to Rule 434, please check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, anon-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Non-accelerated filer

Accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

EXPLANATORY NOTE

This Registration Statement contains two prospectuses as set forth below.

- **Distribution Prospectus:** A prospectus to be used for the distribution of [•] shares of common stock (the “Distribution Shares”) of Generation Income Properties, Inc., a Maryland corporation (the “Company”) by Modiv Operating Partnership, L.P., a Delaware limited partnership (“Modiv OP”) to the holders of Class C units of Modiv OP, including Modiv Inc., now known as Modiv Industrial, Inc. (“Modiv”), and the subsequent distribution by Modiv to the holders of its common stock, which we refer to as the “Distribution Prospectus.”
- **Resale Prospectus:** A prospectus to be used for the potential resale by a selling shareholder of up to [•] shares of common stock of the Company, which we refer to as the “Resale Prospectus.”

The Resale Prospectus is substantively identical to the Distribution Prospectus, except for the following principal points:

- they contain different outside front covers;
- they contain different outside back covers;
- they contain different Offering sections in the Prospectus Summary section;
- they contain different Use of Proceeds sections;
- a Selling Shareholders section is included in the Resale Prospectus;
- they contain different Plan of Distribution sections; and
- a Material U.S. Federal Income Tax Consequences of the Distribution section is included in the Distribution Prospectus.

We have included in this Registration Statement, a set of alternate pages after the back cover page of the Distribution Prospectus, which we refer to as the “Alternate Pages,” to reflect the foregoing differences in the Resale Prospectus as compared to the Distribution Prospectus. The Distribution Prospectus will exclude the Alternate Pages and will be used for the issuance of the Distribution Shares to holders of Modiv Class C OP units, including Modiv, and the subsequent distribution of Distribution Shares by Modiv to the holders of its common stock. The Resale Prospectus will be substantively identical to the Distribution Prospectus except for the addition or substitution of the Alternate Pages and will be used for the offering of the Resale Shares by the selling shareholder.

The information in this prospectus is not complete and may be changed. We may not issue these shares of common stock until the registration statement filed with the Securities and Exchange Commission becomes effective. This prospectus is not an offer to sell these shares of common stock and it is not soliciting an offer to buy these shares of common stock in any jurisdiction where the offer or sale thereof is not permitted.

SUBJECT TO COMPLETION, DATED SEPTEMBER 29, 2023

PRELIMINARY PROSPECTUS



GENERATION INCOME PROPERTIES, INC.

[•] SHARES OF COMMON STOCK

This prospectus relates to the distribution (the “Distribution”) of [•] shares of our common stock (the “Distribution Shares”) by Modiv Operating Partnership, L.P., a Delaware limited partnership (“Modiv OP”) to the holders of Class C units of Modiv OP, including Modiv Inc., now known as Modiv Industrial, Inc. (“Modiv”), and the subsequent distribution by Modiv to the holders of its common stock. The Distribution Shares consist of shares of our common stock issuable upon redemption of 2,400,000 outstanding shares of our Series A Redeemable Preferred Stock, par value \$0.01 per share (the “Series A Preferred Stock”), from Modiv OP in a private placement transaction (the “Redemption”). The Redemption is at our option, subject to the satisfaction of conditions set forth in our Articles Supplementary for the Series A Preferred Stock. See “Background of the Portfolio Acquisition” for more information.

The above number of Distribution Shares assumes that the volume weighted average price (“VWAP”) per share of our common stock for the 60-day period ending on the date immediately preceding the date we provide written notice of our intent to redeem the Series A Preferred Stock is approximately \$3.64 or less. If the 60-day VWAP per share of our common stock for such period is higher than \$3.64, the number of Distribution Shares may be reduced. See “Background of the Portfolio Acquisition” for more information.

We are not selling any securities in this offering, and therefore will not receive any proceeds from the Distribution of the Distribution Shares by Modiv OP, and the subsequent distribution by Modiv.

Each Class C unit of Modiv OP outstanding as of 5:00 p.m., New York City time, on _____, the record date for the Distribution, which we refer to as the “Record Date,” will entitle its holder to receive its *pro rata* portion of the Distribution Shares, subject to the beneficial ownership limitations in our charter. In addition, each outstanding share of common stock of Modiv as of [•] p.m., New York City time, on the Record Date will entitle its holder to receive its *pro rata* portion of the Distribution Shares distributed to Modiv, subject to the beneficial ownership limitations in our charter. As of the Record Date, there were [•] Modiv Class C OP units outstanding and [•] shares of Modiv common stock outstanding. No fractional shares of our common stock will be issued in the Distribution. The Distribution is expected to be effective as soon as practicable after the completion of the Redemption, provided that Modiv OP and/or Modiv may at any time until the Distribution decide to abandon the Distribution or modify or change the terms of the Distribution, subject to the terms and conditions of the Purchase Agreement. See “Background of the Portfolio Acquisition” for more information.

By separate prospectus (the “Resale Prospectus”), we have registered the offer and resale by a selling shareholder of [•] shares of our common stock (the “Resale Shares”), which consists of certain shares of our common stock issuable to such selling shareholder pursuant to the Redemption.

Sales of the shares of our common stock registered in this prospectus and the Resale Prospectus will result in two offerings taking place concurrently, which might affect price, demand, and liquidity of our common stock.

We have agreed to pay the expenses of the registration of the shares of our common stock offered by this prospectus.

Our common stock is currently listed on the Nasdaq Capital Market (“Nasdaq”) under the symbol “GIPR”. The closing price of our common stock on Nasdaq on September 28, 2023 was \$3.93 per share.

Investing in our securities involves risks. You should carefully read and consider the “Risk Factors” beginning on page 7 of this prospectus and the documents that are incorporated by reference into this prospectus including our Annual Report on Form 10-K for the year ended December 31, 2022, for a discussion of certain risk factors you should consider before investing.

We qualify as an “emerging growth company” as defined in the Jumpstart Our Business Startups Act and are subject to reduced public company reporting requirements. See “Jumpstart Our Business Startups Act” contained herein.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities, determined if this prospectus is truthful or complete or passed on or endorsed the merits of this offering. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2023.

TABLE OF CONTENTS

PROSPECTUS SUMMARY	2
THE OFFERING	6
RISK FACTORS	7
USE OF PROCEEDS	11
CAPITALIZATION	12
OUR DISTRIBUTION POLICY	13
JUMPSTART OUR BUSINESS STARTUPS ACT	15
INVESTMENT POLICIES AND POLICIES WITH RESPECT TO CERTAIN ACTIVITIES	16
BACKGROUND OF THE PORTFOLIO ACQUISITION	19
DESCRIPTION OF SECURITIES	21
OUR OPERATING PARTNERSHIP AND THE PARTNERSHIP AGREEMENT	26
MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE DISTRIBUTION	28
MATERIAL FEDERAL INCOME TAX CONSIDERATIONS	31
ERISA CONSIDERATIONS	51
PLAN OF DISTRIBUTION	52
LEGAL MATTERS	54
EXPERTS	54
INCORPORATION BY REFERENCE	54
WHERE YOU CAN FIND MORE INFORMATION	54

ABOUT THIS PROSPECTUS

In this prospectus, references to the “Company,” “we,” “us,” “our” or similar terms refer to Generation Income Properties, Inc., a Maryland corporation, together with its consolidated subsidiaries, including Generation Income Properties, L.P., a Delaware limited partnership, which we refer to as our operating partnership (the “Operating Partnership”). As used in this prospectus, an affiliate, or person affiliated with a specified person, is a person that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

You should rely only on the information contained in this prospectus. We have not authorized anyone to provide you with different or additional information. If anyone provides you with different or inconsistent information, you should not rely on it. Neither we, nor anyone working on our behalf, are making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should assume that the information appearing in this prospectus prepared by us is accurate only as of their respective dates or on the date or dates which are specified in these documents. Our business, financial condition, liquidity, results of operations and prospects may have changed since those dates.

MARKET DATA

We use market data and industry forecasts and projections throughout this prospectus and in the documents incorporated by reference into this prospectus. We have obtained substantially all of this information from independent industry sources and publications as well as from research sources prepared by third party industry sources. Any forecasts are based on data (including third party data), models and experience of various professionals, and are based on various assumptions, all of which are subject to change without notice. In addition, we have obtained certain market and industry data from publicly available industry publications. We believe that the surveys and market research others have performed are reliable, but we have not independently verified this information.

STATEMENTS REGARDING FORWARD-LOOKING INFORMATION

We make statements in this prospectus and the documents incorporated by reference into this prospectus that are forward-looking statements within the meaning of the federal securities laws. The words “believe,” “estimate,” “expect,” “anticipate,” “intend,” “plan,” “seek,” “may,” “continue,” “could,” “might,” “potential,” “predict,” “should,” “will,” “would,” and similar expressions or statements regarding future periods or the negative of these terms are intended to identify forward-looking statements. These forward-looking statements involve known and unknown risks, uncertainties and other important factors that could cause our actual results, performance or achievements, or industry results, to differ materially from any predictions of future results, performance or achievements that we express or imply in this prospectus and documents incorporated by reference into this prospectus.

The forward-looking statements included in this prospectus and documents incorporated by reference into this prospectus are based upon our current expectations, plans, estimates, assumptions and beliefs that involve numerous risks and uncertainties. Assumptions relating to the foregoing involve judgments with respect to, among other things, future economic, competitive and market conditions and future business decisions, all of which are difficult or impossible to predict accurately and many of which are beyond our control. Although we believe that the expectations reflected in such forward-looking statements are based on reasonable assumptions, our actual results and performance could differ materially from those set forth in the forward-looking statements.

Factors that could have a material adverse effect on our forward-looking statements and upon our business, results of operations, financial condition, funds derived from operations, cash available for distribution, cash flows, liquidity and prospects include, but are not limited to, the factors referenced under the caption “Risk Factors” in this prospectus and in our Annual Report on Form 10-K for the year ended December 31, 2022, which is incorporated by reference herein.

Any of the assumptions underlying forward-looking statements could be inaccurate. You are cautioned not to place undue reliance on any forward-looking statements included or incorporated by reference in this prospectus. All forward-looking statements are made as of the date of this prospectus and the risk that actual results will differ materially from the expectations expressed in this prospectus will increase with the passage of time. Except as otherwise required by the federal securities laws, we undertake no obligation to publicly update or revise any forward-looking statements after the date of this prospectus, whether as a result of new information, future events, changed circumstances or any other reason. In light of the significant uncertainties inherent in the forward-looking statements included in this prospectus, the inclusion of such forward-looking statements should not be regarded as a representation by us or any other person that the objectives and plans set forth in this prospectus will be achieved.

PROSPECTUS SUMMARY

This summary highlights selected information contained or incorporated by reference in this prospectus. This summary does not contain all the information that you should consider before deciding whether to invest in our securities. You should read this entire prospectus and the documents incorporated by reference in this prospectus carefully, including the information contained in or referred to under the caption “Risk Factors” beginning on page 7 in this prospectus, and our consolidated financial statements and the notes to those statements incorporated by reference in this prospectus, before making an investment decision.

Our Company

We are an internally managed real estate investment trust focused on acquiring and managing income-producing retail, office and industrial properties net leased to high quality tenants in major markets throughout the United States. With interest rates continuing to rise, we believe our focus on owning properties leased to investment grade or creditworthy tenants with short term leases provide attractive risk adjusted returns through current yields, long term appreciation and tenant renewals.

We believe that single-tenant commercial properties, as compared with shopping centers, malls, and other traditional multi-tenant properties, offer a distinct investment advantage since single-tenant properties generally require less management and operating capital and have less recurring tenant turnover than do multi-tenant properties.

Given the stability and predictability of the cash flows, many net leased properties are held in family trusts, providing us an opportunity to acquire these properties for tax deferred units while giving the owners potential liquidity through the conversion of the units for freely tradable shares of stock.

We have been organized as a Maryland corporation and have elected to be taxed as a REIT under U.S. federal income tax laws, commencing with our taxable year ended December 31, 2021.

Portfolio Update

Recent Acquisition

On August 10, 2023, the Company and the Operating Partnership entered into an Agreement of Purchase and Sale (the “Purchase Agreement”) with Modiv and certain of its indirect subsidiaries, pursuant to which the Operating Partnership purchased from such indirect subsidiaries of Modiv a portfolio of 13 net leased properties (the “Portfolio”). The Portfolio consists of eleven (11) retail properties and two (2) office properties. The properties comprising the Portfolio are located across seven states and aggregate approximately 200,000 rentable square feet.

The purchase price paid for the Portfolio was \$42 million, excluding estimated transaction costs and expenses of \$1.9 million and subject to prorations and credits as set forth in the Purchase Agreement. An amount equal to \$30 million of the purchase price was paid in cash and \$12 million was paid in shares of Series A Preferred Stock. The cash portion of the purchase price was financed with a combination of (i) cash on hand, (ii) a new \$21.0 million secured debt facility from Valley National Bank, and (iii) a \$12.0 million preferred equity investment by LC2-NNN Pref, LLC, a Florida limited liability company and affiliate of Loci Capital Partners (“LC2”). The investment by LC2 was made into a special purpose subsidiary of the Operating Partnership named GIP VB SPE, LLC, a Delaware limited liability company (“GIP SPE”), and each of the properties in the Portfolio was transferred to a separate newly formed special purpose subsidiary of GIP SPE. As a result of the foregoing transactions, GIP SPE serves as a holding company for the various indirect subsidiaries of the Company that hold the properties included in the Portfolio plus the eight previously owned properties held by GIP SPE that were already financed through loans with Valley National Bank.

The acquisition of the Portfolio, as well as the loan with Valley National Bank and the financing transaction with LC2, all closed on August 10, 2023.

Portfolio Statistics

The following are characteristics of our properties as of August 31, 2023 (including the Portfolio and our tenant-in-common property):

- *Creditworthy Tenants.* Approximately 68% of our portfolio’s annualized base rent (“ABR”) as of August 31, 2023 was derived from tenants that have (or whose parent company has) an investment grade credit rating from a recognized credit rating agency of “BBB-” or better. Our largest tenants are the General Service Administration, City of San Antonio (PreK), and Kohl’s Corporation and contributed approximately 46% of our portfolio’s annualized base rent.

[Table of Contents](#)

- *Percent Leased.* Our portfolio is 96% leased.
- *Contractual Rent Growth.* Approximately 84% of the leases in our current portfolio (based on ABR of \$8.6 million) provide for increases in contractual base rent during future years of the current term or during the lease extension periods.
- *Average Effective Annual Rental per Square Foot.* Average effective annual rental per square foot is \$16.02.

Given the nature of our leases, our tenants either pay the realty taxes directly or reimburse us for such costs. We believe all our properties are adequately covered by insurance.

The table below presents an overview of the properties in our portfolio as of August 31, 2023:

Property Type	Location	Rentable Square Feet	Tenant	S&P Credit Rating ⁽¹⁾	Remaining Term (Yrs)	Options (Number × Yrs)	Contractual Rent Escalations ⁽⁵⁾	ABR ⁽²⁾	ABR per Sq. Ft.	
Retail	Washington, D.C.	3,000	7-Eleven Corporation	A	2.6	2 × 5	Yes	\$ 129,804	\$ 43.24	
Retail	Tampa, FL	2,200	Starbucks Corporation	BBB+	4.5	4 × 5	Yes	\$ 200,750	\$ 91.25	
Industrial	Huntsville, AL	59,091	Pratt & Whitney Automation, Inc.	A-	0.4	2 × 5	N/A	\$ 684,996	\$ 11.59	
Office	Norfolk, VA	49,902	General Services Administration–Navy	AA+	5.0	N/A	Yes	\$ 926,923	\$ 18.57	
Office	Norfolk, VA	22,247	VACANT	N/A	—	N/A	N/A	\$ —	\$ —	
Office	Norfolk, VA	34,847	PRA Holdings, Inc. ⁽³⁾	BB+	4.0	1 × 5	Yes	\$ 765,136	\$ 21.96	
Retail	Tampa, FL	3,500	Sherwin Williams Company	BBB	4.9	5 × 5	Yes	\$ 126,788	\$ 36.23	
Office	Manteo, NC	7,543	General Service Administration–FBI	AA+	5.5	1 × 5	Yes	\$ 161,346	\$ 21.39	
Office	Plant City, FL	7,826	Irby Construction	BBB-	1.3	2 × 5	Yes	\$ 170,865	\$ 21.83	
Retail	Grand Junction, CO	30,701	Best Buy Co., Inc.	BBB+	3.6	1 × 5	Yes	\$ 353,061	\$ 11.50	
Medical-Retail	Chicago, IL	10,947	Fresenius Medical Care Holdings, Inc.	BBB	3.2	2 × 5	Yes	\$ 228,902	\$ 20.91	
Retail	Tampa, FL	2,642	Starbucks Corporation	BBB+	3.5	2 × 5	Yes	\$ 148,216	\$ 56.10	
Retail	Tucson, AZ	88,408	Kohl's Corporation	BB+	6.4	7 × 5	Yes	\$ 823,962	\$ 9.32	
Retail	San Antonio, TX	50,000	City of San Antonio (PreK)	AAA	5.9	1 × 8	Yes	\$ 924,000	\$ 18.48	
Retail	Bakersfield, CA	18,827	Dollar General	BBB	4.9	3 × 5	Yes	\$ 361,075	\$ 19.18	
Retail	Big Spring, TX	9,026	Dollar General	BBB	6.8	3 × 5	Yes	\$ 86,040	\$ 9.53	
Retail	Castalia, OH	9,026	Dollar General	BBB	11.8	3 × 5	Yes	\$ 79,320	\$ 8.79	
Retail	East Wilton, ME	9,100	Dollar General	BBB	6.9	3 × 5	Yes	\$ 112,440	\$ 12.36	
Retail	Lakeside, OH	9,026	Dollar General	BBB	11.8	3 × 5	Yes	\$ 81,036	\$ 8.98	
Retail	Litchfield, ME	9,026	Dollar General	BBB	7.1	3 × 5	Yes	\$ 92,964	\$ 10.30	
Retail	Mount Gilead, OH	9,026	Dollar General	BBB	6.8	3 × 5	Yes	\$ 85,920	\$ 9.52	
Retail	Thompsontown, PA	9,100	Dollar General	BBB	7.2	3 × 5	Yes	\$ 86,004	\$ 9.45	
Retail	Morrow, GA	10,906	Dollar Tree Stores, Inc.	BBB	1.9	3 × 5	Yes	\$ 103,607	\$ 9.50	
Office	Maitland, FL	33,118	exp U.S. Services Inc.	Not Rated	3.3	1 × 5	Yes	\$ 835,346	\$ 25.22	
Office	Vacaville, CA	11,014	General Services Administration (GSA)	AA+	3.0	N/A	No	\$ 343,665	\$ 31.20	
Retail	Santa Maria, CA	14,490	Walgreens ⁽⁶⁾	BBB	8.6	N/A	No	\$ 369,000	\$ 25.47	
Tenants – Consolidated Properties								524,539	\$8,281,165	\$ 15.79
Retail	Rockford, IL	15,288	La-Z-Boy Inc. ⁽⁴⁾	Not Rated	4.2	4 × 5	Yes	\$ 366,600	\$ 23.98	
Tenants – All Properties								539,827	\$8,647,765	\$ 16.02

- (1) Tenant, or tenant parent, rated entity.
- (2) Annualized cash base rental income in place as of August 31, 2023.
- (3) Tenant has the right to terminate the lease on August 31, 2024, subject to certain conditions.
- (4) The Company's pro-rata share is 50% of the tenancy-in-common investment.
- (5) Includes rent escalations available from lease renewal options.
- (6) Tenant has the right to terminate the lease as of March 31, 2032, March 31, 2037, March 31, 2042, March 31, 2047, March 31, 2052, and March 31, 2057.

Capital Activities

LC2 Investment

The cash portion of the purchase price for the Portfolio acquisition was financed, in part, with a \$12.0 million preferred equity investment by LC2. In connection with the preferred equity investment by LC2, on August 10, 2023, the Operating Partnership and LC2 entered into an Amended and Restated Limited Liability Company Agreement for GIP SPE (the "GIP SPE Operating Agreement"). In

connection with such investment, the Operating Partnership also entered into an Agreement Providing Representations and Warranties, dated August 10, 2023, with LC2 pursuant to which the Operating Partnership made certain representations and warranties to LC2 in connection with LC2's preferred investment (the "Rep and Warranty Agreement").

Under the GIP SPE Operating Agreement, LC2 made a \$12.0 million initial capital contribution to GIP SPE, together with a commitment to make an additional \$2.1 million contribution upon the satisfactory completion of the acquisition of a tenant-in-common interest held by a third party in the Company's Rockford, Illinois property (the "LC2 Investment"). The Company completed the acquisition of such tenant-in-common interest in its Rockford, Illinois property on September 7, 2023, for a purchase price of \$1.3 million, and LC2 made the additional \$2.1 million capital contribution on September 11, 2023. LC2 made the investment in exchange for a preferred equity interest in GIP SPE (the "Preferred Interest"). The Preferred Interest has a cumulative accruing distribution preference of 15.5% per year, compounded monthly (the "Preferred Return"), a portion of which in the amount of 5% per annum (compounded monthly) is deemed to be the "Current Preferred Return," and the remainder of which in the amount of 10.5% per annum (compounded monthly) is deemed to be the "Accrued Preferred Return."

The GIP SPE Operating Agreement provides that operating distributions by GIP SPE will be made first to LC2 to satisfy any accrued but unpaid Current Preferred Return, with the balance being paid to the Operating Partnership, unless the "annualized debt yield" of GIP SPE is less than 10%, in which case the balance will be paid to LC2. For this purpose, "annualized debt yield" is calculated as the sum of senior debt and LC2 Investment divided by the trailing three-month annualized adjusted net operating income (as defined in the GIP SPE Operating Agreement) of GIP SPE. The GIP SPE Operating Agreement also provides that distributions from capital transactions will be paid first to LC2 to satisfy any accrued but unpaid Preferred Return (comprised of both the Current Preferred Return and Accrued Preferred Return), then to LC2 until the "Make-Whole Amount" (defined as the amount equal to 1.3 times the LC2 Investment) is reduced to zero, and then to the Operating Partnership.

The Preferred Interest is required to be redeemed in full by GIP SPE on or before August 10, 2025 (the "Mandatory Redemption Date"), for a redemption amount equal to the greater of (i) the amount of the LC2 Investment plus the accrued Preferred Return, and (ii) the Make-Whole Amount. Upon a failure to timely redeem the Preferred Interest, the Preferred Return will accrue at an increased rate of 18% per annum, compounded monthly. The Operating Partnership will have the right to extend the Mandatory Redemption Date for two consecutive 12-month extension periods, provided that (i) LC2 is paid an extension fee of 0.01% of the outstanding amount of the LC2 Investment for each such extension, (ii) the Preferred Return is increased from 15.5% to 18% of which the Accrued Preferred Return is increased from 10.5% to 13%, (iii) the trailing 6-month annualized adjusted net operating income (as defined in the GIP SPE Operating Agreement) is in excess of \$5.0 million, and (iv) GIP SPE and its subsidiaries' senior debt is extended through the end of the extension period, and there are no defaults under the GIP SPE Operating Agreement.

Under the GIP SPE Operating Agreement, GIP SPE is also required to pay to Loci Capital, an affiliate of LC2, an equity fee of 1.5% of the LC2 Investment, with 1% having been paid upon the execution and delivery of the GIP SPE Operating Agreement and the 0.5% payable upon redemption of the LC2 Investment.

GIP SPE is managed by a single manager, which is the Operating Partnership, provided that LC2's approval will be required for certain major decisions of GIP SPE, including acquiring additional properties, selling properties (unless certain return objectives are satisfied), extending loans to any person or entity, merging or consolidating with another entity, approving annual budgets, deviating from the approved budget, and certain other actions by GIP SPE. Under the GIP SPE Operating Agreement, LC2 also has customary information rights and other rights that are customary for a preferred investor. LC2 has the right to remove and replace the manager of GIP SPE upon a "Manager Default", which is defined by the GIP SPE Operating Agreement to include an uncured breach of the GIP SPE Operating Agreement by the Operating Partnership, a failure to pay the Current Preferred Return when due, a failure to redeem the LC2 Investment when required, or the Operating Partnership ceasing to be controlled by the Company's founder and Chief Executive Officer, David Sobelman.

The Rep and Warranty Agreement contains customary representations and warranties for an investment such as the LC2 Investment, together with related customary indemnification obligations by the Operating Partnership.

Loan Agreement and Promissory Note with Valley National Bank

The cash portion of the purchase price was also financed, in part, with a new \$21.0 million secured debt facility from Valley National Bank. On August 10, 2023, GIP13, LLC, a Delaware limited liability company and wholly owned subsidiary of GIP SPE ("GIP Borrower"), entered into a Loan Agreement with Valley National Bank (the "Valley Loan Agreement") pursuant to which Valley National Bank made a loan to GIP Borrower in the amount of \$21.0 million (the "Valley Loan") to finance the acquisition of the Portfolio. Pursuant to the Valley Loan Agreement, GIP Borrower executed and delivered to Valley National Bank a promissory note, dated August 10, 2023, in the original principal amount of \$21.0 million.

The outstanding principal amount of the Valley Loan bears interest at an annual rate for each 30-day interest period equal to the compounded average of the secured overnight financing rate published by the Federal Reserve Bank of New York for the thirty-day period prior to the last day of each 30-day interest rate for the applicable interest rate period plus 3.25%, with interest payable monthly after each 30-day interest period. However, the GIP Borrower has entered into an interest rate swap to fix the interest rate at 7.47% per annum. Payments of interest and principal in the amount of approximately \$156,000 are due and payable monthly, with all remaining principal and accrued but unpaid interest due and payable on a maturity date of August 10, 2028. The Valley Loan may generally be prepaid at any time without penalty in whole or in part, provided that there is no return of loan fees and prepaid financing fees.

The Valley Loan is secured by first mortgages and assignments of rents in the properties comprising the Portfolio and eight other properties held by subsidiaries of GIP SPE that had outstanding loans with Valley. All of the mortgaged properties cross collateralize the Valley Loan, and the Valley Loan is guaranteed by the Operating Partnership and the subsidiaries of GIP Borrower that hold the properties that comprise the Portfolio. David Sobelman also entered into a personal, limited guarantee with a \$7,500,000 cap, subject to customary non-recourse carveouts.

The Valley Loan Agreement requires GIP Borrower to maintain a minimum debt-service coverage ratio 1.50:1 on a trailing twelve-month basis, tested as of December 31, 2024, and annually thereafter. The Valley Loan Agreement provides for customary events of default and other customary affirmative and negative covenants that are applicable to GIP Borrower and its subsidiaries, including reporting covenants and restrictions on investments, additional indebtedness, liens, sales of properties, certain mergers, and certain management changes.

Corporate Information

We were incorporated in Maryland on June 19, 2015. Our business and registered office is located at 401 East Jackson Street, Suite 3300, Tampa, Florida 33602. Our telephone number is (813) 448-1234 and our website is www.gipreit.com. The information contained in our website is not incorporated by reference in this prospectus.

THE OFFERING

Issuer:	Generation Income Properties, Inc., a Maryland corporation
Distribution by Modiv and Modiv OP:	[•] shares of our common stock, which we refer to herein as the “Distribution Shares” issuable to Modiv OP pursuant to the Redemption, which will be distributed by Modiv OP to the holders of Class C units of Modiv OP, including Modiv, and subsequently distributed by Modiv to the holders of its common stock. The above number of Distribution Shares assumes that the VWAP per share of our common stock for the 60-day period ending on the date immediately preceding the date we provide written notice of our intent to redeem the Series A Preferred Stock is approximately \$3.64 or less. If the 60-day VWAP per share of our common stock for such period is higher than \$3.64, the number of Distribution Shares may be reduced. See “Background of the Portfolio Acquisition” for more information.
Common Stock Outstanding After this Offering⁽¹⁾:	5,617,988 shares of common stock, assuming the issuance of 3,000,000 shares of our common stock in the Redemption.
Market for the Common Stock:	Our common stock currently trades on the Nasdaq Capital Market under the symbol “GIPR”.
Use of Proceeds:	The Company is not selling any securities in this offering, and therefore will not receive any proceeds from the Distribution of Distribution Shares.
Ownership and Transfer Restrictions:	In order for us to qualify as a REIT under the Internal Revenue Code of 1986, as amended (the “Code”), our charter generally prohibits any person from actually, beneficially or constructively owning more than 9.8% in value or number, whichever is more restrictive, of the outstanding shares of our common stock or more than 9.8% in value of the aggregate outstanding shares of all classes and series of our stock. See the section entitled “Description of Securities — Restrictions on Ownership and Transfer.”
Risk Factors:	Investing in our securities involves risks. You should carefully read and consider the information set forth under the heading “Risk Factors” beginning on page 7 and in our Annual Report on Form 10-K for the year ended December 31, 2022, which is incorporated by reference herein, and other information included in, and incorporated by reference into, this prospectus before investing in our securities.

- (1) The number of shares of our common stock to be outstanding immediately after this offering is based on 2,617,988 shares of common stock outstanding as of August 31, 2023, and excludes as of such date:
- 249,850 warrants to purchase up to 249,850 shares of our common stock at a weighted average exercise price of \$15.50 per share and 675,540 warrants exercisable for 67,554 shares of our common stock (or 67,554 shares of our common stock on a cashless-exercise basis);
 - 292,609 shares of common stock that can be converted from limited partnership units of Generation Income Properties, L.P. that are outstanding as of August 31, 2023; and
 - 918,068 shares of common stock that can be converted from limited partnership units of Generation Income Properties, L.P. that are issuable upon the optional conversion of preferred membership interests in certain of our subsidiaries outstanding as of August 31, 2023.

RISK FACTORS

Investing in our securities involves a high degree of risk. Before you invest in our securities, you should carefully consider the risk factors described below together with the risks described in our Annual Report on Form 10-K for the year ended December 31, 2022, as updated by our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2023 and June 30, 2023, and other documents filed by us with the SEC, and incorporated by reference into this prospectus. The occurrence of any of these risks could materially and adversely affect our business, prospects, ability to implement our investment strategy, financial condition, liquidity, cash flows, and results of operations. Some statements included or incorporated by reference in this prospectus, including statements in the following risk factors, constitute forward-looking statements.

Risks Related to the Redemption

The Redemption is contingent upon the satisfaction of a number of conditions, and therefore, may not be consummated on the terms or timeline currently contemplated.

The Redemption is subject to certain conditions, including (i) the approval by our shareholders of the issuance of our common stock in the Redemption for purposes of complying with Nasdaq Listing Rule 5635 and (ii) the listing on the Nasdaq Capital Market of the shares of our common stock to be issued in the Redemption. For these and other reasons, the Redemption may not be completed on the terms or timeline contemplated, if at all, in which case our issuance of the Distribution Shares and the Resale Shares may be delayed or may not occur.

Risks Related to our Common Stock

The stock price of our common stock may be volatile or may decline regardless of our operating performance, which could lead to losses by investors.

The market price of our common stock may be volatile. In addition, the trading volume in our common stock may fluctuate and cause significant price variations to occur. We cannot assure you that the market price of our common stock will not fluctuate or decline significantly in the future. Some of the factors that could negatively affect our share price or result in fluctuations in the price or trading volume of our common stock include:

- actual or anticipated variations in our operating results, funds from operations, cash flows, liquidity or distributions;
- changes in our earnings estimates or those of analysts;
- publication of research reports about us or the real estate industry or sector in which we operate;
- increases in market interest rates that lead purchasers of our shares to demand a higher dividend yield;
- changes in market valuations of companies similar to us;
- adverse market reaction to any securities we may issue or additional debt we incur in the future;
- adverse impacts of the coronavirus on our tenants or the economy in general;
- additions or departures of key management personnel;
- actions by institutional shareholders;
- speculation in the press or investment community;
- high levels of volatility in the credit markets;
- the realization of any of the other risk factors included herein; and
- general market and economic conditions.

In the past, companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. Accordingly, we may be the target of securities related litigation or other similar litigation in the future. Litigation of this type could result in substantial costs and diversion of management's attention and resources, which could have a material adverse effect on business, financial condition, results of operations and prospects. Any adverse determination in litigation could also subject us to significant liabilities.

We can provide no assurance that our common stock and warrants will continue to meet Nasdaq listing requirements. If we fail to comply with the continuing listing standards of Nasdaq, our securities could be delisted.

Our shares of common stock and warrants are currently listed on the Nasdaq Capital Market ("Nasdaq"). For our securities to continue to be listed on the Nasdaq, we must meet the current Nasdaq continued listing requirements. If we were unable to meet these requirements, our securities could be delisted from the Nasdaq. Any such delisting of our securities could have an adverse effect on the market price of, and the efficiency of the trading market for, our securities, not only in terms of the number of shares and warrants

Table of Contents

that can be bought and sold at a given price, but also through delays in the timing of transactions and less coverage of us by securities analysts, if any. Also, if in the future we were to determine that we need to seek additional equity capital, it could have an adverse effect on our ability to raise capital in the public or private equity markets.

Because we have 110,000,000 authorized shares of stock, management could issue additional shares, diluting the current shareholders' equity.

We have 100,000,000 authorized shares of common stock and 10,000,000 authorized shares of preferred stock. Our management could, without the consent of the existing shareholders, issue substantially more shares of common stock, causing a large dilution in the equity position of our current shareholders. Additionally, large share issuances would generally have a negative impact on the value of our shares.

Provisions of our warrants could discourage an acquisition of us by a third party.

Certain provisions of our warrants could make it more difficult or expensive for a third party to acquire us. The warrants prohibit us from engaging in certain transactions constituting "fundamental transactions" unless, among other things, the surviving entity assumes our obligations under the warrants. These and other provisions of our warrants could prevent or deter a third party from acquiring us even where the acquisition could be beneficial to you.

If securities or industry analysts do not publish research or publish inaccurate or unfavorable research about our business, our stock price and trading volume could decline.

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us and our business. If no analysts commence coverage of us, or if analysts commence and then cease coverage of us, the trading price for our common stock would be negatively affected. If one or more of the analysts publish inaccurate or unfavorable research about our business, the price for our common stock would likely decline.

We are an emerging growth company and we cannot be certain if the reduced disclosure requirements applicable to emerging growth companies will make our common stock less attractive to investors.

For as long as we continue to be an emerging growth company, we intend to take advantage of certain exemptions from various reporting requirements that are applicable to other public companies including, but not limited to, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and shareholder approval of any golden parachute payments not previously approved. In addition, we have elected to use the extended transition period for complying with new or revised accounting standards. This election allows us to delay the adoption of new or revised accounting standards that have different effective dates for public and private companies until those standards apply to private companies. As a result of this election, our financial statements may not be comparable to those of companies that comply with public company effective dates for such new or revised accounting standards. Further, we cannot predict if investors will find our common stock less attractive because we will rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

We will remain an emerging growth company until the earliest of (i) the end of the fiscal year in which the market value of our common stock that is held by non-affiliates exceeds \$700 million, (ii) the end of the fiscal year in which we have total annual gross revenue of \$1.07 billion or more during such fiscal year, (iii) the date on which we issue more than \$1 billion in non-convertible debt in a three-year period or (iv) the last day of the fiscal year following the fifth anniversary of the date of the first sale of our common stock pursuant to an effective registration statement under the Securities Act.

The limits on the percentage of shares of our common stock that any person may own may discourage a takeover or business combination that could otherwise benefit our shareholders.

Our charter, with certain exceptions, authorizes our Board to take such actions as are necessary and desirable to preserve our qualification as a REIT. Unless exempted by our Board, no person may own more than 9.8% in value of our outstanding capital stock or more than 9.8% in value or number of shares, whichever is more restrictive, of our outstanding common stock. A person that did not acquire more than 9.8% of our shares may become subject to our charter restrictions if redemptions by other shareholders cause such person's holdings to exceed 9.8% of our outstanding shares. Our 9.8% ownership limitation may have the effect of delaying, deferring or preventing a change in control of us, including an extraordinary transaction (such as a merger, tender offer or sale of all or substantially all of our assets) that might provide a premium price for our shareholders.

Our charter permits our Board to issue stock with terms that may subordinate the rights of the holders of our common stock or discourage a third party from acquiring us in a manner that could result in a premium price to our shareholders.

Our Board may classify or reclassify any unissued common stock or preferred stock into other classes or series of stock and establish the preferences, conversion or other rights, voting powers, restrictions, limitations as to dividends and other distributions, qualifications and terms or conditions of redemption of any such stock without shareholder approval. Thus, our Board could authorize the issuance of preferred stock with terms and conditions that could have priority as to distributions and amounts payable upon liquidation over the rights of the holders of our common stock. Such preferred stock could also have the effect of delaying, deferring or preventing a change in control of us, including an extraordinary transaction (such as a merger, tender offer or sale of all or substantially all of our assets) that might otherwise provide a premium price to holders of our common stock.

Our charter includes a provision that may discourage a shareholder from launching a tender offer for our shares.

Our charter provides that any tender offer made by a person, including any “mini-tender” offer, must comply with most provisions of Regulation 14D of the Exchange Act. The offeror must provide the Company notice of such tender offer at least 10 business days before initiating the tender offer. If the offeror does not comply with these requirements, no person may transfer any shares held by such person to the offeror without first offering the shares to us at the lowest of (1) the latest offering price of our common stock; (2) the fair market value of one share of our common stock as determined by an independent valuation; and (3) the lowest tender offer price offered in such tender offer. In addition, the noncomplying offeror person shall be responsible for all of the Company’s expenses in connection with that offeror’s noncompliance. This provision of our charter may discourage a person from initiating a tender offer for our shares and prevent you from receiving a premium price for your shares in such a transaction.

Maryland law and our organizational documents limit our rights and the rights of our shareholders to recover claims against our directors and officers, which could reduce your and our recovery against them if they cause us to incur losses.

Maryland law provides that a director will not have any liability as a director so long as he or she performs his or her duties in accordance with the applicable standard of conduct. In addition, Maryland law and our charter provide that no director or officer shall be liable to us or our shareholders for monetary damages unless the director or officer (1) actually received an improper benefit or profit in money, property or services or (2) was actively and deliberately dishonest as established by a final judgment as material to the cause of action. Moreover, our charter generally requires us to indemnify and advance expenses to our directors and officers for losses they may incur by reason of their service in those capacities unless their act or omission was material to the matter giving rise to the proceeding and was committed in bad faith or was the result of active and deliberate dishonesty, they actually received an improper personal benefit in money, property or services or, in the case of any criminal proceeding, they had reasonable cause to believe the act or omission was unlawful. Further, we expect to enter into separate indemnification agreements with each of our officers and directors. As a result, you and we may have more limited rights against our directors or officers than might otherwise exist under common law, which could reduce your and our recovery from these persons if they act in a manner that causes us to incur losses. In addition, we are obligated to fund the defense costs incurred by these persons in some cases.

Certain provisions of Maryland law could inhibit transactions or changes of control under circumstances that could otherwise provide shareholders with the opportunity to realize a premium.

Certain provisions of the Maryland General Corporation Law applicable to us prohibit business combinations with: (1) any person who beneficially owns 10% or more of the voting power of our outstanding voting stock, which we refer to as an “interested shareholder;” (2) an affiliate or associate of ours who, at any time within the two-year period prior to the date in question, was the beneficial owner of 10% or more of the voting power of our then outstanding stock, which we also refer to as an “interested shareholder;” or (3) an affiliate of an interested shareholder. These prohibitions last for five years after the most recent date on which the interested shareholder became an interested shareholder. Thereafter, any business combination with the interested shareholder or an affiliate of the interested shareholder must be recommended by our Board and approved by the affirmative vote of at least 80% of the votes entitled to be cast by holders of our outstanding voting stock, and two-thirds of the votes entitled to be cast by holders of our voting stock other than shares held by the interested shareholder or its affiliate with whom the business combination is to be effected or held by an affiliate or associate of the interested shareholder. These requirements could have the effect of inhibiting a change in control even if a change in control were in our shareholders’ best interest. These provisions of Maryland law do not apply, however, to business combinations that are approved or exempted by our Board prior to the time that someone becomes an interested shareholder. Pursuant to the business combination statute, our Board has exempted any business combination involving us and any person, provided that such business combination is first approved by a majority of our Board.

Federal Income Tax Risks Relating to the Distribution

The Distribution is a taxable transaction and Modiv's shareholders and Modiv OP unitholders may be subject to a tax liability in connection with the Distribution.

For U.S. federal income tax purposes, for so long as Modiv qualifies as a REIT, the distribution by Modiv of our common stock to holders of Modiv's common stock should generally be taxable as a dividend, either as an ordinary dividend to the extent of Modiv's current and accumulated earnings and profits, or, if designated as such by Modiv, as a capital gain dividend, and the recipient of our common stock may be subject to tax on such dividend. To the extent the Distribution is treated as an ordinary dividend, it will not qualify for the dividends received deduction generally available to corporations and will not qualify for the 20% tax rate for "qualified dividend income" to Modiv's shareholders that are taxed at individual rates. Special rules apply to Modiv's non-U.S. shareholders, including rules that require the Distribution to generally be subject to withholding tax. In addition, the distribution by Modiv OP of our common stock to Modiv OP unitholders may be taxable if our shares of common stock are considered to be marketable securities. See "Material U.S. Federal Income Tax Consequences of the Distribution."

USE OF PROCEEDS

This Prospectus relates to the Distribution of [•] Distribution Shares to the holders of Class C units of Modiv OP, including Modiv, and the subsequent distribution by Modiv to the holders of its common stock. We will not receive any proceeds upon the Distribution of the Distribution Shares in this offering.

CAPITALIZATION

The following table sets forth our historical combined cash and cash equivalents and capitalization as of June 30, 2023:

- on an actual basis, and
- on a pro forma basis to give effect to (1) the acquisition of the Portfolio, as well as the related loan with Valley National Bank and financing transaction with LC2 and (2) the issuance of 3,000,000 shares of common stock, the maximum number of shares issuable in the Redemption, subject to certain conditions. See “Background of the Portfolio Acquisition.”

You should read this table together with our consolidated financial statements and related notes thereto incorporated by reference into this prospectus.

	As of June 30, 2023	
	Historical	Pro Forma
Cash and cash equivalents	\$ 2,105,392	\$ 4,136,891
Debt:		
Loans Payable – related party	1,500,000	5,500,000
Mortgage loans, net of unamortized debt issuance costs of \$1,020,728	34,958,848	55,597,771
Total Debt	36,458,848	61,097,771
Redeemable Non-Controlling Interest	6,343,042	16,093,942
Equity:		
Common Stock, \$0.01 par value per share; 100,000,000 shares authorized, actual; 2,617,538 shares issued and outstanding, actual; 100,000,000 shares authorized, 5,617,538 shares issued and outstanding, pro forma	26,175	56,175
Additional paid-in capital	18,870,576	30,840,576
Accumulated deficit	(10,839,825)	(10,839,825)
Total Generation Income Properties, Inc. shareholders’ equity	8,056,926	20,056,926
Non-Controlling Interest	420,201	420,201
Total Capitalization	\$ 51,279,017	\$ 97,668,840

OUR DISTRIBUTION POLICY

We intend to operate in a manner that will allow us to qualify as a REIT for federal income tax purposes. The U.S. federal income tax laws require that a REIT distribute annually at least 90% of its REIT taxable income, determined without regard to the dividends paid deduction and excluding any net capital gains, and that it pay tax at U.S. federal corporate income tax rates to the extent that it annually distributes less than 100% of its REIT taxable income, determined without regard to the dividends paid deduction and including any net capital gains. In addition, a REIT will be required to pay a 4% nondeductible excise tax on the amount, if any, by which the distributions it makes in a calendar year are less than the sum of 85% of its ordinary income, 95% of its capital gain net income, and 100% of its undistributed income from prior years. For more information, see “Material U.S. Federal Income Tax Considerations.”

Although we anticipate continuing to make monthly distributions to our shareholders over time, our board of directors has the sole discretion to determine the timing and amount of any distributions to our shareholders. As such, we cannot provide any assurance as to the amount or timing of future distributions.

If our operations do not generate sufficient cash flow to enable us to pay our intended or required distributions, we may be required either to fund distributions from working capital, borrowings, proceeds from the sale of equity securities or to reduce the amount of such distributions. Because we have not yet generated a profit, distributions to date have been made from offering proceeds. To be able to pay such dividends, our goal is to generate cash distributions from operating cash flow and proceeds from the sale of properties. However, until we generate sufficient cash flows, we expect our distributions will be from a combination of operating cash flows and offering proceeds.

Distributions made by us will be authorized and determined by our board of directors in its sole discretion out of funds legally available therefor and will be dependent upon a number of factors, including restrictions under applicable law and other factors described below. We cannot assure you that our distributions will be made or sustained or that our board of directors will not change our distribution policy in the future. Any distributions that we pay in the future will depend upon our actual results of operations, economic conditions, debt service requirements, capital expenditures and other factors that could differ materially from our current expectations. Our actual results of operations will be affected by a number of factors, including our revenue, operating expenses, interest expense and unanticipated expenditures. We do not currently expect that our regular monthly dividends will change materially from the dividends paid beginning in October 2021. For more information regarding risk factors that could materially adversely affect our actual results of operations, see “Risk Factors” in this prospectus and our Annual Report on Form 10-K for the year ended December 31, 2022 and in our other filings with the SEC, which are incorporated by reference herein.

From inception through August 31, 2023, we have distributed approximately \$3,463,397 to common shareholders. The following is a summary of distributions to common shareholders declared per share for the years ended December 31, 2020, 2021, and 2022, and for the period from January 1, 2023 through August 31, 2023:

Board of Directors Authorized Date	Record Date	Per Share Cash Dividend to Common Shareholders	Total Dividends Paid ⁽¹⁾
January 31, 2020	February 28, 2020	\$ 0.35	\$ 105,101
June 23, 2020	July 2, 2020	\$ 0.35	\$ 105,084
October 30, 2020	November 17, 2020	\$ 0.35	\$ 123,171
February 26, 2021	March 15, 2021	\$ 0.325	\$ 114,373
August 25, 2021	August 31, 2021	\$ 0.325	\$ 116,306
October 5, 2021	October 15, 2021	\$ 0.054	\$ 109,235
October 5, 2021	November 15, 2021	\$ 0.054	\$ 110,216
October 5, 2021	December 15, 2021	\$ 0.054	\$ 110,184
December 10, 2021	January 15, 2022	\$ 0.054	\$ 110,814
December 10, 2021	February 15, 2022	\$ 0.054	\$ 111,264
December 10, 2021	March 15, 2022	\$ 0.054	\$ 112,721
March 15, 2022	April 15, 2022	\$ 0.054	\$ 121,449
March 15, 2022	May 15, 2022	\$ 0.054	\$ 121,601
March 15, 2022	June 15, 2022	\$ 0.054	\$ 115,278
June 27, 2022	July 15, 2022	\$ 0.054	\$ 121,920
June 27, 2022	August 15, 2022	\$ 0.054	\$ 122,222
June 27, 2022	September 15, 2022	\$ 0.054	\$ 133,967
October 3, 2022	October 15, 2022	\$ 0.039	\$ 97,302

Table of Contents

October 3, 2022	November 15, 2022	\$	0.039	\$	97,363
October 3, 2022	December 15, 2022	\$	0.039	\$	97,432
January 3, 2023	January 15, 2023	\$	0.039	\$	97,714
January 3, 2023	February 15, 2023	\$	0.039	\$	97,940
January 3, 2023	March 15, 2023	\$	0.039	\$	101,825
April 3, 2023	April 15, 2023	\$	0.039	\$	101,854
April 3, 2023	May 15, 2023	\$	0.039	\$	102,052
April 3, 2023	June 15, 2023	\$	0.039	\$	102,084
July 3, 2023	July 15, 2023	\$	0.039	\$	102,086
July 3, 2023	August 15, 2023	\$	0.039	\$	102,086
July 3, 2023	September 15, 2023	\$	0.039	\$	102,150

- (1) David Sobelman, our President, Chief Executive Officer and founder waived his distribution for these periods with respect to the 112,504 shares held by him as of the completion of our public offering in September 2021. Mr. Sobelman has received dividends with respect to shares he acquired after our initial public offering. Additionally, beginning in July 2022, Mr. Sobelman now receives dividends on all shares held by him.

JUMPSTART OUR BUSINESS STARTUPS ACT

In April 2012, the Jumpstart Our Business Startups Act (“JOBS Act”) was enacted into law. The JOBS Act provides, among other things, exemptions for emerging growth companies from certain financial disclosure and governance requirements for up to five years.

In general, under the JOBS Act a company is an emerging growth company if its initial public offering (“IPO”) of common equity securities was effected after December 8, 2011 and the company had less than \$1.235 billion of total annual gross revenues during its last completed fiscal year. We currently qualify as an emerging growth company, but will no longer qualify after the earliest of:

- the last day of the fiscal year during which we have annual total gross revenues of \$1.235 billion or more;
- December 31, 2026;
- the date on which we issue more than \$1 billion in non-convertible debt securities during a previous three-year period; or
- the date on which we become a large accelerated filer, which generally is a company with a public float of at least \$700 million (Exchange Act Rule 12b-2).

As an emerging growth company, we are eligible to include audited financial statements required for only two fiscal years and limited executive compensation information.

Pursuant to the relief for emerging growth companies under the JOBS Act, our independent registered public accounting firm is not required to file an attestation report on our internal controls over financial reporting and is exempt from the mandatory auditor rotation rules.

In addition, Section 102(b)(1) of the JOBS Act exempts emerging growth companies from being required to comply with new or revised financial accounting standards until private companies (that is, those that have not had a Securities Act registration statement declared effective or do not have a class of securities registered under the Exchange Act) are required to comply with the new or revised financial accounting standard. The decision by companies to “opt out” of the extended transition period for complying with new or revised accounting standards is irrevocable. We are not electing to opt out of the JOBS Act extended accounting transition period. We intend to take advantage of the extended transition period provided under the JOBS Act for complying with new or revised accounting standards.

To the extent we take advantage of the reduced disclosure requirements afforded by the JOBS Act, investors may be less likely to invest in us or may view our shares as a riskier investment than a similarly situated company that does not take advantage of these provisions.

INVESTMENT POLICIES AND POLICIES WITH RESPECT TO CERTAIN ACTIVITIES

The following is a discussion of our investment policies and our policies with respect to certain other activities, including financing matters and conflicts of interest. These policies may be amended or revised from time to time at the discretion of our Board, without a vote of our shareholders. Any change to any of these policies by our Board, however, would be made only after a thorough review and analysis of that change, in light of then-existing business and other circumstances, and then only if, in the exercise of its business judgment, our Board believes that it is advisable to do so in our and our shareholders' best interests. We cannot assure you that our investment objectives will be attained.

Investments in Real Estate or Interests in Real Estate

We invest principally in freestanding, single-tenant retail, office and industrial properties located primarily in major U.S. cities, with an emphasis on densely populated submarkets. We conduct substantially all of our investment activities through our Operating Partnership and its subsidiaries. Our primary investment objectives are to enhance shareholder value over time by generating strong returns on invested capital, consistently paying attractive distributions to our shareholders and achieving long-term appreciation in the value of our retail, office and industrial properties.

There are no limitations on the amount or percentage of our total assets that may be invested in any one property or on the number or amount of mortgages that may be placed on any single piece of property. Additionally, no limits have been set on the concentration of investments in any one location or facility type.

Investments in Mortgages, Structured Financings and Other Lending Policies

We have no current intention of investing in loans secured by properties or making loans to persons other than in connection with the acquisition of mortgage loans through which we expect to achieve equity ownership of the underlying property in the near-term.

Investments in Securities of or Interests in Persons Primarily Engaged in Real Estate Activities and Other Issuers

Generally speaking, we do not expect to engage in any significant investment activities with other entities, although we may consider joint venture investments with other investors. We may also invest in the securities of other issuers in connection with acquisitions of indirect interests in properties (normally general or limited partnership interests in special purpose partnerships owning properties). We may in the future acquire some, all or substantially all of the securities or assets of REITs or similar entities where that investment would be consistent with our investment policies and the REIT qualification requirements. There are no limitations on the amount or percentage of our total assets that may be invested in any one issuer, other than those imposed by the gross income and asset tests that we must satisfy to qualify as a REIT. However, we do not anticipate investing in other issuers of securities for the purpose of exercising control or acquiring any investments primarily for sale in the ordinary course of business or holding any investments with a view to making short-term profits from their sale. In any event, we do not intend that our investments in securities will require us to register as an "investment company" under the Investment Company Act, and we intend to divest securities before any registration under the Investment Company Act would be required.

We do not intend to engage in trading, underwriting, agency distribution or sales of securities of other issuers.

Disposition Policy

Generally, we do not intend to engage in the disposition, or turnover, of investments. Although we have no current plans to dispose of any of the commercial properties we acquire, we will consider doing so, subject to REIT qualification and prohibited transaction rules under the Code, if our management determines that a sale of a property would be in our interests based on the price being offered for the property, the operating performance of the property, the tax consequences of the sale and other factors and circumstances surrounding the proposed sale. See "Risk Factors — Risks Related to Our Business and Properties" in our Annual Report on Form 10-K for the year ended December 31, 2022 which is incorporated by reference into this prospectus.

We have not disposed of any properties acquired since our inception, except for one property located in Cocoa, Florida, which we sold on August 31, 2021.

Financing Policies

Our long-term goal is to maintain a lower-leverage capital structure and we intend to limit the sum of the outstanding principal amount of any consolidated indebtedness and the liquidation preference of any outstanding preferred shares once we have built a substantial portfolio of assets. To date, financing decisions have been made based on capital available to us and we expect to continue in such manner until we raise sufficient funds. Our Board will periodically review the sum of our outstanding principal amount of any consolidated indebtedness and the liquidation preference of any outstanding preferred shares and may modify or eliminate any of our restrictions without the approval of our shareholders.

In seeking to obtain credit facilities in the future we consider factors as we deem relevant, including interest rate pricing, recurring fees, flexibility of funding, security required, maturity, restrictions on prepayment and refinancing and restrictions impacting our daily operations. There can be no assurance that we will be able to obtain future credit facilities on favorable terms or at all.

We consider a number of factors when evaluating our level of indebtedness and making financial decisions, including, among others, the following:

- the interest rate of the proposed financing;
- the extent to which the financing impacts the flexibility with which we asset manage our properties;
- prepayment penalties and restrictions on refinancing;
- the purchase price of properties we acquire with debt financing;
- our long-term objectives with respect to the financing;
- our target investment returns;
- the ability of particular properties, and our company as a whole, to generate cash flow sufficient to cover expected debt service payments;
- overall level of consolidated indebtedness;
- timing of debt maturities;
- provisions that require recourse and cross-collateralization;
- corporate credit ratios, including debt service or fixed charge coverage, debt to EBITDA, debt to total market capitalization and debt to undepreciated assets; and
- the overall ratio of fixed- and variable-rate debt.

Equity Capital Policies

Subject to applicable law, our Board has the authority, without further shareholder approval, to issue additional common stock and preferred shares or otherwise raise capital, including through the issuance of senior securities, in any manner and on the terms and for the consideration it deems appropriate, including in exchange for property. Existing shareholders will have no preemptive right to additional shares issued in any offering, and any offering might dilute the ownership of our current investors. We may in the future issue common stock in connection with acquisitions. We also may issue common units in our Operating Partnership in exchange for acquiring property.

Our Board may authorize the issuance of preferred shares with terms and conditions that could have the effect of delaying, deterring or preventing a transaction or a change in control of the Company that might involve a premium price for holders of our common stock or otherwise might be in their best interests. Additionally, preferred shares could have distribution, voting, liquidation and other rights and preferences that are senior to those of our common stock.

We may, under certain circumstances, purchase common or preferred shares in the open market or in private transactions with our shareholders, if those purchases are approved by our Board. Our Board has no present intention of causing us to repurchase any shares, and any action would only be taken in conformity with applicable federal and state laws and the applicable requirements for qualifying as a REIT. We do not currently have a share purchase plan.

[Table of Contents](#)

In the future, we may institute a dividend reinvestment plan (“DRIP”), which would allow our shareholders to acquire additional common stock by automatically reinvesting their cash dividends. Shareholders who do not participate in the plan will continue to receive cash distributions as declared.

Communications with Investors

We anticipate that we will provide shareholders with periodic updates on the performance of their investment with us including:

- an annual report to shareholders, including financial statements certified by independent public accountants in accordance with SEC rules;
- quarterly and current event reports as required by SEC rules; and
- an annual IRS Form 1099.

BACKGROUND OF THE PORTFOLIO ACQUISITION

On August 10, 2023, the Company and the Operating Partnership entered into the Purchase Agreement with Modiv and certain of its indirect subsidiaries, pursuant to which the Operating Partnership purchased from such indirect subsidiaries of Modiv, the Portfolio. The purchase price paid for the Portfolio was \$42 million, consisting of \$30 million in cash and \$12 million in shares of our Series A Preferred Stock. Accordingly, we issued 2,400,000 shares of our Series A Preferred Stock to Modiv OP at the closing of the Portfolio acquisition, which also occurred on August 10, 2023.

We may, at our option, redeem the shares of our Series A Preferred Stock issued to Modiv OP in exchange for shares of our common stock, provided certain conditions have been satisfied that are not within the control of Modiv or its affiliates. See “—Series A Preferred Stock—Redemptions” below for more information. Following the satisfaction of those conditions, including the SEC having declared effective the registration statement of which this prospectus forms a part, we intend to redeem the issued and outstanding shares of our Series A Preferred Stock from Modiv OP in exchange for shares of our common stock. Modiv OP will then distribute all or a portion of those shares, which we refer to herein as the “Distribution Shares” to the holders of its Class C OP units, including Modiv, who will subsequently distribute such shares to Modiv’s shareholders. See “—Purchase Agreement” below for more information. Any shares of our common stock issued to Modiv OP in the Redemption that are not so distributed will be the Resale Shares held by Modiv OP.

Purchase Agreement

In addition to customary terms relating to the purchase and sale of a portfolio of commercial properties, the material terms of the Purchase Agreement include (i) an agreement by Modiv to distribute the shares of our common stock issued pursuant to the Redemption by us of the Series A Preferred Stock to Modiv’s shareholders and/or the holders of units of Modiv OP, subject to Modiv receiving the approval of its lenders to make such distribution and any legal or regulatory approvals, (ii) an agreement by Modiv that it will promptly distribute or sell shares of our common stock owned by it following such Redemption if Modiv’s ownership of common stock (together with any other persons or entities whose beneficial ownership of shares of our common stock would be aggregated with Modiv’s for purposes of Section 13(d) of the Exchange Act of 1934, as amended) exceeds 19.9% of the aggregate number of outstanding shares of our common stock, and (iii) an agreement by us to prepare and file with the SEC, a registration statement to register the distribution by Modiv to its shareholders and to Modiv OP unitholders and/or the resale of the shares of our common stock issuable upon redemption of the Series A Preferred Stock. In addition, pursuant to the Purchase Agreement, the Company granted a waiver to Modiv OP from the ownership limitation set forth in the Company’s charter with respect to Modiv OP’s ownership of the Series A Preferred Stock and our common stock issuable upon redemption of the Series A Preferred Stock. Modiv’s lender consented to the distribution by Modiv OP and Modiv of [•] shares of our common stock.

Series A Preferred Stock

General

Prior to issuing the Series A Preferred Stock to Modiv OP in connection with the Portfolio acquisition, on August 10, 2023, we filed Articles Supplementary for the Series A Preferred Stock (the “Articles Supplementary”) with the State Department of Assessments and Taxation of the State of Maryland designating the rights, preferences and privileges of the Series A Preferred Stock.

Dividends

As set forth in the Articles Supplementary, the Series A Preferred Stock ranks, with respect to dividend rights and rights upon the Company’s voluntary or involuntary liquidation, dissolution or winding up, senior to all classes or series of our common stock. Holders of our Series A Preferred Stock, when, as and if authorized by our board of directors and declared by us out of funds legally available for the payment of dividends, are entitled to cumulative cash dividends at the rate of 9.5% per annum of the \$5.00 liquidation preference per share, equivalent to a fixed annual amount of \$0.475 per share, which shall increase to a rate of 12.0% of the \$5.00 liquidation preference per share per annum, equivalent to a fixed annual amount of \$0.60 per share, beginning on September 15, 2024. Dividends are payable monthly in arrears on or about the 15th day of each month, beginning on September 15, 2023. Dividends will accrue and be cumulative from and including August 10, 2023, the first date on which shares of the Series A Preferred Stock were issued.

Table of Contents

Redemption

From the date of issuance until March 15, 2024, the Series A Preferred Stock will be redeemable at our option for either (i) cash, in whole or in part, at a price per share equal to the \$5.00 liquidation preference, plus an amount equal to all dividends accrued and unpaid (whether or not authorized or declared), if any, until the redemption date on each share of Series A Preferred Stock to be redeemed (the “Cash Redemption Price”) or (ii) subject to our satisfaction of certain conditions, a number of shares of our common stock, in whole only and not in part, equal to the Cash Redemption Price, divided by the share price of our common stock as measured by the product of (a) the VWAP of our common stock for the 60 trading days immediately preceding the date we provide written notice of our intent to redeem the Series A Preferred Stock (the “Redemption VWAP”) and (b) 110%, which we refer to herein as the “Redemption.” The maximum number of shares of our common stock that we will be required to issue for the Redemption shall not exceed 3,000,000 shares (the “Ceiling”) and the minimum number of shares of our common stock that we will be required to issue for the Redemption will be no less than 2,200,000 shares (the “Floor”); provided that the Ceiling will not apply if (i) we fail to pay as of the date of the Redemption all dividends accrued (whether or not authorized or declared) on the Series A Preferred Stock, to, but not including, the date of the Redemption, or (ii) at any time after August 10, 2023, and before the date of the Redemption, we fail to pay a monthly dividend on our common stock or reduce, or announce our intent to reduce, the monthly dividend we pay on shares of our common stock to a rate lower than \$0.039 per share per month (the “Dividend Condition”). Each of the Floor and the Ceiling is subject to proportionate adjustments for any share splits (including those effected pursuant to a distribution of our common stock), subdivisions, reclassifications or combinations with respect to our common stock as described in the Articles Supplementary.

In addition, our right to redeem the Series A Preferred Stock for shares of our common stock is conditioned upon the following (the “Redemption Conditions”): (i) our obtaining the approval of our shareholders for the issuance of such Distribution Shares as required by the rules of the Nasdaq Stock Market; (ii) such Distribution Shares being listed on the Nasdaq Stock Market; (iii) the SEC having declared effective the registration statement, of which this prospectus is a part, registering the distribution of such shares by Modiv OP to its Class C unitholders, including Modiv, and the subsequent distribution by Modiv of the shares received by it to its shareholders and/or the resale of such shares by Modiv OP; and (iv) Modiv having received the approval of its lenders to distribute such shares. If we are not in compliance with the Dividend Condition on the redemption date, the Ceiling will not apply and we may be required to issue a greater number of shares of our common stock for the Redemption. If the Redemption VWAP is more than \$3.64, then we will issue fewer shares in connection with the Redemption, subject to the Floor. As of the date of this prospectus, we are in compliance with the Dividend Condition.

After March 15, 2024, we may only redeem the Series A Preferred Stock for the Cash Redemption Price, unless Modiv agrees, in its sole and absolute discretion, to a redemption of the Series A Preferred Stock for shares of our common stock, on terms acceptable to Modiv.

We are required to redeem the Series A Preferred Stock for an amount equal to the Cash Redemption Price, if our common stock is delisted from the Nasdaq Stock Market.

In the event of a Change of Control (as defined in the Articles Supplementary) of the Company, the Company shall redeem the Series A Preferred Stock, at the option of Modiv, for either (a) cash, in an amount equal to the Cash Redemption Price, (b) a number of shares of common stock equal to the Cash Redemption Price divided by the price per share of the common stock as measured by the VWAP of the common stock for the 60 trading days immediately preceding the date of the announcement of such Change of Control (the “Change of Control Share Redemption Consideration”) or (c) the kind and amount of consideration which Modiv would have owned or been entitled to receive had it held a number of shares of common stock equal to the Change of Control Share Redemption Consideration immediately prior to the effective time of the Change of Control.

DESCRIPTION OF SECURITIES

The following summary of certain provisions of our securities does not purport to be complete and is subject to and is qualified in its entirety by our articles of incorporation and bylaws. This description is only a summary. For more detailed information, you should refer to the exhibits to the registration statement. See “Where You Can Find More Information.”

General

Our articles of incorporation provide that we may issue up to 100,000,000 shares of common stock, \$0.01 par value per share and 10,000,000 shares of preferred stock, \$0.01 par value per share. Our articles of incorporation authorizes our Board to amend our articles of incorporation to increase or decrease the aggregate number of authorized shares or the number of shares of any class or series without shareholder approval. As of August 31, 2023, we had 2,617,988 shares of common stock issued and outstanding held by 96 shareholders of record and 2,400,000 shares of Series A Preferred Stock was issued or outstanding. In addition, we had 249,850 warrants to purchase up to 249,850 shares of our common stock at a weighted average exercise price of \$15.50 per share and 675,540 warrants exercisable for 67,554 shares of common stock (or 67,554 shares on a cashless-exercise basis). The warrants are currently exercisable at prices of \$10.00-20.00 per share of common stock, subject to adjustment in certain circumstances, and 50,000 will expire in April 2026, 50,000 will expire in November 2027, and the remaining will expire in September 2026. Under Maryland law, shareholders are not personally liable for the obligations of a company solely as a result of their status as shareholders.

Common Stock

Our shares of common stock are listed on the Nasdaq Capital Market under the symbol “GIPR.” Subject to the preferential rights, if any, of holders of any other class or series of shares of stock and to the provisions of our articles of incorporation regarding the restrictions on ownership and transfer of shares of stock, holders of our common stock are entitled to receive distributions on such shares of stock out of assets legally available therefor if, as and when authorized by our Board and declared by us, and the holders of our common stock are entitled to share ratably in our assets legally available for distribution to our shareholders in the event of our liquidation, dissolution or winding up after payment of or adequate provision for all of our known debts and liabilities.

Subject to the provisions of our articles of incorporation regarding the restrictions on ownership and transfer of common stock and except as may otherwise be specified in the terms of any class or series of common stock, each outstanding common share entitles the holder to one vote on all matters submitted to a vote of shareholders, including the election of directors, and, except as provided with respect to any other class or series of shares of stock, the holders of such common stock will possess the exclusive voting power. There is no cumulative voting in the election of our directors, which means that the affirmative vote of shareholders entitled to cast a majority of the votes entitled to be cast in the election of directors can elect all of the directors then standing for election, and the remaining shareholders will not be able to elect any directors.

Holders of common stock have no preference, conversion, exchange, sinking fund, redemption or appraisal rights and have no preemptive rights to subscribe for any of our securities. Subject to the restrictions on ownership and transfer of shares contained in our articles of incorporation and the terms of any other class or series of common stock, all of our common stock will have equal dividend, liquidation and other rights.

Series A Preferred Stock

The Company has authorized 2,400,000 shares of Series A Preferred Stock, of which 2,400,000 shares are issued and outstanding. Subject to certain terms and conditions set forth in the Articles Supplementary for the Series A Redeemable Preferred Stock, from the date of issuance until March 15, 2024, the Series A Preferred Stock will be redeemable at the Company’s option for either (i) cash, in whole or in part, at a price per share equal to the \$5.00 liquidation preference, plus an amount equal to all dividends accrued and unpaid (whether or not authorized or declared), if any, until the redemption date on each share of Series A Preferred Stock to be redeemed (the “Cash Redemption Price”) or (ii) subject to the Company’s satisfaction of certain conditions, a number of shares of our common stock (the “Underlying Shares”), in whole only and not in part, equal to the Cash Redemption Price, divided by the share price of our common stock as measured by the product of (a) the volume weighted average price (“VWAP”) of our common stock for the 60 trading days immediately preceding the date the Company provides written notice of its intent to redeem the Series A Preferred Stock and (b) 110%. The maximum number of shares of common stock that shall be required to redeem the shares of Series A Preferred Stock in full shall not exceed 3,000,000 shares of common stock (the “Ceiling”) and the minimum number of shares of common stock that shall be required to redeem the shares of Series A Preferred Stock in full shall be no less than 2,200,000 shares (the “Floor”); provided that the Ceiling will not apply if (i) we fail to pay as of the redemption date all dividends accrued (whether or not authorized or declared) on the Series A Preferred Stock, to, but not including, the redemption date, or (ii) at any time after August 10, 2023, and before redemption of the Series A Preferred Stock, the Company fails to pay a monthly dividend on the common stock or reduces, or announces its intent to reduce, the monthly dividend paid on shares of common stock to a rate lower than \$0.039 per share

Table of Contents

per month. Each of the Floor and the Ceiling is subject to proportionate adjustments for any share splits (including those effected pursuant to a distribution of the common stock), subdivisions, reclassifications or combinations with respect to the common stock as described in the Articles Supplementary. After March 15, 2024, the Company may only redeem the Series A Preferred Stock for the Cash Redemption Price, unless Modiv agrees, in its sole and absolute discretion, to a redemption of the Series A Preferred Stock for shares of common stock, on terms acceptable to Modiv.

In addition, the Company's right to redeem the Series A Preferred Stock for the Underlying Shares is conditioned upon the Company obtaining the approval of its shareholders for the issuance of such Underlying Shares as required by the rules of the Nasdaq Stock Market; such Underlying Shares being listed on Nasdaq; the SEC having declared a registration statement effective registering the distribution of such Underlying Shares by Modiv to its shareholders and/or the resale of such Underlying Shares by Modiv; and Modiv having received the approval of its lenders to distribute such Underlying Shares to its shareholders.

The Series A Preferred Stock ranks, with respect to dividend rights and rights upon the Company's voluntary or involuntary liquidation, dissolution or winding up, senior to all classes or series of the common stock. Holders of Series A Preferred Stock, when, as and if authorized by the Company's board of directors and declared by the Company out of funds legally available for the payment of dividends, are entitled to cumulative cash dividends at the rate of 9.5% per annum of the \$5.00 liquidation preference per share, equivalent to a fixed annual amount of \$0.475 per share, which shall increase to a rate of 12.0% of the \$5.00 liquidation preference per share per annum, equivalent to a fixed annual amount of \$0.60 per share, beginning on September 15, 2024. Dividends are payable monthly in arrears on or about the 15th day of each month, beginning on September 15, 2023. Dividends will accrue and be cumulative from and including August 10, 2023, the first date on which shares of the Series A Preferred Stock were issued.

The Company shall redeem the Series A Preferred Stock for an amount equal to the Cash Redemption Price, upon the delisting of the common stock from the Nasdaq Stock Market.

In the event of a Change of Control (as defined in the Articles Supplementary) of the Company, the Company shall redeem the Series A Preferred Stock, at the option of Modiv, for either (a) cash, in an amount equal to the Cash Redemption Price, (b) a number of shares of common stock equal to the Cash Redemption Price divided by the price per share of the common stock as measured by the VWAP of the common stock for the 60 trading days immediately preceding the date of the announcement of such Change of Control (the "Change of Control Share Redemption Consideration") or (c) the kind and amount of consideration which Modiv would have owned or been entitled to receive had it held a number of shares of common stock equal to the Change of Control Share Redemption Consideration immediately prior to the effective time of the Change of Control.

Warrants

Overview. The following summary of certain terms and provisions of the Warrants is not complete and is subject to, and qualified in its entirety by, the provisions of the warrant agent agreement between us and the Warrant Agent, and the form of Warrant, both of which are filed as exhibits to our Annual Report on Form 10-K for the year ended December 31, 2022. The Warrants entitle the registered holder to purchase one share of our common stock at a price equal to \$10.00 per share, subject to adjustment as discussed below, terminating at 5:00 p.m., New York City time, in five years after issuance. The Warrants are listed on the Nasdaq Capital Market under the symbol "GIPRW."

Exercisability. The Warrants are exercisable at any time and at any time up to the date that is five years after their original issuance. The warrants may be exercised upon surrender of the warrant certificate on or prior to the expiration date at the offices of the Warrant Agent, with the exercise form on the warrant certificate completed and executed as indicated. If we fail to maintain the effectiveness of the registration statement and current prospectus relating to the common stock issuable upon exercise of the Warrants, the holders of the Warrants shall have the right to exercise the Warrants solely via a cashless exercise feature provided for in the Warrants, until such time as there is an effective registration statement and current prospectus.

Exercise Limitation. A holder (together with its affiliates) may not exercise any portion of the warrant to the extent that the holder would own more than 4.99% (or, at the election of the holder, 9.8%) of the outstanding common stock immediately after exercise, except that upon at least 61 days' prior notice from the holder to us, the holder may increase the amount of ownership of outstanding stock after exercising the holder's warrants up to 9.8% of the number of shares of our common stock outstanding immediately after giving effect to the exercise, as such percentage ownership is determined in accordance with the terms of the warrants.

Exercise Price. The exercise price per whole share of our common stock purchasable upon the exercise of the Warrants is \$10.00 per share. The Warrants may be exercised at any time up to the date that is five years after their original issuance. The exercise price of the warrants is subject to appropriate adjustment in the event of certain stock dividends and distributions, stock splits, stock combinations, reclassifications or similar events affecting our common stock and also upon any distribution of assets, including cash, stock or other property to our shareholders.

Table of Contents

Cashless Exercise. If, at any time after the Warrants first become exercisable, a holder of the Warrants exercises the Warrants and a registration statement registering the issuance of the shares of common stock underlying the Warrants under the Securities Act is not then effective or available (or a prospectus is not available for the resale of shares of common stock underlying the Warrants), then in lieu of making the cash payment otherwise contemplated to be made to us upon such exercise in payment of the aggregate exercise price, the holder shall instead receive upon such exercise (either in whole or in part) only the net number of shares of common stock determined according to a formula set forth in the Warrants. In addition, after 120 days after the Warrants are issued, any Warrant may be exercised on a cashless basis for 10% of the shares underlying the Warrant if the volume-weighted average trading price of our shares of common stock on Nasdaq is below the then-effective exercise price of the Warrant for 10 consecutive trading days. Notwithstanding anything to the contrary, in the event we do not have or maintain an effective registration statement, there are no circumstances that would require us to make any cash payments or net cash settle the Warrants to the holders.

Fractional Shares. No fractional shares of common stock will be issued upon exercise of the Warrants. If, upon exercise of the Warrant, a holder would be entitled to receive a fractional interest in a share, we will, upon exercise and at our option, pay a cash adjustment in respect of such fraction in an amount equal to such fraction multiplied by the exercise price or round up to the next whole share.

Transferability. Subject to applicable laws, the Warrants may be offered for sale, sold, transferred or assigned at the option of the holder without our consent.

Fundamental Transactions. In the event of a fundamental transaction, as described in the Warrants and generally including any reorganization, recapitalization or reclassification of our common stock, the sale, transfer or other disposition of all or substantially all of our properties or assets, our consolidation or merger with or into another person, the acquisition of more than 50% of our outstanding common stock, or any person or group becoming the beneficial owner of 50% of the voting power represented by our outstanding common stock, the holders of the Warrants will be entitled to receive upon exercise of the warrants the kind and amount of securities, cash or other property that the holders would have received had they exercised the warrants immediately prior to such fundamental transaction.

Rights as a Shareholder. Except by virtue of such holder's ownership of shares of our common stock, the holder of a Warrant, with certain limited exceptions (such as the right to receive non-cash dividends), does not have the rights or privileges of a holder of our common stock, including any voting rights, until the holder exercises the Warrant.

Exclusive Forum. All questions concerning the construction, validity, enforcement and interpretation of the Warrants shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. The Warrant provides that all legal proceedings concerning the interpretations, enforcement and defense of the transactions contemplated by the Warrant (whether brought against a party hereto or their respective affiliates, directors, officers, shareholders, partners, members, employees or agents) shall be commenced exclusively in the state and federal courts sitting in the City of New York. Although this exclusive forum provision applies to federal securities law claims, the Warrant provides that nothing in the Warrant limits or restricts the federal district court in which a holder of a Warrant may bring a claim under the federal securities laws. In addition, investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder, and the Securities Act of 1933, as amended, creates concurrent jurisdiction for federal and state courts over all suits brought to enforce any duty or liability created by such act or the rules and regulations thereunder. Also, a court may find the exclusive forum provisions in the Warrants otherwise unenforceable with respect to one or more specified types of actions or legal proceedings, and in such case, we may incur additional costs associated with resolving such matters in other jurisdictions.

No Appraisal Rights

As permitted by Maryland law, our charter provides that shareholders will not be entitled to exercise appraisal rights unless a majority of our board of directors determines that appraisal rights apply, with respect to all or any classes or series of stock, to one or more transactions occurring after the date of such determination.

Power to Reclassify Our Unissued Shares of Stock

Our articles of incorporation authorize our Board to classify and reclassify any unissued common or preferred shares into other classes or series of shares of stock. Prior to the issuance of shares of each class or series, our Board is required by Maryland law and by our articles of incorporation to set, subject to the provisions of our articles of incorporation regarding the restrictions on ownership and transfer of shares of stock, the preferences, conversion or other rights, voting powers, restrictions, limitations as to

dividends or other distributions, qualifications and terms or conditions of redemption for each class or series. Therefore, our board could authorize the issuance of common stock or preferred shares that have priority over our common stock as to voting rights, dividends or upon liquidation or with terms and conditions that could have the effect of delaying, deferring or preventing a change in control or other transaction that might involve a premium price for our common stock or otherwise be in the best interests of our shareholders. No preferred shares are presently outstanding, and we have no present plans to issue any preferred shares.

Power to Increase or Decrease Authorized Shares of Stock and Issue Additional Common Stock and Preferred Shares

We believe that the power of our Board to amend our articles of incorporation to increase or decrease the number of authorized shares of stock, to authorize us to issue additional authorized but unissued common stock or preferred shares and to classify or reclassify unissued common stock or preferred shares and thereafter to issue such classified or reclassified shares of stock will provide us with increased flexibility in structuring possible future financings and acquisitions and in meeting other needs that might arise. The additional classes or series, as well as the common stock, will be available for issuance without further action by our shareholders, unless such action is required by applicable law or the rules of any stock exchange or automated quotation system on which our securities may be listed or traded. Although our Board does not intend to do so, it could authorize us to issue a class or series that could, depending upon the terms of the particular class or series, delay, defer or prevent a change in control or other transaction that might involve a premium price for our common stock or otherwise be in the best interests of our shareholders.

Restrictions on Ownership and Transfer

For us to qualify as a REIT under the Code, our shares of stock must be beneficially owned by 100 or more persons during at least 335 days of a taxable year of 12 months (other than the first year for which an election to be a REIT has been made) or during a proportionate part of a shorter taxable year. Also, not more than 50% of the value of our outstanding shares of stock may be owned, directly or indirectly, by five or fewer individuals (as defined in the Code to include certain entities) during the last half of a taxable year (other than the first year for which an election to be a REIT has been made).

Our articles of incorporation, subject to certain exceptions, restricts the amount of our shares of stock that a person may beneficially or constructively own. Our articles of incorporation provides that, subject to certain exceptions, no person may beneficially or constructively own more than 9.8% in value or in number of shares, whichever is more restrictive, of the outstanding shares of any class or series of our shares of stock.

Our articles of incorporation also prohibits any person from (i) beneficially owning shares of stock to the extent that such beneficial ownership would result in our being “closely held” within the meaning of Section 856(h) of the Code (without regard to whether the ownership interest is held during the last half of the taxable year but otherwise not applying until June 15 of the second year for which we will file tax returns to be taxed as a REIT), (ii) transferring our shares of stock to the extent that such transfer would result in our shares of stock being beneficially owned by less than 100 persons (determined under the principles of Section 856(a)(5) of the Code), (iii) beneficially or constructively owning our shares of stock to the extent such beneficial or constructive ownership would cause us to constructively own ten percent (10%) or more of the ownership interests in a tenant (other than a taxable REIT subsidiary “TRS”) of our real property within the meaning of Section 856(d)(2)(B) of the Code to the extent the income derived by us from such tenant would cause us to fail to satisfy any of the gross income requirements of Section 856(c) of the Code or (iv) beneficially or constructively owning or transferring our shares of stock if such ownership or transfer would otherwise cause us to fail to qualify as a REIT under the Code. Any person who acquires or attempts or intends to acquire beneficial or constructive ownership of our shares of stock that will or may violate any of the foregoing restrictions on transferability and ownership, or any person who would have owned our shares of stock that resulted in a transfer of shares to a charitable trust, is required to give written notice immediately to us, or in the case of a proposed or attempted transaction, to give at least 15 days’ prior written notice, and provide us with such other information as we may request in order to determine the effect of such transfer on our status as a REIT. The foregoing restrictions on transferability and ownership will not apply if our Board determines that it is no longer in our best interests to attempt to qualify, or to continue to qualify, as a REIT.

Our Board, in its sole discretion, may prospectively or retroactively exempt a person from the limits described in the paragraph above and may establish or increase an excepted holder percentage limit for such person. The person seeking an exemption must provide to our Board such representations, covenants and undertakings as our Board may deem appropriate in order to conclude that granting the exemption will not cause us to lose our status as a REIT. Our Board may not grant such an exemption to any person if such exemption would result in our failing to qualify as a REIT. Our Board may require a ruling from the IRS or an opinion of counsel, in either case in form and substance satisfactory to the Board, in its sole discretion, in order to determine or ensure our status as a REIT.

[Table of Contents](#)

Our Board has waived the ownership limits for the John Robert Sierra Sr. Revocable Family Trust, who currently owns 125,000 shares of our common stock and currently exercisable warrants to purchase 100,000 shares of our common stock. Our Board has also waived the ownership limits for Modiv OP, who currently owns 2,400,000 shares of our Series A Preferred Stock.

Any attempted transfer of our shares of stock which, if effective, would violate any of the restrictions described above will result in the number of shares causing the violation (rounded up to the nearest whole share) to be automatically transferred to a trust for the exclusive benefit of one or more charitable beneficiaries, except that any transfer that results in the violation of the restriction relating to our shares of stock being beneficially owned by fewer than 100 persons will be void from the time of such purported transfer and the proposed transferee will not acquire any rights in such shares.

These ownership limitations could delay, defer or prevent a transaction or a change in control that might involve a premium price for our common stock or otherwise be in the best interest of our shareholders.

Stock Transfer Agent

The transfer agent for our common stock is Continental Stock Transfer & Trust Company.

OUR OPERATING PARTNERSHIP AND THE PARTNERSHIP AGREEMENT

The following summary of the terms of the agreement of limited partnership of our Operating Partnership does not purport to be complete and is subject to and qualified in its entirety by reference to the Amended and Restated Agreement of Limited Partnership of Generation Income Properties, L.P., as amended, a copy of which is filed as an exhibit to the registration statement of which this prospectus is a part. See “Where You Can Find More Information.”

Management

We are the sole general partner of our Operating Partnership, which is organized as a Delaware limited partnership. We conduct substantially all of our operations and make substantially all of our investments through the Operating Partnership. Pursuant to the partnership agreement, we have full, exclusive and complete responsibility and discretion in the management and control of the Operating Partnership, including the ability to cause the Operating Partnership to enter into certain major transactions including acquisitions, dispositions, refinancing and selection of lessees, make distributions to partners, and to cause changes in the Operating Partnership’s business activities. Pursuant to the partnership agreement, the limited partners in the Operating Partnership may not remove us as general partner, with or without cause.

Capital Contribution

The partnership agreement provides that if the Operating Partnership requires additional funds at any time in excess of funds available to the Operating Partnership from borrowing or capital contributions, we may borrow such funds from a financial institution or other lender and lend such funds to the Operating Partnership on the same terms and conditions as are applicable to our borrowing of such funds.

Under the partnership agreement, we are obligated to contribute the net proceeds of any future offering of shares as additional capital to the Operating Partnership. If we contribute additional capital to the Operating Partnership, we will receive additional common units in the Operating Partnership and our percentage interest will be increased on a proportionate basis based upon the amount of such additional capital contributions and the value of the Operating Partnership at the time of such contributions. Conversely, the percentage interests of the limited partners will be decreased on a proportionate basis in the event of additional capital contributions by us. In addition, if we contribute additional capital to the Operating Partnership, we will revalue the property of the Operating Partnership to its fair market value (as determined by us) and the capital accounts of the partners will be adjusted to reflect the manner in which the unrealized gain or loss inherent in such property (that has not been reflected in the capital accounts previously) would be allocated among the partners under the terms of the partnership agreement if there were a taxable disposition of such property for its fair market value (as determined by us) on the date of the revaluation. The Operating Partnership may issue preferred units, in connection with acquisitions of property or otherwise, which could have priority over common units with respect to distributions from the Operating Partnership, including the common units we own.

Series A Preferred Units

The Operating Partnership has designated 2,400,000 Series A preferred units. The Series A preferred units rank senior to all classes or series of common units in the Operating Partnership with respect to distribution rights and rights upon the voluntary or involuntary liquidation, dissolution or winding up of the Operating Partnership. All Series A preferred units must be owned and held at all times solely by us and correspond to the number of issued and outstanding shares of our Series A Preferred Stock. The Series A preferred units are intended to have designations, preferences and other rights and terms that are substantially the same as those of our Series A Preferred Stock, all such that the economic interests of the Series A preferred units and the Series A Preferred Stock are substantially similar. See “Description of Securities—Series A Preferred Stock.”

Redemption Rights

Pursuant to the partnership agreement, any future limited partners, other than us, will receive redemption rights, which will enable them to cause the Operating Partnership to redeem their common units in exchange for cash or, at our option, common stock on a one-for-one basis. The cash redemption amount per unit is based on the market price of our common stock at the time of redemption. The number of common stock issuable upon redemption of common units held by limited partners may be adjusted upon the occurrence of certain events such as share dividends, share subdivisions or combinations. We expect to fund any cash redemptions out of available cash or borrowings. Notwithstanding the foregoing, a limited partner will not be entitled to exercise its redemption rights if the delivery of common stock to the redeeming limited partner would:

- result in any person owning, directly or indirectly, common stock in excess of the share ownership limit in our articles of incorporation;

Table of Contents

- result in our common stock being owned by fewer than 100 persons (determined without reference to any rules of attribution);
- result in our being “closely held” within the meaning of Section 856(h) of the Code;
- cause us to own, actually or constructively, 10% or more of the ownership interests in a tenant (other than a TRS) of ours, the Operating Partnership’s or a subsidiary partnership’s real property, within the meaning of Section 856(d)(2)(B) of the Code;
- cause us to fail to qualify as a REIT under the Code; or
- cause the acquisition of common stock by such redeeming limited partner to be “integrated” with any other distribution of common stock for purposes of complying with the registration provisions of the Securities Act.

We may, in our sole and absolute discretion, waive any of these restrictions.

As of August 31, 2023, we own 90% of the common units in the Operating Partnership and outside investors own 10%. We own all of the Series A preferred units.

In the future we may issue additional common units in our Operating Partnership in exchange for acquiring net lease properties.

The partnership agreement requires that the Operating Partnership be operated in a manner that enables us to satisfy the requirements for being classified as a REIT, to avoid any federal income or excise tax liability imposed by the Code (other than any federal income tax liability associated with our retained capital gains) and to ensure that the partnership will not be classified as a “publicly traded partnership” taxable as a corporation under Section 7704 of the Code.

Distributions

The partnership agreement provides that the Operating Partnership will distribute cash from operations (including net sale or refinancing proceeds, but excluding net proceeds from the sale of the Operating Partnership’s property in connection with the liquidation of the Operating Partnership) at such time and in such amounts as determined by us in our sole discretion, to us and the limited partners in accordance with their respective percentage interests in the Operating Partnership, subject to prior payment of any preferred return on the Series A preferred units.

Upon liquidation of the Operating Partnership, after payment of, or adequate provision for, debts and obligations of the partnership, including any partner loans, and after payment of any preferred return, any remaining assets of the partnership will be distributed to us and the limited partners with positive capital accounts in accordance with their respective positive capital account balances.

Amendments

In general, we may amend the partnership agreement without the consent of the limited partners. However, any amendment to the partnership agreement that would adversely affect the redemption rights or certain other rights of the limited partners requires the consent of limited partners holding a majority in interest of the common units in our partnership.

MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE DISTRIBUTION

The following is a summary description of the general material U.S. federal income tax aspects applicable to Modiv OP unitholders and shareholders of Modiv in connection with the Distribution. The tax treatment of a shareholder or unitholder may vary, depending upon his, her or its particular situation. In this regard, special rules not discussed in this summary may apply to some of Modiv OP's unitholders and Modiv's shareholders. This summary is limited to Modiv OP unitholders and holders of Modiv common stock that are U.S. Holders, as defined below, and that hold their Modiv OP units or Modiv common stock, as the case may be, as a capital asset. The following discussion may not be applicable to a Modiv OP unitholder or a Modiv shareholder who acquired his, her or its units or shares by exercising stock options or otherwise as compensation.

A "U.S. Holder" is a beneficial owner of Modiv OP units or Modiv capital stock that is, for U.S. federal income tax purposes:

- an individual who is a citizen or a resident of the United States;
- a corporation or other entity taxable as a corporation for U.S. federal income tax purposes, created or organized under the laws of the United States or any state thereof or the District of Columbia;
- an estate the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust if (1) a court within the United States is able to exercise primary jurisdiction over its administration and one or more U.S. persons have the authority to control all of its substantial decisions or (2) in the case of a trust that was treated as a domestic trust under law in effect before 1997, a valid election is in place under applicable Treasury Regulations.

The following discussion is based on currently existing provisions of the Code, existing, proposed and temporary Treasury Regulations promulgated under the Code and current administrative rulings and court decisions. All of the foregoing are subject to change, which may or may not be retroactive, and any of these changes could affect the validity of the following discussion.

This summary is for general information only and does not constitute tax advice. It does not discuss all tax considerations that may be relevant to Modiv OP unitholders or Modiv shareholders in light of their particular circumstances, nor does it address the consequences to Modiv OP unitholders or Modiv shareholders subject to special treatment under the U.S. federal income tax laws, such as:

- dealers or traders in securities or currencies;
- tax-exempt entities, including private foundations;
- banks, financial institutions or insurance companies;
- real estate investment trusts, regulated investment companies or grantor trusts;
- persons who acquired Modiv common stock as part of a position in a straddle or as part of hedging, conversion, synthetic security, integrated investment, constructive sale transaction or other risk reduction transaction for U.S. federal income tax purposes;
- persons who are subject to the alternative minimum tax;
- persons whose functional currency is not the U.S. dollar;
- certain former citizens or long-term residents of the United States;
- persons who are subject to special accounting rules under Section 451(b) of the Code;
- persons who own Modiv common stock or units through partnerships or other pass-through entities; or
- persons who hold Modiv common stock or units through atax-qualified retirement plan.

[Table of Contents](#)

This summary is not a complete analysis or description of all potential U.S. federal income tax consequences of the Distribution.

It does not address any tax consequences arising under the Medicare tax on net investment income or the Foreign Account Tax Compliance Act (including the Treasury Regulations promulgated thereunder and intergovernmental agreements entered into pursuant thereto or in connection therewith). In addition, it does not address any U.S. state or local or foreign tax consequences or any estate, gift or other non-income tax consequences of the Distribution. It does not address any tax consequences to holders of Modiv OP units or Modiv common stock that are not U.S. Holders.

If a partnership, or any other entity treated as a partnership or other pass-through entity for U.S. federal income tax purposes, holds Modiv OP units or Modiv common stock, the tax treatment of an owner of that entity will generally depend on the status of the owner and the activities of the entity. Such an entity or an owner thereof is urged to consult its own tax advisor as to its tax consequences.

EACH HOLDER OF MODIV OP UNITS AND MODIV COMMON STOCK IS URGED TO CONSULT ITS OWN TAX ADVISOR WITH RESPECT TO THE U.S. FEDERAL, STATE AND LOCAL AND FOREIGN TAX CONSEQUENCES OF THE DISTRIBUTION AND THE RECEIPT OF THE DISTRIBUTION SHARES BY SUCH HOLDER OF MODIV OP UNITS AND/OR MODIV COMMON STOCK.

Tax Consequences of the Distribution

Distribution from Modiv OP to Modiv OP Unitholders

Under Section 731(a) of the Code, a nonliquidating distribution of property by a partnership to a partner generally does not result in the recognition of gain or loss by the partner, except that gain is recognized to the extent that the amount of money distributed exceeds the adjusted basis of the partner's interest in the partnership immediately before the distribution. Under Section 731(c) of the Code, marketable securities are treated as money. Treasury Regulations promulgated under Section 731(c) of the Code provide that stock is a marketable security if it is of a type that is, as of the date of distribution, listed on a national securities exchange. At the time of the distribution, the shares of common stock to be distributed by Modiv OP are anticipated to be registered under this prospectus and listed on NASDAQ and consequently, are likely to be treated as "marketable securities" under Section 731(c) of the Code. Certain exceptions exist, however, that if applicable, may prevent marketable securities from being treated as money for purposes of Section 731(a) of the Code. Such exceptions depend on the applicable factual circumstances and the satisfaction of certain conditions. No determination has been made by us or our counsel whether any of the exceptions could be available here. In general, if our shares of common stock are considered marketable securities, the excess of the fair market value of our shares of common stock at the time of the Distribution over a Modiv OP unitholder's tax basis in the Modiv OP units owned by such holder would be taxable as a capital gain, and such holder would receive a tax basis in our shares of common stock in an amount equal to such shares' fair market value. If our shares of common stock are not considered to be "marketable securities," a Modiv OP unitholder's receipt of our shares of common stock in the Distribution would generally not be a taxable event for U.S. federal income tax purposes. None of the Company, Modiv OP or Modiv expects to obtain a private letter ruling from the IRS or an opinion of counsel, on the tax consequences of the Distribution to Modiv OP unitholders. Each Modiv OP unitholder should consult with their own tax advisor to determine the consequences of the Distribution to them in light of their particular circumstances.

Distribution from Modiv to Modiv Shareholders

For U.S. federal income tax purposes, it is anticipated that the distribution by Modiv of the shares of our common stock will constitute a taxable transaction for U.S. federal income tax purposes. Neither the Company nor Modiv expects to obtain a private letter ruling from the IRS, or an opinion of counsel, on the tax consequences of the Distribution. So long as Modiv qualifies as a real estate investment trust (a "REIT") and does not designate its distribution of our shares of common stock to a U.S. Holder of Modiv stock as a "capital gain dividend", the fair market value of our common stock received (including any fractional share received by such U.S. Holder or, in the case of cash received in lieu of any fractional share, any fractional share deemed to be received by, and sold on behalf of, such U.S. Holder) generally will be taxed as ordinary income to the extent of Modiv's current or accumulated earnings and profits and will not be eligible for the dividends received deduction generally available for corporations. Any distribution in excess of Modiv's current and accumulated earnings and profits will not be taxable to a U.S. Holder of Modiv stock to the extent that the distribution does not exceed the adjusted tax basis of the U.S. Holder's shares of Modiv stock. Rather, such distribution will reduce the adjusted basis of such shares of Modiv stock. To the extent that the distribution exceeds the adjusted tax basis of the U.S. Holder's shares of Modiv stock, it will be included in income as long-term capital gain, or short-term capital gain if the Modiv shares have been held for one year or less. Any dividend declared by Modiv in October, November or December of any year and payable to a U.S. Holder of record on a specified date in any such month will be treated as both paid by Modiv and received by the U.S. Holder on December 31 of such year, provided that the dividend is actually paid by Modiv before the end of January of the following calendar year.

Table of Contents

Dividends received from REITs are generally not eligible to be taxed at the preferential qualified dividend income rates applicable to individual U.S. shareholders who receive dividends from taxable subchapter C corporations. However, for taxable years beginning after December 31, 2017 and before January 1, 2026, under Section 199A of the Internal Revenue Code, noncorporate U.S. shareholders may deduct up to 20% of certain qualified business income, including “qualified REIT dividends” (generally, dividends received by a REIT shareholder that are not designated as capital gain dividends or qualified dividend income), subject to certain limitations. In order for a dividend paid by a REIT to be eligible to be treated as a “qualified REIT dividend,” a U.S. Holder of Modiv stock must meet certain holding period requirements. Holders of Modiv stock should consult their tax advisors concerning the applicability of these rules and any limitations on the ability to deduct a portion of the contemplated Modiv distribution.

Modiv may elect to designate a distribution of its net capital gain as “capital gain dividend,” which is taxed to shareholders as gain from the sale or exchange of a capital asset held for more than one year, without regard to how long the U.S. Holder has held its shares of Modiv stock. If Modiv designates any portion of the distribution of the shares of our common stock as a capital gain dividend, a U.S. Holder will receive an Internal Revenue Service Form 1099-DIV indicating the amount that will be taxable to the shareholder as capital gain. It would be expected that, if Modiv elects to designate a distribution of its net capital gain as “capital gain dividend”, it may also designate such capital gain dividends as either 20% or 25% rate distributions (generally the maximum individual tax rate applicable to long term real estate capital gains). Corporate shareholders, however, may be required to treat up to 20% of a capital gain dividend as ordinary income.

Back-up Withholding Requirements

Modiv OP and Modiv will be required to comply with United States information reporting requirements with respect to the Distribution. Under the backup withholding rules, a U.S. Holder may be subject to backup withholding with respect to the Distribution unless the U.S. Holder (a) falls within an exempt category and, when required, demonstrates these facts (including by providing any applicable IRS form); or (b) provides a correct taxpayer identification number, certifies as to no loss of exemption from backup withholding and otherwise complies with applicable requirements of the backup withholding rules. A U.S. Holder that does not provide a correct taxpayer identification number may be subject to penalties imposed by the IRS. Backup withholding is not an additional tax. Rather, any amount withheld under the backup withholding rules will be allowed as a refund or a credit against the U.S. Holder’s U.S. federal income tax liability provided the required information is timely furnished to the IRS. Moreover, Modiv may be required to withhold a portion of any capital gain distribution made to any U.S. Holder who fails to certify their non-foreign status. If information reporting requirements apply to a shareholder, the amount of dividends paid with respect to the shareholder’s shares will be reported annually to the IRS and to the shareholder.

MODIV OP UNITHOLDERS AND MODIV SHAREHOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES OF THE DISTRIBUTION TO THEM.

MATERIAL FEDERAL INCOME TAX CONSIDERATIONS

This section summarizes the material federal income tax considerations that you, as a shareholder, may consider relevant in connection with the acquisition, ownership and disposition of our common stock and our election to be taxed as a REIT. Foley & Lardner LLP has acted as our counsel, has reviewed this summary, and is of the opinion that the discussion contained herein is accurate in all material respects. Because this section is a summary, it does not address all aspects of taxation that may be relevant to particular shareholders in light of their personal investment or tax circumstances, or to certain types of shareholders that are subject to special treatment under the federal income tax laws, such as:

- insurance companies;
- tax-exempt organizations (except to the limited extent discussed in “— Taxation of Tax-Exempt Shareholders” below);
- financial institutions or broker-dealers;
- non-U.S. individuals, corporations, estates and trusts (except to the limited extent discussed in “— Taxation of Non-U.S. Shareholders” below);
- U.S. expatriates;
- persons who mark-to-market our common stock;
- subchapter S corporations;
- U.S. shareholders (as defined below) whose functional currency is not the U.S. dollar;
- regulated investment companies;
- trusts and estates;
- holders who receive our common stock through the exercise of employee stock options or otherwise as compensation;
- persons holding our common stock as part of a “straddle,” “hedge,” “conversion transaction,” “synthetic security” or other integrated investment;
- persons subject to the alternative minimum tax provisions of the Code;
- persons holding our common stock through a partnership or similar pass-through entity or on behalf of other persons as nominees; and
- persons holding a 10% or more (by vote or value) beneficial interest in our shares of stock.

This summary assumes that shareholders hold shares as capital assets for federal income tax purposes, which generally means property held for investment.

The statements in this section are based on the current federal income tax laws, all of which are subject to differing interpretations or to change, possibly with retroactive effect. This discussion is for general information purposes only and is not tax advice. We cannot assure you that new laws, interpretations of law, or court decisions, any of which may take effect retroactively, will not cause any statement in this section to be inaccurate.

WE URGE YOU TO CONSULT YOUR OWN TAX ADVISOR REGARDING THE SPECIFIC TAX CONSEQUENCES TO YOU OF THE ACQUISITION, OWNERSHIP AND SALE OF OUR COMMON STOCK AND OF OUR ELECTION TO BE TAXED AS A REIT. SPECIFICALLY, YOU ARE URGED TO CONSULT YOUR OWN TAX ADVISOR REGARDING THE FEDERAL, STATE, LOCAL, FOREIGN, AND OTHER TAX CONSEQUENCES OF SUCH ACQUISITION, OWNERSHIP, SALE AND ELECTION, AND REGARDING POTENTIAL CHANGES IN APPLICABLE TAX LAWS.

Taxation of Our Company

We have elected to be taxed as a REIT for federal income tax purposes commencing with our taxable year ending December 31, 2021. Our qualification as a REIT will depend upon our ability to meet, on a continuing basis, various complex requirements under the Code relating to, among other things, the sources of our gross income, the composition and values of our assets, our distribution levels and the diversity of ownership of our stock. We believe that we will be organized and will operate in such a manner as to qualify for taxation as a REIT under the Code, and we intend to continue to operate in such a manner. However, no assurance can be given that our actual results of operations for any particular taxable year will satisfy such requirements.

In connection with this offering, Foley & Lardner LLP has rendered an opinion that, commencing with our taxable year ending December 31, 2021, we will be organized in conformity with the requirements for qualification and taxation as a REIT under the U.S. federal income tax laws, and our proposed method of operations will enable us to satisfy the requirements for qualification and taxation as a REIT under the U.S. federal income tax laws for our taxable year ending December 31, 2021 and subsequent taxable years. Investors should be aware that Foley & Lardner LLP's opinion is based upon various customary assumptions relating to our organization and operation, is conditioned upon certain representations and covenants made by our management as to factual matters, including representations regarding our organization, the nature of our assets and income and the conduct of our business operations. Foley & Lardner LLP's opinion is not binding upon the IRS or any court and speaks as of the date issued. In addition, Foley & Lardner LLP's opinion is based on existing U.S. federal income tax law governing qualification as a REIT, which is subject to change either prospectively or retroactively.

Moreover, our qualification and taxation as a REIT will depend upon our ability to meet, on a continuing basis, through actual annual and quarterly operating results, certain qualification tests set forth in the U.S. federal income tax laws. Those qualification tests involve the percentage of income that we earn from specified sources, the percentage of our assets that fall within specified categories, the diversity of ownership of our stock and the percentage of our earnings that we distribute. Foley & Lardner LLP will not review our compliance with those tests on a continuing basis. Accordingly, no assurance can be given that our actual results of operations for any particular taxable year will satisfy such requirements. While we intend to operate so that we will qualify as a REIT, given the highly complex nature of the rules governing REITs, the ongoing importance of factual determinations and the possibility of future changes in our circumstances, no assurance can be given by tax counsel or by us that we will qualify as a REIT for any particular year. Foley & Lardner LLP's opinion contemplates that we may have to use one or more of the REIT savings provisions described below, which could require us to pay an excise or penalty tax (which could be material) in order for us to maintain our REIT qualification. For a discussion of the tax consequences of our failure to qualify as a REIT, see “— Failure to Qualify.”

The sections of the Code and Treasury Regulations relating to qualification, operation and taxation as a REIT are highly technical and complex. The following discussion sets forth on the material aspects of those sections. This summary is qualified in its entirety by the applicable Code provisions and the related Treasury Regulations and administrative and judicial interpretations thereof.

If we qualify as a REIT, we generally will not be subject to federal income tax on the taxable income that we distribute to our shareholders. The benefit of that tax treatment is that it avoids the “double taxation,” or taxation at both the corporate and shareholder levels, that generally results from owning stock in a corporation. However, we will be subject to federal tax in the following circumstances:

- We will pay federal income tax on any taxable income, including undistributed net capital gain that we do not distribute to shareholders during, or within a specified time period after, the calendar year in which the income is earned.
- We will pay income tax at the highest corporate rate on:
 - net income from the sale or other disposition of property acquired through foreclosure (“foreclosure property”) that we hold primarily for sale to customers in the ordinary course of business, and
 - other non-qualifying income from foreclosure property.
- We will pay a 100% tax on net income from sales or other dispositions of property, other than foreclosure property, that we hold primarily for sale to customers in the ordinary course of business.
- If we fail to satisfy one or both of the 75% gross income test or the 95% gross income test, as described below under “— Gross Income Tests,” and nonetheless continue to qualify as a REIT because we meet other requirements, we will pay a 100% tax on:

Table of Contents

- the gross income attributable to the greater of the amount by which we fail the 75% gross income test or the 95% gross income test, in either case, multiplied by
 - a fraction intended to reflect our profitability.
 - If we fail to distribute during a calendar year at least the sum of (1) 85% of our REIT ordinary income for the year, (2) 95% of our REIT capital gain net income for the year, and (3) any undistributed taxable income required to be distributed from earlier periods, we will pay a 4% nondeductible excise tax on the excess of the required distribution over the amount we actually distributed.
 - We may elect to retain and pay income tax on our net long-term capital gain. In that case, a U.S. shareholder would be taxed on its proportionate share of our undistributed long-term capital gain (to the extent that we made a timely designation of such gain to the shareholders) and would receive a credit or refund for its proportionate share of the tax we paid.
 - We will be subject to a 100% excise tax on transactions with a TRS that are not conducted on an arm's-length basis.
 - In the event of a failure of any of the asset tests, other than a de minimis failure of the 5% asset test or the 10% vote or value test, as described below under "— Asset Tests," as long as the failure was due to reasonable cause and not to willful neglect, we file a description of each asset that caused such failure with the IRS, and we dispose of the assets or otherwise comply with the asset tests within six months after the last day of the quarter in which we identify such failure, we will pay a tax equal to the greater of \$50,000 or the highest federal income tax rate then applicable to U.S. corporations (currently 21%) on the net income from the nonqualifying assets during the period in which we failed to satisfy the asset tests.
 - In the event we fail to satisfy one or more requirements for REIT qualification, other than the gross income tests and the asset tests, and such failure is due to reasonable cause and not to willful neglect, we will be required to pay a penalty of \$50,000 for each such failure.
 - If we acquire any asset from a C corporation, or a corporation that generally is subject to full corporate-level tax, in a merger or other transaction in which we acquire a basis in the asset that is determined by reference either to the C corporation's basis in the asset or to another asset, we will pay tax at the highest regular corporate rate applicable if we recognize gain on the sale or disposition of the asset during the 5-year period after we acquire the asset provided no election is made for the transaction to be taxable on a current basis. The amount of gain on which we will pay tax is the lesser of:
 - the amount of gain that we recognize at the time of the sale or disposition, and
 - the amount of gain that we would have recognized if we had sold the asset at the time we acquired it.
- Similar rules apply with respect to any built-in gain that exists with respect to our assets on the effective date of our REIT election.
- We may be required to pay monetary penalties to the IRS in certain circumstances, including if we fail to meet record-keeping requirements intended to monitor our compliance with rules relating to the composition of a REIT's shareholders, as described below in "— Recordkeeping Requirements."
 - The earnings of our lower-tier entities that are subchapter C corporations, including TRSs, will be subject to federal corporate income tax.

In addition, notwithstanding our status as a REIT, we may also have to pay certain state and local income taxes, because not all states and localities treat REITs in the same manner that they are treated for federal income tax purposes. Moreover, as further described below, TRSs will be subject to federal, state and local corporate income tax on their taxable income.

Requirements for Qualification

A REIT is a corporation, trust, or association that meets each of the following requirements:

1. It is managed by one or more directors or trustees.

Table of Contents

2. Its beneficial ownership is evidenced by transferable shares, or by transferable certificates of beneficial interest.
3. It would be taxable as a domestic corporation, but for the REIT provisions of the federal income tax laws.
4. It is neither a financial institution nor an insurance company subject to special provisions of the federal income tax laws.
5. At least 100 persons are beneficial owners of its shares or ownership certificates.
6. Not more than 50% in value of its outstanding shares or ownership certificates is owned, directly or indirectly, by five or fewer individuals, which the Code defines to include certain entities, during the last half of the taxable year.
7. It elects to be a REIT, or has made such election for a previous taxable year, and satisfies all relevant filing and other administrative requirements established by the IRS that must be met to elect and maintain REIT status.
8. It meets certain other qualification tests, described below, regarding the nature of its income and assets and the amount of its distributions to shareholders.
9. It uses a calendar year for federal income tax purposes and complies with the recordkeeping requirements of the federal income tax laws.

We must meet requirements 1 through 4, 7, and 8 during our entire taxable year and must meet requirement 5 during at least 335 days of a taxable year of 12 months, or during a proportionate part of a taxable year of less than 12 months. As we have made our REIT election for our taxable year ending December 31, 2021, requirements 5 and 6 applied to us beginning with our 2022 taxable year. If we comply with all the requirements for ascertaining the ownership of our outstanding shares in a taxable year and have no reason to know that we violated requirement 6, we will be deemed to have satisfied requirement 6 for that taxable year. For purposes of determining share ownership under requirement 6, an “individual” generally includes a supplemental unemployment compensation benefits plan, a private foundation, or a portion of a trust permanently set aside or used exclusively for charitable purposes. An “individual,” however, generally does not include a trust that is a qualified employee pension or profit-sharing trust under the federal income tax laws, and beneficiaries of such a trust will be treated as holding our shares in proportion to their actuarial interests in the trust for purposes of requirement 6.

Our articles of incorporation provides restrictions regarding the transfer and ownership of our shares of stock. See “Description of Securities — Restrictions on Ownership and Transfer.” We believe that we have issued sufficient shares of stock with sufficient diversity of ownership to allow us to satisfy requirements 5 and 6 above. The restrictions in our articles of incorporation are intended, among other things, to assist us in satisfying requirements 5 and 6 above. These restrictions, however, may not ensure that we will be able to satisfy such share ownership requirements in all cases. If we fail to satisfy these share ownership requirements, our qualification as a REIT may terminate.

To monitor compliance with the share ownership requirements, we generally will be required to maintain records regarding the actual ownership of our shares. To do so, we must demand written statements each year from the record holders of significant percentages of our shares pursuant to which the record holders must disclose the actual owners of the shares (i.e., the persons required to include our dividends in their gross income). We must maintain a list of those persons failing or refusing to comply with this demand as part of our records. We could be subject to monetary penalties if we fail to comply with these record-keeping requirements. If you fail or refuse to comply with the demands, you will be required by Treasury Regulations to submit a statement with your tax return disclosing your actual ownership of our shares and other information. In addition, we must satisfy all relevant filing and other administrative requirements that must be met to elect and maintain REIT status. We intend to comply with these requirements.

For purposes of requirement 9, we have adopted December 31 as our year end for U.S. federal income tax purposes and thereby satisfy this requirement.

Subsidiary Entities

Qualified REIT Subsidiaries. A corporation that is a “qualified REIT subsidiary” is not treated as a corporation separate from its parent REIT. All assets, liabilities, and items of income, deduction, and credit of a “qualified REIT subsidiary” are treated as assets, liabilities, and items of income, deduction, and credit of the REIT. A “qualified REIT subsidiary” is a corporation, other than a TRS, all of the stock of which is owned by the REIT. Thus, in applying the requirements described herein, any “qualified REIT subsidiary” that we own will be ignored, and all assets, liabilities, and items of income, deduction, and credit of such subsidiary will be treated as our assets, liabilities, and items of income, deduction, and credit.

[Table of Contents](#)

Other Disregarded Entities and Partnerships. An unincorporated domestic entity, such as a partnership or limited liability company that has a single owner, generally is not treated as an entity separate from its parent for federal income tax purposes. An unincorporated domestic entity with two or more owners is generally treated as a partnership for federal income tax purposes. In the case of a REIT that is a partner in a partnership that has other partners, the REIT is treated as owning its proportionate share of the assets of the partnership and as earning its allocable share of the gross income of the partnership for purposes of the applicable REIT qualification tests. Our proportionate share for purposes of the 10% value test (see “— Asset Tests”) will be based on our proportionate interest in the equity interests and certain debt securities issued by the partnership. For all of the other asset and income tests, our proportionate share will be based on our proportionate interest in the capital interests in the partnership. Our proportionate share of the assets, liabilities, and items of income of any partnership, joint venture, or limited liability company that is treated as a partnership for federal income tax purposes in which we acquire an equity interest, directly or indirectly, will be treated as our assets and gross income for purposes of applying the various REIT qualification requirements. In the event that a disregarded subsidiary of ours ceases to be wholly-owned – for example, if any equity interest in the subsidiary is acquired by a person other than us or another disregarded subsidiary of ours – the subsidiary’s separate existence would no longer be disregarded for U.S. federal income tax purposes. Instead, the subsidiary would have multiple owners and would be treated as either a partnership or a taxable corporation. Such an event could, depending on the circumstances, adversely affect our ability to satisfy the various asset and gross income requirements applicable REITs, including the requirement that REITs generally may not own, directly or indirectly, more than 10% of the total value or total voting power of the outstanding securities of another corporation. See “—Gross Income Tests” and “—Asset Tests.”

Taxable REIT Subsidiaries. A REIT, in general, may jointly elect with a subsidiary corporation, whether or not wholly owned, to treat the subsidiary corporation as a TRS. The separate existence of a TRS or other taxable corporation, unlike a disregarded subsidiary as discussed above, is not ignored for U.S. federal income tax purposes. Accordingly, such an entity would generally be subject to U.S. federal income tax on its taxable income, which may reduce the cash flow generated by us and our subsidiaries in the aggregate and our ability to make distributions to our shareholders. A REIT is not treated as holding the assets of a TRS or other taxable subsidiary corporation or as receiving any income that the subsidiary earns. Rather, the stock issued by the subsidiary is an asset in the hands of the REIT, and the REIT generally recognizes dividend income when it receives distributions of earnings from the subsidiary. This treatment can affect the gross income and asset test calculations that apply to the REIT, as described below. Because a parent REIT does not include the assets and income of its TRSs in determining the parent REIT’s compliance with the REIT requirements, such entities may be used by the parent REIT to undertake indirectly activities that the REIT rules might otherwise preclude the parent REIT from doing directly or through pass-through subsidiaries. If dividends are paid to us by one or more domestic TRSs we may own, a portion of the dividends that we distribute to shareholders who are taxed at individual rates generally will be eligible for taxation at preferential qualified dividend income tax rates rather than at ordinary income tax rates. See “—Taxation of Taxable U.S. Shareholders” and “—Annual Distribution Requirements.”

Gross Income Tests

We must satisfy two gross income tests annually to maintain our qualification as a REIT. First, at least 75% of our gross income for each taxable year must consist of defined types of income that we derive, directly or indirectly, from investments relating to real property or mortgages on real property or qualified temporary investment income. Qualifying income for purposes of that 75% gross income test generally includes:

- rents from real property;
- interest on debt secured by mortgages on real property, or on interests in real property;
- dividends on, and gain from the sale of, shares in other REITs;
- gain from the sale of real estate assets (other than certain debt instruments of publicly offered REITs); and
- income derived from the temporary investment of new capital that is attributable to the issuance of our shares of stock other than shares issued pursuant to our distribution reinvestment plan or a public offering of our debt with a maturity date of at least five years and that we receive during the one-year period beginning on the date on which we received such new capital.

Interest and gain on debt instruments issued by publicly offered REITs that are not secured by mortgages on real property or interests in real property are not qualifying income for purposes of the 75% income test.

Table of Contents

Second, in general, at least 95% of our gross income for each taxable year must consist of income that is qualifying income for purposes of the 75% gross income test, other types of interest and dividends, gain from the sale or disposition of shares or securities, or any combination of these. Gross income from our sale of property that we hold primarily for sale to customers in the ordinary course of business is excluded from both the numerator and the denominator in both gross income tests. In addition, income and gain from “hedging transactions” that we enter into to hedge indebtedness incurred or to be incurred to acquire or carry real estate assets and that are clearly and timely identified as such will be excluded from both the numerator and the denominator for purposes of the 75% and 95% gross income tests. In addition, certain foreign currency gains will be excluded from gross income for purposes of one or both of the gross income tests. See “— Foreign Currency Gain” below. The following paragraphs discuss the specific application of the gross income tests to us.

Rents from Real Property

Rent that we receive from our real property will qualify as “rents from real property,” which is qualifying income for purposes of the 75% and 95% gross income tests, only if the following conditions are met:

- The rent must not be based, in whole or in part, on the income or profits of any person, but may be based on a fixed percentage or percentages of gross receipts or sales.
- Neither we nor a direct or indirect owner of 10% or more of our stock may own, actually or constructively, 10% or more of a tenant from whom we receive rent, other than a TRS. Under an exception to such related-party tenant rule, rent that we receive from a TRS will qualify as “rents from real property” as long as (i) at least 90% of the leased space in the property is leased to persons other than TRSs and related-party tenants, and (ii) the amount paid by the TRS to rent space at the property is substantially comparable to rents paid by other tenants of the property for comparable space.
- If the rent attributable to personal property leased in connection with a lease of real property is 15% or less of the total rent received under the lease, then the rent attributable to personal property will qualify as rents from real property. However, if the 15% threshold is exceeded, the rent attributable to personal property will not qualify as rents from real property.
- We generally must not operate or manage our real property or furnish or render services to our tenants, other than through an “independent contractor” that is adequately compensated and from which we do not derive revenue. However, we need not provide services through an independent contractor, but instead may provide services directly to our tenants, if the services are “usually or customarily rendered” in connection with the rental of space for occupancy only and are not considered to be provided for the tenants’ convenience. In addition, we may provide a minimal amount of “noncustomary” services to the tenants of a property, other than through an independent contractor, as long as our income from the services (valued at not less than 150% of our direct cost of performing such services) does not exceed 1% of our income from the related property. Furthermore, we may own up to 100% of the stock of a TRS which may provide customary and noncustomary services to our tenants without tainting our rental income for the related properties.

Unless we determine that the resulting nonqualifying income under any of the following situations, taken together with all other nonqualifying income earned by us in the taxable year, will not jeopardize our qualification as a REIT, we do not intend to:

- charge rent for any property that is based in whole or in part on the income or profits of any person, except by reason of being based on a fixed percentage or percentages of receipts or sales, as described above;
- rent any property to a related party tenant, including a TRS, unless the rent from the lease to the TRS would qualify for the special exception from the related party tenant rule applicable to certain leases with a TRS;
- derive rental income attributable to personal property other than personal property leased in connection with the lease of real property, the amount of which is less than 15% of the total rent received under the lease; or
- directly perform services considered to be noncustomary or rendered to the occupant of the property.

In order for the rent paid under our leases to constitute “rents from real property,” the leases must be respected as true leases for federal income tax purposes and not treated as service contracts, joint ventures or some other type of arrangement. The determination of whether our leases are true leases depends on an analysis of all the surrounding facts and circumstances. In making such a determination, courts have considered a variety of factors, including the following:

- the intent of the parties;

Table of Contents

- the form of the agreement; and
- the degree of control over the property that is retained by the property owner (for example, whether the lessee has substantial control over the operation of the property or whether the lessee was required simply to use its best efforts to perform its obligations under the agreement); and the extent to which the property owner retains the risk of loss with respect to the property (for example, whether the lessee bears the risk of increases in operating expenses or the risk of damage to the property) or the potential for economic gain with respect to the property.

We currently intend to structure any leases we enter into so that they will qualify as true leases for federal income tax purposes. Our belief is based, in part, on the following facts:

- we and the lessee intend for our relationship to be that of a lessor and lessee, and such relationship is documented by a lease agreement;
- the lessee will have the right to exclusive possession and use and quiet enjoyment of the property covered by the lease during the term of the lease;
- the lessee will bear the cost of, and will be responsible for, day-to-day maintenance and repair of the property other than the cost of certain capital expenditures, and dictate, either directly or through third-party operators that are eligible independent contractors who work for the lessee during the terms of the leases, how the property will be operated and maintained;
- the lessee generally will bear the costs and expenses of operating the property, including the cost of any inventory used in their operation, during the term of the lease;
- the lessee will benefit from any savings and bear the burdens of any increases in the costs of operating the property during the term of the lease;
- in the event of damage or destruction to a property, the lessee will be at economic risk because it will bear the economic burden of the loss in income from operation of the property subject to the right, in certain circumstances, to terminate the lease if the lessor does not restore the property to its prior condition;
- the lessee generally will indemnify the lessor against all liabilities imposed on the lessor during the term of the lease by reason of: (i) injury to persons or damage to property occurring at the property; (ii) the lessee's use, management, maintenance or repair of the property; (iii) taxes and assessments in respect of the property that are obligations of the lessees; (iv) any breach of the leases by the lessees, and (v) the nonperformance of contractual obligations of the lessees with respect to the property;
- the lessee will be obligated to pay, at a minimum, material base rent for the period of use of the property under the lease;
- the lessee will stand to incur substantial losses or reap substantial gains depending on how successfully it, either directly or through the eligible independent contractors, operates the property;
- we expect that each lease that we enter into, at the time we enter into it (or at any time that any such lease is subsequently renewed or extended) will enable the applicable lessee to derive a meaningful profit, after expenses and taking into account the risks associated with the lease, from the operation of the property during the term of its lease; and
- upon termination of each lease, the applicable property will be expected to have a substantial remaining useful life and substantial remaining fair market value.

If our leases are characterized as service contracts or partnership agreements, rather than as true leases, part or all of the payments that we and our subsidiaries receive from our percentage and other leases may not be considered rent or may not otherwise satisfy the various requirements for qualification as "rents from real property." In that case, we likely would not be able to satisfy either the 75% or 95% gross income test and, as a result, would lose our REIT status.

[Table of Contents](#)

We expect to enter into sale-leaseback transactions. It is possible that the IRS could take the position that specific sale-leaseback transactions that we treat as true leases are financing arrangements or loans rather than true leases for federal income tax purposes. Recharacterization of a sale-leaseback transaction as a financing arrangement or loan could jeopardize our REIT status.

Interest

Interest income constitutes qualifying mortgage interest for purposes of the 75% gross income test to the extent that the obligation is secured by a mortgage on real property. If we receive interest income with respect to a mortgage loan that is secured by both real property and other property and the highest outstanding balance of the loan during a taxable year exceeds the fair market value of the real property on the date of our commitment to make or purchase the mortgage loan, the interest income will be apportioned between the real property and the other property, and our income from the arrangement will qualify for purposes of the 75% gross income test only to the extent that the interest is allocable to the real property. The failure of a loan to qualify as an obligation secured by a mortgage on real property within the meaning of the REIT rules could adversely affect our ability to qualify as a REIT. The term "interest" generally does not include any amount received or accrued, directly or indirectly, if the determination of such amount depends in whole or in part on the income or profits of any person. However, interest generally includes the following:

- an amount that is based on a fixed percentage or percentages of receipts or sales; and
- an amount that is based on the income or profits of a debtor, as long as the debtor derives substantially all of its income from the real property securing the debt from leasing substantially all of its interest in the property, and only to the extent that the amounts received by the debtor would be qualifying "rents from real property" if received directly by a REIT.

If a loan contains a provision that entitles a REIT to a percentage of the borrower's gain upon the sale of the real property securing the loan or a percentage of the appreciation in the property's value as of a specific date, income attributable to that loan provision will be treated as gain from the sale of the property securing the loan, which generally is qualifying income for purposes of both gross income tests.

We may, on a select basis, purchase mortgage loans. Interest on debt secured by a mortgage on real property or on interests in real property, including, for this purpose, discount points, prepayment penalties, loan assumption fees, and late payment charges that are not compensation for services, generally is qualifying income for purposes of the 75% gross income test. However, if a loan is secured by real property and other property and the highest principal amount of a loan outstanding during a taxable year exceeds the fair market value of the real property securing the loan as of the date the REIT agreed to acquire the loan, a portion of the interest income from such loan that is not allocable to real property will not be qualifying income for purposes of the 75% gross income test, but will be qualifying income for purposes of the 95% gross income test.

We may also, on a select basis, purchase mezzanine loans, which are loans secured by equity interests in a pass-through entity that directly or indirectly owns real property, rather than by a direct mortgage of the real property. IRS Revenue Procedure 2003-65 provides a safe harbor pursuant to which a mezzanine loan, if it meets each of the requirements contained in the Revenue Procedure, will be treated by the IRS as a real estate asset for purposes of the REIT asset tests described below, and interest derived from it will be treated as qualifying mortgage interest for purposes of the 75% gross income test. Although the Revenue Procedure provides a safe harbor on which taxpayers may rely, it does not prescribe rules of substantive tax law. Moreover, we anticipate that the mezzanine loans we may acquire typically will not meet all of the requirements for reliance on this safe harbor. If we invest in mezzanine loans, we intend to invest in a manner that will enable us to continue to satisfy the gross income and asset tests.

Dividends Received

Our share of any dividends received from any corporation (including any TRS, but excluding any REIT) in which we own an equity interest will qualify for purposes of the 95% gross income test but not for purposes of the 75% gross income test. Our share of any dividends received from any REIT in which we own an equity interest, if any, will be qualifying income for purposes of both gross income tests.

Prohibited Transactions

A REIT will incur a 100% tax on the net income (including foreign currency gain) derived from any sale or other disposition of property, other than foreclosure property, that the REIT holds primarily for sale to customers in the ordinary course of a trade or business. We believe that none of our assets will be held primarily for sale to customers and that a sale of any of our assets will not be in the ordinary course of our business. Whether a REIT holds an asset "primarily for sale to customers in the ordinary course of a trade or business" depends, however, on the facts and circumstances in effect from time to time, including those related to a particular asset.

Table of Contents

A safe harbor to the characterization of the sale of property by a REIT as a prohibited transaction and the 100% prohibited transaction tax is available if the following requirements are met:

- the REIT has held the property for not less than two years;
- the aggregate expenditures made by the REIT, or any partner of the REIT, during the two-year period preceding the date of the sale that are includable in the basis of the property do not exceed 30% of the selling price of the property;
- either (1) during the year in question, the REIT did not make more than seven sales of property other than foreclosure property or sales to which Section 1033 of the Code applies, (2) the aggregate adjusted bases of all such properties sold by the REIT during the year did not exceed 10% of the aggregate bases of all of the assets of the REIT at the beginning of the year, (3) the aggregate fair market value of all such properties sold by the REIT during the year did not exceed 10% of the aggregate fair market value of all of the assets of the REIT at the beginning of the year or (4) the REIT satisfies the test in preceding clause (3) by substituting 20% for 10% and either the 3-year average adjusted bases percentage for the taxable year or the 3-year average fair market value percentage for the taxable year does not exceed 10%;
- in the case of property not acquired through foreclosure or lease termination, the REIT has held the property for at least two years for the production of rental income; and
- if the REIT has made more than seven sales of non-foreclosure property during the taxable year, substantially all of the marketing and development expenditures with respect to the property were made through an independent contractor from whom the REIT derives no income.

We generally will attempt to comply with the terms of safe-harbor provision in the federal income tax laws prescribing when an asset sale will not be characterized as a prohibited transaction. We cannot assure you, however, that we can comply with the safe-harbor provision or that we will avoid owning property that may be characterized as property that we hold "primarily for sale to customers in the ordinary course of a trade or business." The 100% tax will not apply to gains from the sale of property that is held through a TRS or other taxable corporation, although such income will be taxed to the corporation at regular corporate income tax rates.

Foreclosure Property

Foreclosure property is real property (including interests in real property) and any personal property incident to such real property: (i) that is acquired by a REIT as the result of the REIT having bid in the property at foreclosure, or having otherwise reduced the property to ownership or possession by agreement or process of law, after there was a default (or default was imminent) on a lease of the property or on a mortgage loan held by the REIT and secured by the property; (ii) for which the related loan or lease was acquired by the REIT at a time when default was not imminent or anticipated; and (iii) for which such REIT makes a proper election to treat the property as foreclosure property. REITs generally are subject to tax at the maximum corporate rate (currently 21%) on any net income from foreclosure property, including any gain from the disposition of the foreclosure property, other than income that would otherwise be qualifying income for purposes of the 75% gross income test. Any gain from the sale of property for which a foreclosure property election has been made will not be subject to the 100% tax on gains from prohibited transactions described above, even if the property would otherwise constitute inventory or dealer property in the hands of the selling REIT. We do not anticipate that we will receive any income from foreclosure property that is not qualifying income for purposes of the 75% gross income test, but, if we do receive any such income, we intend to make an election to treat the related property as foreclosure property.

Foreign Currency Gain

Certain foreign currency gains will be excluded from gross income for purposes of one or both of the gross income tests. "Real estate foreign exchange gain" will be excluded from gross income for purposes of the 75% gross income test. Real estate foreign exchange gain generally includes foreign currency gain attributable to any item of income or gain that is qualifying income for purposes of the 75% gross income test, foreign currency gain attributable to the acquisition or ownership of (or becoming or being the obligor under) obligations secured by mortgages on real property or on interests in real property and certain foreign currency gain attributable to certain "qualified business units" of a REIT. "Passive foreign exchange gain" will be excluded from gross income for purposes of the 95% gross income test. Passive foreign exchange gain generally includes real estate foreign exchange gain as described above, and also includes foreign currency gain attributable to any item of income or gain that is qualifying income for purposes of the 95% gross income test and foreign currency gain attributable to the acquisition or ownership of (or becoming or being the obligor under) obligations. Because passive foreign exchange gain includes real estate foreign exchange gain, real estate foreign exchange gain is excluded from gross income for purposes of both the 75% and 95% gross income tests. These exclusions for real

Table of Contents

estate foreign exchange gain and passive foreign exchange gain do not apply to any certain foreign currency gain derived from dealing, or engaging in substantial and regular trading, in securities. Such gain is treated as nonqualifying income for purposes of both the 75% and 95% gross income tests.

Failure to Satisfy Gross Income Tests

We intend to monitor our sources of income, including any non-qualifying income received by us, and manage our assets so as to ensure our compliance with the gross income tests. We cannot assure you, however, that we will be able to satisfy the gross income tests. If we fail to satisfy one or both of the gross income tests for any taxable year, we nevertheless may qualify as a REIT for that year if we qualify for relief under certain provisions of the federal income tax laws. Those relief provisions are available if:

- our failure to meet those tests is due to reasonable cause and not to willful neglect; and
- following such failure for any taxable year, we file a schedule of the sources of our income in accordance with regulations prescribed by the Secretary of the U.S. Treasury.

We cannot predict, however, whether in all circumstances we would qualify for the relief provisions. In addition, as discussed above in “—Taxation of Our Company,” even if the relief provisions apply, we would incur a 100% tax on the gross income attributable to the greater of the amount by which we fail the 75% gross income test or the 95% gross income test multiplied, in either case, by a fraction intended to reflect our profitability.

Asset Tests

To qualify as a REIT, we also must satisfy the following asset tests at the end of each quarter of each taxable year.

First, at least 75% of the value of our total assets must consist of:

- cash or cash items, including certain receivables and, in certain circumstances, foreign currencies;
- government securities;
- interests in real property, including leaseholds and options to acquire real property and leaseholds;
- interests in mortgages loans secured by real property;
- stock in other REITs; and
- investments in stock or debt instruments during the one-year period following our receipt of new capital that we raise through equity offerings (other than our distribution reinvestment plan) or public offerings of debt with at least a five-year term.

Second, of our investments not included in the 75% asset class, the value of our interest in any one issuer’s securities may not exceed 5% of the value of our total assets, or the 5% asset test.

Third, of our investments not included in the 75% asset class, we may not own more than 10% of the voting power or value of any one issuer’s outstanding securities, or the 10% vote or value test.

Fourth, no more than 20% of the value of our total assets may consist of the securities of one or more TRSs.

Fifth, no more than 25% of the value of our total assets may consist of the securities that are not qualifying assets for purposes of the 75% asset test.

Sixth, not more than 25% of the value of our gross assets may be represented by nonqualified publicly offered REIT debt instruments (i.e., those that are not secured by mortgages on real property or interests in real property).

For purposes of the 5% asset test and the 10% vote or value test, the term “securities” does not include shares in another REIT, equity or debt securities of a qualified REIT subsidiary or TRS, mortgage loans that constitute real estate assets, or equity interests in a partnership. The term “securities,” however, generally includes debt securities issued by a partnership or another REIT, except that for purposes of the 10% value test, the term “securities” does not include “straight debt” securities, which is defined as a written unconditional promise to pay on demand or on a specified date a sum certain in money if (i) the debt is not convertible,

Table of Contents

directly or indirectly, into shares, and (ii) the interest rate and interest payment dates are not contingent on profits, the borrower's discretion, or similar factors. "Straight debt" securities do not include any securities issued by a partnership or a corporation in which we or any controlled TRS (i.e., a TRS in which we own directly or indirectly more than 50% of the voting power or value of the stock) hold non-"straight debt" securities that have an aggregate value of more than 1% of the issuer's outstanding securities. However, "straight debt" securities include debt subject to the following contingencies:

- a contingency relating to the time of payment of interest or principal, as long as either (i) there is no change to the effective yield of the debt obligation, other than a change to the annual yield that does not exceed the greater of 0.25% or 5% of the annual yield, or (ii) neither the aggregate issue price nor the aggregate face amount of the issuer's debt obligations held by us exceeds \$1 million and no more than 12 months of unaccrued interest on the debt obligations can be required to be prepaid; and
- a contingency relating to the time or amount of payment upon a default or prepayment of a debt obligation, as long as the contingency is consistent with customary commercial practice.

In addition, the following are not treated as securities for purposes of the 10% value test:

- Any loan to an individual or an estate;
- Any "section 467 rental agreement," other than an agreement with a related party tenant;
- Any obligation to pay "rents from real property";
- Certain securities issued by governmental entities;
- Any security issued by a REIT;
- Any debt instrument issued by an entity treated as a partnership for federal income tax purposes in which we are a partner to the extent of our proportionate interest in the equity and debt securities of the partnership; and
- Any debt instrument issued by an entity treated as a partnership for federal income tax purposes not described in the preceding bullet points if at least 75% of the partnership's gross income, excluding income from prohibited transactions, is qualifying income for purposes of the 75% gross income test described above.

For purposes of the 10% value test, our proportionate share of the assets of a partnership is our proportionate interest in any securities issued by the partnership, without regard to the securities described in the last two bullet points above.

As described above, we may, on a select basis, invest in mezzanine loans. Although we expect that our investments in mezzanine loans will generally be treated as real estate assets, we anticipate that the mezzanine loans in which we invest will not meet all the requirements of the safe harbor in IRS Revenue Procedure 2003-65. Thus no assurance can be provided that the IRS will not challenge our treatment of mezzanine loans as real estate assets. If we invest in mezzanine loans, we intend to invest in a manner that will enable us to continue to satisfy the asset and gross income test requirements.

We will monitor the status of our assets for purposes of the various asset tests and will manage our portfolio in order to comply at all times with such tests. If we fail to satisfy the asset tests at the end of a calendar quarter, we will not lose our REIT qualification if:

- we satisfied the asset tests at the end of the preceding calendar quarter; and
- the discrepancy between the value of our assets and the asset test requirements arose from changes in the market values of our assets and was not wholly or partly caused by the acquisition of one or more non-qualifying assets.

If we did not satisfy the condition described in the second item, above, we still could avoid disqualification by eliminating any discrepancy within 30 days after the close of the calendar quarter in which it arose.

In the event that we violate the 5% asset test or the 10% vote or value test described above, we will not lose our REIT qualification if (1) the failure is de minimis (up to the lesser of 1% of our assets or \$10 million) and (2) we dispose of assets or otherwise comply with the asset tests within six months after the last day of the quarter in which we identify such failure. In the event of a failure of any of the asset tests (other than de minimis failures described in the preceding sentence), as long as the failure was due

Table of Contents

to reasonable cause and not to willful neglect, we will not lose our REIT status if we (1) dispose of assets or otherwise comply with the asset tests within six months after the last day of the quarter in which we identify the failure, (2) we file a description of each asset causing the failure with the IRS and (3) pay a tax equal to the greater of \$50,000 or 35% of the net income from the nonqualifying assets during the period in which we failed to satisfy the asset tests.

We believe that the assets that we will hold will satisfy the foregoing asset test requirements. However, we will not obtain independent appraisals to support our conclusions as to the value of our assets and securities, or the real estate collateral for the mortgage or mezzanine loans that support our investments. Moreover, the values of some assets may not be susceptible to a precise determination. As a result, there can be no assurance that the IRS will not contend that our ownership of securities and other assets violates one or more of the asset tests applicable to REITs.

Distribution Requirements

Each taxable year, we must distribute dividends, other than capital gain dividends and deemed distributions of retained capital gain, to our shareholders in an aggregate amount at least equal to the sum of:

- 90% of our “REIT taxable income,” computed without regard to the dividends paid deduction and our net capital gain or loss, and
- 90% of our after-tax net income, if any, from foreclosure property, minus
- the sum of certain items of non-cash income that exceeds a percentage of our income.

We must distribute such dividends in the taxable year to which they relate, or in the following taxable year if either (a) we declare the distribution before we timely file our federal income tax return for the year and pay the distribution on or before the first regular dividend payment date after such declaration or (b) we declare the distribution in October, November or December of the taxable year, payable to shareholders of record on a specified day in any such month, and we actually pay the dividend before the end of January of the following year. The distributions under clause (a) are taxable to the shareholders in the year in which paid, and the distributions in clause (b) are treated as paid on December 31st of the prior taxable year. In both instances, these distributions relate to our prior taxable year for purposes of the 90% distribution requirement.

In order for distributions to satisfy this requirement and give rise to a deduction, such dividends may not be “preferential.” A dividend will not be deemed to be preferential if it is pro rata among all outstanding shares of stock within a given class and any preferences between classes of stock are made pursuant to the terms contained in our organizational documents. Under certain technical rules governing deficiency dividends, we could lose our ability to cure an under-distribution in a year with a subsequent year deficiency dividend if we pay preferential dividends. Preferential dividends potentially include “dividend equivalent redemptions.” Accordingly, we intend to pay dividends pro rata within each class, to abide by the rights and preferences of each class of the company’s shares if there is more than one, and to seek to avoid dividend equivalent redemptions. This limitation regarding preferential distributions will not apply if we qualify as a “publicly offered REIT.” A “publicly offered REIT” includes all public listed REITs and public non-listed REITs that are required to file annual and periodic reports with the SEC under the Exchange Act.

We will pay federal income tax on taxable income, including net capital gain, that we do not distribute to shareholders. Furthermore, if we fail to distribute during a calendar year, or by the end of January following the calendar year in the case of distributions with declaration and record dates falling in the last three months of the calendar year, at least the sum of:

- 85% of our REIT ordinary income for such year,
- 95% of our REIT capital gain income for such year, and
- any undistributed taxable income from prior periods, we will incur a 4% nondeductible excise tax on the excess of such required distribution over the amounts we actually distribute.

We may elect to retain and pay income tax on the net long-term capital gain we receive in a taxable year. If we so elect, we will be treated as having distributed any such retained amount for purposes of the 4% nondeductible excise tax described above. We intend to make timely distributions sufficient to satisfy the annual distribution requirements and to avoid corporate income tax and the 4% nondeductible excise tax.

It is possible that, from time to time, we may experience timing differences between the actual receipt of income and actual payment of deductible expenses and the inclusion of that income and deduction of such expenses in arriving at our REIT taxable

Table of Contents

income. For example, we may not deduct recognized capital losses from our “REIT taxable income.” Further, it is possible that, from time to time, we may be allocated a share of net capital gain attributable to the sale of depreciated property that exceeds our allocable share of cash attributable to that sale. As a result of the foregoing, we may have less cash than is necessary to distribute taxable income sufficient to avoid corporate income tax and the excise tax imposed on certain undistributed income or even to meet the 90% distribution requirement. In such a situation, we may need to borrow funds or, if possible, pay taxable dividends of our shares of stock or debt securities.

Under certain circumstances, we may be able to correct a failure to meet the distribution requirement for a year by paying “deficiency dividends” to our shareholders in a later year. We may include such deficiency dividends in our deduction for dividends paid for the earlier year. Although we may be able to avoid income tax on amounts distributed as deficiency dividends, we will be required to pay interest to the IRS based upon the amount of any deduction we take for deficiency dividends.

Recordkeeping Requirements

To avoid a monetary penalty, we must request on an annual basis information from our shareholders designed to disclose the actual ownership of our outstanding shares of stock. We intend to comply with these requirements.

Failure to Qualify

If we fail to satisfy one or more requirements for REIT qualification, other than the gross income tests and the asset tests, we could avoid disqualification if our failure is due to reasonable cause and not to willful neglect and we pay a penalty of \$50,000 for each such failure.

If we fail to qualify as a REIT in any taxable year, and no relief provision applies, we would be subject to federal income tax and any applicable alternative minimum tax on our taxable income at regular corporate rates. In calculating our taxable income in a year in which we fail to qualify as a REIT, we would not be able to deduct amounts paid out to shareholders. In fact, we would not be required to distribute any amounts to shareholders in that year. In such event, to the extent of our current and accumulated earnings and profits, all distributions to shareholders would be taxable as ordinary income. Subject to certain limitations of the federal income tax laws, corporate shareholders might be eligible for the dividends received deduction and shareholders taxed at individual rates may be eligible for the reduced federal income tax rate on such “qualified dividends.” Unless we qualified for relief under specific statutory provisions, we also would be disqualified from taxation as a REIT for the four taxable years following the year during which we failed to qualify as a REIT. We cannot predict whether in all circumstances we would qualify for such statutory relief.

Taxation of Taxable U.S. Shareholders

As used herein, the term “U.S. shareholder” means a holder of our common stock that for U.S. federal income tax purposes is not a tax-exempt organization and is:

- a citizen or resident of the United States;
- a corporation (including an entity treated as a corporation for federal income tax purposes) created or organized in or under the laws of the United States, any of its states or the District of Columbia;
- an estate whose income is subject to federal income taxation regardless of its source; or
- any trust if (1) a U.S. court is able to exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) it has a valid election in place to be treated as a U.S. person.

If a partnership, entity or arrangement treated as a partnership for U.S. federal income tax purposes holds our common stock, the federal income tax treatment of a partner in the partnership will generally depend on the status of the partner and the activities of the partnership. If you are a partner in a partnership holding our common stock, you are urged to consult your tax advisor regarding the consequences of the ownership and disposition of our common stock by the partnership.

Taxation of Distributions

As long as we qualify as a REIT, a taxable U.S. shareholder must generally take into account as ordinary income distributions made out of our current or accumulated earnings and profits that we do not designate as capital gain dividends or retained long-term capital gain. A U.S. shareholder will not qualify for the dividends-received deduction generally available to corporations. In

Table of Contents

addition, dividends paid to a non-corporate U.S. shareholder generally will not qualify for the 20% maximum tax rate for “qualified dividend income.” The maximum tax rate on qualified dividend income is lower than the maximum tax rate on ordinary income, which is currently 37%. Through taxable years ending December 31, 2025, the top effective rate applicable to ordinary dividends from REITs is 29.6% (through a 20% deduction for ordinary REIT dividends received that are not “capital gain dividends” or “qualified dividend income,” subject to complex limitations). The 20% tax rate for qualified dividend income will apply to our ordinary REIT dividends (i) attributable to dividends received by us from non-REIT corporations, such as any TRS, and (ii) to the extent attributable to income upon which we have paid corporate income tax (e.g., to the extent that we distribute less than 100% of our taxable income). In general, to qualify for the reduced tax rate on qualified dividend income, a shareholder must hold our common stock for more than 60 days during the 121-day period beginning on the date that is 60 days before the date on which our common stock becomes ex-dividend.

A U.S. shareholder generally will take into account as long-term capital gain any distributions that we designate as capital gain dividends without regard to the period for which the U.S. shareholder has held our common stock. We generally will designate our capital gain dividends as either 20% or 25% rate dividends. See “— Capital Gains and Losses.” A corporate U.S. shareholder, however, may be required to treat up to 20% of certain capital gain dividends as ordinary income.

We may elect to retain and pay income tax on the net long-term capital gain that we receive in a taxable year. In that case, to the extent that we designate such amount in a timely notice to such shareholder, a U.S. shareholder would be taxed on its proportionate share of our undistributed long-term capital gain. The U.S. shareholder would receive a credit for its proportionate share of the tax we paid. The U.S. shareholder would increase the basis in its shares of stock by the amount of its proportionate share of our undistributed long-term capital gain, minus its share of the tax we paid.

A U.S. shareholder will not incur tax on a distribution in excess of our current and accumulated earnings and profits if the distribution does not exceed the adjusted basis of the U.S. shareholder’s common stock. Instead, the distribution will reduce the adjusted basis of such shares of stock. A U.S. shareholder will recognize a gain on a distribution in excess of both our current and accumulated earnings and profits and the U.S. shareholder’s adjusted basis in his or her shares of stock as long-term capital gain, or short-term capital gain if the shares of stock have been held for one year or less, assuming the shares of stock are a capital asset in the hands of the U.S. shareholder. In addition, if we declare a dividend in October, November, or December of any year that is payable to a U.S. shareholder of record on a specified date in any such month, such dividend shall be treated as both paid by us and received by the U.S. shareholder on December 31 of such year, provided that we actually distribute such dividend during January of the following calendar year.

Shareholders may not include in their individual income tax returns any of our net operating losses or capital losses. Instead, these losses are generally carried over by us for potential offset against our future income. Taxable distributions from us and gain from the disposition of our common stock will not be treated as passive activity income, and, therefore, shareholders generally will not be able to apply any “passive activity losses,” such as losses from certain types of limited partnerships in which the shareholder is a limited partner, against such income. In addition, taxable distributions from us and gain from the disposition of our common stock generally will be treated as investment income for purposes of the investment interest limitations. We will notify shareholders after the close of our taxable year as to the portions of the distributions attributable to that year that constitute ordinary income, return of capital and capital gain.

Taxation of U.S. Shareholders on the Disposition of Common stock

A U.S. shareholder who is not a dealer in securities must generally treat any gain or loss realized upon a taxable disposition of our common stock as long-term capital gain or loss if the U.S. shareholder has held our common stock for more than one year and otherwise as short-term capital gain or loss. In general, a U.S. shareholder will realize gain or loss in an amount equal to the difference between the sum of the fair market value of any property and the amount of cash received in such disposition and the U.S. shareholder’s adjusted tax basis. A shareholder’s adjusted tax basis generally will equal the U.S. shareholder’s acquisition cost, increased by the excess of net capital gains deemed distributed to the U.S. shareholder (discussed above) less tax deemed paid on such gains and reduced by any returns of capital. However, a U.S. shareholder must treat any loss upon a sale or exchange of common stock held by such shareholder for six months or less as a long-term capital loss to the extent of capital gain dividends and any other actual or deemed distributions from us that such U.S. shareholder treats as long-term capital gain. All or a portion of any loss that a U.S. shareholder realizes upon a taxable disposition of our common stock may be disallowed if the U.S. shareholder purchases other common stock within 30 days before or after the disposition.

Capital Gains and Losses

A taxpayer generally must hold a capital asset for more than one year for gain or loss derived from its sale or exchange to be treated as long-term capital gain or loss. The highest marginal individual income tax rate currently is 37%. The maximum tax rate on long-term capital gain applicable to taxpayers taxed at individual rates is 20% for sales and exchanges of assets held for more than one year. The maximum tax rate on long-term capital gain from the sale or exchange of “Section 1250 property,” or depreciable real property, is 25%, which applies to the lesser of the total amount of the gain or the accumulated depreciation on the Section 1250 property. Gains recognized by U.S. shareholders that are corporations are subject to U.S. federal income tax at a maximum rate of 21%, whether or not classified as long-term capital gain.

With respect to distributions that we designate as capital gain dividends and any retained capital gain that we are deemed to distribute, we generally will designate whether such a distribution is taxable to our shareholders taxed at individual rates at a 20% or 25% rate. Thus, the tax rate differential between capital gain and ordinary income for those taxpayers may be significant. In addition, the characterization of income as capital gain or ordinary income may affect the deductibility of capital losses. A non-corporate taxpayer may deduct capital losses not offset by capital gains against its ordinary income only up to a maximum annual amount of \$3,000. A non-corporate taxpayer may carry forward unused capital losses indefinitely. A corporate taxpayer must pay tax on its net capital gain at ordinary corporate rates. A corporate taxpayer may deduct capital losses only to the extent of capital gains, with unused losses being carried back three years and forward five years.

Medicare Tax on Unearned Income

High-income individuals, estates and trusts, will be subject to an additional 3.8% tax, which, for individuals, applies to the lesser of (i) “net investment income” or (ii) the excess of “modified adjusted gross income” over \$200,000 (\$250,000 if married and filing jointly or \$125,000 if married and filing separately). “Net investment income” generally equals the taxpayer’s gross investment income reduced by the deductions that are allocable to such income. Investment income generally includes passive income such as dividends and gains from sales of stock. U.S. shareholders should consult their tax advisors regarding the effect, if any, of this legislation on their ownership and disposition of our common stock.

Taxation of Tax-Exempt Shareholders

Tax-exempt entities, including qualified employee pension and profit sharing trusts and individual retirement accounts, generally are exempt from federal income taxation. However, they are subject to taxation on their unrelated business taxable income (“UBTI”). The IRS has issued a ruling that dividends from a REIT to an exempt employee pension trust do not constitute UBTI so long as the exempt employee pension trust does not otherwise use the shares of beneficial interest in the REIT in an unrelated trade or business of the pension trust. Based on that ruling, amounts that we distribute to tax-exempt shareholders generally should not constitute UBTI. However, if a tax-exempt shareholder were to finance its acquisition of common stock with debt, a portion of the income that it receives from us would constitute UBTI pursuant to the “debt-financed property” rules. Moreover, social clubs, voluntary employee benefit associations, supplemental unemployment benefit trusts and qualified group legal services plans that are exempt from taxation under special provisions of the federal income tax laws are subject to different UBTI rules, which generally will require them to characterize distributions that they receive from us as UBTI. Finally, in certain circumstances, a qualified employee pension or profit sharing trust that owns more than 10% of our shares of stock must treat a percentage of the dividends that it receives from us as UBTI. Such percentage is equal to the gross income we derive from an unrelated trade or business, determined as if we were a pension trust, divided by our total gross income for the year in which we pay the dividends. That rule applies to a pension trust holding more than 10% of our shares of stock only if:

- the percentage of our dividends that the tax-exempt trust must treat as UBTI is at least 5%;
- we qualify as a REIT by reason of the modification of the rule requiring that no more than 50% of our shares of stock be owned by five or fewer individuals that allows the beneficiaries of the pension trust to be treated as holding our shares of stock in proportion to their actuarial interests in the pension trust; and

either:

- one pension trust owns more than 25% of the value of our shares of stock; or
- a group of pension trusts individually holding more than 10% of the value of our shares of stock collectively owns more than 50% of the value of our shares of stock.

Taxation of Non-U.S. Shareholders

The term “non-U.S. shareholder” means a holder of our common stock that is not a U.S. shareholder or a partnership (or entity treated as a partnership for federal income tax purposes). The rules governing federal income taxation of nonresident alien individuals, foreign corporations, and other foreign shareholders are complex. This section is only a summary of such rules. **We urge non-U.S. shareholders to consult their own tax advisors to determine the impact of federal, state, and local income tax laws on the purchase, ownership and sale of our common stock, including any reporting requirements.**

Taxation of REIT Distributions

A distribution to a non-U.S. shareholder that is not attributable to gain from our sale or exchange of a “United States real property interest,” or USRPI, as defined below, that we do not designate as a capital gain dividend or retained capital gain and that we pay out of our current or accumulated earnings and profits will be subject to a 30% withholding tax on the gross amount of the dividend unless an applicable tax treaty reduces or eliminates the tax. If a dividend is “effectively connected income,” or such dividend is treated as effectively connected with the non-U.S. shareholder’s conduct of a U.S. trade or business, the non-U.S. shareholder generally will be subject to federal income tax on the dividend at graduated rates, in the same manner as U.S. shareholders are taxed with respect to such dividend, and a non-U.S. shareholder that is a corporation also may be subject to the 30% branch profits tax with respect to that dividend. We plan to withhold U.S. income tax at the rate of 30% on the gross amount of any such distribution paid to a non-U.S. shareholder unless either:

- a lower treaty rate applies and the non-U.S. shareholder files an IRS Form W-8BEN or W-8BEN-E evidencing eligibility for that reduced rate with us; or
- the non-U.S. shareholder files an IRS Form W-8ECI with us claiming that the distribution is effectively connected income.

A non-U.S. shareholder will not incur tax on a distribution in excess of our current and accumulated earnings and profits if the excess portion of such distribution does not exceed the adjusted basis of its common stock. Instead, the excess portion of such distribution will reduce the adjusted basis of such shares of stock. A non-U.S. shareholder will be subject to tax on a distribution that exceeds both our current and accumulated earnings and profits and the adjusted basis of its common stock, if the non-U.S. shareholder otherwise would be subject to tax on gain from the sale or disposition of its common stock, as described below. Because we generally cannot determine at the time we make a distribution whether the distribution will exceed our current and accumulated earnings and profits, we normally will withhold tax on the entire amount of any distribution at the same rate as we would withhold on a dividend. However, a non-U.S. shareholder may claim a refund of amounts that we withhold if we later determine that a distribution in fact exceeded our current and accumulated earnings and profits.

For any year in which we qualify as a REIT, a non-U.S. shareholder will incur tax on distributions that are attributable to gain from our sale or exchange of a USRPI under the Foreign Investment in Real Property Act of 1980 (“FIRPTA”). A USRPI includes certain interests in real property and stock in corporations at least 50% of whose assets consist of interests in real property. Under FIRPTA, a non-U.S. shareholder is taxed on distributions attributable to gain from sales of USRPIs as if such gain were effectively connected with a U.S. business of the non-U.S. shareholder. A non-U.S. shareholder thus will be required to file U.S. federal income tax returns and will be taxed on such a distribution at the normal capital gains rates applicable to U.S. shareholders, subject to applicable alternative minimum tax and a special alternative minimum tax in the case of a nonresident alien individual. A non-U.S. corporate shareholder not entitled to treaty relief or exemption also may be subject to the 30% branch profits tax on such a distribution. We will be required to withhold 35% of any distribution that we could designate as a capital gain dividend. A non-U.S. shareholder will receive a credit against its tax liability for the amount we withhold.

However, if our common stock are regularly traded on an established securities market in the United States, capital gain distributions on our common stock that are attributable to our sale of real property will be treated as ordinary dividends rather than as gain from the sale of a USRPI, as long as the non-U.S. shareholder did not own more than 10% of our common stock at any time during the one-year period preceding the distribution. As a result, non-U.S. shareholders generally will be subject to withholding tax on such capital gain distributions in the same manner as they are subject to withholding tax on ordinary dividends. If our common stock is not regularly traded on an established securities market in the United States or the non-U.S. shareholder owned more than 10% of our common stock at any time during the one-year period preceding the distribution, capital gain distributions that are attributable to our sale of real property would be subject to tax under FIRPTA, as described in the preceding paragraph. Moreover, if a non-U.S. shareholder disposes of our common stock during the 30-day period preceding a dividend payment, and such non-U.S. shareholder (or a person related to such non-U.S. shareholder) acquires or enters into a contract or option to acquire our common stock within 61 days of the first day of the 30-day period described above, and any portion of such dividend payment would, but for the disposition, be treated as a USRPI capital gain to such non-U.S. shareholder, then such non-U.S. shareholder shall be treated as having USRPI capital gain in an amount that, but for the disposition, would have been treated as USRPI capital gain.

Taxation of Dispositions of REIT Shares

Non-U.S. shareholders could incur tax under FIRPTA with respect to gain realized upon a disposition of our common stock or if we are a United States real property holding corporation during a specified testing period. If at least 50% of a REIT's assets are United States real property interests, then the REIT will be a United States real property holding corporation. We anticipate that we will be a United States real property holding corporation based on our investment strategy. However, if we are a United States real property holding corporation, a non-U.S. shareholder generally would not incur tax under FIRPTA on gain from the sale of our common stock if we are a "domestically controlled qualified investment entity." A domestically controlled qualified investment entity includes a REIT in which, at all times during a specified testing period, less than 50% in value of its shares are held directly or indirectly by non-U.S. shareholders. We cannot assure you that this test will be met. If our common stock is regularly traded on an established securities market, an additional exception to the tax under FIRPTA will be available with respect to our common stock, even if we do not qualify as a domestically controlled qualified investment entity at the time the non-U.S. shareholder sells our common stock. Under that exception, the gain from such a sale by such a non-U.S. shareholder will not be subject to tax under FIRPTA if:

- our common stock is treated as being regularly traded under applicable U.S. Treasury Regulations on an established securities market; and
- the non-U.S. shareholder owned, actually or constructively, 10% or less of our common stock at all times during a specified testing period.

If the gain on the sale of our common stock were taxed under FIRPTA, a non-U.S. shareholder would be taxed on that gain in the same manner as U.S. shareholders, subject to applicable alternative minimum tax and a special alternative minimum tax in the case of nonresident alien individuals. Furthermore, a non-U.S. shareholder generally will incur tax on gain not subject to FIRPTA if:

- the gain is effectively connected with the non-U.S. shareholder's U.S. trade or business, in which case the non-U.S. shareholder will be subject to the same treatment as U.S. shareholders with respect to such gain; or
- the non-U.S. shareholder is a nonresident alien individual who was present in the U.S. for 183 days or more during the taxable year and has a "tax home" in the United States, in which case the non-U.S. shareholder will incur a 30% tax on his or her capital gains.

FATCA Withholding

Under legislation (commonly referred to as "FATCA"), withholding at a rate of 30% will be required on dividends in respect of our common stock received by certain non-U.S. holders if certain disclosure requirements related to U.S. accounts or ownership are not satisfied. In addition, if those disclosure requirements are not satisfied, under FATCA, a U.S. withholding tax at a 30% rate will be imposed, for payment after December 31, 2018, on gross proceeds from the sale of shares of our common stock received by certain non-U.S. holders. If payment of withholding taxes is required, non-U.S. holders that are otherwise eligible for an exemption from, or reduction of, U.S. withholding taxes with respect of such interest and proceeds will be required to seek a refund from the IRS to obtain the benefit of such exemption or reduction. We will not pay any additional amounts in respect of any amounts withheld. However, under recently released proposed Treasury Regulations, such gross proceeds are not subject to FATCA withholding. In the preamble to these proposed Treasury Regulations, the IRS has stated that taxpayers may generally rely on the proposed treasury Regulations until final Treasury Regulations are issued. Non-U.S. shareholders are encouraged to consult with their tax advisers regarding the possible implications of the FATCA rules on their investment in our common stock.

Information Reporting Requirements and Backup Withholding

We will report to our shareholders and to the IRS the amount of distributions we pay during each calendar year, and the amount of tax we withhold, if any. Under the backup withholding rules, a shareholder may be subject to backup withholding at a rate of 24% with respect to distributions unless the holder:

- is a corporation or qualifies for certain other exempt categories and, when required, demonstrates this fact; or
- provides a taxpayer identification number, certifies as to no loss of exemption from backup withholding, and otherwise complies with the applicable requirements of the backup withholding rules.

A shareholder who does not provide us with its correct taxpayer identification number also may be subject to penalties imposed by the IRS. Any amount paid as backup withholding will be creditable against the shareholder's income tax liability. In addition, we may be required to withhold a portion of capital gain distributions to any shareholders who fail to certify their non-foreign status to us.

Backup withholding will generally not apply to payments of dividends made by us or our paying agents, in their capacities as such, to a non-U.S. shareholder provided that the non-U.S. shareholder furnishes to us or our paying agent the required certification as to its non-U.S. status, such as providing a valid IRS Form W-8, or certain other requirements are met. Notwithstanding the foregoing, backup withholding may apply if either we or our paying agent has actual knowledge, or reason to know, that the holder is a U.S. person that is not an exempt recipient. Payments of the net proceeds from a disposition or a redemption effected outside the U.S. by a non-U.S. shareholder made by or through a foreign office of a broker generally will not be subject to information reporting or backup withholding. However, information reporting (but not backup withholding) generally will apply to such a payment if the broker has certain connections with the U.S. unless the broker has documentary evidence in its records that the beneficial owner is a non-U.S. shareholder and specified conditions are met or an exemption is otherwise established. Payment of the net proceeds from a disposition by a non-U.S. shareholder of common stock made by or through the U.S. office of a broker is generally subject to information reporting and backup withholding unless the non-U.S. shareholder certifies under penalties of perjury that it is not a U.S. person and satisfies certain other requirements, or otherwise establishes an exemption from information reporting and backup withholding.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be refunded or credited against the shareholder's federal income tax liability if certain required information is furnished to the IRS. Shareholders are urged to consult their own tax advisors regarding application of backup withholding to them and the availability of, and procedure for obtaining an exemption from, backup withholding.

Other Tax Consequences

Tax Aspects of Our Investments in Our Operating Partnership and Subsidiary Partnerships

The following discussion summarizes certain federal income tax considerations applicable to our direct or indirect investments in our Operating Partnership and any subsidiary partnerships or limited liability companies that we form or acquire (each individually a "Partnership" and, collectively, the "Partnerships"). The discussion does not cover state or local tax laws or any federal tax laws other than income tax laws.

Classification as Partnerships. We will include in our income our distributive share of each Partnership's income and to deduct our distributive share of each Partnership's losses only if such Partnership is classified for federal income tax purposes as a partnership (or an entity that is disregarded for federal income tax purposes if the entity has only one owner or member) rather than as a corporation or an association taxable as a corporation. An unincorporated entity with at least two owners or members will be classified as a partnership, rather than as a corporation, for federal income tax purposes if it:

- is treated as a partnership under the Treasury regulations relating to entity classification (the "check-the-box regulations"); and
- is not a "publicly traded" partnership.

Under the check-the-box regulations, an unincorporated entity with at least two owners or members may elect to be classified either as an association taxable as a corporation or as a partnership. If such an entity fails to make an election, it generally will be treated as a partnership (or an entity that is disregarded for federal income tax purposes if the entity has only one owner or member) for federal income tax purposes. Each Partnership intends to be classified as a partnership for federal income tax purposes, and no Partnership will elect to be treated as an association taxable as a corporation under the check-the-box regulations.

A publicly traded partnership is a partnership whose interests are traded on an established securities market or are readily tradable on a secondary market or the substantial equivalent thereof. A publicly traded partnership will not, however, be treated as a corporation for any taxable year if, for each taxable year, 90% or more of the partnership's gross income for such year consists of certain passive-type income, including real property rents, gains from the sale or other disposition of real property, interest, and dividends (the "90% passive income exception"). Treasury regulations (the "PTP regulations") provide limited safe harbors from the definition of a publicly traded partnership. Pursuant to one of those safe harbors (the "private placement exclusion"), interests in a partnership will not be treated as readily tradable on a secondary market or the substantial equivalent thereof if (1) all interests in the partnership were issued in a transaction or transactions that were not required to be registered under the Securities Act, and (2) the partnership does not have more than 100 partners at any time during the partnership's taxable year. In determining the number of partners in a partnership, a person owning an interest in a partnership, grantor trust, or S corporation that owns an interest in the partnership is treated as a partner in such partnership only if (1) substantially all of the value of the owner's interest in the entity is attributable to the entity's direct or indirect interest in the partnership and (2) a principal purpose of the use of the entity is to permit the partnership to satisfy the 100-partner limitation. Each Partnership is expected to qualify for the private placement exclusion in the foreseeable future.

[Table of Contents](#)

We have not requested, and do not intend to request, a ruling from the IRS that the Partnerships will be classified as partnerships for federal income tax purposes. If for any reason a Partnership were taxable as a corporation, rather than as a partnership, for federal income tax purposes, we likely would not be able to qualify as a REIT unless we qualified for certain relief provisions. See “— Gross Income Tests” and “— Asset Tests.” In addition, any change in a Partnership’s status for tax purposes might be treated as a taxable event, in which case we might incur tax liability without any related cash distribution. See “— Distribution Requirements.” Further, items of income and deduction of such Partnership would not pass through to its partners, and its partners would be treated as shareholders for tax purposes. Consequently, such Partnership would be required to pay income tax at corporate rates on its net income, and distributions to its partners would constitute dividends that would not be deductible in computing such Partnership’s taxable income.

Income Taxation of the Partnerships and their Partners

Partners, Not the Partnerships, Subject to Tax. A partnership is not a taxable entity for federal income tax purposes. Rather, we are required to take into account our allocable share of each Partnership’s income, gains, losses, deductions, and credits for any taxable year of such Partnership ending within or with our taxable year, without regard to whether we have received or will receive any distribution from such Partnership.

Partnership Allocations. Although a partnership agreement generally will determine the allocation of income and losses among partners, such allocations will be disregarded for tax purposes if they do not comply with the provisions of the federal income tax laws governing partnership allocations. If an allocation is not recognized for federal income tax purposes, the item subject to the allocation will be reallocated in accordance with the partners’ interests in the partnership, which will be determined by taking into account all of the facts and circumstances relating to the economic arrangement of the partners with respect to such item. Each Partnership’s allocations of taxable income, gain, and loss are intended to comply with the requirements of the federal income tax laws governing partnership allocations.

Tax Allocations With Respect to Our Properties. Income, gain, loss, and deduction attributable to appreciated or depreciated property that is contributed to a partnership in exchange for an interest in the partnership must be allocated in a manner such that the contributing partner is charged with, or benefits from, respectively, the unrealized gain or unrealized loss associated with the property at the time of the contribution. The amount of such unrealized gain or unrealized loss (“built-in gain” or “built-in loss”) is generally equal to the difference between the fair market value of the contributed property at the time of contribution and the adjusted tax basis of such property at the time of contribution (a “book-tax difference”). Any property purchased by our Operating Partnership for cash initially will have an adjusted tax basis equal to its fair market value, resulting in no book-tax difference. Our Operating Partnership has acquired properties by contribution in exchange for interests in our Operating Partnership, which resulted in book-tax differences. Allocations with respect to book-tax differences are solely for federal income tax purposes and do not affect the book capital accounts or other economic or legal arrangements among the partners. The U.S. Treasury Department has issued regulations requiring partnerships to use a “reasonable method” for allocating items with respect to which there is a book-tax difference and outlining several reasonable allocation methods. Under certain available methods, the carryover basis of contributed properties in the hands of our Operating Partnership (i) would cause us to be allocated lower amounts of depreciation deductions for tax purposes than would be allocated to us if all contributed properties were to have a tax basis equal to their fair market value at the time of the contribution and (ii) in the event of a sale of such properties, could cause us to be allocated taxable gain in excess of the economic or book gain allocated to us as a result of such sale, with a corresponding benefit to the contributing partners. An allocation described in (ii) above might cause us to recognize taxable income in excess of cash proceeds in the event of a sale or other disposition of property, which might adversely affect our ability to comply with the REIT distribution requirements and may result in a greater portion of our distributions being taxed as dividends. Our Operating Partnership generally intends to use the “traditional” method for allocating items with respect to which there is a book-tax difference caused by the contribution of properties to our Operating Partnership in exchange for interests.

Any property acquired by our Operating Partnership in a taxable transaction will initially have a tax basis equal to its fair market value, and Section 704(c) of the Code generally will not apply.

Basis in Partnership Units. Our adjusted tax basis in our common units in our Operating Partnership generally is equal to:

- the amount of cash and the basis of any other property contributed by us to our Operating Partnership;
- increased by our allocable share of our Operating Partnership’s income and our allocable share of indebtedness of our Operating Partnership; and

Table of Contents

- reduced, but not below zero, by our allocable share of our Operating Partnership's loss and the amount of cash distributed to us, and by constructive distributions resulting from a reduction in our share of indebtedness of our Operating Partnership.

If the allocation of our distributive share of our Operating Partnership's loss would reduce the adjusted tax basis of our common units below zero, the recognition of such loss will be deferred until such time as the recognition of such loss would not reduce our adjusted tax basis below zero. To the extent that our Operating Partnership's distributions, or any decrease in our share of the indebtedness of our Operating Partnership, which is considered a constructive cash distribution to the partners, reduce our adjusted tax basis below zero, such distributions will constitute taxable income to us. Such distributions and constructive distributions normally will be characterized as long-term capital gain.

Sale of a Partnership's Property

Generally, any gain realized by a Partnership on the sale of property held by the Partnership for more than one year will be long-term capital gain, except for any portion of such gain that is treated as depreciation or cost recovery recapture. Any gain or loss recognized by a Partnership on the disposition of contributed properties will be allocated first to the partners of the Partnership who contributed such properties to the extent of their built-in gain or loss on those properties for federal income tax purposes. The partners' built-in gain or loss on such contributed properties will equal the difference between the partners' proportionate share of the book value of those properties and the partners' tax basis allocable to those properties at the time of the contribution. Any remaining gain or loss recognized by the Partnership on the disposition of the contributed properties, and any gain or loss recognized by the Partnership on the disposition of the other properties, will be allocated among the partners in accordance with their respective percentage interests in the Partnership.

Our share of any gain realized by a Partnership on the sale of any property held by the Partnership as inventory or other property held primarily for sale to customers in the ordinary course of the Partnership's trade or business will be treated as income from a prohibited transaction that is subject to a 100% penalty tax. Such prohibited transaction income also may have an adverse effect upon our ability to satisfy the income tests for REIT status. See "— Gross Income Tests." We do not presently intend to acquire or hold or to allow any partnership to acquire or hold any property that represents inventory or other property held primarily for sale to customers in the ordinary course of our or such partnership's trade or business.

State, Local and Foreign Taxes

We and you may be subject to taxation by various states, localities and foreign jurisdictions, including those in which we or a shareholder transacts business, owns property or resides. The state, local and foreign tax treatment may differ from the federal income tax treatment described above.

Consequently, you are urged to consult your own tax advisors regarding the effect of state, local and foreign tax laws upon an investment in our common stock.

ERISA CONSIDERATIONS

A fiduciary of a pension, profit sharing, retirement or other employee benefit plan, or plan, subject to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), should consider the fiduciary standards under ERISA in the context of the plan’s particular circumstances before authorizing an investment of a portion of such plan’s assets in our common stock. Accordingly, such fiduciary should consider (i) whether the investment satisfies the diversification requirements of Section 404(a)(1)(C) of ERISA, (ii) whether the investment is in accordance with the documents and instruments governing the plan as required by Section 404(a)(1)(D) of ERISA, and (iii) whether the investment is prudent under ERISA. In addition to the imposition of general fiduciary standards of investment prudence and diversification, ERISA, and the corresponding provisions of the Code, prohibit a wide range of transactions involving the assets of the plan and persons who have certain specified relationships to the plan (“parties in interest” within the meaning of ERISA, “disqualified persons” within the meaning of the Code). Thus, a plan fiduciary considering an investment in our common stock also should consider whether the acquisition or the continued holding of the shares might constitute or give rise to a direct or indirect prohibited transaction that is not subject to an exemption issued by the Department of Labor (the “DOL”). Similar restrictions apply to many governmental and foreign plans which are not subject to ERISA. Thus, those considering investing in the shares on behalf of such a plan should consider whether the acquisition or the continued holding of the shares might violate any such similar restrictions.

The DOL has issued final regulations (the “DOL Regulations”), as to what constitutes assets of an employee benefit plan under ERISA. Under the DOL Regulations, if a plan acquires an equity interest in an entity, which interest is neither a “publicly offered security” nor a security issued by an investment company registered under the Investment Company Act, the plan’s assets would include, for purposes of the fiduciary responsibility provision of ERISA, both the equity interest and an undivided interest in each of the entity’s underlying assets unless certain specified exceptions apply. The DOL Regulations define a publicly offered security as a security that is “widely held,” “freely transferable,” and either part of a class of securities registered under the Exchange Act or sold pursuant to an effective registration statement under the Securities Act (provided the securities are registered under the Exchange Act within 120 days after the end of the fiscal year of the issuer during which the public offering occurred). The shares are being sold in an offering registered under the Securities Act and will be registered under the Exchange Act.

The DOL Regulations provide that a security is “widely held” only if it is part of a class of securities that is owned by 100 or more investors independent of the issuer and of one another. A security will not fail to be “widely held” because the number of independent investors falls below 100 subsequent to the initial public offering as a result of events beyond the issuer’s control.

The DOL Regulations provide that whether a security is “freely transferable” is a factual question to be determined on the basis of all relevant facts and circumstances. We believe that the restrictions imposed under our articles of incorporation on the transfer of our shares are limited to the restrictions on transfer generally permitted under the DOL Regulations and are not likely to result in the failure of the common stock to be “freely transferable.” The DOL Regulations only establish a presumption in favor of the finding of free transferability, and, therefore, no assurance can be given that the DOL will not reach a contrary conclusion.

Assuming that the common stock will be “widely held” and “freely transferable,” we believe that our common stock will be publicly offered securities for purposes of the DOL Regulations and that our assets will not be deemed to be “plan assets” of any plan that invests in our common stock.

Each holder of our common stock will be deemed to have represented and agreed that its purchase and holding of such common stock (or any interest therein) will not constitute or result in a non-exempt prohibited transaction under ERISA or Section 4975 of the Code.

PLAN OF DISTRIBUTION

General

Following the Redemption, Modiv OP plans to effect the distribution of the Distribution Shares to the holders of Class C units of Modiv OP, including Modiv, and Modiv plans to further distribute such Distribution Shares that it receives to holders of its common stock. The distribution of Distribution Shares by Modiv OP and the subsequent distribution of Distribution Shares by Modiv are collectively referred to herein as the “Distribution.” Modiv OP and Modiv have fixed the Record Date for the Distribution at

The ratio, based on [•] Distribution Shares divided by the [•] Class C units of Modiv OP outstanding as of the Record Date, is [•] Distribution Shares per Modiv Class C OP unit. The ratio, based on [•] Distribution Shares to be distributed by Modiv divided by the [•] shares of common stock of Modiv outstanding as of the Record Date is [•] Distribution Shares per share of Modiv common stock. The estimated distribution date for the Distribution is (the “Distribution Date”). See below under “Number of Shares Modiv Class C OP Unitholders and Modiv Shareholders Will Receive.” For the issuance of fractional shares, see below under “Treatment of Fractional Shares.” Completion of the Distribution is subject to the satisfaction of the Redemption Conditions and consummation of the Redemption. Furthermore, it is within our discretion whether or not to consummate the Redemption. In addition, Modiv OP and/or Modiv may at any time until the Distribution decide to abandon the Distribution or modify or change the terms of the Distribution, subject to the terms and conditions of the Purchase Agreement. For a more detailed discussion, see “Background of the Portfolio Acquisition” and see below under “Conditions to the Distribution.”

When and How You Will Receive Our Shares

Following the Redemption, Modiv OP will distribute to its Class C unitholders, including Modiv, as a pro rata dividend, [•] shares of our common stock for every Class C unit of Modiv OP outstanding as of , the Record Date for the Distribution. Modiv will then distribute to the holders of its common stock, as a pro rata dividend, [•] shares of our common stock for every share of common stock of Modiv outstanding as of the Record Date.

Modiv will provide additional information to holders of Modiv OP units and holders of Modiv common stock regarding the delivery of the Distribution Shares when it announces the Record Date.

If you sell any of your Class C units of Modiv OP or any of your shares of Modiv common stock on or before the Distribution Date, the buyer of those shares may in some circumstances be entitled to receive the shares of our common stock to be distributed in respect of the Modiv Class C OP units or the shares of Modiv common stock that you sold. See “Trading Prior to the Distribution Date” for more information.

We are not asking holders of Modiv Class C OP units or holders of Modiv common stock to take any action in connection with the Distribution. We are not asking you for a proxy and request that you not send us a proxy. We are also not asking you to make any payment or surrender or exchange any of your Modiv Class C OP units or shares of Modiv common stock for shares of our common stock. The number of outstanding Class C units of Modiv OP and outstanding shares of Modiv common stock will not change as a result of the Distribution.

Treatment of Fractional Shares

Modiv OP and Modiv will not distribute any fractional shares of our common stock in connection with the Distribution. Instead, as to any such fractional shares, Modiv OP or Modiv, as the case may be, will round up or round down to the nearest whole share or will distribute cash in lieu of fractional share interests in our common stock to which Modiv OP unit holders and holders of Modiv common stock would otherwise be entitled to receive in the Distribution. Modiv will provide additional information to holders of Modiv OP units and holders of Modiv common stock regarding the treatment of fractional shares in connection with the Distribution when it announces the Record Date.

Trading Prior to the Distribution Date

If you sell any of your shares of Modiv common stock on or before the Distribution Date, the buyer of those shares may in some circumstances be entitled to receive the shares of our common stock to be distributed in respect of the Modiv shares you sold. We anticipate that, on or shortly before the Record Date and continuing up to and including the Distribution Date, there will be two markets in Modiv common stock: a “regular-way” market and an “ex-dividend” market. Shares of Modiv common stock that trade on the “regular-way market” will trade with the entitlement to receive shares of our common stock in the Distribution. Shares that trade

Table of Contents

on the ex-dividend market will trade without the entitlement to receive shares of our common stock in the Distribution. Therefore, if you sell shares of Modiv common stock in the “regular-way” market up to and including the Distribution Date, you will be selling your right to receive shares of our common stock in the Distribution. If you hold shares of Modiv common stock on the Record Date and then decide to sell any shares of Modiv common stock before the Distribution Date, you should make sure your stockbroker, bank or other nominee understands whether you want to sell your shares of Modiv common stock with or without your entitlement to our common stock pursuant to the Distribution.

Conditions to the Distribution

We expect that the Distribution will be effective as soon as practicable after the satisfaction of the Redemption Conditions and completion of the Redemption, provided that Modiv OP and/or Modiv may at any time until the Distribution decide to abandon the Distribution or modify or change the terms of the Distribution, subject to the terms and conditions of the Purchase Agreement. For a more detailed discussion, see “Background of the Portfolio Acquisition.”

We are not aware of any material federal, foreign or state regulatory requirements with which we must comply, other than SEC rules and regulations, or any material approvals that we must obtain, other than the approval of Nasdaq for the listing of the Distribution Shares and the SEC’s declaration of the effectiveness of the Registration Statement, in connection with the Distribution.

LEGAL MATTERS

Certain legal matters in connection with this offering, including the validity of the securities being offered hereby, will be passed upon for us by Foley & Lardner LLP.

EXPERTS

The audited financial statements incorporated in this prospectus by reference from our Annual Report on Form 10-K for the year ended December 31, 2022 have been so included in reliance on the reports of MaloneBailey LLP, independent registered public accountants, as stated in their reports incorporated by reference herein, and upon the authority of said firm as experts in auditing and accounting.

INCORPORATION BY REFERENCE

The SEC allows us to “incorporate by reference” the information we file with it, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this prospectus. We incorporate by reference the documents listed below:

- Our Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2022, filed with the SEC on March 28, 2023;
- Our Quarterly Reports on Form 10-Q for the [quarter ended March 31, 2023, filed with the SEC on May 12, 2023](#), and for the [quarter ended June 30, 2023, filed with the SEC on August 14, 2023](#);
- Our Current Reports on Form 8-K filed with the SEC on [January 4, 2023](#), [February 9, 2023](#), [February 15, 2023](#), [April 10, 2023](#), [June 2, 2023](#), [July 26, 2023](#), [August 14, 2023](#), [September 8, 2023](#), and [September 13, 2023](#) (other than documents or portions of those documents deemed to be furnished but not filed); and
- The information specifically incorporated by reference into our Annual Report on [Form 10-K](#) for the fiscal year ended December 31, 2022, from our [Definitive Proxy Statement](#) filed with the SEC on April 28, 2023; and
- The description of our common stock, which is contained in the registration statement on [Form 8-A](#) filed with the SEC on August 30, 2021, including amendments or reports filed for the purpose of updating that description.

Any statement contained herein or in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes hereof or of the related prospectus supplement to the extent that a statement contained herein or in any other subsequently filed document which is also incorporated or deemed to be incorporated herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

We will provide without charge to each person, including any beneficial owner, to whom this prospectus is delivered, upon his or her written or oral request, a copy of any or all documents referred to above which have been or may be incorporated by reference into this prospectus but not delivered with this prospectus excluding exhibits to those documents unless they are specifically incorporated by reference into those documents. You can request those documents from us, at no cost, by writing or telephoning us at: Generation Income Properties, Inc., (813) 225-4122, 401 East Jackson Street, Suite 3300, Tampa, Florida 33602, Attention: Secretary.

The most recent information that we file with the SEC automatically updates and supersedes older information. The information contained in any such filing will be deemed to be a part of this prospectus, commencing on the date on which the filing is made. Information furnished under Items 2.02 or 7.01 (or corresponding information furnished under Item 9.01 or included as an exhibit) in any Current Report on Form 8-K that we file with the SEC, unless we specified in such report, is not incorporated by reference in this prospectus.

WHERE YOU CAN FIND MORE INFORMATION

We have filed a registration statement on Form S-11 with the SEC for the Securities we are offering by this prospectus. This prospectus does not include all of the information contained in the registration statement. You should refer to the registration

Table of Contents

statement and its exhibits for additional information. Whenever we make statements in this prospectus as to the contents of our contracts, agreements or other documents, the statements are not necessarily complete and, where that contract, agreement or other document has been filed as an exhibit to the registration statement, each statement in this prospectus is qualified in all respects by the exhibit to which the statement relates.

You can read our SEC filings, including the registration statement, free of charge on the SEC's website, www.sec.gov.

We maintain a website at <https://www.gipreit.com>. Information contained on our website is not incorporated by reference into this prospectus, and you should not consider information contained on our website to be part of this prospectus. We will provide each person, including any beneficial owner, to whom this prospectus is delivered, a copy of any or all of the reports or documents that have been incorporated by reference in this prospectus but not delivered with this prospectus. We will provide these reports or documents upon oral or written request to the Secretary at 401 East Jackson Street, Suite 3300, Tampa, Florida 33602 or by calling (813) 225-4122.



GENERATION INCOME PROPERTIES, INC.

[•] SHARES OF COMMON STOCK

PROSPECTUS

, 2023

[Alternate Page for Resale Prospectus]

The information in this prospectus is not complete and may be changed. We may not issue these shares of common stock until the registration statement filed with the Securities and Exchange Commission becomes effective. This prospectus is not an offer to sell these shares of common stock and it is not soliciting an offer to buy these shares of common stock in any jurisdiction where the offer or sale thereof is not permitted.

SUBJECT TO COMPLETION, DATED SEPTEMBER 29, 2023

PRELIMINARY PROSPECTUS



GENERATION INCOME PROPERTIES, INC.

Up to [•] SHARES OF COMMON STOCK

This prospectus relates to up to [•] shares of our common stock that may be sold from time to time by the selling shareholder named in this prospectus.

The selling shareholder may sell shares from time to time in the open market, through privately negotiated transactions or a combination of these methods, at market prices prevailing at the time of sale or at negotiated prices. The selling shareholder may offer shares to or through underwriters, dealers or other agents, directly to investors or through any other manner permitted by law, on a continued or delayed basis. We will bear all costs, expenses and fees in connection with the registration of the shares offered by this prospectus, and the selling shareholder will bear all incremental selling expenses, including commissions and discounts, brokerage fees and other similar selling expenses it incurs in sale of the shares. See “Plan of Distribution.”

The shares of our common stock offered by the selling shareholder are referred to herein as the “Resale Shares.” The Resale Shares consist of shares of our common stock issuable upon redemption of certain shares of our Series A Redeemable Preferred Stock, par value \$0.01 per share (the “Series A Preferred Stock”), from the selling shareholder in a private placement transaction (the “Redemption”). The Redemption is at our option, subject to the satisfaction of conditions set forth in our Articles Supplementary for the Series A Preferred Stock. See “Background of the Portfolio Acquisition” for more information.

The Company is not selling any securities in this offering, and therefore will not receive any proceeds from the resale of the Resale Shares by the selling shareholder.

Our common stock is currently listed on the Nasdaq Capital Market (“Nasdaq”) under the symbol “GIPR”. The closing price of our common stock on Nasdaq on September 28, 2023 was \$3.93 per share.

By separate prospectus (the “Distribution Prospectus”), we have registered an aggregate of [•] shares of our common stock (the “Distribution Shares”) for distribution by Modiv Operating Partnership, L.P., a Delaware limited partnership (“Modiv OP”) to the holders of units of Modiv OP, including Modiv Inc., now known as Modiv Industrial, Inc. (“Modiv”), and the subsequent distribution by Modiv to the holders of its common stock.

Sales of the shares of our common stock registered in this prospectus and the Distribution Prospectus will result in two offerings taking place concurrently, which might affect price, demand, and liquidity of our common stock.

Investing in our securities involves risks. You should carefully read and consider the [“Risk Factors”](#) beginning on page 7 of this prospectus and the documents that are incorporated by reference into this prospectus including our Annual Report on Form 10-K for the year ended December 31, 2022, for a discussion of certain risk factors you should consider before investing.

We qualify as an “emerging growth company” as defined in the Jumpstart Our Business Startups Act and are subject to reduced public company reporting requirements. See “Jumpstart Our Business Startups Act” contained herein.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities, determined if this prospectus is truthful or complete or passed on or endorsed the merits of this offering. Any representation to the contrary is a criminal offense.

The date of this prospectus is _____, 2023.

[Alternate Page for Resale Prospectus]

THE OFFERING

Common Stock Offered by the Selling Shareholder:	Up to [•] shares. As more particularly described in the section entitled “Background of the Portfolio Acquisition,” if the volume weighted average price (“VWAP”) per share of our common stock for the 60-day period ending on the date immediately preceding the date we provide written notice of our intent to redeem the Series A Preferred Stock (the “Redemption VWAP”) is more than \$3.64, the number of Resale Shares may be reduced. See “Background of the Portfolio Acquisition” for more information.
Common Stock Outstanding:⁽¹⁾	5,617,988 shares of our common stock assuming the issuance of 3,000,000 shares of our common stock in the Redemption.
Market for the Common Stock:	Our common stock currently trades on the Nasdaq Capital Market under the symbol “GIPR”.
Use of Proceeds:	The Company is not selling any securities in this offering, and therefore will not receive any proceeds from the resale of the Resale Shares.
Ownership and Transfer Restrictions:	In order for us to qualify as a REIT under the Internal Revenue Code of 1986, as amended (the “Code”), our charter generally prohibits any person from actually, beneficially or constructively owning more than 9.8% in value or number, whichever is more restrictive, of the outstanding shares of our common stock or more than 9.8% in value of the aggregate outstanding shares of all classes and series of our stock. See the section entitled “Description of Securities — Restrictions on Ownership and Transfer.”
Risk Factors:	Investing in our securities involves risks. You should carefully read and consider the information set forth under the heading “Risk Factors” beginning on page 7 and in our Annual Report on Form 10-K for the year ended December 31, 2022, which is incorporated by reference herein, and other information included in, and incorporated by reference into, this prospectus before investing in our securities.

- (1) The number of shares of our common stock to be outstanding immediately after this offering is based on 2,617,988 shares of common stock outstanding as of August 31, 2023, and excludes as of such date:
- 249,850 warrants to purchase up to 249,850 shares of our common stock at a weighted average exercise price of \$15.50 per share and 675,540 warrants exercisable for 67,554 shares of our common stock (or 67,554 shares of our common stock on a cashless-exercise basis);
 - 292,609 shares of common stock that can be converted from limited partnership units of Generation Income Properties, L.P. that are outstanding as of August 31, 2023; and
 - 918,068 shares of common stock that can be converted from limited partnership units of Generation Income Properties, L.P. that are issuable upon the optional conversion of preferred membership interests in certain of our subsidiaries outstanding as of August 31, 2023.

[Alternate Page for Resale Prospectus]

USE OF PROCEEDS

We will not receive any of the proceeds from the sale of the Resale Shares.

The selling shareholder will pay any underwriting discounts and commissions and expenses incurred by it for brokerage, accounting, tax or legal services or any other expenses incurred by it in disposing of the Resale Shares. We will bear all other costs, fees and expenses incurred in effecting the registration of the Resale Shares covered by this prospectus, including, without limitation, all registration and filing fees and fees and expenses of our counsel and our accountants.

[Alternate Page for Resale Prospectus]

SELLING SHAREHOLDERS

The Resale Shares being offered by the selling shareholder are issuable upon the Redemption. For additional information regarding the issuance of the Resale Shares pursuant to the Redemption, see the section of this prospectus entitled “Background of the Portfolio Acquisition.”

The selling shareholder may pursuant to this prospectus from time-to-time offer and sell any or all of the Resale Shares to be issued to the selling shareholder upon the Redemption. We do not know how long the selling shareholder will hold the Resale Shares before selling them, and we currently have no agreements, arrangements, or understandings with the selling shareholder regarding the sale of any of the Resale Shares.

To our knowledge, neither the selling shareholder nor any of its affiliates has held a position or office, or had any other material relationship, with us or any of our predecessors or affiliates, except as otherwise described in the section of this prospectus entitled “Background of the Portfolio Acquisition.” As used in this prospectus, the term “selling shareholder” includes the selling shareholder listed in the table below and any donees, pledgees, transferees, or other successors in interest selling Resale Shares received after the date of this prospectus from that selling shareholder as a gift, pledge or other non-sale related transfer.

The table below assumes that the Redemption VWAP per share of our common stock is no more than \$3.64 and that 3,000,000 shares of the Company’s common stock are issued pursuant to the Redemption.

The first column lists the Resale Shares issuable upon the Redemption that will be beneficially owned by the selling shareholder prior to this offering. The selling shareholder may sell all, some, or none of the Resale Shares it will beneficially own in this offering. See “Plan of Distribution.” The third column lists the Resale Shares being offered by this prospectus by the selling shareholder following the Redemption. We assume all the Resale Shares will be sold and that the selling shareholder shall not beneficially own any shares of our common stock following this offering.

<u>Selling Shareholder</u>	<u>Number of Shares Beneficially Owned Before Offering</u>	<u>Percentage of Shares Beneficially Owned Before this Offering</u>	<u>Number of Shares Being Offered</u>	<u>Number of Shares Beneficially Owned After Offering</u>	<u>Percentage of Shares Beneficially Owned After Offering (1)(%)</u>
Modiv OP (2)	[*]	[*]%	[*]	—	*

* Less than 1%

- (1) Applicable percentage ownership after to this offering is based on 2,617,988 shares of common stock deemed to be outstanding as of August 31, 2023.
- (2) Modiv, as the general partner of the selling shareholder, has voting and investment power over the reported securities.

[Alternate Page for Resale Prospectus]

PLAN OF DISTRIBUTION

We are registering the Resale Shares to permit the resale of the Resale Shares by the selling shareholder from time to time after the date of this prospectus. We will not receive any of the proceeds from the sale of the Resale Shares. We will pay all expenses (other than discounts, commissions, and transfer taxes, if any) relating to the registration of the Resale Shares in the registration statement of which this prospectus forms a part.

The selling shareholder may sell all or a portion of the Resale Shares beneficially owned by them and offered hereby from time to time directly or through one or more underwriters, broker-dealers, or agents. If the Resale Shares are sold through underwriters or broker-dealers, the selling shareholder will be responsible for any underwriter discounts or commissions and any applicable transfer taxes. The Resale Shares may be sold in one or more transactions at fixed prices, at prevailing market prices at the time of the sale, at varying prices determined at the time of sale, or at negotiated prices. These sales may be effected in transactions, which may involve crosses or block transactions,

- on any national securities exchange or quotation service on which the securities may be listed or quoted at the time of sale;
- in the over-the-counter market;
- in transactions otherwise than on these exchanges or systems or in the over-the-counter market;
- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the securities as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- short sales;
- in transactions through broker-dealers that agree with the selling shareholder to sell a specified number of such securities at a stipulated price per security;
- through the writing or settlement of options or other hedging transactions, whether through an options exchange or otherwise;
- a combination of any such methods of sale; or
- any other method permitted pursuant to applicable law

The selling shareholder may also sell securities under Rule 144 or any other exemption from registration under the Securities Act, if available, rather than under this prospectus.

Broker-dealers engaged by the selling shareholder may arrange for other brokers-dealers to participate in sales. Broker-dealers may receive commissions or discounts from the selling shareholder (or, if any broker-dealer acts as agent for the purchaser of securities, from the purchaser) in amounts to be negotiated, but, except as set forth in a supplement to this prospectus, in the case of an agency transaction not in excess of a customary brokerage commission in compliance with FINRA Rule 2121; and in the case of a principal transaction a markup or markdown in compliance with FINRA Rule 2121.

In connection with the sale of the securities or interests therein, the selling shareholder may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the securities in the course of hedging the positions they assume. The selling shareholder may also sell securities short and deliver these securities to close out their short positions, or loan or pledge the securities to broker-dealers that in turn may sell these securities. The selling shareholder may also enter into option or other transactions with broker-dealers or other financial institutions or create one or more derivative securities which require the delivery to such broker-dealer or other financial institution of securities offered by this prospectus, which securities such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction).

[Table of Contents](#)

The selling shareholder and any broker-dealers or agents that are involved in selling the securities may be deemed to be “underwriters” within the meaning of the Securities Act in connection with such sales. In such event, any commissions received by such broker-dealers or agents and any profit on the resale of the securities purchased by them may be deemed to be underwriting commissions or discounts under the Securities Act. The selling shareholder has informed us that it does not have any written or oral agreement or understanding, directly or indirectly, with any person to distribute the securities.

Alt-6

[Alternate Page for Resale Prospectus]

**Up to [•] Shares
Common Stock**



Generation Income Properties, Inc.

Prospectus

You should rely only on the information contained in this prospectus. No dealer, salesperson or other person is authorized to give information that is not contained in this prospectus. This prospectus is not an offer to sell nor is it seeking an offer to buy these securities in any jurisdiction where the offer or sale is not permitted. The information contained in this prospectus is correct only as of the date of this prospectus, regardless of the time of the delivery of this prospectus or the sale of these securities.

, 2023

PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 31. Other Expenses of Issuance and Distribution.

The following table sets forth the expenses we will incur in connection with the issuance and distribution of the securities to be registered pursuant to this registration statement. All amounts other than the SEC registration fee and FINRA filing fee have been estimated.

SEC registration fee	\$1,322.40
Legal fees and expenses	*
Accounting fees and expenses	*
Miscellaneous	*
Total	\$ *

* To be provided by amendment.

Item 32. Sales to Special Parties.

Not applicable.

Item 33. Recent Sales of Unregistered Securities

The Company has issued the following securities in the past three years that were not registered under the Securities Act:

- On November 13, 2020, the Company raised \$1,000,000 by issuing 50,000 Units with each Unit being comprised of one share of our common stock and one warrant to purchase one share of our common stock. Each Unit was sold for a price of \$20.00 per Unit. The shares of our common stock and common warrants included in the Units, were offered together, but the securities included in the Units are issued separately.
- On December 11, 2020, the board of directors granted 10,000 restricted shares to its four independent directors effective January 1, 2021, that will vest annually over 36 months.
- On December 11, 2020, the board of directors granted 4,000 restricted shares to its three employees effective January 1, 2021, that will vest annually over 36 months.
- On March 16, 2021, the Company issued 2,200 shares of stock to our former chief financial officer as compensation for services.
- On September 12, 2022, the Company issued 200,000 shares of common stock in redemption of 60,000 common units in the Operating Partnership.
- On August 10, 2023, the Company issued 2,400,000 shares of Series A Preferred Stock to Modiv OP, as a portion of the purchase price for a portfolio of eleven (11) retail properties and two (2) office properties (the "Portfolio").
- On August 10, 2023, a \$12.0 million preferred equity investment by LC2-NNN Pref, LLC, a Florida limited liability company and affiliate of Loci Capital Partners was made into a special purpose subsidiary of the Operating Partnership named GIP VB SPE, LLC, a Delaware limited liability company, for cash to finance a portion of the purchase price paid for the Portfolio.

The issuance of the shares above was effected in reliance upon an exemption from registration provided by Section 4(a)(2) of the Securities Act and Rule 701 thereunder (solely with respect to the grant of restricted shares to officers and directors).

Item 34. Indemnification of Directors and Officers.

Maryland law permits a Maryland corporation to include in its charter a provision eliminating the liability of its directors and officers to the corporation and its shareholders for money damages except for liability resulting from actual receipt of an improper benefit or profit in money, property or services or active and deliberate dishonesty that was established by a final judgment and was material to the cause of action. Our charter contains a provision that eliminates the liability of our directors and officers to the maximum extent permitted by Maryland law.

Table of Contents

The MGCL requires us (unless our charter provides otherwise, which our charter does not) to indemnify a director or officer who has been successful, on the merits or otherwise, in the defense of any proceeding to which he or she is made a party by reason of his or her service in that capacity. The MGCL permits us to indemnify our present and former directors and officers, among others, against judgments, penalties, fines, settlements and reasonable expenses actually incurred by them in connection with any proceeding to which they may be made or threatened to be made a party by reason of their service in those or other capacities unless it is established that:

- act or omission of the director or officer was material to the matter giving rise to the proceeding and (i) was committed in bad faith or (ii) was the result of active and deliberate dishonesty;
- the director or officer actually received an improper personal benefit in money, property or services; or
- in the case of any criminal proceeding, the director or officer had reasonable cause to believe that the act or omission was unlawful.

Under the MGCL, we may not indemnify a director or officer in a suit by us or in our right in which the director or officer was adjudged liable to us or in a suit in which the director or officer was adjudged liable on the basis that personal benefit was improperly received. Nevertheless, a court may order indemnification if it determines that the director or officer is fairly and reasonably entitled to indemnification, even though the director or officer did not meet the prescribed standard of conduct or was adjudged liable on the basis that personal benefit was improperly received. However, indemnification for an adverse judgment in a suit by us or in our right, or for a judgment of liability on the basis that personal benefit was improperly received, is limited to expenses.

In addition, the MGCL permits us to advance reasonable expenses to a director or officer upon our receipt of:

- written affirmation by the director or officer of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification by us; and
- a written undertaking by the director or officer or on the director's or officer's behalf to repay the amount paid or reimbursed by us if it is ultimately determined that the director or officer did not meet the standard of conduct.

Our charter authorizes us to obligate ourselves and our bylaws obligate us, to the fullest extent permitted by Maryland law in effect from time to time, to indemnify and, without requiring a preliminary determination of the ultimate entitlement to indemnification, pay or reimburse reasonable expenses in advance of final disposition of a proceeding to:

- any present or former director or officer who is made or threatened to be made a party to or witness in the proceeding by reason of his or her service in that capacity; or
- any individual who, while a director or officer of our company and at our request, serves or has served as a director, officer, partner, manager, member or trustee of another corporation, real estate investment trust, partnership, limited liability company, joint venture, trust, employee benefit plan or any other enterprise and who is made or threatened to be made a party to or witness in the proceeding by reason of his or her service in that capacity.

Our charter and bylaws also permit us to indemnify and advance expenses to any individual who served any predecessor of our company, in any of the capacities described above and any employee or agent of our company or a predecessor of our company.

We have entered into indemnification agreements with each of our directors and executive officers that provide for indemnification to the maximum extent permitted by Maryland law.

Insofar as the foregoing provisions permit indemnification of directors, officers or persons controlling us for liability arising under the Securities Act, we have been informed that, in the opinion of the SEC, this indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Item 35. Treatment of Proceeds from Stock Being Registered.

None.

Item 36. Financial Statements and Exhibits

- (a) The financial statements set forth in the documents that are incorporated by reference as part of the prospectus included in this registration statement are set forth in the section of the prospectus entitled "Incorporation by Reference."
- (b) A list of exhibits filed with this registration statement on FormS-11 is set forth on the Exhibit Index and is incorporated herein by reference.
- (c) The filing fee table is furnished as set forth on the Exhibit Index and is incorporated herein by reference.

Item 37. Undertakings

- (a) The undersigned registrant hereby further undertakes:

- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to the registration statement:

- (i) To include any prospectus required by Section 10(a)(3) of the Securities Act;

- (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20 percent change in the maximum aggregate offering price set forth in the "Calculation of Filing Fee Tables" or "Calculation of Registration Fee" table, as applicable, in the effective registration statement;

- (iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement.

- (2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and this offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

- (3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of this offering.

- (4) That, for the purpose of determining liability under the Securities Act to any purchaser:

- (i) Each prospectus filed pursuant to Rule 424(b) as part of a registration statement relating to an offering, other than registration statements relying on Rule 430B or other than prospectuses filed in reliance on Rule 430A, shall be deemed to be part of and included in the registration statement as of the date it is first used after effectiveness. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such first use, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such date of first use.

- (b) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

EXHIBIT INDEX

The following exhibits are included in this registration statement on Form S-11 (and are numbered in accordance with Item 601 of Regulation S-K).

EXHIBIT NUMBER	DESCRIPTION
2.1*	Agreement of Purchase and Sale, dated August 10, 2023, among Modiv Inc., Generation Income Properties, Inc., Generation Income Properties, L.P., and each entity identified as a "Selling Entity" therein (incorporated by reference to Exhibit 2.1 of the Company's Current Report on Form 8-K filed on August 14, 2023).
2.2	Tenant in Common Purchase Agreement, dated September 7, 2023 between GIPIL 525 S Perryville Rd, LLC and Sunnyridge MHP, LLC (incorporated by reference to Exhibit 2.1 of the Company's Current Report on Form 8-K filed on September 13, 2023).
3.1	Articles of Amendment and Restatement of Generation Income Properties, Inc. (incorporated by reference to Exhibit 2.1 of the Company's Form 1-A/A filed on January 28, 2016)
3.1.1	Articles of Amendment to Amended and Restated Articles of Incorporation. (incorporated by reference to Exhibit 2.1 to the Company's Form 1-U filed on October 9, 2020.)
3.1.2	Articles Supplementary for the Series A Redeemable Preferred Stock of Generation Income Properties, Inc. (incorporated by reference to Exhibit 3.1 of the Company's Current Report on Form 8-K filed August 14, 2023).
3.2	Bylaws of Generation Income Properties, Inc. (incorporated by reference to Exhibit 2.2 of the Company's Form 1-A filed on September 16, 2015)
4.1	Form of Stock Certificate (incorporated by reference to Exhibit 3.3 of the Company's Form 1-A filed on September 16, 2015)
4.2	Amended and Restated Agreement of Limited Partnership of Generation Income Properties, L.P. (incorporated by reference to Exhibit 6.2 of the Company's Form 1-A POS filed on March 29, 2018)
4.2.1	First Amendment to Amended and Restated Agreement of Limited Partnership of Generation Income Properties, L.P. (incorporated by reference from Exhibit 4.4 to the Company's Amendment No. 5 to Registration Statement on Form S-11 filed on April 12, 2021)
4.2.2	Second Amendment to Amended and Restated Agreement of Limited Partnership of Generation Income Properties, L.P. (incorporated by reference to Exhibit 4.5 to the Company's Amendment No. 5 to Registration Statement on Form S-11 filed on April 12, 2021)
4.2.3	Third Amendment to Amended and Restated Limited Partnership Agreement of Generation Income Properties, L.P., dated August 10, 2023 (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K filed on August 14, 2023).
4.3	Common Stock Purchase Warrant, dated April 17, 2019. (incorporated by reference from Exhibit 4.6 to the Company's Amendment No. 5 to Registration Statement on Form S-11 filed on April 12, 2021)
4.4	Common Stock Purchase Warrant dated November 12, 2020 (incorporated by reference to Exhibit 4.7 to the Company's Amendment No. 5 to Registration Statement on Form S-11 filed on April 12, 2021).
4.5	Representative's Warrant, dated September 8, 2021 (incorporated by reference from Exhibit 4.1 from Form 8-K filed on September 9, 2021)
4.6	Form of Investor Warrant (incorporated by reference to Exhibit 4.2 from the Company's Form 8-K filed on September 9, 2021)
4.7	Warrant Agent Agreement, dated September 2, 2021 between the Company and VStock Transfer, LLC (incorporated by reference to Exhibit 4.3 of the Company's Form 8-K filed on September 9, 2021)
5.1^	Form of Legal Opinion of Foley & Lardner LLP
8.1^	Form of Tax Matters Opinion of Foley & Lardner LLP
10.1+	Generation Income Properties, Inc. 2020 Omnibus Incentive Plan. (incorporated by reference to Exhibit 10.1 to Company's Amendment No. 5 to Registration Statement on Form S-11 filed on April 12, 2021)
10.2+	Form of Director Indemnification Agreement (incorporated by reference to Exhibit 10.14 to the Company's Amendment No. 1 to Registration Statement on Form S-11 filed on February 14, 2020).
10.3+	Form of Officer Indemnification Agreement (incorporated by reference to Exhibit 10.21 to the Company's Amendment No. 1 to Registration Statement on Form S-11 filed on February 14, 2020).
10.4+	Form of Officer and Director Indemnification Agreement (incorporated by reference to Exhibit 10.22 to the Company's Amendment No. 1 to Registration Statement on Form S-11 filed on February 14, 2020).

Table of Contents

- 10.5+ [Form of Director and Officer Restricted Stock Award Agreement \(incorporated by reference to Exhibit 10.15 to the Company's Amendment No. 1 to Registration Statement on Form S-11 filed on February 14, 2020\).](#)
- 10.6+ [Employment Agreement, dated January 24, 2022 \(with term effective as of February 28, 2022\), between Generation Income Properties, Inc. and Allison Davies \(incorporated by reference to Exhibit 10.1 to the Company's Form 8-K filed on January 27, 2022\).](#)
- 10.7 [Note, Deed of Trust, Assignment of Leases and Rents, and Related Loan Documents Assignment, Assumption and Modification Agreement dated September 30, 2019 by and among Riverside Crossing, L.C., as original borrower, GIPVA 130 Corporate Blvd, LLC, as new borrower, Newport News Shipbuilding Employees' Credit Union, Inc. DBA BayPort Credit Union, and James B. Mears, as trustee \(incorporated by reference to Exhibit 10.7 to the Company's Amendment No. 1 to Registration Statement on Form S-11 filed on February 14, 2020\).](#)
- 10.8 [Commercial Loan Agreement dated September 30, 2019, between GIPVA 2510 Walmer Ave, LLC and Newport News Shipbuilding Employees' Credit Union, Inc. DBA BayPort Credit Union \(incorporated by reference to Exhibit 10.8 to the Company's Amendment No. 1 to Registration Statement on Form S-11 filed on February 14, 2020\).](#)
- 10.9 [Guaranty of Nonrecourse Carveout Liabilities and Obligations dated as of September 30, 2019 made by Generation Income Properties, L.P., Generation Income Properties, Inc. and David E. Sobelman in favor of Newport News Shipbuilding Employees' Credit Union, Inc. DBA Bayport Credit Union \(incorporated by reference to Exhibit 10.12 of the Company's Amendment No. 1 to Registration Statement on Form S-11 filed on February 14, 2020\).](#)
- 10.10 [Guaranty of Nonrecourse Carveout Liabilities and Obligations dated as of September 30, 2019 made by Generation Income Properties, L.P., Generation Income Properties, Inc. and David E. Sobelman in favor of Newport News Shipbuilding Employees' Credit Union, Inc. DBA Bayport Credit Union \(incorporated by reference to Exhibit 10.13 of the Company's Amendment No. 1 to Registration Statement on Form S-11 filed on February 14, 2020\).](#)
- 10.11 [Loan Agreement dated as of February 11, 2020 by and among GIPFL 1300 S DALE MABRY, LLC, GIPDC 3707 14TH ST, LLC and GIPAL JV 15091 SW ALABAMA 20, LLC, as borrowers, and DBR Investments Co. Limited \(incorporated by reference to Exhibit 10.26 to the Company's Amendment No. 1 to Registration Statement on Form S-11 filed on February 14, 2020\).](#)
- 10.12 [Guaranty of Recourse Obligations dated as of February 11, 2020, made by David Sobelman and Generation Income Properties, L.P. for the benefit of DBR Investments Co. Limited \(incorporated by reference to Exhibit 10.27 to the Company's Amendment No. 1 to Registration Statement on Form S-11 filed on February 14, 2020\).](#)
- 10.13 [Commitment for \\$25 Million Master Credit Facility with American Momentum Bank dated October 26, 2021 \(incorporated by reference to Exhibit 10.1 in the Company's Form 8-K filed on October 27, 2021\)](#)
- 10.14 [Contribution Agreement, dated October 11, 2021, between Generation Income Properties, L.P. and LMB Owenton I LLC \(incorporated by reference to Exhibit 10.1 in the Company's Form 8-K filed on January 20, 2022\)](#)
- 10.15 [Tenants in Common Agreement dated August 2, 2021 between GIPIL 525 S Perryville RD, LLC and Sunny Ridge MHP, LLC \(incorporated by reference to Exhibit 10.44 to the Company's Amendment No. 9 to Registration Statement on Form S-11 filed on August 18, 2021\).](#)
- 10.16 [Contribution and Subscription Agreement between the Company and Riverside Crossing, L.C. \(incorporated by reference to Exhibit 10.28 to the Company's Amendment No. 5 to Registration Statement on Form S-11 filed on April 12, 2021\)](#)
- 10.16.1 [Amendment to Contribution and Subscription Agreement with Riverside Crossing, L.C. \(incorporated by reference to Exhibit 10.28.1 to the Company's Amendment No. 5 to Registration Statement on Form S-11 filed on April 12, 2021\)](#)
- 10.17 [Contribution and Subscription Agreement between the Company and Greenwal, L.C. \(incorporated by reference to Exhibit 10.29 to the Company's Amendment No. 5 to Registration Statement on Form S-11 filed on April 12, 2021\)](#)
- 10.17.1 [Amendment No. 1 to Contribution and Subscription Agreement with Greenwal, L.C. \(incorporated by reference to Exhibit 10.29.1 to the Company's Amendment No. 5 to Registration Statement on Form S-11 filed on April 12, 2021\)](#)
- 10.17.2 [Amendment No. 2 to Contribution and Subscription Agreement with Greenwal, L.C. \(incorporated by reference to Exhibit 10.29.2 to the Company's Amendment No. 5 to Registration Statement on Form S-11 filed on April 12, 2021\)](#)
- 10.18 [Tax Protection Agreement between the Company and Riverside Crossing, L.C. dated September 30, 2019 \(incorporated by reference to Exhibit 10.37 to the Company's Amendment No. 6 to Registration Statement on Form S-11 filed on June 17, 2021\).](#)
- 10.19 [Tax Protection Agreement between the Company and Greenwal, L.C. dated September 30, 2019. \(incorporated by reference to Exhibit 10.38 to the Company's Amendment No. 6 to Registration Statement on Form S-11 filed on June 17, 2021\).](#)
- 10.20 [Contribution and Subscription Agreement, dated October 28, 2020, between Generation Income Properties, L.P. and GIP Fund 1, LLC \(incorporated by reference to Exhibit 10.31 to the Company's Amendment No. 5 to Registration Statement on Form S-11 filed on April 12, 2021\)](#)
- 10.21+ [Form of Restricted Stock Award Agreement under 2020 Omnibus Incentive Plan \(incorporated by reference from Exhibit 10.22 from the Company's Annual Report on Form 10-K for the year ended December 31, 2021 filed on March 18, 2022\)](#)

Table of Contents

- 10.22 [Purchase and Sale Agreement, dated October 28, 2021, between Generation Income Properties, LP and OREOF19 BR, LLC \(incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed on May 16, 2022\).](#)
- 10.23 [First Amendment to Purchase and Sale Agreement, effective as of December 10, 2021, between Generation Income Properties, LP and OREOF19 BR, LLC \(incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed on May 16, 2022\).](#)
- 10.24 [Assignment and Assumption of Purchase and Sale Agreement, effective as of December 23, 2021, by and between Generation Income Properties, LP and GIPCO 585 24 1/2 ROAD, LLC \(incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed on May 16, 2022\).](#)
- 10.25 [Lease Agreement, dated as of February 27, 2006, between OREOF19 BR, LLC, as landlord, and Best Buy Stores, L.P., as tenant, as amended by that certain first amendment to lease, dated May 19, 2021 \(incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed on May 16, 2022\).](#)
- 10.26 [Guaranty, dated February 27, 2006, by Best Buy Co., Inc. in favor of OREOF BR, LLC \(incorporated by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed on May 16, 2022\).](#)
- 10.27 [Purchase and Sale Agreement, dated October 27, 2021, between Generation Income Properties, LP and Elliott Bay Healthcare Realty, LLC \(incorporated by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed on May 16, 2022\).](#)
- 10.28 [First Amendment to Purchase and Sale Agreement, dated December 10, 2021, between Generation Income Properties, LP and Elliott Bay Healthcare Realty, LLC \(incorporated by reference to Exhibit 10.7 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed on May 16, 2022\).](#)
- 10.29 [Assignment and Assumption of Purchase and Sale Agreement, effective as of December 23, 2021, by and between Generation Income Properties, LP and GIPIL 3134 W 76th Street, LLC \(incorporated by reference to Exhibit 10.8 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed on May 16, 2022\).](#)
- 10.30 [Second Amendment to Purchase and Sale Agreement, effective as of January 3, 2022, between Elliott Bay Healthcare Realty, LLC and GIPIL 3134 W 76th Street, LLC \(incorporated by reference to Exhibit 10.9 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed on May 16, 2022\).](#)
- 10.31 [Lease Agreement, dated as of January 24, 2006, between Elliott Bay Healthcare Realty, LLC, as landlord, and WSKC Dialysis Services, Inc., as tenant, as amended on August 16, 2016, and on November 13, 2020 \(incorporated by reference to Exhibit 10.10 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed on May 16, 2022\).](#)
- 10.32 [Assignment and Assumption of Lease, Security Deposit and Guaranty, dated January 7, 2022, by and between Elliott Bay Healthcare Realty, LLC and GIPIL 3134 W 76th Street, LLC \(incorporated by reference to Exhibit 10.11 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed on May 16, 2022\).](#)
- 10.33 [Promissory Note, dated December 28, 2021, issued by GIPCO 585 24 1/2 ROAD, LLC, as borrower, in favor of American Momentum Bank, as lender \(incorporated by reference to Exhibit 10.12 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed on May 16, 2022\).](#)
- 10.34 [Loan Agreement, dated December 28, 2021, by and between GIPCO 585 24 1/2 ROAD, LLC and American Momentum Bank \(incorporated by reference to Exhibit 10.13 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed on May 16, 2022\).](#)
- 10.35 [Absolute Guaranty of Payment and Performance, dated December 28, 2021, by David Sobelman and Generation Income Properties, LP in favor of American Momentum Bank \(incorporated by reference to Exhibit 10.14 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed on May 16, 2022\).](#)
- 10.36 [Promissory Note, dated January 7, 2022, issued by GIPIL 3134 W 76th Street, LLC, as borrower, in favor of American Momentum Bank, as lender \(incorporated by reference to Exhibit 10.37 to the Company's Post-Effective Amendment No. 2 to Form S-11 filed on November 29, 2022\).](#)
- 10.37 [Loan Agreement, dated January 7, 2022, by and between GIPIL 3134 W 76th Street, LLC and American Momentum Bank \(incorporated by reference to Exhibit 10.16 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed on May 16, 2022\).](#)
- 10.38 [Absolute Guaranty of Payment and Performance, dated December 23, 2021, by David Sobelman and Generation Income Properties, LP in favor of American Momentum Bank \(incorporated by reference to Exhibit 10.17 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 filed on May 16, 2022\).](#)
- 10.39 [Loan Agreement, dated April 1, 2022, by and among GIPAZ 199 N Pantano Road, LLC, GIPCO 585 24 0.5 Road, LLC, GIPFL 702 Tillman Place, LLC, GIPFL 10002 N Dale Mabry, LLC, GIPNC 201 Etheridge Road, LLC, and GIPIL 3134 W 76TH Street LLC, as the borrowers, David Sobelman, as guarantor, and Valley National Bank, as lender \(incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed April 7, 2022\).](#)
- 10.40 [Guaranty of Payment, dated April 1, 2022 by David Sobelman, individually, as guarantor, to Valley National Bank, as lender \(incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed April 7, 2022\).](#)

Table of Contents

- 10.41 [Multi-State Fee and Leasehold Mortgage and Security Agreement, dated April 1, 2022, made by among GIPAZ 199 N Pantano Road, LLC, GIPCO 585 24 0.5 Road, LLC, GIPFL 702 Tillman Place, LLC, GIPFL 10002 N Dale Mabry, LLC, GIPNC 201 Etheridge Road, LLC, and GIPIL 3134 W 76TH Street LLC, as mortgagor\(s\), and Valley National Bank, as mortgagee \(incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed April 7, 2022\).](#)
- 10.42 [Promissory Note, dated April 1, 2022, issued by GIPAZ 199 N Pantano Road, LLC, GIPCO 585 24 0.5 Road, LLC, GIPFL 702 Tillman Place, LLC, GIPFL 10002 N Dale Mabry, LLC, GIPNC 201 Etheridge Road, LLC, and GIPIL 3134 W 76TH Street LLC, as borrowers, in favor of Valley National Bank, as lender \(incorporated by reference to Exhibit 10.4 to the Company's Current Report on Form 8-K filed April 7, 2022\).](#)
- 10.43 [Loan Agreement, dated April 1, 2022, by and among GIPIL 525 S Perryville Rd, LLC, and Sunny Ridge MHP LLC, as borrowers, David Sobelman, individually and as President of Generation Income Properties, Inc., the General Partner of Generation Income Properties, L.P., as guarantor, and Valley National Bank, as lender \(incorporated by reference to Exhibit 10.5 to the Company's Current Report on Form 8-K filed April 7, 2022\).](#)
- 10.44 [Guaranty of Payment, dated April 1, 2022, by David Sobelman, individually and David Sobelman, as President of Generation Income Properties, Inc., the General Partner of Generation Income Properties, L.P., as guarantor, to Valley National Bank, as lender \(incorporated by reference to Exhibit 10.6 to the Company's Current Report on Form 8-K filed April 7, 2022\).](#)
- 10.45 [Mortgage and Security Agreement, dated April 1, 2022, by GIPIL 525 Perryville Rd LLC, and Sunny Ridge MHP LLC, as mortgagors, and Valley National Bank, as mortgagee \(incorporated by reference to Exhibit 10.7 to the Company's Current Report on Form 8-K filed April 7, 2022\).](#)
- 10.46 [Promissory Note, dated April 1, 2022, issued by GIPIL 525 S Perryville Rd, LLC and Sunny Ridge MHP LLC, as borrowers, in favor of Valley National Bank, as lender \(incorporated by reference to Exhibit 10.8 to the Company's Current Report on Form 8-K filed April 7, 2022\).](#)
- 10.47 [Commitment for \\$50 Million Master Credit Commitment with American Momentum Bank dated May 9, 2022 \(incorporated by reference to Exhibit 10.1 of the Company's Form 8-K/A filed on May 12, 2022\).](#)
- 10.48 [Purchase and Sale Agreement, dated January 19, 2022, between Generation Income Properties, LP and NSHE Bassett, LLC \(incorporated by reference to Exhibit 10.1 of the Company's Form 8-K/A filed on May 23, 2022\).](#)
- 10.49 [Assignment and Assumption of Purchase and Sale Agreement, effective as of February 23, 2022, by and between Generation Income Properties, LP and GIPAZ 199 North Pantano Road, LLC \(incorporated by reference to Exhibit 10.2 of the Company's Form 8-K/A filed on May 23, 2022\).](#)
- 10.50 [Lease Agreement, dated as of January 30, 2003, between Continental 34 Fund Limited Partnership, as landlord, and Kohl's Department Stores, Inc., as tenant, as amended by that certain first amendment to lease, dated June 10, 2003, as amended by that certain second amendment to lease, dated February 6, 2020 \(incorporated by reference to Exhibit 10.3 of the Company's Form 8-K/A filed on May 23, 2022\).](#)
- 10.51 [Land Lease Agreement, dated as of January 30, 2003, between October 23rd Group LLC., as landlord, and NSHE Bassett, LLC., as tenant \(incorporated by reference to Exhibit 10.4 of the Company's Form 8-K/A filed on May 23, 2022\).](#)
- 10.52 [Assignment and Assumption of Underlying Lease and Security Deposit, dated March 9, 2022, by and between NSHE Bassett, LLC and GIPAZ 199 North Pantano Road, LLC \(incorporated by reference to Exhibit 10.5 of the Company's Form 8-K/A filed on May 23, 2022\).](#)
- 10.53 [Assignment and Assumption of Lease, Security Deposit and Guaranty, dated March 9, 2022, by and between NSHE Bassett, LLC and GIPAZ 199 North Pantano Road, LLC. Guaranty, dated January 30, 2003, by Kohl's Corporation in favor of NSHE Bassett, LLC \(incorporated by reference to Exhibit 10.6 of the Company's Form 8-K/A filed on May 23, 2022\).](#)
- 10.54 [Promissory Note, dated March 9, 2022, issued by GIPAZ 199 North Pantano Road, LLC, as borrower, in favor of American Momentum Bank, as lender \(incorporated by reference to Exhibit 10.7 of the Company's Form 8-K/A filed on May 23, 2022\).](#)
- 10.55 [Loan Agreement, dated March 9, 2022, by and between GIPAZ 199 North Pantano Road, LLC and American Momentum Bank \(incorporated by reference to Exhibit 10.8 of the Company's Form 8-K/A filed on May 23, 2022\).](#)
- 10.56 [Absolute Guaranty of Payment and Performance, dated March 9, 2022, by David Sobelman and Generation Income Properties, LP in favor of American Momentum Bank \(incorporated by reference to Exhibit 10.9 of the Company's Form 8-K/A filed on May 23, 2022\).](#)
- 10.57+ [First Amended and Restated Employment Agreement, dated June 23, 2022, between the Company and David Sobelman \(incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed on June 27, 2022\).](#)
- 10.59 [Revised Commitment Letter, dated September 9, 2022 \(incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed on September 14, 2022\).](#)
- 10.60 [Redemption Agreement dated as of August 9, 2022 among the Company, Generation Income Properties, L.P. and Thomas Robinson \(incorporated by reference to Exhibit 10.2 of the Company's Form 10-Q filed on August 15, 2022\).](#)
- 10.61 [Promissory Note dated October 14, 2022 between Generation Income Properties, L.P. and Brown Family Enterprises LLC \(incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed on October 18, 2022\).](#)

Table of Contents

10.62	<u>Security Agreement dated October 14, 2022 between Generation Income Properties, L.P. and Brown Family Enterprises (incorporated by reference to Exhibit 10.2 of the Company's Form 8-K filed on October 18, 2022).</u>
10.63	<u>First Amended and Restated Employment Agreement, dated June 23 2022, between Generation Income Properties, Inc. and David Sobelman (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K/A filed on January 4, 2023).</u>
10.64	<u>Second Amended and Restated Limited Liability Company Agreement of GIPVA 130 Corporate Blvd, LLC, dated February 8, 2023 (incorporated by reference to Exhibit 10.1 of the Company's Form 8-K filed on February 9, 2023).</u>
10.65	<u>Unit Purchase Agreement, GIPVA 130 Corporate Blvd, LLC and Brown Family Enterprises, dated February 8, 2023 (incorporated by reference to Exhibit 10.2 of the Company's Form 8-K filed on February 9, 2023).</u>
10.66	<u>Second Amended and Restated Limited Liability Company Agreement of GIPVA 2510 Walmer Ave, LLC, dated February 8, 2023 (incorporated by reference to Exhibit 10.3 of the Company's Form 8-K filed on February 9, 2023).</u>
10.67	<u>Unit Purchase Agreement, GIPVA 2510 Walmer Ave, LLC and Brown Family Enterprises, dated February 8, 2023 (incorporated by reference to Exhibit 10.4 of the Company's Form 8-K filed on February 9, 2023).</u>
10.68	<u>Unit Issuance Agreement and Amendment to Contribution and Subscription Agreement, Generation Income Properties, L.P., and LMB Owenton I LLC, dated February 7, 2023 (incorporated by reference to Exhibit 10.5 of the Company's Form 8-K filed on February 9, 2023).</u>
10.69	<u>Amended and Restated Secured Promissory Note dated July 21, 2023 (incorporated by reference to Exhibit 10.1 of the Company's Current Report on Form 8-K filed on July 26, 2023).</u>
10.70	<u>Amended and Restated Security Agreement dated July 21, 2023 (incorporated by reference to Exhibit 10.2 of the Company's Current Report on Form 8-K filed on July 26, 2023).</u>
10.71	<u>Registration Rights Agreement, dated August 10, 2023 (incorporated by reference to Exhibit 10.2 of the Company's Current Report on Form 8-K filed on August 14, 2023).</u>
10.72*	<u>Loan Agreement, dated August 10, 2023, between GIP13, LLC and Valley National Bank (incorporated by reference to Exhibit 10.3 of the Company's Current Report on Form 8-K filed on August 14, 2023).</u>
10.73	<u>Promissory Note, dated August 10, 2023, payable by GIP13, LLC to Valley National Bank (incorporated by reference to Exhibit 10.4 of the Company's Current Report on Form 8-K filed on August 14, 2023).</u>
10.74*	<u>Amended and Restated Liability Company Agreement of GIP VB SPE, LLC, dated August 10, 2023, between Generation Income Properties, L.P. and LC2-NNN Pref, LLC (incorporated by reference to Exhibit 10.5 of the Company's Current Report on Form 8-K filed on August 14, 2023).</u>
10.75*	<u>Agreement Providing Representations and Warranties, dated August 10, 2023, between Generation Income Properties, L.P. and LC2-NNN Pref, LLC (incorporated by reference to Exhibit 10.6 of the Company's Current Report on Form 8-K filed on August 14, 2023).</u>
10.76	<u>Redemption Agreement with Brown Family Enterprises, LLC dated August 8, 2023 for GIPNC 201 Etheridge Road, LLC (incorporated by reference to Exhibit 10.7 of the Company's Current Report on Form 8-K filed on August 14, 2023).</u>
10.77	<u>Redemption Agreement with Richard N. Hornstrom dated August 8, 2023 for GIPIL 525 S Perryville Rd, LLC (incorporated by reference to Exhibit 10.8 of the Company's Current Report on Form 8-K filed on August 14, 2023).</u>
10.78	<u>Redemption Agreement with Richard N. Hornstrom dated August 8, 2023 for GIPFL 702 Tillman Place, LLC (incorporated by reference to Exhibit 10.9 of the Company's Current Report on Form 8-K filed on August 14, 2023).</u>
10.79	<u>Redemption Agreement with Stephen J. Brown dated August 8, 2023 for GIPFL 702 Tillman Place, LLC (incorporated by reference to Exhibit 10.10 of the Company's Current Report on Form 8-K filed on August 14, 2023).</u>
10.80^	<u>Office Lease Agreement, dated November 14, 2002, between BRWHP Properties, LLP and X-nth, Inc., as amended.</u>
10.81^	<u>Lease, dated October 1, 2013, between Flamingo Cay, LLC, and San Antonio Early Childhood Education Municipal Development Corporation, as amended, as assigned and assumed by Rich Uncles Real Estate Investment Trust I on April 8, 2016.</u>
21.1^	<u>List of Subsidiaries</u>
23.1^	<u>Consent of MaloneBailey, LLP</u>
23.2**	Consent of Foley & Lardner LLP (included in Exhibits 5.1 and 8.1)
24.1^	<u>Powers of Attorney (included on the signature page of this Registration Statement)</u>
107^	<u>Filing Fee Table.</u>

Table of Contents

- * Certain exhibits and schedules to this exhibit have been omitted pursuant to Item 601(a)(5) and/or Item 601(b)(2) of Regulation S-K. The registrant hereby undertakes to furnish copies of any of the omitted schedules and exhibits upon request by the U.S. Securities and Exchange Commission.
- ** To be filed by amendment.
- ^ Filed herewith.
- + Indicates management contract or compensatory plan.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-11 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Tampa, State of Florida, on the 29th day of September, 2023.

Generation Income Properties, Inc.

By: /s/ David Sobelman
David Sobelman
President and Chief Executive Officer
(Principal Executive Officer)

Each person whose signature appears below constitutes and appoints each of David Sobelman and Allison Davies, and each of them individually, his or her true and lawful attorneys-in-fact and agents, with full powers of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any or all amendments (including post effective amendments) to this registration statement and any subsequent registration statement filed pursuant to Rule 462 under the Securities Act of 1933, as amended, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, and hereby ratifying and confirming all that either of the said attorneys-in-fact and agents, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated.

<u>NAME</u>	<u>CAPACITY</u>	<u>DATE</u>
<u>/s/ David Sobelman</u> David Sobelman	President and Chief Executive Officer (Principal Executive Officer) and Chairman of the Board	September 29, 2023
<u>/s/ Allison Davies</u> Allison Davies	Chief Financial Officer (Principal Financial and Accounting Officer)	September 29, 2023
<u>/s/ Benjamin Adams</u> Benjamin Adams	Director	September 29, 2023
<u>/s/ Gena Cheng</u> Gena Cheng	Director	September 29, 2023
<u>/s/ Stuart Eisenberg</u> Stuart Eisenberg	Director	September 29, 2023
<u>/s/ Betsy Peck</u> Betsy Peck	Director	September 29, 2023
<u>/s/ Patrick Quilty</u> Patrick Quilty	Director	September 29, 2023



FOLEY & LARDNER LLP

ATTORNEYS AT LAW

100 NORTH TAMPA STREET, SUITE 2700
 TAMPA, FL 33602-5810
 P.O. BOX 3391
 TAMPA, FL 33601-3391
 813.229.2300 TEL
 813.221.4210 FAX
 WWW.FOLEY.COM

September [], 2023

Generation Income Properties, Inc.
 401 East Jackson Street, Suite 3300
 Tampa, Florida 33602

Re: Registration Statement on Form S-11

Ladies and Gentlemen:

We have acted as counsel to Generation Income Properties, Inc., a Maryland corporation (the "Company"), in connection with a registration under the Securities Act of 1933, as amended (the "Securities Act"), pursuant to a Registration Statement on Form S-11 (File No. 333-) filed by the Company with the Securities and Exchange Commission (the "Commission") on the date hereof (as amended, the "Registration Statement"). The Registration Statement relates to (i) the distribution of [] shares of common stock, \$0.01 par value per share ("Common Stock") of the Company (the "Distribution Shares") by Modiv Operating Partnership, L.P., a Delaware limited partnership ("Modiv OP") to the holders of units of Modiv OP, including Modiv Inc., now known as Modiv Industrial, Inc. ("Modiv"), and the subsequent distribution by Modiv to the holders of its common stock and (ii) the offer and sale, from time-to-time by the Selling Shareholders identified in the Registration Statement of up to [] shares of Common Stock (the "Resale Shares"). The Distribution Shares and the Resale Shares (collectively referred to herein as the "Shares") are issuable to Modiv OP upon the redemption by the Company of 2,400,000 shares of the Company's Series A Redeemable Preferred Stock, par value \$0.01 per share (the "Series A Preferred Stock"), as described in the Registration Statement, in a private placement transaction exempt from registration under Section 4(a)(2) of the Securities Act and Regulation D promulgated thereunder.

In connection with our representation of the Company, and as a basis for the opinion hereinafter set forth, we have examined originals, or copies certified or otherwise identified to our satisfaction, of such documents and public records as we considered necessary for the purposes of this opinion, including the following (collectively, the "Documents"): (i) the Registration Statement, (ii) the Amended and Restated Articles of Incorporation, as amended, of the Company (the "Charter"); (iii) the Articles Supplementary designating the rights, preferences and privileges of the Series A Preferred Stock (the "Articles Supplementary"), (iv) the Bylaws of the Company, as amended; (v) the Purchase Agreement pursuant to which the shares of Series A Preferred Stock were issued by the Company to Modiv OP, (vi) resolutions adopted by the Board of Directors of the Company relating to the registration and issuance of the Shares (the "Board Resolutions"); (vii) the form of certificate, which may be used by the Company to evidence the Shares when and as issued, filed as Exhibit 4.1 to the Registration Statement; (viii) a certificate executed by the Secretary of the Company; and (ix) such other proceedings, documents and records as we have deemed necessary to enable us to render this opinion.

AUSTIN
 BOSTON
 CHICAGO
 DALLAS
 DENVER

DETROIT
 HOUSTON
 JACKSONVILLE
 LOS ANGELES
 MADISON

MEXICO CITY
 MIAMI
 MILWAUKEE
 NEW YORK
 ORLANDO

SACRAMENTO
 SAN DIEGO
 SAN FRANCISCO
 SILICON VALLEY
 TALLAHASSEE

TAMPA
 WASHINGTON, D.C.
 BRUSSELS
 TOKYO

In expressing the opinion set forth below, we have assumed the following:

1. Each individual executing any of the Documents, whether on behalf of such individual or another person, is legally competent to do so.
2. Each individual executing any of the Documents on behalf of a party (other than the Company) is duly authorized to do so.
3. Each of the parties (other than the Company) executing any of the Documents has caused to be duly and validly executed and delivered each of the Documents to which such party is a signatory, and such party's obligations (other than the Company's) set forth therein are legal, valid and binding.
4. All Documents submitted to us as originals are authentic. All Documents submitted to us as certified or photostatic copies conform to the original documents. All signatures on all such Documents are genuine. All public records and certificates of public officials reviewed or relied upon by us or on our behalf are true and complete. All statements and information contained in the Documents are true and complete. There has been no oral or written modification or amendment to the Documents, or waiver of any provision of the Documents, by action or omission of the parties or otherwise.
5. The Shares will not be issued or transferred in violation of any restriction or limitation on transfer or ownership contained in Section 4.05 of the Charter.
6. The Company will issue the Shares in accordance with the Board Resolutions, and both as of the date hereof and prior to the issuance of any Shares, the Company will have available for issuance, under the Charter, the requisite number of authorized but unissued shares of Common Stock for the issuance of the Shares.
7. The Shares, if certificated, when issued and delivered will conform to the form set forth in Exhibit 4.1 to the Registration Statement.

We have also assumed that the Registration Statement and any amendments thereto will have become effective and comply with all applicable laws and no stop order suspending the effectiveness of the Registration Statement will have been issued and remain in effect, in each case, at the time the Shares are offered and sold as contemplated by the Registration Statement.

Based upon the foregoing, and subject to the assumptions, limitations and qualifications stated herein, it is our opinion that, the Shares, when issued and delivered by the Company upon redemption of the Series A Preferred Stock in accordance with the terms and conditions of the Articles Supplementary and for the consideration set forth therein, will be validly issued, fully paid and non-assessable.

The foregoing opinion is limited solely to the Maryland General Corporation Law, as amended, and we do not express any opinion herein concerning any other laws, statutes, ordinances, rules, or regulations. We express no opinion as to compliance with the securities (or "blue sky") laws of the State of Maryland. The opinion expressed herein is subject to the effect of judicial decisions that may permit the introduction of parol evidence to modify the terms or the interpretation of agreements.



FOLEY & LARDNER LLP

September [], 2023

Page 3

This opinion is issued as of the date hereof, and we assume no obligation to supplement this opinion if any applicable law changes after the date hereof or if we become aware of any fact that might affect the opinion expressed herein after the date hereof. This opinion is limited to the matters set forth herein, and no other opinion should be inferred beyond the matters expressly stated.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to the use of the name of our Firm therein. In giving this consent, we do not admit that we are within the category of persons whose consent is required by Section 7 of the Securities Act.

Very truly yours,

[DRAFT]

Foley & Lardner LLP

September [], 2023

Generation Income Properties, Inc.
401 East Jackson Street, Suite 3300
Tampa, Florida 33602

Re: Opinion of Foley & Lardner LLP as to Tax Matters

Ladies and Gentlemen:

We have acted as counsel to Generation Income Properties, Inc., a Maryland corporation (the "Company"), with respect to certain United States federal income tax matters in connection with the filing of its registration statement on Form S-11 (the "Registration Statement") with the Securities and Exchange Commission (the "Commission") on the date hereof. The Registration Statement relates to (i) the distribution of [] shares of common stock, \$0.01 par value per share ("Common Stock") of the Company (the "Distribution Shares") by Modiv Operating Partnership, L.P., a Delaware limited partnership ("Modiv OP") to the holders of units of Modiv OP, including Modiv Inc., now known as Modiv Industrial, Inc., a Maryland corporation ("Modiv"), and the subsequent distribution by Modiv to the holders of its common stock and (ii) the offer and sale, fronttime-to-time by the Selling Shareholders identified in the Registration Statement of up to [] shares of Common Stock (the "Resale Shares"). The Distribution Shares and the Resale Shares (collectively referred to herein as the "Shares") are issuable to Modiv OP upon the redemption by the Company of 2,400,000 shares of the Company's Series A Redeemable Preferred Stock, par value \$0.01 per share (the "Series A Preferred Stock"), as described in the Registration Statement, in a private placement transaction exempt from registration under Section 4(a)(2) of the Securities Act and Regulation D promulgated thereunder. In connection with the Registration Statement, we have been asked to provide an opinion regarding the classification of the Company as a real estate investment trust ("REIT") under the Internal Revenue Code of 1986, as amended (the "Code")¹; and (ii) the accuracy and fairness of the discussion in the Registration Statement under the caption "Material Federal Income Tax Considerations." Capitalized terms not defined herein shall have the meanings ascribed to them in the Registration Statement.

In rendering our opinions, we have made such factual and legal examinations, including an examination of such statutes, regulations, records, certificates and other documents as we have considered necessary or appropriate, including, but not limited to, the following: (1) the Registration Statement (including exhibits and schedules thereto); (2) the Articles of Incorporation of the Company, as amended through the date hereof; and (3) the Agreement of Limited Partnership of Generation Income Properties, L.P., a Delaware limited partnership (the "Operating Partnership"), dated March 23, 2018, and any amendments thereto through the date hereof. The opinions set forth in this letter also are based on certain written factual representations and covenants made by an officer of the Company, in the Company's own capacity and in its capacity as the general partner of the Operating Partnership, in a letter to us (the "Officer's Certificate") (collectively, the Officer's Certificate, and the documents described in the immediately preceding sentence are referred to herein as the "Transaction Documents").

¹ Unless otherwise stated, all section references herein are to the Code.

In our review, we have assumed, with the consent of the Company and the Operating Partnership, that (i) all of the factual representations, covenants and statements set forth in the Transaction Documents are true, complete and correct in all material respects, (ii) all of the obligations imposed by any such documents on the parties thereto have been and will be performed or satisfied in accordance with their terms; (iii) the Company and the Operating Partnership each will be operated in the manner described in the relevant Transaction Documents; and (iv) the Company and the Operating Partnership have valid legal existences under the laws of the states in which they were formed and have operated in accordance with the laws of such states. We have, consequently, assumed and relied on your representations that the information presented in the Transaction Documents (including, without limitation, the Officer's Certificate and the exhibits thereto) accurately and completely describe all material facts relevant to our opinion and that any representation of fact made "to the knowledge of" or similarly qualified is correct without such qualification. To the extent the representations and covenants speak to the intended ownership or operations of the Company or the Operating Partnership, we have assumed that the Company or Operating Partnership, as the case may be, will in fact be owned and operated in accordance with such stated intent. We have not undertaken any independent inquiry into, or verification of, these facts for the purpose of rendering this opinion. While we have reviewed all representations made to us to determine their reasonableness, we have no assurance that they are or will ultimately prove to be accurate. No facts have come to our attention, however, that would cause us to question the accuracy or completeness of such facts or representations in a material way. Our opinion is conditioned on the continuing accuracy and completeness of such representations, covenants and statements. Any material change or inaccuracy in the facts referred to, set forth, or assumed herein or in the Transaction Documents may affect our conclusions set forth herein.

We also have assumed the legal capacity of all natural persons, the genuineness of all signatures, the proper execution of all documents, the legal capacity of signatories, the authenticity of all documents submitted to us as originals, the conformity to originals of documents submitted to us as copies, and the authenticity of the originals from which any copies were made. For documents that have been provided to us in draft form, we have assumed that the final executed versions of such documents will not differ materially from such drafts.

Based upon, and subject to, the foregoing assumptions and qualifications and the discussion below, we are of the opinion that:

1. For each of its taxable years beginning with its taxable year ended December 31, 2021, the Company has been organized and operated in conformity with requirements for qualification and taxation as a REIT under the Code, and the Company's organization and proposed method of operation will enable it to meet the requirements for qualification and taxation as a REIT for its taxable year ending on December 31, 2023, and thereafter.

2. The discussion in the Registration Statement under the caption “Material Federal Income Tax Considerations,” to the extent it constitutes matters of law, summaries of legal matters or legal conclusions, is correct in all material respects and fairly summarizes the U.S. federal income tax considerations that are likely to be material to a holder of the Company’s Common Stock, subject to the qualifications set forth therein.

We express no opinion on any issue relating to the Company, the Operating Partnership or the discussion in the Registration Statement under the caption “Material Federal Income Tax Considerations” other than as expressly stated above.

We undertake no obligation to update this opinion, or to ascertain after the date hereof, whether circumstances occurring after such date may affect the conclusions set forth herein. We express no opinion as to matters governed by any laws other than the Code, the Treasury Regulations, published administrative announcements and rulings of the Internal Revenue Service (“IRS”), and court decisions.

The Company’s qualification and taxation as a REIT will depend upon the Company’s ability to meet on a continuing basis, through actual annual operating and other results, the various requirements under the Code with regard to, among other things, the sources of its gross income, the composition of its assets, the level of its distributions to stockholders, and the diversity of its stock ownership, and the Company’s utilization of any and all appropriate “savings provisions” (including, without limitation, the provisions of Sections 856(c)(6), 856(c)(7), and 856(g) and the provision included in Section 856(c)(4) (flush language) allowing for the disposal of assets within 30 days after the close of a calendar quarter, and all available deficiency dividend procedures) available to the Company under the Code to correct violations of specified REIT qualification requirements of Sections 856 and 857. Our opinions set forth above do not foreclose the possibility that the Company may have to utilize one or more of these “savings provisions” in the future, which could require amending prior year tax returns and/or the payment of an excise tax and/or penalty tax (either of which could be significant in amount) in order to maintain its REIT qualification. Foley & Lardner LLP will not review the Company’s compliance with the REIT requirements on a continuing basis. Accordingly, no assurance can be given that the actual results of the operations of the Company and the Operating Partnership, the sources of their income, the nature of their assets, the level of the Company’s distributions to stockholders and the diversity of its stock ownership for any given taxable year will satisfy the requirements under the Code for the Company’s qualification and taxation as a REIT. To the extent that the facts differ from those represented to or assumed by us herein, our opinion should not be relied upon.

The foregoing opinions are based on relevant provisions of the Code, Treasury Regulations issued thereunder (including Proposed and Temporary Regulations), and interpretations of the foregoing as expressed in court decisions, administrative determinations, and the legislative history as of the date hereof. These provisions and interpretations are subject to differing interpretations or change at any time, which may or may not be retroactive in effect, and which might result in modifications of our opinions. In this regard, an opinion of counsel with respect to an issue represents counsel’s best judgment as to the outcome on the merits with respect to such issue, is not binding on the IRS or the courts, and is not a guarantee that the IRS

will not assert a contrary position with respect to an issue, or that a court will not sustain such a position if asserted by the IRS. The IRS has not issued Regulations or administrative interpretations with respect to various provisions of the Code relating to REIT qualification. No assurance can be given that the law will not change in a way that will prevent the Company from qualifying as a REIT or that may change the other legal conclusions stated herein.

The foregoing opinions are limited to the United States federal income tax matters addressed herein, and no other opinions are rendered with respect to other United States federal tax matters or to any issues arising under the tax laws of any other country, or any state or locality. This opinion letter is rendered to you for your use in connection with the Registration Statement and may be relied upon solely by you and acquirors of the shares of Common Stock pursuant to the Registration Statement, and it speaks only as of the date hereof. Except as provided in the next paragraph, this opinion letter may not be distributed, quoted in whole or in part or otherwise reproduced in any document, filed with any governmental agency, or relied upon by any other person for any other purpose (other than as required by law) without our express written consent.

We consent to the use of our name under the captions "Material Federal Income Tax Considerations" and "Legal Matters" in the Registration Statement and to the use of these opinions for filing as Exhibit 8.1 to the Registration Statement. In giving this consent, we do not hereby admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, or the rules and regulations of the Commission thereunder.

Very truly yours,

DRAFT

FOLEY & LARDNER LLP

OFFICE LEASE AGREEMENT**(Revised January 1, 2009)**

THIS LEASE is made and entered into as of the 14th day of November, 2002, by and between **BRWHP Properties, LLP.**, and/or assigns ("Landlord"), having an office at 2601 Westhall Lane, Maitland, FL, 32751 ("Landlord's Mailing Address"), and **X-nth, Inc.** ("Tenant"), having an office at 2601 Westhall Lane, Maitland, Florida 32751 ("Tenant's Mailing Address").

I. DEMISE OF PREMISES

In consideration of the Rent and the covenants and agreements made herein, including the General Terms, Covenants and Conditions attached hereto and made a part hereof, Landlord leases to Tenant and Tenant accepts from Landlord the Premises (as outlined on the plan attached hereto as Exhibit "A") located in the Complex for the Term beginning on the Commencement Date.

II. TERMS

In the event of a conflict between Item 11, Terms and other provisions of this Lease, Item 11, Terms shall prevail. As used in this Lease, the following terms shall have the following meanings:

1. **Building:** 33,118 rentable square foot office facility to be known as 2601 Westhall Lane, located on the northeast corner of Westhall Lane and Maitland Center Commons, in Orange County, Florida (as indicated on the attached Exhibit "A"), and all improvements now or hereafter constructed by Landlord including any additional facilities which may be deemed necessary or desirable by Landlord.
2. **Premises:** approximately 33,118 rentable square feet.
3. **Commencement Date:** The earlier of January 1, 2003, or the date Tenant first takes possession of the Premises. Such Commencement Date shall be confirmed by Certificate of Commencement executed by Landlord and Tenant upon Tenant's occupancy of Premises.
4. **Rent Commencement Date:** The earlier of January 1, 2003, or the date Tenant first takes possession of the Premises.
5. **Term:** a period commencing on the Commencement Date and expiring at midnight on the date one-hundred and twenty (204) months after the Commencement Date, provided, however, if the Commencement Date is any day other than the first day of a calendar month, the Term shall be extended automatically until midnight on the last day of the calendar month in which the Term would otherwise expire.

6. **Lease Year:** each twelve (12) month period of the Time commencing on the Commencement Date or any anniversary of the Commencement Date.
7. **Base Rent:** the annual Base Rent is \$16.23 per rentable square foot per year, as described below, and shall be payable in equal Monthly Installments of Base Rent (plus sales tax) during the applicable Lease. The actual Monthly Base Rent due shall be the Annual Base Rent divided by twelve. Base rent shall increase at a rate of 3% per annum (plus sales tax) beginning 12 months after commencement date. The table below reflects the 3% annual increase.

Lease Year	Annual Base Rent	Monthly Installments of Base Rent
2009	\$537,648.71	\$44,804.06
2010	\$553,778.17	\$46,148.18
2011	\$570,391.51	\$47,532.63
2012	\$587,503.26	\$48,958.60
2013	\$605,128.36	\$50,427.36
2014	\$623,282.21	\$51,940.18
2015	\$641,980.67	\$53,498.39
2016	\$661,240.09	\$55,103.34
2017	\$681,077.30	\$56,756.44
2018	\$701,509.62	\$58,459.13
2019	\$722,554.90	\$60,212.91

In addition to Base Rent, Tenant shall pay in monthly installments Landlord's Operating Expenses (see below) for the Building.

8. **Security Deposit:** None required
9. **Common Areas:** areas designed and intended to be used by all tenants of the Building, including walkways, driveways, parking areas, and landscaped areas.

- 10. **Property:** the Building, including all Common Areas.
 - 11. **Permitted Use:** General office
 - 12. **Leasehold Improvement Allowance:** none.
 - 13. **Operating Expenses (in addition to Base Rent):** Tenant shall pay monthly all Landlords' Operating Expenses for the Building. Operating Expenses are defined herein on pages 6 and 7 infra.
- III. EXHIBITS AND RIDERS

The Exhibits and Riders listed below are incorporated in this Lease and are to be construed as part hereof:

Exhibits

- "A" - Plan showing the Premises.
- "B" - Rules and Regulations.

Riders ("x" if applicable):

- Construction of Leasehold Improvements
- Guaranty of Lease
- Landlord Contingencies

IN WITNESS WHEREOF, Landlord and Tenant have executed or caused to be executed this Lease as of the date first written above.

WITNESSES:

/s/ _____

/s/ _____

/s/ _____

TENANT:

By: /s/ Richard Poirier _____

Name: Richard Poirier

Title: Corporate Secretary

LANDLORD:

By: /s/ William Beckman _____

Name: William C Beckman

Title: President, General Partner, Onit Engineering, Inc.

GENERAL TERMS, COVENANTS AND CONDITIONS

1. Commencement Date; Construction of Premises

- (a) The rights, duties and obligations of the parties under this Lease shall be effective upon the execution hereof, and Tenant's obligation to pay Rent hereunder shall commence upon the Commencement Date.
- (b) If Landlord is unable to deliver possession of the Premises to Tenant on the Commencement Date because of the holding-over by any occupant of the Premises, or because the Premises are not substantially completed, or for any other reason, this Lease shall continue in effect and Landlord shall not be liable to Tenant or any third party for such inability. In such event, Landlord shall act diligently and in good faith to complete the work that is necessary to allow Landlord to deliver the Premises to Tenant for use and occupancy by Tenant. If the Premises are not available for Tenant's use and occupancy by the Commencement Date described above and such delay is not caused by Tenant, then the Commencement Date shall be adjusted to the date when Landlord does in fact deliver possession of the Premises to Tenant for Tenant's use and occupancy. If action or inaction by Tenant causes a delay in preparation or completion of the Premises for Tenant's use and occupancy, then the Commencement Date shall be the later of the Commencement Date identified above or the date the Premises would have been available for Tenant's use and occupancy but for delays caused by Tenant. Notwithstanding any term or provision herein to the contrary, if, for any reason other than Tenant's delay, Landlord cannot deliver possession of the Premises to Tenant for Tenant's use and occupancy on a date which is sixty (60) days after the Commencement Date identified above, then Tenant shall be entitled to terminate this Lease by notifying Landlord in writing within fifteen (15) days following the expiration of such sixty (60) day period. However, if Landlord delivers the premises within the fifteen (15) day notice period, the Lease will remain in full force and effect.
- (c) Tenant's taking possession of the Premises shall be conclusive evidence that the Premises were in good order, condition and repair when Tenant took possession, except for such matters of which Tenant gives Landlord notice on or before the Commencement Date. No promise of Landlord to alter, remodel, repair or improve the Premises or the Building and no representation, either express or implied, respecting any matter or thing relating to the Building or this Lease (including the condition of the Premises or the Building) have been made by Landlord to Tenant, other than as may be contained herein or in a separate Construction Rider signed by Landlord and Tenant.
- (d) Any and all construction work to be performed upon the Premises and the designation of the party financially responsible for such work and the application of the Leasehold Improvement Allowance and the work schedule and plans for such work shall be described in a Construction Rider attached hereto and made a part hereof.

2. Rent

- (a) Tenant shall pay Monthly Installments of Base Rent, Operating Expenses, Electric Bill Expense and sales tax (sometimes referred to collectively as "Rent") in advance on the first day of each month of the Term. If the Term shall commence or end on a day other than the first day of a month, the Monthly Installments of Base Rent, Operating Expenses and Electric Bill expense for the first or last partial month shall be prorated on a per diem basis. Upon the execution of this Lease, Tenant shall pay one Monthly Installment of Base Rent and Operating Expenses for the first full month of the Term and a prorated Monthly Installment of Base Rent, Operating Expenses and Electric Bill Expense for any partial month which may precede it.
- (b) Tenant shall pay to Landlord at the time of paying the Rent any excise, sales, use, gross receipts or other taxes (other than a net income or excess profits tax) which may be imposed on or measured by such Rent or may be imposed on or on account of the letting and which Landlord may be required to pay or collect under any law now in effect or hereafter enacted.
- (c) The Rent shall be paid in lawful money of the United States of America to Landlord at Landlord's Mailing Address or to such other person or at such other place as Landlord may from time to time designate in writing, without any prior notice or demand therefore and without any deduction or offset whatsoever.
- (d) If any part of the Rent is not paid within five (5) days after it is due, Tenant shall pay Landlord a late charge in the amount of five percent (5%) of such payment. The payment by Tenant of a late charge or interest hereunder shall not prevent nor remedy a default under this Lease.

3. Increases in Base Rent

Commencing at the beginning of each Lease Year during the Term of this Lease, the Base Rent shall be adjusted annually as described in Paragraph 7 of Article II, Terms, of this Lease.

4. Operating Expenses

- (a) The term "Operating Expenses" as used herein includes all expenses incurred with respect to the maintenance, management and operation of the Building of which the Premises are a part, including, but not limited to, maintenance and repair costs, electricity, fuel, water, sewer, gas and other utility charges, security, janitorial services in the Common Areas, trash removal, landscaping and pest control, wages and fringe benefits payable to employees of Landlord whose duties are connected with the operation and maintenance of the Building, amounts paid to contractors or subcontractors for work or services performed in connection with the operation, management and maintenance of the Building, all services, supplies, repairs, replacements or other expenses for

maintaining, managing and operating the Building including maintenance of the Common Areas. The term "Operating Expenses" also includes all real property taxes and installments of special assessments, as well as all insurance premiums Landlord is required to pay or deems necessary to pay, including public liability insurance, rent loss insurance and casualty insurance with respect to the Building.

- (b) The term "Operating Expenses" does not include income and franchise taxes of Landlord, expenses incurred in leasing to or procuring of tenants, leasing commissions, advertising expenses, expenses for the renovating of space for new tenants, capital improvements, interest or principal payments on any mortgage or other indebtedness of Landlord, nor depreciation allowance or expense.
- (c) In the event the Operating Expenses of the Building shall, in any calendar year during the Term of this Lease, exceed the Operating Expense estimate per square foot of rentable area, Tenant agrees to pay as additional rent Tenant's Share of the excess Operating Expenses and Electric Bill Expense. Landlord may, within six (6) months following the close of any calendar year for which such payment is due under this paragraph, invoice Tenant for the excess Operating Expenses and Electric Bill Expense. The invoice shall include in reasonable detail the computation of the additional payment, and Tenant agrees to make payment of the excess Operating Expenses to Landlord within ten (10) days following receipt of the invoice. In the year in which this Lease terminates, Landlord, in lieu of waiting until the close of the calendar year in order to determine any excess Operating Expenses, may invoice Tenant for Tenant's Share based upon an estimate of the year's excess Operating Expenses. Landlord may invoice Tenant under this provision within thirty (30) days prior to the termination of the Lease or at any time thereafter. Tenant shall have the right, at its own expense and at a reasonable time and upon prior notice to Landlord, to inspect Landlord's books at the Landlord or its manager's place of business, relevant to the additional payments due under this paragraph. Tenant's obligation to pay excess Operating Expenses shall survive the termination of this Lease. Landlord will manage the building in a manner generally consistent with other single story office facilities of similar design and age.
- (d) Landlord may, at its option, estimate its annual cost of Operating Expenses and determine whether excess Operating Expenses will be payable from Tenant. In such case, Tenant shall pay 1/12th of Tenant's Share of such excess estimated Operating Expenses on the same date monthly rent is due. Landlord shall thereafter determine its actual Operating Expenses and Electric Bill Expense at the end of each calendar year and shall notify Tenant of any adjustment due, which shall be paid by or credited to Tenant, as the case may be, within thirty (30) days after such notice. Tenant shall also pay sales tax, if any, due on such excess Operating Expenses whether paid on a monthly basis or at year-end.

5. Building Services

Landlord shall furnish the following services to the Building and Premises, the cost of which shall be included in Operating Expenses and paid by Tenant:

- (a) Electrical current for ordinary purposes connected with the permitted use of the exterior of the Building and Parking areas. Electricity for Tenant's Premises is at Tenant's sole expense.
- (b) Electrical lighting service outside the Building and the within the Parking areas and related landscaping islands in the manner and to the extent deemed by Landlord to be standard. Electrical lighting service for Tenant's Premises shall be at Tenant's sole expense.
- (c) Water, sewer and trash removal as determined by Landlord to be standard.

The failure by Landlord to any extent to furnish, or any stoppage of these services resulting from causes beyond the control of Landlord, shall not render the Landlord liable in any respect for damages to either person or property, nor be construed as an eviction of Tenant, nor work an abatement of rent, nor relieve Tenant from fulfillment of any covenant or agreement hereof. Should any equipment or machinery breakdown or, for any cause, cease to function properly, Landlord shall use reasonable diligence to repair the same promptly, but Tenant shall have no claim for rebate of rent or damages on account of interruptions in service occasioned thereby or resulting therefrom.

6. Repairs, Maintenance and Alterations

- (a) Tenant shall keep the Premises, including the Leasehold Improvements and Tenant's Property, neat, clean, and in good order and condition. Tenant shall give Landlord prompt notice of any damage to or defective condition in any part or appurtenance of the Premises, the Leasehold Improvements, Tenant's Property, or the Building including mechanical, electrical, plumbing, heating, ventilating, air conditioning and other equipment facilities and systems located within or serving the Building, (hereinafter the "Building Systems"). Tenant shall, at Tenant's cost and expense, repair or replace any damage or injury done to the Building or the Premises caused by Tenant or by Tenant's agents, employees, invitees or visitors. If Tenant fails to make such repairs or replacements promptly, or within fifteen (15) days of occurrence, Landlord may, at its option, make such repairs or replacement and Tenant shall repay the cost thereof to Landlord upon demand. Tenant shall not commit or allow any waste or damage to be committed on any portion of the Premises or the Building and shall, at the termination of this Lease, by lapse of time or otherwise, deliver the Premises to Landlord broom-clean and in as good condition as at date of possession by Tenant, ordinary wear and tear excepted.
- (b) The repair and maintenance of the heating, ventilating and air conditioning systems, equipment and fixtures shall be undertaken pursuant to an HVAC service contract entered into by Landlord and included in the Operating Expenses.
- (c) Landlord shall, at Landlord's expense, repair, replace and maintain the roof and the external and structural parts of the Building which do not constitute a part of the Premises and shall perform such repairs, replacements and maintenance with reasonable dispatch, in a good and workmanlike manner. Landlord shall keep and maintain the Common Area (the expense of which shall be borne in part by Tenant as an Operating Expense described above) in good order and repair. In the event damage to the Building or Common Area is caused by Tenant, Tenant shall pay the cost of those repairs.
- (d) Except as provided herein, Landlord shall have no liability to Tenant nor shall Tenant's covenants and obligations under this Lease be reduced or abated in any manner whatsoever by reason of any inconvenience, annoyance, interruption or injury to business arising from Landlord's making any repairs or changes which Landlord is required or permitted by this Lease or by any other tenant's lease or required by law to make in or to any portion of the Premises, the Building or the Building Systems. Landlord shall nevertheless use its best efforts to minimize any interference with Tenant's business in the Premises.

-
- (e) Tenant shall not make any alteration in or to the Premises without the prior written consent of Landlord. If Landlord gives its consent to the making of alterations by Tenant, all such work shall be done in accordance with such requirements and upon such conditions as Landlord, in its sole discretion, may impose. Any review or approval by Landlord of any plans or specifications with respect to any alteration is solely for Landlord's benefit and without any representation or warranty whatsoever to Tenant with respect to the adequacy, correctness or efficiency thereof or otherwise.
 - (f) Tenant shall defend, indemnify and save harmless Landlord from and against any and all mechanics' and other liens and encumbrances filed by any person claiming through or under Tenant, including security interests in any materials, fixtures, equipment or any other improvements or appurtenances installed in and constituting part of the Premises and against all costs, expenses and liabilities (including reasonable attorneys' fees) incurred in connection with any such lien or encumbrance or any action or proceeding brought thereon. Tenant at its expense shall procure the satisfaction or discharge of record of all such liens and encumbrances within twenty (20) days after the filing thereof. Pursuant to the provisions of Section 713.10, Florida Statutes, under no circumstances shall the interest of Landlord in and to the Property or the Building be subject to liens for improvements made by Tenant or subject to any mechanic's, laborer's or material man's lien or any other lien or charge on account of or arising from any contract or obligations of Tenant.

7. Use of the Premises; Rules and Regulations; Signs

- (a) Tenant shall use the Premises only for the Permitted Use and all other uses or purposes are strictly prohibited. Tenant shall not at any time use or occupy, or suffer or permit anyone to use or occupy, the Premises or do or permit anything to be done in the Premises which: (i) causes or is liable to cause injury to persons, to the Building or its equipment, facilities or systems; (ii) impairs or tends to impair the character, reputation or appearance of the Building as a first class office building; (iii) impairs or tends to impair the proper and economic maintenance, operation and repair of the Building or its equipment, facilities or systems; (iv) increases the rate of fire, liability or other insurance coverage for the Property; or (v) annoys or inconveniences or tends to annoy or inconvenience other tenants or occupants of the Building as determined by Landlord.

- (b) Tenant shall comply with any rules and regulations as Landlord may from time to time make; provided, however, in no event shall such rules or regulations contradict or abrogate any right or privilege herein expressly granted to Tenant in this Lease. Landlord shall not be responsible for the violation by anyone of any of said rules and regulations. The current Rules and Regulations are attached hereto as Exhibit B.
- (c) Only such signage as complies with Landlords Sign Criteria, a copy of which is attached hereto as Exhibit C, shall be permitted at the Premises. Tenant agrees that no other signs or advertising devices of any nature shall be erected or maintained by Tenant on the Premises or elsewhere within the Premises so as to be visible from the exterior of the Building or within the Complex. No exterior lighting, awnings, equipment or other structures shall be permitted on the Premises, on the exterior walls or extending to the exterior of the Building or elsewhere in the Complex except as approved in writing by Landlord

8. Leasehold Improvements

- (a) All fixtures, equipment, improvements and appurtenances attached to or built into the Premises, whether or not by or at the expense of Tenant, and any carpeting or other personal property in the Premises on the Commencement Date installed by Landlord (collectively hereinafter "Leasehold Improvements"); (i) shall be and remain a part of the Premises; (ii) shall be deemed the property of Landlord; and (iii) shall not be removed by Tenant.
- (b) All movable partitions, other business and trade fixtures, furnishings, furniture, machinery and equipment, communications equipment, and other personal property located in the Premises acquired by or for the account of Tenant, without expense to Landlord, which can be removed without damage to the Building (collectively sometimes hereinafter called "Tenant's Property"), shall be and shall remain the property of Tenant and, except as otherwise prohibited by this Lease, may be removed by it at any time during the Term; provided that, if any of Tenant's Property is removed, Tenant shall pay the cost of repairing any damage to the Premises or to the Building resulting from such removal.

9. Rights Reserved to Landlord

Landlord reserves the following rights, exercisable without liability to Tenant for damage or injury to property, person or business and without effecting an eviction, constructive or actual, or disturbance of Tenant's use or possession or giving rise to any claim:

- (a) To have pass keys to the Premises and all doors therein, excluding Tenant's vaults and safes;

-
- (b) On reasonable prior notice to Tenant, to exhibit the Premises to any prospective purchaser, mortgagee or assignee of any mortgage on the Building or Complex and to others having an interest therein at any time during the Term, and to prospective tenants during the last six months of the Term;
 - (c) To take any and all measures, including entering the Premises for the purpose of making inspections, repairs, alterations, additions and improvements to the Premises or to the Building (including for the purpose of checking, calibrating, adjusting and balancing controls and other parts of the Building Systems), as may be necessary or desirable for the operation, improvement, safety, protection or preservation of the Premises or the Building, or in order to comply with all laws, orders and requirements of governmental or other authority, or as may otherwise be permitted or required by this Lease; provided, however, that Landlord shall use its best efforts to minimize interference with Tenant's business in the Premises.
 - (d) Tenant (and or successor on assigns) if requested agrees to provide Landlord with Annual Financial Statements, depicting tenants financial standing in conformity with generally accepted accounting practices. Landlord agrees to keep the information confidential and agrees to enter into a non-disclosure agreement pursuant to this clause. Landlord agrees to use this information solely as a means of obtaining and facilitating financing on the subject building.

10. Assignment and Subletting

- (a) Tenant shall not assign, mortgage or encumber this Lease, nor sublet, suffer or permit the Premises or any part thereof to be used by others, without the prior written consent of Landlord in each instance, which consent Landlord will not unreasonably withhold. If this Lease be assigned, or if the Premises or any part thereof be sublet or occupied by anyone other than Tenant without Landlord's prior written consent, such purported assignment or subletting shall be null and void; however, Landlord may collect rent from the assignee, subtenant or occupant, and apply the net amount collected to the Rent, and no such assignment, subletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant or occupant as tenant, or a release of Tenant from the further performance of its covenants herein contained. The consent by Landlord to an assignment or subletting shall not be construed to relieve Tenant from obtaining Landlord's written consent to any further assignment or subletting.

-
- (b) For the purpose of this Lease, an "assignment" prohibited by this section shall be deemed to include the following: if Tenant is a partnership, a withdrawal or change (voluntary, involuntary, by operation of law or otherwise) of any of the partners thereof, or the dissolution of the partnership; or, if Tenant consists of more than one person, a purported assignment, transfer, mortgage or encumbrance (voluntary, involuntary, by operation of law or otherwise) from one thereof unto the other or others thereof; or, if Tenant is a corporation, any dissolution, merger, consolidation or other reorganization of Tenant, or any change in the ownership (voluntary, involuntary, by operation of law, creation of new stock or otherwise) of 50 percent or more of its capital stock from the ownership existing on the date of execution hereof; or, the sale of fifty percent (50%/or more of the value of the assets of Tenant
 - (c) No assignment or subletting shall affect the continuing primary liability of Tenant (which, following assignment, shall be joint and several with the assignee), and Tenant shall not be released from performing any of the terms, covenants and conditions of this Lease.

11. Holding Over

If Tenant retains possession of the Premises or any part thereof after the Term has expired, Tenant's occupancy of the Premises shall be as a tenant at will, terminable at any time by Landlord. Tenant shall pay Landlord rent for such time as Tenant remains in possession at the rate of one hundred fifty percent (150%) for the first two months, thereafter at two hundred percent (200%) of the total amount of the Rent payable hereunder for the month immediately preceding the Termination Date, and, in addition thereto, shall pay Landlord for all damages sustained by reason of Tenant's retention of possession. The provisions of this Section do not exclude Landlord's rights of re-entry or any other right hereunder.

12. Surrender of the Premises

- (a) At the expiration of the Term or earlier termination, Tenant shall peaceably surrender the Premises, including the Leasehold Improvements, in broom-clean condition and otherwise in as good condition as when Tenant took possession, except for: (i) reasonable wear and tear; (ii) loss by fire or other casualty, and (iii) loss by condemnation. Tenant shall, on Landlord's request, remove Tenant's Property and pay the cost of repairing all damage to the Premises or the Building caused by such removal.

-
- (b) If Tenant abandons or surrenders the Premises, or is dispossessed by process of law, or otherwise, any of Tenant's Property (except money, securities and other like valuables) left on the Premises shall be deemed abandoned; and title thereto shall automatically pass to Landlord under this Lease as by a bill of sale. Thereafter, Landlord may in its sole and absolute discretion choose to remove, store or otherwise dispose of such property in any manner it may deem commercially reasonable. However, the proceeds from the disposition of such property shall be applied against the balance of any sums owed to Landlord by Tenant and against the costs of the removal or disposition.

13. Destruction or Damage

- (a) If the Building or the Premises are damaged or destroyed by fire or other casualty, and this Lease is not terminated as provided below, Landlord shall repair the damage and restore or rebuild the Building and the Premises (as the case may be), at its expense, with reasonable dispatch after notice to it of the damage or destruction, to the extent that insurance proceeds are available for such repair, restoration or rebuilding; provided, however, that Landlord shall not be required to repair or replace any of Tenant's Property, or any alteration of Leasehold Improvements made by Tenant or nonstandard building improvements made by Landlord.
- (b) If the Premises are damaged or destroyed by fire or other casualty, the Rent shall equitably abate, to the extent that the Premises are rendered untenable, for the period from the date of such damage or destruction to the date the damage is repaired or restored.
- (c) If the Building or the Premises is substantially damaged or destroyed by fire or other casualty, Landlord may terminate this Lease by notice to Tenant within ninety (90) days after the date of the casualty, and this Lease shall terminate upon the thirtieth (30th) day after such notice, by which date Tenant shall vacate and surrender the Premises to Landlord. The Rent shall be prorated to the date of the casualty. The Premises or Building (whether or not the Premises are damaged) shall be deemed substantially damaged or destroyed if (i) the amount of the damage is more than twenty percent (20%) of the replacement value of the Building immediately prior to the casualty or (ii) restoration is not possible in accordance with Landlord's reasonable estimate within one hundred eighty (180) days following the date the damage occurred. If, by reason of such casualty, the Premises are rendered untenable in some material portion, and the amount of time required to repair the damage is reasonably determined by Landlord to be in excess of one hundred eighty (180) days from the date of such casualty, then Tenant shall have the right to terminate this Lease by giving Landlord written notice of termination within thirty (30) days after the date Landlord delivers Tenant notice that the amount of time required to repair the damage has been determined by Landlord to be in excess of one hundred eighty (180) days.
- (d) No damages, compensation or claim shall be payable by Landlord for any casualty, or any inconvenience, loss of business or annoyance arising from any repair or restoration of any portion of the Premises or of the Building pursuant to this Section. Landlord shall use its best efforts to make such repair or restoration promptly and in such manner as will not unreasonably interfere with Tenant's use and occupancy of the Premises.

14. Eminent Domain

- (a) If the whole of the Building is lawfully taken by condemnation or any other manner for any public or quasi-public purpose, this Lease shall terminate as of the date of vesting of title in such condemning authority (which date is hereinafter also referred to as the "date of taking"), and the Rent shall be prorated to such date, if any part of the Building or Complex is so taken, this Lease shall be unaffected by such taking, except that the Landlord may terminate this Lease by notice to Tenant within ninety (90) days after the date of taking, and (ii) if twenty percent (20%) or more of the Premises shall be taken and the remaining area of the Premises shall not be reasonably sufficient for Tenant to continue operation of its business, Tenant may terminate this Lease by notice to the Landlord within 90 days after the date of taking. This Lease shall terminate on the 30th day after such notice, by which date Tenant shall vacate and surrender the Premises to Landlord. The Rent shall be prorated to such date as Tenant is required to vacate the Premises by reason of the taking. If this Lease continues in force upon such partial taking, the Rent shall be equitably adjusted according to the rentable area of the Premises remaining.
- (b) In the event of any taking, all of the proceeds of any award, judgment or settlement payable by the condemning authority shall be and remain the sole and exclusive property of Landlord, and Tenant hereby assigns all of its right, title and interest in and to any such award, judgment or settlement to Landlord. Tenant, however, shall have the right, to the extent that the same shall not reduce or prejudice Landlord's award, to claim from the condemning authority, but not from Landlord, such compensation as may be recoverable by Tenant in its own right for moving expenses and damage to Tenant's Property.

15. Indemnification

- a) Tenant will not knowingly permit or suffer any lien attributable to Tenant or its agents or employees to attach to the Demised Premises or the Building and nothing contained herein shall be deemed to imply any agreement of Landlord to subject Landlord's interest or estate to any

mechanics' lien or any other lien, if any mechanics' lien is filed against the Demised Premises or the Building as a result of additions, alterations, repairs, installations or improvements made or claimed to have been made by Tenant or anyone holding any part of the Demised Premises through or under Tenant, or any other work or act of any of the foregoing, Tenant shall discharge the same within twenty (20) days from the filing thereof. If Tenant fails to so discharge by payment, bond or court order any such mechanics' lien, Landlord, at its option, in addition to all other rights or remedies herein provided, may bond said lien or claim (or pay off said lien or claim if it cannot be bonded) for the account of Tenant without inquiring into the validity thereof, and all sums so advanced by Landlord shall be paid by Tenant to Landlord as Additional Rent on demand.

- b) Tenant further indemnifies and exonerates Landlord against and *from* all liabilities, losses, obligations, damages, penalties, claims, costs, charges and expenses, including reasonable attorney's fees, which may be imposed upon or asserted against or incurred by Landlord by reason of (a) any negligence on the part of Tenant or any of its agents, contractors, servants, employees, licensees or invitees; (b) any accident, injury or damage to any person or property occurring in, on or about the Demised Premises or any part thereof; or (c) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on its part to be performed or complied with.

16. Hold Harmless

Tenant agrees to hold Landlord harmless against any and all claims, damages, accidents and injuries to persons or property caused by or resulting from or in connection with anything *in* or pertaining to or upon the Demised Premises during the term of this Lease or while Tenant is occupying the Demised Premises, except if such claim, damage, accident or injury shall be caused by the negligence of Landlord or its agents. Landlord shall not be liable to Tenant, Tenant's employees, agents, invitees, licensees or any other person whomsoever for any injury to person or damage to property on or about the Demised Premises caused by the negligence or misconduct of Tenant, its agents, servants, or employees or of any other person entering the building under expressed or implied invitation by Tenant or due to any other cause whatsoever, unless caused by the negligence or neglect of Landlord, its employees or its authorized representatives.

17. Tenant's Insurance

- (a) If during the Term insurance premiums on any insurance policy carried by Landlord on the Building or the Premises are increased due to or resulting from Tenant's occupancy hereunder, Tenant shall pay to Landlord as additional rent the amount by which Landlord's insurance premiums exceed standard rates. Any amount payable by Tenant hereunder shall be paid to Landlord within ten (10) days after notice to Tenant accompanied by the premium notice or other evidence of the amount due.

-
- (b) Tenant shall at its expense obtain insurance on the Leasehold Improvements, Tenant's Property and any nonstandard building improvements within the Premises. Tenant shall at Tenant's expense, at all times maintain no less than \$3,000,000 in general liability insurance with a reputable insurance company acceptable to Landlord in Landlord's reasonable discretion. Tenant shall name Landlord as "Additionally Insured".
 - (c) Neither party shall be liable to the other party or to any insurance company insuring the other party (by way of subrogation or otherwise) for any loss or damage to any property, or losses under workmen's compensation laws and benefits, even though such loss or damage may have been occasioned by the negligence of such party, its agents or employees, provided that such loss or damage is insured against under the terms of insurance policies referred to elsewhere in this Lease.

18. Subordination and Attornment

- (a) This Lease and all rights of Tenant hereunder shall be subordinate to all mortgages (referred to as the "mortgages") which may now or hereafter affect the Building or Property. The foregoing provision shall be self-operative and no further instruments of subordination shall be required. In confirmation of such subordination, Tenant shall promptly execute, acknowledge and deliver any instrument that Landlord or the holder of any mortgage or any of their respective assigns or successors in interest may reasonably request to evidence such subordination.
- (b) If any mortgagee (or any purchaser at a foreclosure sale) succeeds to the rights of Landlord under this Lease, whether through foreclosure action or delivery of a deed, (a "Successor Landlord") Tenant shall attorn to and recognize such Successor Landlord as Tenant's landlord under this Lease and shall promptly execute and deliver any instrument that such Successor Landlord may reasonably request to evidence such attornment. Landlord shall use its best efforts to obtain from each mortgagee an agreement that if as a result of the exercise of their rights they acquire Landlord's interest in and to the Premises, then as Successor Landlord they shall recognize the validity and continuance of

this Lease and shall not disturb Tenant's possession of the Premises so long as Tenant shall not be in default of this Lease, except that Successor Landlord shall in no event: (i) be liable for any previous act or omission of a prior landlord under this Lease; (ii) be subject to any offset for a claim arising prior to its succession to the rights of Landlord under this Lease; or, (iii) be bound by any modification of this Lease or by any prepayment of more than one month's Rent, unless such modification or prepayment shall have been expressly approved by the Successor Landlord.

19. Estoppel Certificate by Tenant

- (a) Tenant shall from time to time upon request by Landlord deliver to Landlord a statement in writing certifying: (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, identifying such modifications and certifying that the Lease, as modified, is in full force and effect); (ii) the dates to which the Rent has been paid; (iii) that Landlord is not in default under any provision of this Lease (or if Landlord is in default, specifying each such default); and, (iv) the address to which notices to Tenant shall be sent; it being understood that any such statement so delivered may be relied upon in connection with any lease, mortgage or transfer of the Building.
- (b) Tenant's failure to deliver such statement within such time shall be conclusive upon Tenant that: (i) this Lease is in full force and effect and not modified except as Landlord may represent; (ii) not more than one month's Rent has been paid in advance; (iii) there are no such defaults; and, (iv) notices to Tenant shall be sent to Tenant's Mailing Address as set forth in this Lease.

20. Transfer of Landlord's Interest

Landlord may assign, in whole or in part, its rights and obligations under this Lease and its rights and obligations in and to the Property. The term "Landlord" as used in this Lease, so far as covenants or agreements on the part of Landlord are concerned, shall be limited to mean and include only the owner or owners of Landlord's interest in this Lease at the time in question. Upon any transfer or transfers of such interest, Landlord herein named (and in case of any subsequent transfer, the then transferor) shall thereafter be relieved of all liability for the performance of any subsequent covenants or agreements on the part of Landlord contained in this Lease.

21. Default

- (a) The following shall be events of default under this Lease: (i) if Tenant defaults in payment of the Rent for a period of ten (10) days after any payment of the Rent shall become due and payable; (ii) if Tenant defaults in the performance of any other term, covenant, condition or obligation of Tenant under this Lease and fails to cure, such default within a period of fifteen (15) days after notice from Landlord specifying such default, provided, however, that if the nature of Tenant's default is such that more than fifteen (15) days are required to cure such default, then Tenant shall not be deemed to be in default if it shall commence such cure within such fifteen (15) day period and thereafter diligently prosecute the same to completion; (iii) if Tenant abandons or vacates any portion of the Premises, or if the Premises or a substantial part thereof remain unoccupied for a period of thirty (30) days or more; (iv) if Tenant makes any transfer, assignment, conveyance, sale, pledge or disposition of all or a substantial portion of Tenant's Property, or removes a substantial portion of Tenant's Property from the Premises; (v) if Tenant is a corporation which is not validly existing and in good standing; (vi) if Tenant is a partnership which is dissolved or liquidated; or, (vii) if Tenant's interest herein is sold under execution. Any installment of Rent or any other sum due by Tenant hereunder not paid within ten (10) days following the date when due and payable shall bear interest from the date due until paid at the lesser of (i) 12% per annum or (H) the maximum lawful contract rate per annum.
- (b) Upon any such event of default, Landlord may without prejudice to its other rights hereunder, do any one or more of the following: (i) terminate this Lease and re-enter and take possession of the Premises; (ii) recover possession of the Premises (with or without terminating this Lease, at Landlord's option) in the manner prescribed by any statute relating to summary process; (iii) Landlord may relet the Premises as Landlord may see fit without thereby avoiding or terminating this Lease, and for the purpose of such reletting, Landlord is authorized to make such repairs to the Premises as may be necessary in the sole discretion of Landlord for the purpose of such reletting, and if a sufficient sum is not realized from such reletting (after payment of all costs and expenses of such repairs and the expense of such reletting and the collection of rent accruing there from) each month to equal the Rent, then Tenant shall pay such deficiency each month upon demand therefore; and (iv) Landlord may declare immediately due and payable all the remaining installments of the Rent and such amount, less the fair rental value of the Premises for the remainder of the Term, shall be construed as liquidated damages and shall constitute a debt provable in bankruptcy or receivership. In computing such liquidated damages, there shall be added to such deficiency any reasonable expenses as Landlord may incur in connection with reletting, such as court costs, attorney's fees and disbursements, brokerage fees, and for putting and keeping the Premises in good order or for preparing the Premises for reletting. The failure of Landlord to relet the Premises or any part thereof after recovery of possession shall not release or affect Tenant's liability for damages. Landlord shall in no event be liable in any way whatsoever for failure to relet the Premises, or in the event that the Premises are relet, for failure to collect the Rent under such reletting. All of the damages which are specified in this Lease are in addition to all other damages and costs to which Landlord may be entitled under the laws of the State of Florida.

-
- (c) After default, the acceptance of the Rent (or any portion thereof) or failure to re-enter by Landlord shall not be held to be a waiver of its rights to terminate this Lease, and Landlord may re-enter and take possession of the Premises as if no Rent had been accepted after such default. All of the remedies given to Landlord in this Lease in the event of default by Tenant are in addition to all other rights or remedies to which Landlord may be entitled under the laws of the State of Florida; all such remedies shall be deemed cumulative and the election of one shall not be deemed a waiver of any other or further rights or remedies.
 - (d) Landlord shall not be deemed to be in default in the performance of any obligation required to be performed by Landlord hereunder unless and until it has failed to perform such obligation within thirty (30) days after receipt of written notice thereof from Tenant to Landlord; provided, however, that if the nature of Landlord's obligations is such that more than thirty (30) days are required for its performance, then Landlord shall not be deemed to be in default if it shall commence such performance within such 30-day period and thereafter diligently prosecute the same to completion.

22. Bankruptcy

If Tenant shall file a voluntary petition pursuant to the Bankruptcy Code or any successor thereto, or take the benefit of any insolvency act, or be dissolved, or if an involuntary petition be filed against Tenant pursuant to the Bankruptcy Code or any successor thereto, or if a receiver shall be appointed for its business or its assets and the appointment of such receiver is not vacated within 30 days after such appointment, or if it shall make an assignment for the benefit of its creditors, then and forthwith thereafter Landlord shall have all of the rights provided above in the event of nonpayment of the Rent.

23. Brokerage Fees

Tenant warrants and represents that it has not dealt with any Realtor, broker or agent in connection with this Lease. Tenant shall indemnify and hold Landlord harmless from any cost, expense or liability (including cost of suit and reasonable attorneys' fees) for any compensation, commissions or charges claimed by any Realtor, broker, or agent in connection with this Lease or by reason of any act of Tenant.

24. Notices

All notices, demands or other communications ("notices") permitted or required to be given hereunder shall be in writing and, if mailed postage prepaid by certified or registered mail, return receipt requested, shall be deemed given three days after the date of mailing thereof or on the date of actual receipt, if sooner; all other notice not so mailed shall be deemed given on the date of actual receipt. Notices shall be addressed as follows: (a) if to Landlord, to the Landlord's Mailing Address and (b) if to Tenant, to the Tenant's Mailing Address. Landlord and Tenant may from time to time by notice to the other designate such other place or places for the receipt of future notices.

25. Security Deposit

Tenant has deposited with Landlord the Security Deposit as security for the full and faithful performance of every provision of this Lease to be performed by Tenant. If Tenant defaults with respect to any provision of this Lease, including payment of the Rent, Landlord may use, apply or retain all or any part of the Security Deposit for the payment of any Rent, or to compensate Landlord for any other loss, cost or damage which Landlord may suffer by reason of Tenant's default. If any portion of the Security Deposit is so used or applied, Tenant shall, within five (5) days after notice thereof, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount, and Tenant's failure to do so shall be a breach of this Lease. Landlord shall not be required to keep the Security Deposit separate from its general funds, nor pay interest to Tenant. If Tenant shall fully and faithfully perform every provision of this Lease to be performed by it, the Security Deposit or any balance thereof shall be returned to Tenant at the expiration of the Term and upon Tenant's vacation of the Premises. If the Building is sold, the Security Deposit may be transferred to the new owner, and Landlord shall be discharged from further liability with respect thereto. The Security Deposit shall in no event be considered an advance rental payment, or a measure of Landlord's damages.

26. Quiet Enjoyment

Tenant, upon paying the Rent and performing all of the terms on its part to be performed, shall peaceably and quietly enjoy the Premises subject, nevertheless, to the terms of this Lease and to any mortgage or other agreement to which this Lease is subordinated.

27. Observance of Law

- (a) Tenant shall comply with all provisions of law, including federal, state, county and city laws, ordinances and regulations, building codes and any other governmental, quasi-governmental or municipal regulations which relate to the partitioning, equipment operation, alteration, occupancy and use of the Premises, and to the making of any repairs, replacements, additions, changes, substitutions or improvements of or to the Premises. Moreover, Tenant shall comply with all police, fire and sanitary regulations imposed by any federal, state, county or municipal authority, or made by insurance underwriters, and shall observe and obey all other requirements governing the conduct of any business conducted in the Premises.
- (b) Notwithstanding the foregoing, it shall be Landlord's responsibility to comply with all provisions of law, including federal, state, county and city laws, ordinances and regulations, building codes, and any other governmental, quasi-governmental or municipal regulations which relate to the Building insofar as they may require structural changes in the Building, provided nevertheless, that such changes shall be the responsibility of Tenant if they are changes required by reason of a condition which has been created by or at the instance of Tenant, or are required by reason of a default by Tenant hereunder.

28. Limitation of Landlord's Liability

- (a) Tenant shall be limited for the satisfaction of any money judgment against Landlord solely to Landlord's interest in the Building or the Complex or any proceeds arising from the sale thereof and no other property or assets of Landlord or the individual partners, directors, officers, or shareholders of Landlord shall be subject to levy, execution or other enforcement procedure whatsoever for the satisfaction of said money judgment.
- (b) Landlord's obligations hereunder shall be binding upon Landlord only for the period of time that Landlord is in ownership of the Building; and, upon termination of that ownership, Tenant, except as to any obligations which have then matured, shall look solely to Landlord's successor in interest in the Building for the satisfaction of each and every obligation of Landlord hereunder.

29. Parking

Parking of motor vehicles shall be limited to parking spaces delineated in the Common Areas, on a first come - first serve basis. Landlord reserves the right to implement and enforce reasonable rules and regulations as to parking. Tenant shall be allowed up to four (4) parking spaces per thousand rentable square feet.

30. Common Areas

All Common Areas, and other areas, facilities and improvements as may be provided by Landlord from time to time for the general use, in common, by Tenant and other tenants of the Building or of other buildings, their employees, agents, invitees and licensees, shall at all times be subject to the exclusive control and management of Landlord, and Landlord shall have the right from time to time to establish, modify and enforce reasonable rules and regulations with respect to all such Common Areas, facilities and improvements.

31. Authority

If Tenant is a corporation (or partnership), each individual executing this Lease on behalf of said corporation (or partnership) represents and warrants that he is duly authorized to execute and deliver this Lease on behalf of said corporation (or partnership) in accordance with the duly adopted resolution of the Board of Directors of said corporation or in accordance with the bylaws of said corporation (or under the pertinent partnership agreements), that any required consents or approvals of third parties have been obtained, and that this Lease is binding upon said corporation (or partnership) in accordance with its terms.

32. Waiver

The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the obligations of this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or of the right to exercise such.

33. Attorneys' Fees

In any action or proceeding which Landlord or Tenant may be required to prosecute or enforce its respective rights hereunder, the unsuccessful party agrees to pay all costs incurred by the prevailing party therein, including reasonable attorneys' fees (including on any appeal).

34. Radon Gas

The following disclosure is included in accordance with Florida law: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your County Public Health Unit.

35. Hazardous Substances

Tenant represents and warrants to Landlord that the activities Tenant will conduct on the Premises pose no hazard to human health or the environment, nor do they violate any applicable federal, state or local laws, ordinances, rules or regulations pertaining to Hazardous Materials (to be hereinafter defined) or industrial hygiene or environmental conditions ("Environmental Laws"). Tenant shall not cause or permit the Premises to be used for the generation, handling, storage, transportation, disposal or release of any Hazardous Materials except as exempted or permitted under applicable Environmental Laws; and Tenant shall not cause or permit the Premises or any activities conducted thereon to be in violation of any applicable Environmental Laws. Tenant shall acquire and maintain all permits, approvals, licenses and the like required by Environmental Laws for Tenant's activities on the Premises; and Tenant shall keep those permits, approvals, licenses and the like current, and shall comply with all regulations, rules and restrictions relating thereto. Tenant agrees to indemnify Landlord and hold the Landlord harmless from all claims, losses, damages, liabilities, fines, penalties and charges and all costs and expense incurred in connection therewith (including attorneys' fees and litigation expenses), directly or indirectly resulting in whole or in part from Tenant's violation of any Environmental Laws applicable to the Premises or to any activity conducted thereon, or from any use, generation, handling, storage, transportation, disposal or release of Hazardous Materials at or in connection with the Premises, or any clean up or other remedial measures required with respect to the Premises under any Environmental Laws. Tenant shall reimburse Landlord immediately upon demand for all sums paid and costs incurred by Landlord with respect to the foregoing matters. This indemnity shall survive the full performance and expiration of this Lease and shall inure to the benefit of any transferee of title to the Land. For purposes of this Lease, the term "Hazardous Materials" shall include any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "toxic substances", "contaminants", "regulated substances", or any other pollution under any applicable federal, state or local laws, ordinances, rules or regulations now or hereafter in effect.

36. Severability

If any clause or provision of this Lease is or becomes illegal or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, effective during the Term, the intention of the parties hereto is that the remaining parts of this Lease shall not be affected thereby unless such clause or provision is, in the reasonable determination of Landlord, essential and material to its rights, in which event Landlord shall have the right to terminate this Lease by notice to Tenant.

37. Proceedings

If Landlord commences any summary proceedings or an action for nonpayment of Rent, Tenant shall not interpose any non-mandatory counterclaim of any nature or description in any such proceedings or action. TENANT AND LANDLORD BOTH WAIVE A TRIAL BY JURY OF ANY OR ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING BETWEEN THE PARTIES HERETO OR THEIR SUCCESSORS, UNDER OR CONNECTED WITH THIS LEASE, OR ANY OF ITS PROVISIONS.

38. Binding Effect

All the terms and provisions of this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.

39. Applicable Law

This Lease shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Florida.

40. Amendments

This Lease sets forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises, Building and Complex, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than as are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by them.

41. Captions

The captions appearing within the body of this Lease have been inserted as a matter of convenience and for reference only and in no way define, limit or enlarge the scope or meaning of this Lease or of any provision hereof.

42. Accord and Satisfaction

No payment by Tenant or receipt by Landlord of a lesser amount than the Rent payment herein stipulated shall be deemed to be other than on account of the Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction (unless Landlord expressly agrees to an accord and satisfaction in a separate agreement duly accepted by Landlord's appropriate officer or officers), and Landlord may accept such check or payment without

prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease. Landlord may receive and retain, absolutely and for itself, any and all payments so tendered, notwithstanding any accompanying instructions by Tenant to the contrary, and any such payment shall be treated by Landlord at its option as being received solely on account of any amounts due and owing Landlord, including the Rent, and to such items and in such order as Landlord in its sole discretion shall determine.

43. Miscellaneous

- (a) If any provision contained in an Exhibit, Rider or Addendum is inconsistent with any other provision of this Lease, the provision contained in said Exhibit, Rider or Addendum shall supersede said other provision, unless otherwise provided in said Exhibit, Rider or Addendum.
- (b) The use of the neuter singular pronoun to refer to either party shall be deemed a proper reference even though it may be an individual, partnership, corporation or a group of two or more individuals or corporations. The necessary grammatical changes required to make the provisions of this Lease apply in the plural number where there is more than one Landlord or Tenant and to either corporations, associations, partnerships or individuals, males or females, shall in all instances be assumed as though in each case fully expressed.
- (c) This Lease may be executed in several counterparts, all of which constitute one and the same instrument.
- (d) As used in this Lease, any list of one or more items preceded by the word "including" shall not be deemed limited to the stated items but shall be deemed without limitation.
- (e) The language of this Lease shall be construed according to its normal and usual meaning and not strictly for or against either Landlord or Tenant.
- (f) If more than one person or entity executes this Lease as Tenant, each such person or entity shall be jointly and severally liable for observing and performing each of the terms, covenants, conditions and provisions to be observed or performed by Tenant.
- (g) The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof shall not work a merger and shall, at Landlord's option, either terminate all or any existing subleases or sub tenancies or operate as an assignment to Landlord of any or all of such subleases or sub tenancies.
- (h) Neither this Lease nor any memorandum of this Lease shall be recorded in the Public Records by Tenant without the express written consent of Landlord. Any such recording by Tenant without such consent shall be deemed a default by Tenant hereunder.

44. Option to Extend

Provided Tenant is not in default, Tenant shall have an option to extend this Lease (the "Option") for an additional two five(5) year periods at market terms as reasonably determined by Landlord provided Tenant gives Landlord at least twelve months prior written notice of Tenant's intent to exercise the Option to extend the Lease.

BRWHP Properties
2601 Westhall Lane, Maitland, FL

26 of 32

01/01/09

EXHIBIT "A"

PLAN SHWOING THE PREMISES

[To be inserted]

BRWHP Properties
2601 Westhall Lane, Maitland, FL

27 of 32

01/01/09

EXHIBIT "B"

RULES AND REGULATIONS

The Rules and Regulations set forth in this Exhibit shall be and hereby are made a part of the Lease to which they refer. Whenever the term "Tenant" is used in these Rules and Regulations, it shall be deemed to include Tenant, its employees or agents and any other persons permitted by Tenant to occupy or enter the Premises. Rules and Regulations may from time to time or modified by Landlord, as the Landlord deems appropriate. All changes and revisions will be an integral part of the Lease. The Property Manager is _____ located at _____ . All notices to the Property Manager shall be given at the above address or by contacting the Property manager by telephone. The name, address and/or phone number of the Property Manager may be changed from time to time by written notice form Landlord to Tenant.

1. **ACCIDENTS AND DAMAGES.** In the event of damage to the Leased Premises or the Building or injury on the Property, Tenant shall immediately notify the Property Manager. After normal operating hours, call the Property Manager and advise the answering service who will contact the appropriate management personnel.
2. **ADMITTANCE TO LEASED PREMISES.** Property Management, maintenance, security, janitorial and other agents authorized by the Landlord shall be allowed admittance to the Leased Premises at all times.
3. **APPEARANCE.** Tenant shall not allow anything to be placed within or near any partitions, corridors, windows or doors which shall be unsightly or detrimental to the appearance of the Building in the Landlord's opinion and shall, upon request, immediately correct such violation.
Except as permitted by Landlord, Tenant shall not mark upon, paint or attach signs upon, cut, drill into, drive nails or screws into, or in any way deface the walls, ceilings, partitions or floors of the Leased Premises or of the Building, and the repair of any defacement, damage or injury caused by Tenant shall be charged to Tenant.
4. **BICYCLES/OTHER VEHICLES.** Bicycles or other vehicles shall not be permitted anywhere inside or on the sidewalks outside of the Building, except in those areas designated by landlord.
5. **BUILDING SECURITY.** Landlord may restrict access to and from the Building after normal operating hours for reasons of Building security. Security, janitorial and maintenance personnel are not permitted to unlock Tenant's Leased Premises to admit Tenant, its employees, agents or visitors. No individual security system will be allowed in the Leased Premises without the written consent of Landlord.

6. CAPTIONS. The caption for each of these Rules and Regulations is added as a matter of convenience only and shall be considered of no effect in the construction of any provision or provisions of these Rules and Regulations.
7. CHAIR PADS. During the entire term of this Lease, Tenant shall, at its expense, install and maintain under all caster chairs a chair pad or carpet casters to protect the carpeting.
8. COMMON AREA. The sidewalks, entries, passages, corridors, halls, lobbies, stairways, elevators and other common facilities of the Building shall be controlled by Landlord and shall not be obstructed by Tenant or used for any purpose other than ingress and egress to and from the Leased Premises. Tenant shall not place any item in any of such locations, whether or not any such item constitutes an obstruction, without the prior written consent of Landlord. Landlord shall have the right to remove any obstruction or any such item without notice to Tenant and at the expense of Tenant.
9. DELIVERIES. Tenant shall insure that all deliveries of supplies to the Leased Premises shall be made only through the delivery entrance designated by Landlord and upon the service elevator and only during the normal operating hours of the Building. If any person delivering supplies to Tenant damages the elevator or any other part of the Building, Tenant shall pay to Landlord, upon demand, the amount required to repair such damage.
10. EMERGENCY CONTACT PROCEDURE. Tenant shall provide in a timely manner to Landlord the name of an employee or agent of Tenant to be contacted by Landlord in the event of an emergency, whether during or after normal operating hours. Such information must be at all times kept current and accurate.

Emergency procedures and policies may be developed, issued and revised by the Landlord at any time and will become an integral part of these Rules and Regulations and the Lease to which they refer.
11. EMPLOYEES, VISITORS. Tenant shall be responsible for all behavior and adherence to all Rules and Regulations by any of Tenant's employees, visitors and agents. Tenant shall require strict adherence to such Rules and Regulations and shall allow no obnoxious or offensive conduct.
12. EXCESSIVE NOISE, ANIMALS. No animals, except Seeing Eye dogs, shall be allowed in the Building. No person shall disturb the occupants of the Building by the use of any radio or musical instrument or by the making of loud or improper noises.

-
13. HAZARDOUS OPERATIONS AND ITEMS. Tenant shall not install or operate any steam or gas engine or boiler, or carry on any mechanical business in the Leased Premises without Landlord's prior written consent, which consent may be withheld in Landlord's absolute discretion. The use of oil, gas or inflammable liquids for heating, lighting or any other purpose is expressly prohibited. Explosives or other articles deemed extra hazardous shall not be brought into the Building.
 14. HEAVY ARTICLES. No safe or article the weight of which may, in the reasonable opinion of Landlord, constitute a hazard or damage the Building or its equipment, shall be moved into the Leased Premises. Safes and other heavy equipment, the weight of which will not constitute a hazard or damage the Building or its equipment, shall be moved into, from or about the Building only during such hours and in such manner as shall be prescribed by Landlord, and Landlord shall have the right to designate the location of such articles in the Leased Premises.
 15. JANITORIAL. Ordinary and customary janitorial services, as determined by landlord for the Common Areas, are provided in accordance with the Lease. Any services required by Tenant in excess of those provided by Landlord shall be at Tenant's cost. For any specific need or inquiry, contact the Property Manager. Absolutely no cups or cans containing liquids are to be placed in any trash receptacles, unless in a special container so approved by Landlord. Janitors have been instructed not to empty any trash receptacles containing liquids. Stains and other damage caused by spilled liquids will be charged to Tenant.
 16. KEYS ANO LOCKS. No additional lock or locks shall be placed by Tenant on any door in the Building and no existing lock shall be changed unless written consent of Landlord shall first have been obtained. A reasonable number of keys to the Leased Premises will be furnished by landlord. Duplicate keys shall be made by the Landlord at a reasonable cost to the Tenant. Tenant shall make all requests to re-key to Landlord, who shall make or cause to have made said changes within five (5) working days. If Tenant wishes such work performed on an earlier priority, Landlord may charge for such work on an overtime cost basis. At the termination of this tenancy, Tenant shall promptly return to Landlord all keys and lock combinations to offices, restrooms, safes and cabinets.

Landlord and its agents, including Property Management, security and the janitorial service, may at all times keep a pass key to the Leased Premises.

17. MAINTENANCE/REPAIRS ANO ALTERATIONS. Contact the Property management to report all requests for maintenance and repairs. As all work is pre-scheduled, do not ask maintenance personnel directly to perform work. After normal operating hours, call the Property Manager and advise the answering service who will, in turn, contact the appropriate management personnel.

All alterations, improvements, telegraphic or telephonic connections, installation or electrical wiring, equipment, or other changes in the configuration of the Leased Premises shall require written approval of Landlord as provided in the Lease and plans of proposed changes must be presented in writing to Landlord detailing the specifications and layout.

Any repairs, maintenance and alterations required or permitted to be done by Tenant under the Lease shall be done only during the normal operating hours of the Building unless Landlord shall have first consented to such work being done outside of such times. If Tenant desires to have such work done by Landlord's employees on Saturdays, Sundays, holidays or at other times outside of normal operating hours, Tenant shall pay the extra cost of such labor.

18. MAIL DELIVERY/COLLECTION. The mail delivery will be made by the United States Postal Service by means and at a location acceptable to the United States Postal Service.
19. MOVING. Furniture and equipment shall be moved in or out of the Building through the delivery entrance designated by Landlord and upon the service elevator only during such hours and in such manner as may be prescribed by Landlord. Landlord shall have the right to approve or disapprove the movers or moving company employed by Tenant and Tenant shall cause such movers to use only the loading facilities designated by Landlord. If Tenants movers damage the Building, Tenant shall pay to Landlord upon demand, the amount required to repair such damage. All boxes, refuse and other trash created by the move shall be removed from the Property by Tenant or the moving company.
20. OPERATING HOURS. The normal hours of the Building are from 8:00 a.m. until 6:00 p.m., Monday through Friday, and from 9:00 am until 1:00p.m. on Saturday, excluding the legal holidays of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. All other times will be after hour's operation.
21. PARKING. Vehicles shall be parked only in areas and spaces designated for such purpose. No vehicle shall be parked on lawns, sidewalks, driveways or any area except within marked parking spaces. There are no assigned spaces other than those reserved for visitors and handicapped persons. Tenant is responsible for its employees', agents' and visitors' adherence to Rules and Regulations governing parking. Landlord reserves the right to assign spaces and revise parking rules, cost and location in the future.
22. SERVICES. Landlord shall provide those services described in the Lease. Additional services required by Tenant, such as special air conditioning for sensitive equipment, shall be provided by Landlord only if compatible with Building design and only if the entire cost of installation, maintenance and utility services is paid by Tenant.

-
23. SIGNAGE. No signs, symbols or identifying marks shall be placed upon the Building or in the halls, elevators, staircases, entrances, parking areas or other parts of the Property or upon the doors or walls without prior written approval of Landlord. Landlord agrees to provide and install, at Tenant's cost, one Tenant identification sign on the Leased Premises. All letters and numerals shall be in the Building standard graphics, and no other shall be used or permitted. Landlord will provide a tenant directory located in a public area of the Building and including one listing for each Tenant.
 24. SOLICITATION/FOOD AND BEVERAGES. Landlord reserves the right to restrict, control or prohibit canvassing, soliciting and peddling within the Building. Tenant shall not grant any concessions, licenses or permission for the sale or taking of orders for food or services or merchandise in the Leased Premises, nor install or permit the installation or use of any machine or equipment for dispensing goods or foods or beverages in the Leased Premises, nor permit the preparation, serving, distribution or delivery of food or beverages in the Leased Premises without the approval of Landlord. Only persons approved by Landlord shall be permitted to serve, distribute or deliver food and beverages within the Building, or to use the elevators or public areas of the Building for that purpose.
 25. TRASH. All ordinary trash shall be placed in receptacles provided by Tenant on the Leased Premises, or in receptacles provided by Landlord for the Building. Empty boxes that are to be thrown away must be broken down. All trash must be bagged and compacted as much as possible. Only ordinary types and quantities of trash shall be removed by the janitorial personnel. Extraordinary trash, as determined by Landlord, shall be removed from the Leased Premises, Building and Property by Tenant at Tenant's expense.
 26. USE OF WATER FIXTURES. Water closets and other water fixtures shall not be used for any purpose other than that for which the same are intended, and any damage resulting to the same from misuse on the part of Tenant shall be paid for by Tenant. Water faucets shall be turned off when not in use.
 27. WINDOWS. No window shades, blinds, screens or draperies will be attached or detached by Tenant and no awnings shall be placed over the windows without Landlord's prior written consent. Tenant agrees to abide by Landlord's rules with respect to window coverings at all windows and hallways so that the Building will present a uniform appearance. Tenant shall not allow anything to be placed against or near the glass.

LEASE AMENDMENT

This lease amendment amends the lease between the landlord, BRWHP PROPERTIES, LLP, and the tenant, X-NTH, INC., dated January 1, 2003. The address of the leased premises is 2601 Westhall Lane, Maitland, Florida.

For the sum of \$10 and other valuable consideration, the undersigned parties agree to change the term of the lease referenced in the above paragraph. The original ten-year term of the lease is hereby reduced to seven years from December 1, 2009. Tenant shall have the option of renewing the lease on a year to year basis, for three years following the seven year term of the lease. Lease payments for each option year shall not exceed 103% of the prior year's lease payments.

Signed by the parties in Maitland, FL on this 30th day of October 2009.

BRWHP Properties, LLP

By: /s/ William Beckman, President - ONIT Engineering,
Inc. _____

Its: General Partner

X-nth, Inc.

By: /s/ William Beckman _____

Its: CEO

THIRD LEASE AMENDMENT

July 15, 2014

This lease amendment amends that certain OFFICE LEASE AGREEMENT dated November 14, 2002, revised January 1, 2009 and amended October 30, 2009 (together the "Lease") between BRWHP Properties, LLP, a Florida limited liability partnership ("Landlord") and exp US Services, Inc., a Delaware corporation, as successor in interest to X-nth, Inc. ("Tenant"). The address of the leased premises is 2601 Westhall Lane, Maitland, Florida 32751 ("Leased Premises").

The undersigned parties agree:

1. Tenant hereby exercises its three-year "Option to Renew" as set out in the Lease Amendment dated October 30, 2009 (the "First Option"). The Annual Base Rent and Monthly Installments for the First Option period shall be as stated in the Lease.
2. Immediately following the First Option, the term of the Lease shall be extended for a seven (7) year term ("Second Option"). The Second Option period shall commence on December 1, 2019 and expire November 30, 2026.
3. The Annual Base Rent of the Second Option period shall be \$22.75 per rentable square foot per year and shall be payable in equal Monthly installments (plus sales tax). Base Rent shall increase at a rate of 3.5% per annum (plus sales tax) from 2020 through 2024 and shall be fixed for the final two years of the Second Option period. The Annual Base Rent and Monthly Installments for the Second Option period shall be as follows:

<u>Lease Year</u>	<u>Annual Base Rent</u>	<u>Monthly Installment</u>	<u>Annual Expense Stop</u>
2020	\$753,434.50	\$62,786.20	\$198,708.00
2021	\$779,804.71	\$64,983.72	\$205,663.00
2022	\$807,097.87	\$67,258.16	\$212,861.00
2023	\$835,346.30	\$69,612.19	\$220,311.00
2024	\$864,583.42	\$72,048.61	\$228,022.00
2025	\$864,583.42	\$72,048.61	\$236,003.00
2026	\$864,583.42	\$72,048.61	\$244,263.00

-
4. From January 1, 2020 and throughout the Second Option period, the Landlord shall pay up to \$6.00 per square foot per year toward Tenant's share of the Operation Expenses of the Building as defined in article 4 of the Lease. Landlord's contribution to the Operation Expenses shall increase by 3.5% each year through the Second Option period, but shall not exceed the "Annual Expense Stop" amount for each year as shown above. Tenant agrees to pay any additional Operating Expenses not absorbed by the Annual Expense Stop as additional rent.
 5. Tenant has the option, but not the obligation to a five-year "Option to Extend" (the "Third Option") at the end of the Second Option period.
 6. Upon execution of this Lease Amendment, Landlord shall provide Tenant with a maintenance allowance equal to \$683,224 ("First Tenant Allowance"). The Tenant Allowance shall be used to maintain or improve the Leased Premises and to cover for such costs as contractor charges, filing and permitting fees and a 5% construction management fee payable to Onit Engineering, Inc. Architectural and engineering fees shall be borne by the Tenant.
 7. Upon commencement of the Second Option period, the Landlord shall provide Tenant an additional maintenance allowance of \$165,590 ("Second Tenant Allowance"). The Second Tenant Allowance shall be used to maintain or improve the Leased Premises and to cover for such costs as contractor charges, filing and permitting fees and a 5% construction management fee payable to Onit Engineering, Inc. Architectural and engineering fees shall be borne by the Tenant.

IN WITNESS WHEREOF, Landlord and Tenant have executed or caused to be executed this Lease Amendment as of the date first written above.

WITNESSES:

/s/ Enzo Perri
Signature

Enzo Perri
Printed Name

WITNESSES:

/s/ Janet L Beckman
Signature

Janet L Beckman
Printed Name

TENANT: exp US Services, Inc.,
A Delaware Corporation

By: /s/ Greg Henderson
Greg Henderson
Title: CFO

LANDLORD: BRWHP Properties, LLP,
A Florida limited liability partnership

By: /s/ William C Beckman
William C Beckman
Title: President

[Signature page to Third Lease Amendment dated July 15, 2014]

FOURTH LEASE AMENDMENT

APRIL 17, 2015

This lease amendment amends that certain OFFICE LEASE AGREEMENT dated November 14, 2002, revised January 1, 2009, amended October 30, 2009 and the Third Lease Amendment dated July 15, 2014 (together the "Lease") between BRWHP Properties, LLP, a Florida limited liability partnership ("Landlord") and exp US Services, Inc., a Delaware corporation, as successor in interest to X-nth, Inc. ("Tenant"). The address of the leased premises is 2601 Westhall Lane, Maitland, Florida 32751 ("Leased Premises").

The undersigned parties agree that Paragraphs 6 and 7 of the Third Lease Amendment shall be revised to read as follows:

- 6. Upon execution of this Lease Amendment, Landlord shall provide Tenant with a maintenance allowance equal to \$906,977.48 ("First Tenant Allowance"). The Tenant Allowance shall be used to maintain or improve the Leased Premises and to cover for such costs as contractor charges, filing and permitting fees and a 5% construction management fee payable to Onit Engineering, Inc. Architectural and engineering fees shall be borne by the Tenant.
- 7. Upon commencement of the Second Option period, the Landlord shall provide Tenant an additional maintenance allowance of \$82,795.00 ("Second Tenant Allowance"). The Second Tenant Allowance shall be used to maintain or improve the Leased Premises and to cover for such costs as contractor charges, filing and permitting fees and a 5% construction management fee payable to Onit Engineering, Inc. Architectural and engineering fees shall be borne by the Tenant.

IN WITNESS WHEREOF, Landlord and Tenant have executed or caused to be executed this Lease Amendment as of the date first written above.

WITNESSES:

TENANT: exp US Services, Inc.,
A Delaware corporation

/s/ Enzo Perri
Signature

By: /s/ Greg Henderson
Greg Henderson
Title: CFO

Enzo Perri
Printed Name

WITNESSES:

LANDLORD: BRWHP Properties, LLP,
A Florida limited liability partnership

/s/ Janet L Beckman
Signature

By: /s/ William C Beckman
William C Beckman

Janet L Beckman
Printed Name

Title: President

[Signature page to Fourth Lease Amendment dated April 17, 2015]

FIFTH LEASE AMENDMENT

March 13, 2017

This lease amendment amends that certain OFFICE LEASE AGREEMENT dated November 14, 2002, revised January 1, 2009, amended October 30, 2009, the Third Lease Amendment dated July 15, 2014 and the Fourth Lease Amendment dated April 17, 2015 (together the "lease") between BRWHP Properties, LLP, a Florida limited liability partnership ("Landlord") and exp US Services, Inc., a Delaware corporation, as successor in interest to X-nth, Inc. ("Tenant"). The address of the leased premises is 2601 Westhall Lane, Maitland, Florida 32751 ("Leased Premises").

The undersigned parties agree that Paragraph 7 of the Fourth Lease Amendment shall be revised to read as follows:

7. Upon commencement of the Second Option period, the Landlord shall provide Tenant an additional maintenance allowance of \$55,440.13 ("Second Tenant Allowance"). The Second Tenant Allowance shall be used to maintain or improve the Leased Premises and to cover for such costs as contractor charges, filing and permitting fees. Architectural and engineering fees shall be borne by the Tenant.

IN WITNESS WHERE OF. Landlord and Tenant have executed or caused to be executed this Lease Amendment as of the date first written above.

WITNESS:

/s/ Kathleen J Weise
Signature

Kathleen J Weise
Printed Name

WITNESS:

/s/ Janet L Beckman
Signature

Janet L Beckman
Printed Name

TENANT: exp US Services, Inc.,
A Delaware corporation

By: /s/ Sean McMahan
Title: SVP

Sean McMahan
Printed Name

LANDLORD: BRWHP Properties, LLP
A Florida Limited Liability Partnership

By: /s/ William C Beckman
Title: Pres Onit Engineering Inc General Partner

William C Beckman
Printed Name

Lease**Pre-K 4 SA Educational Initiative, 5103 Old Highway 90****Table of Contents**

1. Basic Information, Definitions	1
2. Grant	5
3. Rent	6
4. Term, Option to Renew Term and Purchase Option	9
5. Tenant's Affirmative Promises	11
6. Tenant's Negative Promises	11
7. Landlord's Affirmative Promises	12
8. Landlord's Negative Promises	14
9. Repair, Maintenance and Replacement Responsibilities	14
10. Alterations	15
11. Insurance	15
12. Release of Claims/Subrogation	17
13. Indemnity	17
14. Casualty/Total or Partial Destruction	18
15. Condemnation/Substantial or Partial Taking	21
16. Holdover	21
17. Default	22
18. Warranty Disclaimer	23
19. Environmental	24
20. Appropriations	25
21. Term Completion Incentive	26
22. Prohibited Interests in Contracts	26
23. Miscellaneous	27
24. Public Information	30
Exhibit A: Description of Premises	32
Exhibit B: Commencement Date Memorandum	37
Exhibit C: Work Letter	39
Attachment A to Work Letter	53
Attachment B to Work Letter	55
Exhibit D: Location of Tenant's Monument Sign	56
Exhibit E: Sign Criteria	57
Exhibit F: Sanitary Sewer Line and Sanitary Sewer Easement	60

1. Basic Information, Definitions.

Landlord: Flamingo Cay, LLC

Landlord's Address: 10003 NW Military Highway, Suite 2209
San Antonio, Texas 78231

Tenant: San Antonio Early Childhood Education Municipal Development Corporation

Tenant's Address: 7031 S. New Braunfels
San Antonio, TX 78223

Premises: A tract of land constituting approximately 5.43 acres of land, as more particularly described on **Exhibit A** attached hereto, to be improved in accordance with the terms and conditions contained herein with (i) a single story building containing approximately 50,000 rentable square feet (“Building”), (ii) a parking lot containing approximately 250 parking spaces, or such lesser number as Tenant may otherwise approve (“Parking Facilities”), and (iii) multiple playground areas.

Permitted Use: Educational purposes including classrooms and office support space for personnel engaged in Tenant sponsored citywide educational programs and/or other office or administration uses deemed appropriate by Tenant in connection therewith, or other uses expressly approved in writing by Landlord.

No. of Parking Spaces: Approximately 250 non-exclusive parking spaces situated on the Premises or such lesser number as Tenant may otherwise approve.

Commencement Date: Upon the earlier of (i) the date of Substantial Completion of Landlord’s Work and Tenant Improvements (as such terms are defined in the attached **Exhibit C**), (ii) that date which is the date of Substantial Completion less the number of days of attributable to Tenant Delays (as defined on Exhibit “C” attached hereto) or (iii) upon Tenant’s occupancy of the Premises. The actual Commencement Date will be confirmed in the Commencement Date Memorandum to be prepared by Landlord in the form attached hereto as **Exhibit B**, to be executed by Tenant within 10 days following Landlord’s delivery to Tenant of the Commencement Date Memorandum executed by Landlord.

Effective Date: This Lease is binding on the parties on the later of the signatures of the Landlord and Tenant.

Initial Term: 7 years from the Commencement Date.

Base Rent: Years 1-7: \$16.50 per rentable square feet of the Building per annum, paid in monthly installments of \$68,750.00 per month during the Initial Term, and thereafter as adjusted as set out in this Lease for each period beyond the Initial Term.

Address for Payment of Rent:	Flamingo Cay, LLC c/o Valcor Property Management 5101 Broadway, Suite 200 San Antonio, Texas 78209
Asbestos Survey Deadline:	Within 30 days after Commencement Date.
Building Standard Hours:	Upon the Commencement Date and during the Term of this Lease, Tenant shall have the right to use the Premises at anytime and without restriction by Landlord, except as otherwise provided in the Lease.
Essential Services:	(a) Repair and maintenance of the Parking Facilities; (b) maintenance of landscape installed by Landlord located outside the Building but within the Premises, including the replacement of any landscaping that requires replacement during the Term; (c) maintenance and provision of all exterior lighting on the Premises, including but not limited to the Building; and (d) maintenance, repair and replacement of the HVAC systems including periodic replacement of air filters.
Operating Expenses:	All expenses that Landlord incurs in connection with the ownership, operation, and maintenance of the Premises after the Commencement Date, which expenses shall be limited to Landlord's actual costs for the Property Taxes levied and assessed against the Premises (as set out below), Landlord's Insurance Premiums relating to the Building or the Premises, and Landlord's actual costs to maintain, repair, replace, manage and/or operate the following: (i) the Essential Services; (ii) lawn sprinkler systems; (iii) sweeping, resurfacing, restriping and sealing of the sidewalks and the Parking Facilities; (iv) replacement and maintenance of exterior lighting on signage, including but not limited to Tenant's Monument Sign; (v) painting; (vi) repair of electrical or utility lines; (vii) utility charges; (viii) graffiti removal from the exterior of the Building or Tenant's Monument Sign; (ix) management of the Premises, not to exceed two and one-half percent (2.5%) of the total Operating Expenses hereunder; and (x) if Landlord makes a capital improvement to all or any portion of the Premises, an annual amortization of the cost of the capital improvement (and 8% annual interest factor on the unamortized balance). For the purpose of determining the Operating Expenses attributable to such capital

improvement, the cost of the capital improvement item, as increased by the interest factor described above, shall be amortized over the useful life of the item (as determined in the Internal Revenue Code of 1986, as amended from time to time). Such amortization shall cease upon Landlord having fully recouped the capital improvement costs as increased by the annual interest factor.

Property Taxes:

All taxes, assessments and governmental charges of any kind and nature whatsoever levied or assessed against the Premises, any other charges, taxes and/or impositions now in existence or hereafter imposed by any governmental authority based upon the privilege of renting the Premises or upon the amount of rent collected therefor, and any tax, fee, levy, assessment or charge which is imposed as the result of a transfer, either partial or total, of Landlord's interest in the Premises or which is added to a tax or charge hereinbefore included within the definition of real property tax by reason of such transfer. Property Taxes shall also be deemed to include ad valorem taxes, general and special assessments, parking surcharges, any tax or excise on rents any tax or charge for governmental services (such as street maintenance or fire protection) payable with respect to the Premises, any special taxing district assessment which is imposed in order to fund public facilities for the area in which the Premises is located and any other tax or charges that is in lieu of or a substitute for any such real estate or other taxes. If any rent tax becomes payable on the Rent required by this Lease, Tenant shall pay such rent tax. Notwithstanding anything to the contrary set forth herein, Taxes shall include the so called "margin franchise tax" payable under Chapter 171 of the Texas Tax Code, as amended by Tex. H.B. 3, 79th Leg., 3d C.S. (2006).

Insurance Premium:

The Insurance Premiums shall have the meaning set forth in Section 11.02.01 herein.

Estimated Substantial Completion Date:

August 1, 2014

Substantial Completion Date:

The date of Substantial Completion.

Substantial Completion:

The performance of the relevant work in substantial accordance with the plans therefor, exclusive of minor details of unfinished work that do not preclude beneficial use of the Premises for Tenant's Permitted Use, as evidenced by the issuance of a certificate of occupancy for the Building or upon Tenant's occupancy of the Premises.

Outside Delivery Date: Estimated Substantial Completion Date as extended by any Construction Delays, Force Majeure Delays and Tenant Delays.

Lease: This Lease entered into between Landlord and Tenant along with all Exhibits attached hereto.

The exhibits to this Lease are as follows and all exhibits are incorporated herein for all purposes as if fully set forth:

Exhibit A: Description of Premises

Exhibit B: Commencement Date Memorandum

Exhibit C: Work Letter

Exhibit D: Location of Tenant's Monument Sign

Exhibit E: Sign Criteria

Exhibit F: Sanitary Sewer Line and Sanitary Sewer Easement

2. Grant.

2.01. Landlord leases the Premises to Tenant, and Tenant takes the Premises from Landlord on the terms and conditions of this Lease. As a part of this Lease, Landlord must provide to Tenant the non-exclusive right to use the Parking Facilities based on the number of parking spaces indicated above.

2.02. Subject to Tenant not then being in default under the terms of this Lease, Tenant shall have the right to occupy the Premises upon the Substantial Completion Date.

2.03 In the event that Substantial Completion Date does not occur on or before that date which is the later to occur of (i) 300 days following the Effective Date, or (ii) August 10, 2013, as extended by any Construction Delays, Force Majeure Delays and Tenant Delays as each of these terms is defined within Section 11 of Exhibit C: Work Letter, (the "First Penalty Date"), Landlord will pay to Tenant a payment of \$500.00 for each day that Substantial Completion occurs beyond the First Penalty Date. In the event that Substantial Completion Date does not occur on or before that date which is the later to occur of (i) 315 days following the Effective Date, or (ii) August 25, 2013 (as extended by any Construction Delays, Force Majeure Delays and Tenant Delays, the Second Penalty Date"), Landlord will pay to Tenant a payment of \$1,500.00 for each day that Substantial Completion occurs beyond the Second Penalty Date.

2.04. This Lease is binding on the parties on the Effective Date.

2.05. Tenant acknowledges that as of the Effective Date, Landlord is under contract to acquire property containing the Premises (the "Acquisition Contract") and does not own fee simple title to the Premises. Notwithstanding anything contained herein to the contrary, this Lease, and the Landlord's obligations hereunder, are expressly conditioned upon the Landlord acquiring fee simple title to the Premises on or after the Effective Date, such condition being for the sole benefit of Landlord. If for whatever reason Landlord is unable to acquire fee simple title to the Premises within 105 days from the Effective Date, then Landlord shall have the right to terminate this Lease by delivering written notice to Tenant at any time, and upon such termination, neither Landlord or Tenant shall have any further obligations hereunder, except that Landlord shall return to Tenant the \$200,000 Accelerated Mobilization Reimbursement and \$800,000.00 Up Front Tenant Development Deposit, set out in Exhibit C attached hereto.

3. Rent.

3.01. Base Rent for the Initial Term is set forth above in Section 1 of this Lease. The Base Rent for the Option to Renew Term(s) is set forth below in Section 4.02. "Rent", as used in this Lease, shall mean Base Rent, together with Additional Rent (as defined in Section 3.03 below) and any other charges payable by Tenant hereunder.

3.02. Tenant must pay Rent in advance on the first day of each month. The first such monthly installment of Rent shall be due and payable on the Commencement Date and subsequent installments shall be due and payable on the 1st day of each succeeding calendar month during the Initial Term of this Lease; provided that in the event the Commencement Date is not the 1st day of a particular month, then Rent shall be prorated based on the number of days remaining in the month at the per diem rate equal to the number of days in that particular month, but the initial partial month does not count as a month on the table above. Tenant further may be more than 10 days late twice in a calendar year without penalty. On the third and each later occasion in a calendar year on which Tenant is more than 10 days late, Landlord may deliver to Tenant written notice of delinquency. If Tenant does not pay the full amount due within 15 days from delivery of Landlord's notice, then, to the fullest extent allowed by law, Tenant shall pay to Landlord a late charge of 5% of the delinquent amount as additional Rent hereunder for any such Rent payment that Tenant is in default of making under the terms of this Lease as an offset to the administrative cost incurred by Landlord to address such default by Tenant, which late charge shall be due and payable in connection with the other Rent to which it relates. The late charge represents a fair and reasonable estimate of costs Landlord will incur because of the late payment.

To the fullest extent allowed by law, (i) Tenant's obligation to make any payment of Rent which Tenant is in default of paying under the terms of this Lease, or (ii) Landlord's obligation to make any payment to Tenant which Landlord is in default of paying under the terms of this Lease, shall bear interest at a rate which is the lower of the highest rate allowed by law or ten percent (10%) per annum, from the date due until paid. The interest charges will be due at the same time and as a part of the payment for any such sums due upon which the interest charge was calculated.

Interest and late charges are in addition to all Landlord's other rights and remedies.

3.03. Commencing upon the Commencement Date and throughout the Term of this Lease, Tenant must pay to Landlord the Operating Expenses (as defined in Section 1 above) as additional rental hereunder in monthly installments, which are subject to adjustment as set forth in Section 3.04 below (collectively, the "Additional Rent"), and which initial Operating Expenses are estimated below:

Initial Estimated Operating Expenses: \$4.90 psf of the Building per annum, for monthly installments of \$20,416.67 per month

3.04. *Estimate of Additional Rent.* During each calendar year commencing on the Commencement Date, and during each calendar year thereafter, Tenant must pay Landlord, in advance concurrently with each monthly installment of Base Rent, an amount equal to the estimated Additional Rent for such calendar year or part thereof divided by the number of months therein. The estimate must be calculated as stated herein. The initial estimated Additional Rent is set forth in Section 3.03 above. From year to year, Landlord may re-estimate the Additional Rent to be due by Tenant, based on Landlord's projected expenses for such calendar year, and deliver a copy of the estimate or re-estimate to Tenant. Thereafter, the monthly installments of Additional Rent payable by Tenant will be appropriately adjusted retroactive to January 1st and in accordance with the estimations so that, by the end of the calendar year in question, Tenant will have paid all the Additional Rent as estimated by Landlord. Any amounts paid based on such an estimate are subject to adjustment when actual Operating Expenses are available for each calendar year, pursuant to Section 3.05 below.

For the purpose of calculating Property Taxes if the tax parcel(s) of which the Premises are a part relate to larger land tract(s), then the Property Taxes shall be prorated by Landlord as follows: (i) for the Property Taxes attributable to the land, a ratio of the total net land area in the Premises to the total net land area in the property affected by the tax parcel(s), and (ii) for the Property Taxes attributable to the improvements, a ratio of the total rentable square footage in the Premises to the total rentable square footage in the property affected by the tax parcel(s). The payment to be made by Tenant for the real estate tax year in which this Lease begins or terminates shall bear the same ratio to the payment which would be required to be made for the full real estate tax year as the number of days of such tax year which elapsed during the term of this Lease bears to the total number of days in the full tax year.

3.05. *Recapture of Unrecovered Expenses.* By April 1 of each calendar year, or as soon thereafter as practicable, Landlord must furnish Tenant a statement of Landlord's actual Operating Expenses ("Actual Operating Expenses"). If Tenant's estimated payments of Additional Rent exceed the Actual Operating Expenses for the year, then Landlord must promptly, at Landlord's option, either credit Tenant's account for subsequent payments of Additional Rent or reimburse Tenant for the excess. Likewise, if Tenant's estimated payments of Additional Rent for such year are less than the Actual Operating Expenses, then Tenant shall pay Landlord the deficiency in a single lump sum payment promptly following written notice by Landlord.

3.06. *Audit of Actual Operating Expenses.* On fifteen (15) days prior written notice to Landlord, at Tenant's sole cost and expense, Tenant and its agents and representatives may inspect and copy Landlord's business records relating to calculation of Additional Rent attributable to the immediately preceding calendar year only. Such audit right shall be limited to one (1) time per calendar year. Unless otherwise mutually agreed, the inspection will be conducted during Landlord's normal working hours. Landlord must make the records available at a location in San Antonio, Texas, and shall allow Tenant to make copies of such records at Tenant's sole cost and expense. Tenant will pay Landlord 20 cents a copy for any copies made on Landlord's machine.

3.07. *Independent Covenants.* Tenant's covenant to pay Rent and Landlord's covenants are independent. Except as expressly provided herein, Tenant shall not abate Rent under any circumstances.

3.08. *Assumed Services.* At Tenant's sole option and effective every January 1st of the Term of this Lease, Tenant may elect to assume responsibility for all or any portion of those maintenance and repair services identified as Operating Expenses in subsections (i) through (ix) in Section 1 above, including but not limited to the Essential Services ("Assumed Services"), by providing Landlord with at least ninety (90) days prior written notice of such election, together with a detailed description of such Assumed Services to be provided by Tenant. In such event and upon Tenant's assumption of the Assumed Services, the Operating Expenses shall exclude such Assumed Services, so long as Tenant remains responsible for and actually performs the Assumed Services in the manner hereafter set forth. In such event, Tenant agrees to be responsible for the Assumed Services for a period of no less than 12 months, and Tenant shall provide the Assumed Services in keeping with the standards of other comparable buildings in the San Antonio, Texas area.

4. Term, Option to Renew Term and Purchase Option.

4.01. The "Term" of this Lease shall mean the Initial Term and any Option to Renewal Term(s) timely exercised by Tenant pursuant to Section 4.02 below, unless sooner terminated.

4.02 Provided that Tenant is not then in default under the terms of this Lease, Tenant shall have the option to renew this Lease for two consecutive eight-year terms (each, an "Option to Renew Term") upon 120 days prior written notice to Landlord upon the same terms and conditions of this Lease, except that Base Rent shall be at the following rates:

Years 8-15: \$18.48 per rentable square feet of the Building per annum, paid in monthly installments of \$77,000.00 per month.

Years 16-23: \$20.70 per rentable square feet of the Building per annum, paid in monthly installments of \$86,250.00 per month.

Tenant shall continue to pay Additional Rent during the Option to Renew Term(s) as provided in Section 3 above.

In the event that Tenant does not elect to renew this Lease after the expiration of the Initial Term only, then Tenant shall timely pay to Landlord a fee of \$275,000.00 (the "Non-Renewal Fee). Tenant's right to extend the Lease for the Option to Renew Term(s) is personal to Tenant and shall not apply to any of Tenant's assigns or subtenants other than assignees which are formed by the City to carry out the purpose of the educational initiative.

4.03 So long as Tenant is not in default under the terms of this Lease, Landlord grants Tenant an option to purchase the Premises, exercisable by providing prior written notice to Landlord, for a closing on any of the following dates (each, an "Option Closing Date"): (1) on August 31, 2021 ("First Purchase Option"), (2) on August 31, 2029 ("Second Purchase Option"), or (3) on August 31, 2037 ("Third Purchase Option"). If Tenant timely exercises its option to purchase the Premises, Tenant's option to purchase the Premises is expressly conditioned on Tenant continuing to honor all provisions of this Lease, including payment of Rent, until the closing of the purchase of the Premises. The purchase price for the Premises shall be determined as follows, as adjusted for the pro-ration of revenue and operating expenses as of the applicable Option Closing Date:

4.03.1 If the First Purchase Option is timely exercised, the purchase price shall be \$13,200,000.00 payable in cash.

4.03.2 If the Second Purchase Option is timely exercised, the purchase price shall be \$14,786,000.00 payable in cash.

4.03.3 If the Third Purchase Option is timely exercised, the purchase price shall be \$16,560,000.00 payable in cash.

The Premises will be conveyed by Seller free and clear of all encumbrances, other than those of public record and free and clear of all liens other than the inchoate lien for ad valorem taxes. All taxes and other expenses relating to the Premises will be pro rated to the date of the closing of such sale.

4.04 If Tenant intends to exercise an option to purchase the Premises pursuant to the First Purchase Option, the Second Purchase Option or the Third Purchase Option (the "Exercised Option"), Tenant shall provide Landlord with written notice of such intention no later than 180 days prior to the applicable Option Closing Date for such Exercised Option. Within 30 days of the date Tenant provides notice to Landlord of its intent to purchase the Premises, Landlord shall open escrow with a mutually acceptable escrow company located in the City of San Antonio. As a matter of course, Tenant will complete an environmental assessment of the Premises, and in the event that contaminants are found on the Premises, the soil or the groundwater under the Premises and such contamination was not specifically caused by Tenant, then Tenant shall have to either (i) rescind its notice to exercise the Exercised Option by delivering written notice to Landlord prior to the applicable Option Closing Date, in which event the Exercised Option shall automatically terminate, and neither party shall have any further rights or obligations with respect to such option, (ii) require Landlord to remediate the contamination, in which case the closing shall occur on the later of the scheduled closing date or 20 days after the contamination has been remediated, provided however if the cost of remediation is greater than 5% of the sales price the Landlord can elect to cancel this sale and Tenant will be deemed to waive its option rights hereunder, or (iii) waive such conditions and proceed to close on the Option Closing Date. For purposes of this Section 4.03 and 4.04, time is of the essence, and Tenant's right to purchase the Premises is personal to Tenant and shall not apply to any of Tenant's assigns.

5. Tenant's Affirmative Promises.

Tenant promises that it will:

5.01. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises and Building; (b) any requirements imposed by utility companies serving or insurance companies covering the Premises or Building; (c) any rules and regulations for the Building and Premises adopted by Landlord; and (d) any restrictions, covenants and requirements affecting the Premises that are of record in Bexar County, Texas.

5.02. Obtain and pay for all utility services, including but not limited to water, sewer, electrical, gas, CATV, trash disposal used by Tenant at the Premises, including separately metered charges for water service to the landscape sprinkler system (including any annual fees for back flow prevention fees), and separately metered electric service for the exterior and parking lot lighting systems.

5.03. Allow Landlord to enter the Premises to perform Landlord's obligations, inspect the Premises, and show the Premises to prospective purchasers or tenants.

5.04. Promptly submit in writing to Landlord any request for repairs, replacement, and maintenance that are obligations of Landlord.

5.05. Vacate the Premises and return all keys to the Premises promptly upon expiration of the Term in the condition required herein, subject to any holdover rights.

5.06. On request, execute an estoppel certificate that states the Commencement Date and the duration of this Lease, identifies any amendments to this Lease, describes any rights to extend the Term or purchase rights, lists defaults by Landlord, and provides any other information reasonably requested. Tenant need not sign any certificate that purports to modify Tenant's obligations in any respect, except for a change in the address for notice or payment of Rent.

5.07 Maintain and keep in good order, repair and condition the Building.

5.08 Repair any broken glass in the exterior or interior of the Building.

5.09 Tenant will cooperate with Landlord in its efforts to obtain the Certificate of Occupancy for the Premises and will not take any actions to interfere with the Landlord's efforts to obtain this certificate.

5.10 As of the Commencement Date, provide any monitoring services for any life safety systems which serve the Premises.

6. Tenant's Negative Promises.

Tenant promises that it will not:

6.01. Use the Premises for any purpose other than the Permitted Use.

6.02. Create a nuisance.

6.03. Interfere with any other tenant's normal business operations or Landlord's management of the Building or Premises.

6.04. Permit waste.

6.05. Use the Premises in any way that would increase insurance premiums or void insurance on the Building.

6.06. Alter any structural elements or roof of the Building or Premises or otherwise make any material alteration to the Building or Premises.

6.07. Allow a lien to be placed on the Premises.

6.08. Assign this Lease to anyone other than a municipal corporation created by the City of San Antonio as a successor entity to Tenant that administers the same program as the original Tenant and is the authorized recipient of the same sales tax proceeds being funded to the original Tenant hereunder, without Landlord's written consent.

6.09. Sublease any portion of the Premises to anyone other than the City of San Antonio or a municipal corporation created by the City of San Antonio as a successor entity to Tenant without Landlord's written consent, which consent shall not be unreasonably withheld.

7. Landlord's Affirmative Promises.

Landlord promises that it will:

7.01. Lease to Tenant the Premises for the entire Term, beginning on Commencement Date on the terms set out in this Lease.

7.02. Obey all applicable laws with respect to Landlord's operation of the Building and Premises unless such failure does not materially and adversely affect Tenant's use and enjoyment of the Premises.

7.03. Provide the Essential Services (unless assumed by Tenant pursuant to Section 3.08 of this Lease).

7.04. Unless caused by any act or omission of Tenant (in which case Landlord shall still be responsible for the repair but the actual cost of which shall be promptly reimbursed by Tenant to Landlord, subject to any insurance proceeds paid to Landlord or its lenders), repair and maintain the (a) roof, (b) foundation, (c) structural soundness of the exterior walls and exterior doors, and (d) slab floor (but not carpeting or similar floor covering).

7.05. *Intentionally deleted.*

7.06. Pay all Property Taxes assessed against the real property of which the Premises are a part (the "Property") on or before the assessment of interest or penalties for late payment, which shall be reimbursed (excluding any assessment of penalties or interest arising from Landlord's failure to pay Property Taxes when due) by Tenant pursuant to Section 3.04 of this Lease.

7.07. Timely complete at its own cost all of Landlord's Work and Tenant Improvements allocated to Landlord by the work letter attached as **Exhibit C**, subject to Construction Delays, Force Majeure Delays and Tenant Delays.

7.08. Allow Tenant to utilize a monument sign identifying its Permitted Use at the front entrance of the Premises in the location set forth on **Exhibit D** attached hereto ("Tenant's Monument Sign"). The Tenant's Monument Sign shall not be less than twenty (20) square feet in sign area on both sides of such sign. Landlord shall have final approval rights with respect to the design and construction of the Tenant's Monument Sign, and it shall be built, at Tenant's expense, in coordination with the construction of the Premises building. Subject to Landlord's prior approval and compliant with City Zoning Regulations, Tenant shall have the right to erect signage on two (2) sides of the Building of which the Premises is a part, subject to the Sign Criteria set forth on **Exhibit E** attached hereto.

7.09. All other provisions of this Lease notwithstanding, in no event will the Landlord be required to provide any repairs, maintenance, improvements or services to the Premises or Tenant, other than those set out in Section 7.04 or as otherwise required under the terms of this Lease for casualty loss or condemnation matters, to the extent the Landlord is not being reimbursed for its expenditures in connection with providing such repairs, maintenance, improvements or services to the Premises.

7.10. Comply with all laws, rules, and regulations regarding procurement of finish-out work funded by Tenant that Tenant would otherwise have to comply with were it doing the work itself, provided if, compliance with any such rules and regulations causes a delay in the process of contracting with contractors or subcontractors, beyond the time periods Landlord would ordinarily undertake, without regard to such procedures, each day of such delay will be deemed a Tenant Delay.

7.11. Maintain, repair and replace the HVAC systems serving the Premises and be responsible for regularly scheduled preventative maintenance on the HVAC systems as evidenced by a valid contract for services with a licensed mechanical contractor.

8. Landlord's Negative Promises.

Landlord promises that it will not:

8.01. Materially interfere with Tenant's possession of the Premises as long as Tenant is not in Default; provided, however that Landlord shall at all times be permitted to enter upon the Premises and the Building for the purpose of performing Landlord's obligations hereunder, upon advance written notice to Tenant, provided three (3) business prior to the date that Landlord desires to commence work, unless such work or obligation requires immediate attention, in such circumstance Landlord shall notify Tenant as soon as reasonably possible about such work or obligation. Landlord agrees that all personnel or staff entering or working at the Premises shall abide by Tenant's security protocols within ten (10) days after a written copy of any such protocols are delivered to Landlord.

9. Repair, Maintenance and Replacement Responsibilities.

Landlord and Tenant each must repair, maintain, and replace, if necessary, any building component or services allocated to it in the table below, unless otherwise provided in this Lease:

<i>Item</i>	<i>Tenant Responsibility</i>	<i>Landlord Responsibility</i>
Janitorial Services to Premises	Yes	No
Trash Disposal	Yes	No
Utility Services	Yes	No
Parking Lot Maintenance	No	Yes
Landscaping	No	Yes
Exposed Electrical Systems	Yes	No
Light bulbs and tubes, except exterior lights which are exclusively Landlord's responsibility	Yes	No
Concealed Electrical Systems	Yes	No
(i) All Exposed Plumbing Systems or (ii)	Yes	No

failures of concealed plumbing, including under slab drain lines, specifically caused by Tenants use, operations or maintenance

Concealed Plumbing Systems including under slab drain lines, but not systems behind vertical walls or in attic areas which are exclusively Tenant's responsibility	No	Yes
--	----	-----

HVAC Systems	No	Yes
--------------	----	-----

10. Alterations.

Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. Landlord may require that Tenant, at the end of the Term and at Tenant's expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

11. Insurance.

11.01. Tenant and its employees are protected under the City of San Antonio Defined Self-Insurance and Risk Management Program. Said program provides liability coverage pursuant to City Ordinance 83926. This Ordinance authorizes the City of San Antonio to pay claims which are brought against it or its employees under the Texas Tort Claims Act, § 101.001 et seq., Section 150 of the City Charter, the Federal Civil Rights Act, § 42 U.S.C., 1983, and other applicable statutes. As a political subdivision of the State of Texas, Tenant is subject to the Texas Tort Claims Act, and the obligations of Tenant and the rights of persons claiming against Tenant are subject to that Act.

With respect to the Property Insurance, Tenant purchases a blanket commercial property insurance policy. The broad form coverage protects Tenant's business personal property and leasehold improvements in accordance with the requirements of this Lease.

11.02.01 Landlord must maintain Commercial General Liability insurance of not less than \$1,000,000 that includes coverage for among other things claims that may be made by Landlord's invitees for injuries suffered while on the Premises ("Landlord's CGL Insurance") and a policy of fire and extended coverage insurance (or, at Landlord's option, an "all-risk" policy) on the Building, in the amount of its

full replacement value with a deductible that does not exceed \$5,000.00 ("Landlord's Casualty Insurance"). Tenant shall pay to Landlord as a part of Additional Rent, the premiums for all fire and extended coverage or all-risk insurance, boiler insurance, rent insurance and property damage insurance which Landlord may elect to carry, from time to time, with respect to the Premises (collectively, the "Insurance Premiums"). For purposes hereof, premiums paid for insurance policies having policy years which do not coincide with calendar years shall be prorated on a per diem basis for each calendar year affected, and total premiums for policies issued for more than one year will be prorated equally over the number of years for the term of such policies, regardless of differences in premium amounts actually paid during any particular year or years of such term. The payment to be made by Tenant for the respective years in which this Lease commenced and terminates shall bear the same ratio to the payment which would be required to be paid for the full year as the number of days of such year which elapsed after commencement or prior to termination of this Lease, as the case may be, bears to the full year. Landlord shall have the right to carry its insurance with respect to the Premises under a "blanket policy" that includes property in addition to the Premises, but the Insurance Premiums shall not exceed the lesser of (i) an amount which would have been applicable in the event Landlord had not carried such insurance under a "blanket policy" or (ii) a cost equal to the proportionate interest of the a 50,000 square foot building to the total number of improved building square feet insured under the blanket policy. The Insurance Premiums shall be reimbursed by Tenant pursuant to this Lease.

11.02.03 Each insurance policy of Landlord required by this Lease must contain the following clauses:

"This insurance cannot be canceled, limited in scope or coverage, or non-renewed until after 30-days' prior written notice has been given to Tenant and to:

City Clerk, City of San Antonio
City Hall/2nd Floor
P. O. Box 839966
San Antonio, Texas 78283-3966
Attention: Risk Manager

and

City of San Antonio
Leasing Division
P.O. Box 839966
San Antonio, Texas 78283-3966

Each insurance policy required by this Lease must contain the following clause to the extent available to Landlord:

"The Tenant is added as an additional insured as respects operations and activities of, or on behalf of, the named insured performed under this Lease with the City of San Antonio This policy cannot be invalidated as to Tenant because of Landlord's breach of representation, warranty, declaration, or condition of this policy without 30 days prior written notice to Tenant."

11.02.04. Within 30 days after the Commencement Date and promptly after Tenant's later request, Landlord must, at its own expense, deliver certificates to Tenant's Risk Manager and to the City Clerk, reflecting all required insurance coverage, together with copies of policies and endorsements. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Tenant, Landlord must send Tenant documentation acceptable to Tenant that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company. Tenant may request, but Landlord is not obligated to implement, changes in policy terms, conditions, limitations, or exclusions (except where established by law). Any increase in premiums as a result of any changes approved by Landlord and Tenant to such insurance coverages shall become a part of the Insurance Premiums charge and shall be reimbursed by Tenant pursuant to this Lease.

12. Release of Claims/Subrogation.

The insurance requirements of this Lease are a bargained-for allocation of risk of loss. Landlord and Tenant each release the other from claims arising from injury or loss to either of them if the injury or loss is covered by insurance the waiving party is required by this Lease to maintain, whether or not the party actually has the insurance ("Covered Claims"). This release is additional to and does not limit any other release contained in this Lease. Landlord and Tenant, to the maximum extent allowable without causing cancellation of a required policy, will require their insurers to waive subrogation against each other for Covered Claims. This release shall not apply to the amount of any deductible under any insurance policy, and THIS RELEASE DOES NOT APPLY TO CLAIMS CAUSED BY A PARTY'S WILLFUL MISCONDUCT. Nothing in this Section 12 shall be construed to impose any other or greater liability upon either Landlord or Tenant than would have existed in the absence of this Section 12.

13. Indemnity.

LANDLORD covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, Tenant and the elected officials, employees, officers, directors, volunteers and representatives of Tenant, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon Tenant directly or

indirectly arising out of, resulting from or related to LANDLORD'S activities under this Lease, including any acts or omissions of LANDLORD, any agent, officer, director, representative, or employee of LANDLORD, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Lease. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of TENANT, its officers or employees, directors, volunteers and representatives or invitees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LANDLORD AND TENANT, OR TENANT'S OFFICERS OR EMPLOYEES DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OR INVITEES, ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO TENANT UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LANDLORD shall advise Tenant in writing within 24 hours of any claim or demand against Tenant or LANDLORD known to LANDLORD related to or arising out of LANDLORD'S activities under this LEASE and shall see to the investigation and defense of such claim or demand at LANDLORD'S cost. Tenant shall have the right, at its option and at its own expense, to participate in such defense without relieving LANDLORD of any of its obligations under this paragraph.

14. Casualty/Total or Partial Destruction.

14.01. If the Premises are damaged by casualty, Tenant shall give immediate written notice to Landlord.

(i) If Landlord reasonably believes the damage to cost five hundred thousand dollars (\$500,000.00) or less to repair, within thirty (30) days following the date of such notice, Landlord will use reasonable efforts to determine if the Premises can be restored within 180 days thereafter. If Landlord determines that the Premises can be restored within 180 days from the date that the determination as to the restoration is made by the Landlord, Landlord will, at its expense, restore the roof, foundation and structural soundness of the exterior walls of the Premises to the extent same were included in the Landlord's Work, and all leasehold improvements within the Premises, including interior partitions, ceilings, wiring, light fixtures, and plumbing, to the extent same were included in

the Tenant Improvements, all to substantially the same condition in which the same existed prior to the casualty, as the case may be, reasonable wear and tear excepted and only to the extent of insurance proceeds provided to Landlord to address the casualty loss; provided, however, that Landlord shall have no obligation to restore the Premises if there is less than one (1) year remaining in the current Term of the Lease. Landlord will use commercially reasonable efforts to restore the Premises as quickly as reasonably possible to the extent of the insurance proceeds that are to be made available to Landlord, as set out in Section 14.04, below. If Landlord fails to complete the portion of the restoration for which Landlord is responsible hereunder within 180 days from the date that repairs are commenced by Landlord despite using Landlord's reasonable diligence, and Tenant is prevented from using the Premises for its Permitted Use, then (i) Tenant may provide notice of intent to terminate the Lease and may terminate this Lease if the restorations are not complete within thirty (30) days after such notice, or (ii) Landlord may terminate this Lease, in each case by written notice delivered to the other provided the notice is delivered before Landlord completes Landlord's restoration obligations; provided, however, that Tenant shall have no right to terminate this Lease if Tenant, or its employees or agents, were the cause of such damage.

(ii) If Landlord reasonably believes the damage to cost more than five hundred thousand dollars (\$500,000.00) to repair, within ninety (90) days following the date of such notice, Landlord will use reasonable efforts to determine if the Premises can be restored within 270 days thereafter. If Landlord determines that the Premises can be restored within 270 days from the date that the determinate as to the restoration is made by the Landlord, Landlord will, at its expense, restore the roof, foundation and structural soundness of the exterior walls of the Premises to the extent same were included in the Landlord's Work, and all leasehold improvements within the Premises, including interior partitions, ceilings, wiring, light fixtures, and plumbing, to the extent same were included in the Tenant Improvements, all to substantially the same condition in which the same existed prior to the casualty, as the case may be, reasonable wear and tear excepted and only to the extent of insurance proceeds provided to Landlord to address the casualty loss; provided, however, that Landlord shall have no obligation to restore the Premises if there is less than three (3) years remaining in the current Term of the Lease. Landlord will use commercially reasonable efforts to restore the Premises as quickly as reasonably possible to the extent of the insurance proceeds that are to be made available to Landlord, as set out in Section 14.04, below. If Landlord fails to complete the portion of the restoration for which Landlord is responsible hereunder within 270 days from the date that repairs are commenced by Landlord despite using Landlord's reasonable diligence, and Tenant is prevented from using the Premises for its Permitted Use, then (i) Tenant may provide notice of intent to terminate the Lease and may terminate this Lease if the restoration s are not complete within thirty (30) days after such notice, or (ii) Landlord may terminate this Lease, in each case by written notice delivered to the other provided the notice is delivered before Landlord completes Landlord's restoration obligations; provided, however, that Tenant shall have no right to terminate this Lease if Tenant, or its employees or agents, were the cause of such damage.

14.02. If Landlord determines that the Premises cannot be restored within the time periods set out in Section 14.01, Landlord at its option may either terminate this Lease (and choose not to restore) or restore the Premises and notify Tenant of the estimated time to restore. Tenant shall have the right to terminate this Lease within 15 days following Landlord's delivery to Tenant of such notice of the estimated time to restore.

14.03. During the period before Landlord completes restoration, Rent will be adjusted as may be fair and reasonable to take into consideration those portions of the Building which are not useable by the Tenant, on a per square foot proration.

14.04 No damage or destruction to the Premises shall allow Tenant to surrender possession of the Premises or affect Tenant's liability for the payment of Rent or any other covenant herein contained, except as may be specifically provided in this Lease. Landlord shall not be obligated to commence any repair, restoration or rebuilding until insurance proceeds are received by Landlord, and Landlord's obligations hereunder shall be limited to the proceeds received by Landlord under its insurance policy or Tenant's insurance policy, as the case may be.

14.05 As with the insurance requirements, the rebuilding obligations of this paragraph are abargained-for allocation of risk.

14.06 In the event the Premises is not reconstructed Landlord will pay Tenant the \$2,000,000 term completion incentive as described in this Lease as well as insurance proceeds paid to the Landlord and Tenant in the following manner:

(i) all proceeds relating to the loss of the Base Building Improvements will be payable to Landlord.

(ii) as for the proceeds relating to the loss of the Tenant Improvements, the Tenant will receive that portion of those proceeds which is provided for the loss of the Tenant Improvements multiplied by a fraction, the numerator of which is the number of months remaining under the terms of the Lease and the denominator of which is the total number of months under the terms of the Lease, assuming each option which was capable of being exercised at the time of the Lease termination had been exercised (but excluding those option periods which were not capable of being exercised due to the lapse of time to make a timely election or otherwise).

(iii) the remainder of the insurance proceeds relating to the loss of the Tenant Improvements will be payable to the Landlord.

14.07 In the event the Landlord determines that the Premises can be restored within the time periods set out in Section 14.1, above, and the Tenant reasonably determines that the Landlord's restoration process will not cause the Premise to be restored within such period, the Tenant may provide notice to Landlord of its desire to cause the work to be completed by Tenant and may pursue such work if, within fifteen (15) days thereafter the Landlord has not provided a reasonable explanation as to why completion on the time table determined by Landlord is reasonable. If Tenant undertakes this work, as set out above, it shall do so at its sole cost and expense and, upon completion, Landlord's will reimburse Tenant for Tenant's reasonable actual third party cost in doing so, up to but not exceeding the Landlord unexpended portions of any insurance proceeds received by Landlord for the restoration process.

15. Condemnation/Substantial or Partial Taking.

15.01. If the Premises or any portion of them are taken by eminent domain, or sale in lieu of eminent domain, by any entity other than Tenant or any entity controlled by Tenant, the Lease automatically terminates as to the part so taken as of the date the condemning authority takes title or possession, whichever occurs first.

15.02. If entire Premises are not taken, the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

15.03. Tenant has no claim to the condemnation award or proceeds in lieu of condemnation.

16. Holdover.

16.01. If the Lease has not been earlier terminated according to its terms and Tenant is current on rent, both after the Initial Term and after any renewals provided for in this Lease, Tenant may holdover for up to six additional months on a month-to-month basis on the same terms and conditions herein, except that Base Rent shall be one hundred twelve and one-half percent (112.5%) of the Base Rent for the immediately preceding calendar month. Tenant need not give advance notice of intent to exercise this holdover right, and it need not hold over all of the allowable six months.

16.02. Whenever this Lease refers to the Term, events to occur during the Term, or rights and obligations of Landlord and Tenant during the Term, a holdover period is considered a part of the Term.

17. Default.

17.01. *Default by Landlord/Events.* Defaults by Landlord are (i) failing to comply with any provision of this Lease within 30 days after written notice thereof specifying such failure (or if the failure specified by Tenant is not capable of cure within such 30 day period, if Landlord fails promptly after notice from Tenant to commence to cure such failure and diligently to pursue completion of such cure during and within a reasonable time after such 30 day period); (ii) other than as a result of Construction Delays, Tenant Delays and Force Majeure Delays, unless the Essential Services have been assumed by Tenant as portion of the Assumed Services, failing to provide Essential Services to Tenant within 15 days after written notice thereof specifying such failure (or if the failure specified by Tenant is not capable of cure within such 15 day period, if Landlord fails promptly after notice from Tenant to commence to cure such failure and diligently to pursue completion of such cure during and within a reasonable time after such 15 day period); (iii) failure to pay before delinquency and termination of such services the cost of utility services, to the extent the obligation to pay for such services is expressly allocated to Landlord under this Lease; and (iv) failure to pay Property Taxes before assessment of interest or penalty.

17.02. *Default by Landlord/Tenant's Remedies.* Tenant's exclusive remedy for any default by Landlord shall be an action for actual damages. Except as expressly provided herein, in no event shall Tenant be entitled to terminate this Lease or *will Landlord be liable to Tenant* for consequential, punitive or special damages or any similar types of damages by reason of a failure to perform (or a default) by Landlord hereunder or otherwise. Tenant hereby expressly waives and disclaims any lien or claim which Tenant has or may have in and to any property belonging to the Landlord or on the Rent due to the Landlord under this Lease. Notwithstanding the foregoing, if Landlord is in default under subsection (ii) under Section 17.01 above (beyond any applicable notice and cure periods), then Tenant may have the additional right to assume the Assumed Services, as if Tenant had elected to assume the Assumed Services pursuant to Section 3.08 above, so long as Tenant is not otherwise in default hereunder.

17.03. *Default by Tenant/Events.* Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning or vacating a substantial portion of the Premises, and (c) failing to comply within 30 days after written notice with any provision of this Lease other than the defaults set forth in (a) and (b) above.

17.04. *Default by Tenant/Landlord's Remedies.* In addition to any and all other remedies available to Landlord in this Lease, at law or in equity, Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises, after which Landlord may relet the Premises on behalf of Tenant and receive the rent directly by reason of the reletting, and Tenant shall reimburse Landlord for reasonable reletting expenditures; (b) enter the Premises and perform Tenant's obligations; and/or (c) terminate this Lease by written notice and sue for damages.

17.05. *Waiver of Liens.* Only to the extent required in Article XI, § 9 of the Texas Constitution, Landlord waives all common law and statutory liens in the property of Tenant, including the lien that might otherwise arise under § 54.021 of the Texas Property Code.

18. Warranty Disclaimer.

EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, TENANT HEREBY AGREES AND ACKNOWLEDGES THAT IT IS LEASING THE PREMISES IN ITS EXISTING CONDITION, "AS-IS, WHERE-IS", AND WITH ALL FAULTS WITH RESPECT TO ANY FACTS, CIRCUMSTANCES, CONDITIONS AND DEFECTS. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, LANDLORD HAS NO OBLIGATION TO REPAIR OR CORRECT ANY SUCH FACTS, CIRCUMSTANCES, CONDITIONS OR DEFECTS IN THE CONDITION OF THE PREMISES, NOR DOES LANDLORD HAVE ANY OBLIGATION TO COMPENSATE TENANT FOR SAME. NO OTHER PROMISE OF LANDLORD TO ALTER, REMODEL, REPAIR OR IMPROVE THE PREMISES OR THE BUILDING AND PREMISES AND NO REPRESENTATION RESPECTING THE CONDITION OF THE PREMISES OF THE BUILDING HAVE BEEN MADE BY LANDLORD TO TENANT. TENANT EXPRESSLY ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE SPECIFIED HEREIN, LANDLORD HAS MADE NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF CONDITION, TITLE, HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PREMISES, ALL SUCH REPRESENTATIONS AND WARRANTIES, AS WELL AS ANY IMPLIED WARRANTIES BEING HEREBY EXPRESSLY DISCLAIMED.

THE PREMISES IS A NEWLY CONSTRUCTED BUILDING AND AS SUCH ANY WARRANTIES FOR EQUIPMENT INCLUDING, BUT NOT LIMITED TO HVAC EQUIPMENT, ROOF, AND OTHER BUILDING COMPONENTS, TO THE EXTENT THAT TENANT IS RESPONSIBLE FOR MAINTENANCE OF SUCH EQUIPMENT, SHALL TRANSFER TO TENANT WITH THE OBLIGATION OF TENANT TO ENFORCE SUCH WARRANTY COVERAGE.

TENANT HEREBY AGREES AND ACKNOWLEDGES THAT, EXCEPT AS OTHERWISE SPECIFICALLY STATED IN THIS LEASE, LANDLORD HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OR, AS TO, OR CONCERNING THE NATURE AND CONDITION OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, THE SUITABILITY THEREOF AND OF THE PREMISES OR OTHER ITEMS CONVEYED HEREUNDER FOR ANY AND ALL ACTIVITIES AND USES WHICH TENANT MAY ELECT TO CONDUCT THEREON, THE EXISTENCE OF ANY ENVIRONMENTAL HAZARDS OR CONDITIONS THEREON (INCLUDING BUT NOT LIMITED TO THE PRESENCE OF ASBESTOS OR OTHER HAZARDOUS MATERIALS) OR COMPLIANCE WITH APPLICABLE ENVIRONMENTAL LAWS, RULES OR REGULATIONS.

LANDLORD ACKNOWLEDGES, TO THE EXTENT A CONSTRUCTION DEFECT MAY ARISE DURING THE FIRST YEAR OF THE TERM OF THIS LEASE, WHICH DEFECT IS COVERED BY THE WARRANTY PROVIDED BY THE CONTRACTORS OR MANUFACTURES TO LANDLORD, TENANT MAY MAKE A CLAIM WITH LANDLORD AND LANDLORD WILL TAKE THOSE STEPS REASONABLY NECESSARY TO CAUSE THE CONTRACTORS OR MANUFACTURE TO CORRECT THE DEFECT.

19. Environmental.

19.01. "Environmental Laws" means applicable federal, state, and local laws relating to protection of the public health, welfare, and the environment, including without limitation, those laws relating to the storage, handling, and use of chemicals and other hazardous substances, those relating to the generation, processing, treatment, storage, transport, disposal, or other management of waste materials of any kind, and those relating to the protection of environmentally sensitive areas.

19.02. "Hazardous Material" means "hazardous substance," "pollution or contaminant," "petroleum," and "natural gas liquids," as those terms are defined by or used in Environmental Laws, or that are regulated because of their effect or potential effect on human health and the environment.

19.03. "Release" means depositing, spilling, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing.

19.04. Landlord represents, to Landlord's actual knowledge without the duty to investigate, that the Premises and the property of which the Premises are a part, if applicable, comply with all applicable Environmental Laws, except as otherwise disclosed to Tenant by Landlord prior to the date hereof. As part of its disclosures, Landlord has provided to Tenant a Phase 1 Environmental Report dated August 8, 2013, as completed by Pape-Dawson Engineers, Inc.

19.05. Landlord represents and warrants, to Landlord's actual knowledge without the duty to investigate, that there has been no Release on, onto, or from the Premises and that the Premises has not contained and does not contain any asbestos, underground or aboveground storage tanks, or "PCBs" or "PCB items," as defined in 40 CFR § 761.3.

19.06. Tenant must not allow the Release of any Hazardous Material from its use of the Premises on, onto, or from the Premises. Tenant further must not handle, use, or otherwise manage any Hazardous Material on the Premises in violation of any Environmental Laws or in any but a reasonable and prudent manner.

19.07. Landlord represents and warrants that (i) with regard to activities and conditions on the Premises, Landlord has not received, any notice that: (a) the Premises violates any Environmental Law; (b) there has been a Release, or threat of Release, of Hazardous Materials from the Premises; (c) the Landlord may be or is liable, in whole or in part, for costs of cleaning up, remediating, removing, or responding to a Hazardous Materials release on the Premises; or (d) the Premises is subject to a lien under any Environmental Laws. In case of receipt of such notice, Landlord must immediately provide Tenant a copy.

19.08. Before the Commencement Date, Landlord must permit Tenant and its, representatives and contractors to enter upon the Premises at reasonable times and in a reasonable manner to investigate environmental matters. Tenant may perform such tests, including without limitation, subsurface testing, soils, and groundwater testing, and any other tests, as the Tenant, in its sole discretion, determines are necessary to identify environmental concerns, except that any Tenant may not cause to be conducted on or with respect to the Premises any Phase II or other environmental site assessment, or test borings or other air, water, or soil samples or other testing which could result in a notice or reporting requirement to any regulatory or governmental authority, without the prior written consent of Landlord. The investigation is at Tenant's sole cost. Tenant must minimize the intrusion upon and inconvenience to Landlord and the ongoing operations at the Premises. If Tenant performs any tests that disturb the PREMISES, Tenant must restore the PREMISES. Tenant is responsible for damages arising from its testing on the PREMISES and for the proper disposal of any wastes generated by its testing.

20. Appropriations.

All obligations of Tenant are funded subject to the collection of assigned sales tax and at the discretion of City Council whether to appropriate funding. If the City Council fails to appropriate money for any obligation under this Lease, Tenant may terminate this Lease and have no further liability.

21. Term Completion Incentive.

In the event the Tenant (i) occupies the Premises for the full Initial Term, (ii) pays all Rent due and payable during the full Initial Term pursuant to the terms of this Lease, plus all Additional Rent and all other sums due by Tenant during the Initial Term pursuant to the terms of this Lease (unless other sums are being contested in good faith), (iii) exercises its option to either purchase the Premises or extend the Initial Term for the first Renewal Term, and (iv) is not otherwise in Default of this Lease, Landlord will pay to Tenant, as a term completion incentive a payment of \$2,000,000.00, which payment will be made by Landlord to Tenant within 60 days following the end of the Initial Term and full payment of the sums set out in (ii) above. If Landlord fails to pay such sum after said payment is due and payable, then Tenant may elect, so long as such sum remains unpaid, by delivering written notice to Landlord of such election, either to (i) offset the unpaid portion of such \$2,000,000.00 sum from future monthly installments of Base Rent due and payable by Tenant hereunder, or (ii) reduce the purchase price payable by Tenant with respect to an Exercised Option on the Option Closing Date set out in Section 4.03 hereof, by seven and one half percent (7.5%) plus an amount equal to the unpaid portion of such \$2,000,000.00 sum.

22. Prohibited Interests in Contracts.

22.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City. The San Antonio Early Childhood Education Municipal Development Corporation ("Corporation") has adopted this same prohibition. As such, an officer or employee has a "prohibited financial interest" in a contract with the City or Corporation or in the sale to the City or Corporation of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

- (i) a City or Corporation officer or employee;
- (ii) his or her parent, child or spouse;
- (iii) a business entity in which the officer or employee, or his or her parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
- (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City or Corporation contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

22.02. Landlord warrants and certifies as follows:

- (i) Landlord and its officers, employees and agents are neither officers nor employees of the City or Corporation.
- (ii) Landlord has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code and the Corporation's bylaws.

23. Miscellaneous.

23.01. *Applicable Law.* This Lease is entered into in San Antonio, Bexar County, State of Texas. **Its Construction And The Rights, Remedies, And Obligations Arising Under It Are Governed by The Laws of The State Of Texas.** But the Texas conflicts of law rules must not be used to apply the laws of a jurisdiction other than Texas. Both parties' obligations under this Lease are performable in San Antonio, Bexar County, Texas, and venue for any action arising under this Lease is only in Bexar County, Texas.

23.02. *Severability.* If any part of this Lease is found invalid or unenforceable, the finding does not affect the remainder.

23.03. *Successors.* This Lease inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

23.04. *Integration.* **This Lease Represents The final Lease Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.**

23.05. *Modification.* This Lease may be changed only by a written agreement, signed by the party against whom enforcement of any modification is sought. Subject to that restriction, any of this Lease's terms may be modified by the party entitled to their benefit, **but** no modification, express or implied, affects the right of the modifying party either (i) to apply any other term or condition or (ii) to apply the same term or condition to a later or earlier occasion.

23.06. *Third Party Beneficiaries.* This Lease benefits the parties and their successors and permitted assigns only. It has no third party beneficiaries.

23.07. *Notices.* Notices must be in writing and by certified mail, return receipt requested, or by independent delivery service addressed to the parties at their respective addresses set forth at the beginning. If sent by certified mail, notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. If sent other than by certified mail, notice is complete on the date shown on the receipt. Address for notice may be changed by giving notice.

23.08. *Captions.* Paragraph captions are for ease of reference only and do not affect the interpretation.

23.09. *Counterparts and Electronic Signatures.* This Lease may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of their number, counterparts constitute only one agreement. In making proof of this Lease, one need not produce or account for more counterparts than necessary to show execution by or on behalf of all parties. A signature delivered by facsimile or other electronic transmission (including e-mail) will be considered an original signature.

23.10. *Further Assurances.* The parties must execute and deliver such additional documents and instruments as may be necessary to effect fully the provisions hereof. But no such additional documents can alter the rights or obligations of the parties stated in this Lease.

23.11. *Administrative Agreements.* The Chief Executive Officer for the San Antonio Early Childhood Education Municipal Development Corporation, or her designee may, without further Board action, agree to, sign, and deliver on behalf of the Tenant all consents, certificates, memoranda, estoppels, attornments, and modifications of nonmaterial rights and obligations arising under this Lease and may declare defaults and pursue remedies for such defaults. This paragraph does not authorize lease amendments or renewals without council consent.

23.12. *Conflicts Between Numbers Stated Two Ways.* Whenever this Lease states a number more than one way, either by using both words and numerals or by stating a fixed amount and a calculation for arriving at an amount, and there is a conflict, the highest number controls.

23.13 *Landlord's Right to Terminate.* In the event the Landlord determines that it will not be able to obtain the right to place a sewer line under Highway 151, as shown on Exhibit "F" at any time within 60 days from the Effective Date of this Lease it may terminate this Lease and return to Tenant the Acceleration Fee and the Up Front Tenant Deposit, as defined in the Work Letter attached hereto.

23.14 Duty to Provide Easement. Tenant will use reasonable business efforts and cooperate with Landlord to cause the City of San Antonio to dedicate and make available to San Antonio Water System for Landlord's use, at no cost to Landlord, if possible, the sanitary sewer line easement as set out on Exhibit "F" attached hereto.

In the event the Landlord determines that it will not be able to obtain the right to such sewer line at any time within 105 days from the Effective Date of this Lease, it may terminate this Lease and return to Tenant the Acceleration Fee and the Up Front Tenant Deposit, as defined in the Work Letter attached hereto after deducting from such sums all of the third party out of pocket cost incurred by Landlord in connection with its proposed development of the Premises and the Building.

23.15. *Quiet Enjoyment.* As long as Tenant pays the rent and other charges under this Lease and observes the covenants and terms of this Lease, Tenant will lawfully and quietly hold, occupy, and enjoy the Premises during the Term without being disturbed by Landlord or any person claiming under Landlord, except for any portion of the Premises that is taken under the power of eminent domain.

23.16. *Incorporation of Exhibits.* All exhibits to this Lease are incorporated into it for all purposes as if fully set forth.

23.17 *Limitation of Landlord's Liability.* This Lease is executed by certain authorized representatives of Landlord, not individually, but solely on behalf of, Landlord. TENANT WAIVES ANY RIGHTS TO BRING A CAUSE OF ACTION AGAINST THE INDIVIDUALS EXECUTING THIS LEASE ON BEHALF OF LANDLORD AND THE LANDLORD PARTIES. THE LIABILITY OF LANDLORD UNDER THIS LEASE SHALL BE LIMITED TO 50% OF THE VALUE OF THE PREMISES. The provisions of this Section 23.15 are not intended to relieve Landlord from the performance of any of Landlord's obligations under this Lease, but only to limit the personal liability of Landlord in the case of recovery of a judgment against Landlord. Tenant's rights to obtain injunctive relief or avail itself of any other right or remedy which may be awarded to Tenant by law or under this Lease shall in no way be limited by the foregoing provisions of this Section 23.15. The provisions of this Section 23.15 shall survive the termination of this Lease.

23.18 *No Joint Venture.* Nothing contained herein shall be deemed or construed by the parties hereto, nor any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of Rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.

23.19 *Additional Rent.* Landlord and Tenant are knowledgeable and experienced in commercial transactions and agree that the terms in this Lease for determining Additional Rent payable by Tenant are commercially reasonable and valid even though the methods contained herein may not state a precise mathematical formula for determining all such changes. ACCORDINGLY TO THE EXTENT ALLOWED BY LAW, TENANT VOLUNTARILY AND KNOWINGLY WAIVES ALL RIGHTS AND BENEFITS OF TENANT UNDER SECTION 93.012 OF THE TEXAS PROPERTY CODE, AS AMENDED FROM TIME TO TIME.

24. Public Information.

Landlord acknowledges that this instrument is public information within the meaning of Chapter 552 of the Texas Government Code and accordingly may be disclosed to the public. Nothing in this Lease waives an otherwise applicable exception to disclosure.

[The Signatures Appear on Following Pages]

Signature Page - Lease

In Witness Whereof, the parties have caused their representatives to set their hands.

Tenant

San Antonio Early Childhood Education Municipal Development Corporation, a Texas nonprofit corporation

/s/ Kathleen Bruck

Signature

Kathleen Bruck

Name

CEO

Title

10.1.2013

Date

Landlord

Flamingo Cay, LLC,
a Texas limited liability company

By: GFR Development Services, LLC,
a Texas limited liability company, its Manager

By: /s/ Mark D. Granados

Name: Mark D. Granados

Title: President

Exhibit A: Description of Premises



The Premises are more fully described on the field notes description and exhibit attached hereto.

FIELDNOTE DESCRIPTION
FOR

A 5.464 acres, or 238,030 square feet more or less, tract of land being a portion out of 11.00 acres conveyed to Shuchi Development, LLC described in a deed recorded in Volume 12016, Page 643 of the Official Public Records of Real Property of Bexar County, Texas, out of I. & G.N.R.R. CO. Survey No. 1, Abstract 937, County Block 4327 and C.L. Owens Survey No. 73, County Block 4328, now in New City Block 11379, in the City of San Antonio, Bexar County, Texas. Said 5.464 acre tract being more fully described as follows, with bearings based on the North American Datum of 1983 (NA2011) epoch 2010.00, from the Texas Coordinate System established for the South Central Zone:

BEGINNING: At a set 1/2 inch iron rod with yellow cap marked "Pape-Dawson" on the northwest right-of-way line of Old Highway 90 West, a 120-foot right-of-way, the southeast line of said 11.00 acre tract, and from which a found TxDot Highway Monument (Type II) at the south end of a cutback line on the northwest right-of-way line of said Old Highway 90 West, with the intersection of the northeast right-of-way line State Highway 151, a variable width right-of-way, bears S64°05'15"W, 283.39 feet;

THENCE: N 25°51'22" W, departing the northwest right-of-way line of said Old Highway 90 West, over and across said 11.00 acre tract of land, a distance of 141.85 feet passing the east corner of a 4.476 acre tract of land described in a deed recorded in Volume 6696, Page 1286 of said Official Public Records, an interior corner of said 11.00 acre tract of land, continuing along and with the southwest line of said 4.476 acre tract of land and a west line hereof, a distance of 535.37 feet for a total distance of 677.22 feet to a found iron rod with a illegible cap;

THENCE: S 62°34'24" W, continuing along and with the common line between said 11.00 acre tract of land and said 4.476 acre tract of land, a distance of 367.61 feet to a set 1/2 inch iron rod with yellow cap marked "Pape-Dawson" on the northeast right-of-way line of said State Highway 151, the west corner of said 4.476 acre tract of land;

Page 1 of 3

SAN ANTONIO / AUSTIN
HOUSTON / FORT WORTH

555 East Ramsey San Antonio, Texas 78216
P 210.375.9000 F 210.375.9010 www.pape dawson.com

Page 33 of 60 Pages

THENCE: Along and with the northeast line of said State Highway 151, the following bearings and distances:

N 24°42'59" W, a distance of 20.78 feet to a set¹/₂ inch iron rod with yellow cap marked "Pape-Dawson", a point of curvature;

Northwesterly, along a curve to the left, said curve having a radius of 3039.79 feet, a central angle of 00°16'07", a chord bearing and distance of N 24°51'03" W, 14.26 feet, for an arc length of 14.26 feet to a set "X" in concrete, at the south corner of Lot 22, Block 6, New City Block 11379, Missions Baseball Academy MAOZ Subdivision, recorded in Volume 9631, Page 104 of the Deed and Plat Records of Bexar County, Texas, the northwest corner of said 11.00 acre tract of land;

THENCE: N 62°34'24" E, departing the northeastright-of-way line of said State Highway 151, along and with the common line between said Lot 22 and said 11.00 acre tract of land, a distance of 888.25 feet to a set ¹/₂ inch iron rod with yellow cap marked "Pape-Dawson" on the west line of a 1.03 acre tract of land described in a deed recorded in Volume 12579, Page 163 of said Official Public Records, at the east corner of said Lot 22, an angle point of said 11.00 acre tract of land;

THENCE: Over and across said 11.00 acre tract of land, the following bearings and distances:

S 00°12'12" E, a distance of 637.13 feet to a set¹/₂ inch iron rod with yellow cap marked "Pape-Dawson" for an angle point;

S 62°34'24" W, a distance of 194.25 feet to a set¹/₂ inch iron rod with yellow cap marked "Pape-Dawson" for an angle point;

S 25°51'22" E, a distance of 111.79 feet to a set¹/₂ inch iron rod with yellow cap marked "Pape-Dawson" for an angle point;

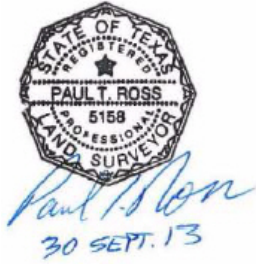
N 64°08'38" E, a distance of 15.00 feet to a set¹/₂ inch iron rod with yellow cap marked "Pape-Dawson" for an angle point;



S 25°51'22" E, a distance of 35.00 feet to a set 1/2 inch iron rod with yellow cap marked "Pape-Dawson" on the northwestright-of-way line of said Old Highway 90 West, the southeast line of said 11.00 acre tract of land;

THENCE: S 64°05'15" W, along and with the northwestright-of-way line of said Old Highway 90 West, a distance of 66.10 feet to the POINT OF BEGINNING, and containing 5.464 acres in the City of San Antonio, Bexar County, Texas. Said tract being described in accordance with a survey made on the ground and a survey description and map prepared under job number 9257-13 by Pape-Dawson Engineers, Inc.

PREPARED BY: Pape-Dawson Engineers, Inc.
DATE: September 30, 2013
OB NO. 9257-13
DOC. ID. N:\Survey\13-9200\9257-13\WORD\9257-13 EX.docx
TBPE Firm Registration #470
TBPLS Firm Registration #100288-00

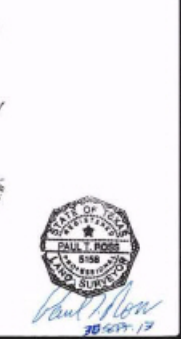
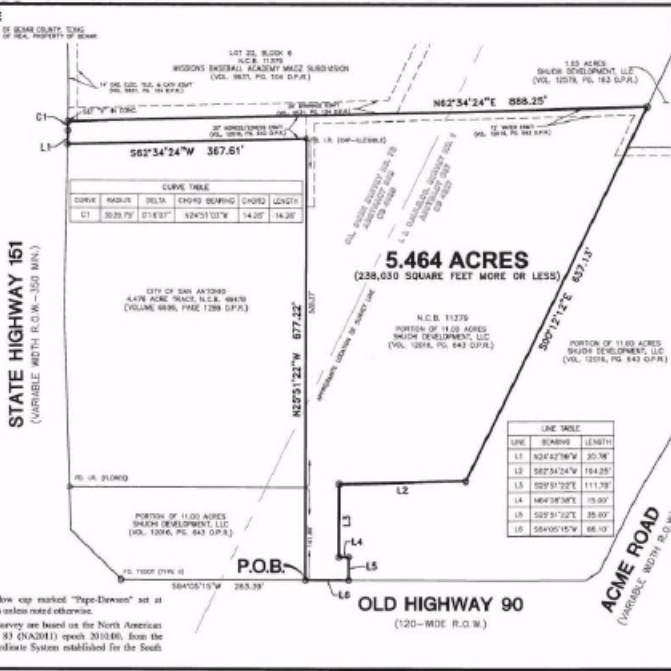


DEED/PLAT REFERENCE

D.P.R. 2022 AND PLAT RECORDS OF BEXAR COUNTY, TEXAS
 OFFICE RECORDS OF REAL PROPERTY OF BEXAR COUNTY, TEXAS

LEGEND

DAVE ONLY TELEVISION
 CONC FIBER OPTIC
 I.R. POWER
 I.R. FURNACE
 I.R. FURNACE
 I.R. FURNACE
 I.R. FURNACE
 I.R. FURNACE



NOTES:

- 1) 5" iron rod with yellow cap marked "Type-Dewson" set at subject property corners unless noted otherwise.
- 2) The bearings for this survey are based on the North American Datum of 1983 NAD 83 (NAD83) epoch 2011.00, from the Texas State Plane Coordinate System established for the South Central Zone.

PAUL M. MONAHAN
 ENGINEER

EXHIBIT OF
 A 5.464 ACRES, OR 228,030 SQUARE FEET MORE OR LESS, TRACT OF LAND BEING A PORTION OF 11.00 ACRES TRACT OF LAND CONVEYED TO SHUKH DEVELOPMENT, L.L.C. BY DEED/PLAT RECORDS OF BEXAR COUNTY, TEXAS.

DATE: 10/13/22
 SHEET: 1 of 1

Commencement Date Memorandum

Landlord:

Tenant:

Lease:

Predicate Facts:

Landlord and Tenant are parties to the Lease, which was authorized by the Authorizing Ordinance.

The Lease Term is to begin upon the Substantial Completion of the Landlord's Work and the Tenant Improvements.

For their mutual benefit, the parties now wish to memorialize the actual Commencement Date of the Lease's Term.

Rights and Obligations:

Now Therefore, in consideration of the premises, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Defined Terms.

All terms used in this memorandum and not otherwise defined herein but defined in the Lease have the meanings ascribed to them in that instrument.

2. Commencement Date.

The Commencement Date is _____, and the Initial Term shall expire on _____.

3. No Default.

As a part of the inducement to Landlord to execute and deliver this Commencement Date Memorandum, Tenant represents to Landlord that:

- a. The Lease is in full force and effect according to its terms.
- b. Neither party is in default under the Lease.

c. Neither party has any offset or claim against the other that would reduce or impair its obligations under the Lease.

4. Conflict of Terms.

This instrument controls over anything to the contrary in the Lease.

In Witness Whereof, the parties have caused their representatives to set their hands.

Tenant

San Antonio Early Childhood Education Municipal Development Corporation, a Texas nonprofit corporation

Landlord

Flamingo Cay, LLC,
a Texas limited liability company

By: GFR Development Services,
LLC, a Texas limited liability company,
its Manager

Signature

By: _____
Name: Mark D. Granados
Title: President

Name

Title

Date

Exhibit C: Work Letter

This Work Letter is between Landlord and Tenant in connection with the Lease.

Landlord: Flamingo Cay, LLC

Tenant: San Antonio Early Childhood Education Municipal Development Corporation

Lease: Lease of a tract of land constituting approximately 5.43 acres, as more particularly described on **Exhibit A** attached to the Lease, to be improved in accordance with the terms and conditions contained herein with (i) a single store building containing approximately 50,000 rentable square feet ("Building"), (ii) a parking lot containing approximately 250 parking spaces ("Parking Facilities"), and (iii) multiple playground areas.

1. **Definitions.** Capitalized words have the meanings ascribed to them in the Lease. If not defined in the Lease, they have the following meanings:

Tenant Improvement Reimbursement	100% of the cost incurred by Landlord (excluding the Signage Allowance) to construct the Tenant Improvements, including any fees related to the completion of the Tenant Improvements as specifically provided in the Work Letter not to exceed \$4,400,000 including the Acceleration Mobilization Fee and \$800,000 Up Front Tenant Development Deposit, unless Tenant has expressly confirmed its intent in writing to Landlord to waive this limitation.
Up Front Tenant Development Deposit	A payment of \$800,000 which may be used by the Landlord for any cost it may incur in connection with its acquisition and development of the Premises and Buildings which sum is included in the Tenant Improvement Reimbursement and shall be paid by Tenant to the Landlord on the Effective Date.
Tenant Improvement Reimbursement Payment Date	Within 30 days of Tenant's receipt of a detailed invoice, including copies of executed contracts for the work, Tenant

Corporation's Designated Construction Representative	will pay Landlord all costs incurred for Tenant Improvements. These request for payment from Landlord can be made incrementally, though in no event shall a request be made more than 1 time in any 30 day period. Razi Hussein, P.E. Capital Improvements Management Department 114 West Commerce Street, fifth floor San Antonio, TX 78205 (210) 207-8076
Accelerated Mobilization Reimbursement	A fee equal to \$200,000 to be paid by Tenant to Landlord to assist in defraying the cost incurred by Landlord to address the construction schedule of Tenant, as set out herein, which is included in the Tenant Improvement Reimbursement and shall be paid by Tenant to the Landlord on the Effective Date
Signage Allowance	Landlord will provide Tenant an allowance not to exceed \$15,000.00 for the purpose of installing signage on the Premises and at the driveway entrances to the Premises.
Landlord's Construction Representative	Mark Granados or his designee
Tenant's Address for Work Letter Notice	See Section 1 of the Lease
Landlord's Address for Work Letter Notice	See Section 1 of the Lease
Attachments to Work Letter	Attachment A: Base Building Improvements Attachment B: Tenant Improvements
Substantial Completion	As defined in the Lease
Estimated Substantial Completion Date	As defined in the Lease
Outside Delivery Date	As defined in the Lease

2. Building Improvements and Other Work to be Completed at Landlord's Expense

2.1. Landlord represents that all of Landlord's Work and Tenant Improvements (as defined below) shall be constructed to Substantial Completion on or before the Estimated Substantial Completion Date as may be extended under the terms of the Lease to the Outside Delivery Date. "Landlord's Work" shall include the base building improvements described on Attachment A hereto (the "Base Building Improvements"). "Tenant Improvements" shall have the meaning set forth in Section 3 below. Landlord shall cause all portions of Landlord's Work and Tenant Improvements to comply with the access requirements of ADA at Landlord's sole cost and expense.

2.2. Landlord shall be solely responsible for the delivering to the designated Architect "as built" plans for Landlord' Work. In the event the Architect charges additional fees for development or verification of the "as built" plans, such fees shall be borne solely by the Landlord and shall not be charged to Tenant.

3. Improvements to be Completed by Landlord and Considered Tenant Improvements

The term "Tenant Improvements" shall mean all improvements identified in Attachment B attached hereto. Landlord and Tenant will carry out construction of the Tenant Improvements in the manner set out in this Work Letter.

4. Project Tasks to be Completed as Detailed Below

4.1 Landlord and Tenant agree that Villa Park Architecture is the designated architect for the Tenant Improvements ("Architect") and that the Contractor (as referenced in Section 6 below) shall be responsible for retaining a qualified licensed engineer ("Engineer") to complete the Tenant Improvements. Tenant, at its option may direct Landlord to hire an alternative architect or engineer ("Alternate A/E"). The services of the Alternate A/E can be used to review the drawings prepared by Architect and/or Engineer. The costs associated with services provided by the Alternate A/E shall be paid by Landlord using the Tenant Improvement Reimbursement.

4.2 On or before ninety (90) days following the Effective Date, Tenant shall submit to Landlord a space plan and specifications for the Premises, showing all Tenant requested demising walls, corridors, entrances, exits, doors, interior partitions, and the locations of all offices, conference rooms, computer rooms, mini-service kitchens, reception area and library room (collectively the "Space Plan").

4.3 Within 105 days of the Effective Date, Landlord shall submit to Tenant a preliminary budget of the costs to complete the Tenant Improvements (the "Preliminary Budget"). The Preliminary Budget will outline the estimated costs to be paid by Tenant to Landlord for the Tenant Improvements, including permit fees, Architectural and Engineering fees, a construction supervision fee equal to 3% of the hard cost of the Tenant Improvements, excluding any costs associated with Architectural and Engineering fees, permit fees, and any other cost not attributable to the actual amount required to build the Tenant Improvements (the "Construction Supervision Fee"), a contingency line item equal to 10% of the hard costs to

construct the Tenant Improvements and any other costs that Landlord expects will be incurred as a part of carrying out the Tenant Improvements. The Preliminary Budget will also indicate any costs attributable to Landlord's Work so that Tenant has an understanding of the costs Landlord estimates it will incur to complete the Landlord's Work and Tenant Improvements. In the event that the Preliminary Budget indicates a cost for completion that exceeds 100% of the Tenant Improvement Reimbursement that is available to fund Tenant Improvements, the Landlord and Tenant shall work cooperatively to reduce the project scope to meet a target completion cost that is not more than 100% of the Tenant Improvement Reimbursement that is available for Tenant Improvements. Such budget shall be revised into final form as provided in Section 7, below.

5. Preparation of Plans and Specifications and Construction Schedule

5.1 Within 10 days of the Effective Date, Landlord shall instruct the Architect to commence preparation of Working Drawings (the "Working Drawings"), which must be compatible with the design, construction and equipment of the Building, comply with all applicable laws, be capable of physical measurement and construction, contain all such information as may be required for the construction of the Tenant Improvements and the preparation of the Engineering Drawings (as defined below), and contain all partition locations, plumbing locations, air conditioning system and duct work, special air conditioning requirements, reflected ceiling plans, office equipment locations, and special security systems. The Working Drawings may be submitted in one or more stages and at one or more times. Landlord shall provide Tenant the Working Drawings, or such portion as has from time to time been submitted, for review. Tenant agrees to respond with any comments thereto (with specified reason if it does not approve) within 5 business days following any submittal by Landlord to Tenant of such portion(s) of the Working Drawings. In the event the Tenant provides objections to the Working Drawings as proposed by Landlord, Landlord will accommodate the changes set out as the specific reasons for the objections unless (i) the accommodation will cause the cost of the Tenant Improvements to go over the authorized expenditures in the Preliminary Budget and Tenant does not agree in its objection to increase the Final Budget to accommodate the cost, or (ii) the accommodation will cause the time frame to carry out the Tenant Improvements to be extended and the Tenant does not agree in its objection to extend the Estimated Completion Date by the amount of the extra time required to provide for the accommodation. If Tenant does not provide for the increased time frame or budget, as set out above, the objections will be waived and the Landlord will use reasonable efforts to construct the Tenant Improvements in a manner that addresses the Tenant's objections to the Working Drawings in a manner that will not increase the Final Budget or increase the time to construct the Tenant Improvements. Landlord and Tenant hereby instruct the Architect to cause the Working Drawings to comply with all applicable building codes and be drawn free from errors or omissions on the part of the Architect to the extent same affect the Tenant's rights to use and occupy the Premises for its Permitted Use. At such time as the Working Drawings are approved by Landlord and Tenant, with the Engineering Drawings incorporated therein, as set forth below, they shall be referred to as the "Working Drawings."

5.2 Landlord shall cause the Architect to coordinate all engineering drawings prepared by the Engineer, showing complete mechanical, electrical, plumbing, and HVAC plans ("Engineering Drawings") for the Tenant Improvements to be integrated into the Working Drawings. The Engineering Drawings may be submitted in one or more stages and at one or more times for Tenant's review. Tenant agrees to respond with any comments thereto (with specified reason if it does not approve) within 5 business days following any submittal by Landlord to Tenant of such portion(s) of the Engineering Drawings. In the event the Tenant provides objections to the Engineering Drawings as proposed by Landlord, Landlord will accommodate the changes set out as the specific reasons for the objections unless (i) the accommodation will cause the cost of the Tenant Improvements to go over the authorized expenditures in the Final Budget and Tenant does not agree in its objection to increase the Final Budget to accommodate the cost, or (ii) the accommodation will cause the time frame to carry out the Tenant Improvements to be extended and the Tenant does not agree in its objection to extend the Outside Delivery Date by the amount of the extra time required to provide for the accommodation. If Tenant does not provide for the increased time frame or budget, as set out above, the objections will be waived and the Landlord will use reasonable efforts to construct the Tenant Improvements in a manner that addresses the Tenant's objections to the proposed Engineering Drawings in a manner that will not increase the Final Budget or increase the time to construct the Tenant Improvements. At such time as the Engineering Drawings are approved by Landlord and Tenant, they shall be referred to as the Engineering Drawings.

5.3. After Tenant has approved the Engineering Drawings, Landlord shall cause the Architect to integrate the approved Working Drawings with the approved Engineering Drawings (collectively "Final Plans") and deliver five sets of the Final Plans for the Tenant Improvements to Tenant. The Final Plans shall be suitable for a) plan check review and permitting by local agencies having jurisdiction and, b) for the layout, improvement and finish of the Premises consistent with the design of the Space Plan and construction of the Base Building Improvements, including electrical and mechanical drawings, capacity reports, dimensioned partition plans, floor plans, power, telephone communications safety devices, construction detail sheets including millwork detail plans showing the location of partitions, light fixtures, electrical outlets, telephone sprinklers, doors, (including voltage, amps, phase, and special plugs and connections), wall finishes, floor coverings, millwork and other Tenant Improvements.

5.4 Approval by Tenant of the Working Drawings and Engineering Drawings shall be deemed approval of the Final Plans and shall act as a confirmation by Tenant as to the adequacy or correctness of the design of the Tenant Improvements.

5.5. Within 10 days after approval by Landlord and Tenant of the Working Drawings and the Final Budget, (as set forth below), or as soon as practicable thereafter, Landlord shall submit to Tenant a detailed construction schedule, subject to approval by Tenant, which approval shall not be unreasonably withheld, setting forth the estimated dates for specific completion of the Tenant Improvements, including, but not limited to, submission of plans to local jurisdiction for review, issuance of building permit, submission of plans to contractors for bidding, award of construction contract, construction commencement, construction completion, projected Commencement Date and other similar dates ("Construction Schedule"). Landlord's failure to include any days attributable to Tenant Delay occurring prior to the preparation of the Construction Schedule shall be deemed to indicate that up until the date the Construction Schedule was prepared, no instances of Tenant Delay occurred and Landlord shall be barred from adjusting the Outside Delivery Date for Tenant Delay's occurring prior to the delivery of the Construction Schedule. Tenant agrees to issue its approval or disapproval (with specified reason therefore) within 5 business days following any submittal by the Landlord of the detailed Construction Schedule. In the event the Tenant provides objections to the Construction Schedule as proposed by Landlord, Landlord will accommodate the changes set out as the specific reasons for the objections unless (i) the accommodation will cause the cost of the Tenant Improvements to go over the authorized expenditures in the Final Budget and Tenant does not agree in its objection to increase the Final Budget to accommodate the cost, or (ii) the accommodation will cause the time frame to carry out the Tenant Improvements to be extended and the Tenant does not agree in its objection to extend the Outside Delivery Date by the amount of the extra time required to provide for the accommodation. If Tenant does not provide for the increased time frame or budget, as set out above, the objections will be waived and the Landlord will use reasonable efforts to construct the Tenant Improvements in a manner that addresses the Tenant's objections to the Construction Schedule in a manner that will not increase the Final Budget or increase the time to construct the Tenant Improvements. At such time as the Construction Schedule is approved by Landlord and Tenant, it shall be as the Construction Schedule.

6. Selection of Contractor for Tenant Improvements

Tenant has approved and agrees that Landlord may select the general contractor for the purpose of carrying out the Landlord's Work and the Tenant Improvements, provided any construction contract for the Tenant Improvements will require the general contractor to retain subcontractors and materials consistent with the SBEDA rules for the City of San Antonio, Texas; or such percentage as may be agreed to between Landlord and Tenant.

7. Final Budget and Payment of Tenant Construction Costs.

7.1 At least 10 days prior to commencement of Tenant Improvement Reimbursement, Landlord shall submit a construction budget outlining all costs to complete the Tenant Improvements including a contingency line item equal to 10% of the hard costs to construct the Tenant Improvements, the Construction Supervision Fee and in a format similar to the Preliminary Budget referred to herein as the "Final Budget". Tenant shall have 5 business days from the date of receipt of the Final Budget to approve or disapprove (giving specific reasons therefore) the Final Budget. In the event the Tenant provides objections to the proposed Final Budget, as proposed by Landlord, Landlord will accommodate the changes set out as the specific reasons for the objections unless (i) the accommodation will cause the cost of the Tenant Improvements to go over the authorized expenditures in the Final Budget and Tenant does not agree in its objection to increase the Final Budget to accommodate the cost, or (ii) the accommodation will cause the time frame to carry out the Tenant Improvements to be extended and the Tenant does not agree in its objection to extend the Estimated Completion Date by the amount of the extra time required to provide for the accommodation. If Tenant does not provide for the increased time frame or budget, as set out above, then the objections will be waived and the Landlord will use reasonable efforts to construct the Tenant Improvements in a manner that addresses the Tenant's objections to the proposed Final Budget, in a manner that will not increase the Final Budget or increase the time to construct the Tenant Improvements.

7.2 In the event a change in conditions or circumstances should arise after the approval of the Final Budget attributable specifically to a change requested by Tenant, or a cost should arise which Tenant has not approved as a part of the Final Budget or Final Plans, Landlord will bring any such expense to the attention of Tenant and Tenant will agree to modify the Final Budget to accommodate such cost (i) to the extent the sums are required to cause the Tenant Improvements to be constructed in accordance with the Final Plans; (ii) and the expense, when combined with all other expenses added to the Final Budget under this paragraph do not exceed the Tenant Improvement Reimbursement. If the cost due to change in condition should exceed the Final Budget, and Tenant does not agree to amend the Final Budget, the Tenant Improvements will be completed by Landlord without such modification and the Tenant Improvements will be completed by Landlord as originally contracted.

7.3 Tenant may, after approval of the Final Plans, request changes to the Final Plans. Any changes are subject to Landlord's reasonable approval. In the event a Change Order is made and, where required the Landlord approves any of Tenant's requested revisions to the Final Plans (the "Change Order"), which approval shall not be unreasonably withheld or delayed, Tenant shall pay to Landlord within thirty (30) days following request for the Change Order, in addition to any other amounts which are payable by Tenant to Landlord hereunder, all of Landlord's extra costs associated with such Change Order as set out in the Change Order Invoice to be delivered to Tenant, as set out below, including, but not limited

to a construction management fee and associated architectural and engineering fees, if any. Landlord shall not be required to approve a Change Order if the requested changes does not materially change the improvement set out in the Final Plans. Prior to implementing any requested Change Order to the Final Plans, Landlord will prepare and deliver to Tenant for Tenant's approval a "Change Order Invoice" setting forth the cost of such requested Change Order and the number of days of Construction Delays and Tenant Delay arising in connection therewith. If Tenant fails to approve, execute and deliver to Landlord such Change Order Invoice within five (5) business days following the delivery of the Change Order Invoice by Landlord, Tenant will be deemed to have withdrawn the proposed request for the Change Order and Tenant will not be charged any costs associated with the Change Order.

7.4 Landlord shall cause to be constructed the Tenant Improvements in the manner set out in this Work Letter: however Landlord's obligations to carry out these obligations are subject to payment to the Landlord of the Tenant Improvement Reimbursement and Tenant's compliance with its payment obligation set out in this Work Letter. Tenant agrees to pay to Landlord all of the Approved Costs incurred by Landlord to construct the Tenant Improvements, which cost shall be paid in increments on or before each Tenant Improvement Reimbursement Payment Date, as set out above. For the purpose of this Work Letter, "Approved Costs" are any costs set out in the Final Budget, any Change Order as approved by Tenant and Landlord or any other cost approved by Tenant.

7.5 Tenant agrees to pay to Landlord a fee in the amount of \$200,000.00, as the Accelerated Mobilization Reimbursement, which fee will be paid to Landlord in good funds on the Effective Date to assist in defraying the cost incurred by Landlord to address the construction schedule of Tenant.

7.6 Notwithstanding Landlord's right to move forward with the Tenant Improvements in the event Tenant fails to take action as provided in Sections 7.1 and 7.2 above, in no event shall the Tenant Improvement cost exceed the Tenant Improvement Reimbursement plus any other increase in sums available for such work pursuant to a Change Order as approved by Tenant and Landlord or any other cost approved by Tenant unless Tenant expressly authorizes Landlord to exceed the such sums.

7.7 Tenant agrees to pay to Landlord the sum of \$800,000.00, as the Up Front Tenant Development Deposit, which sums will be paid to Landlord in good funds on the Effective Date.

8. Construction of Tenant Improvements

8.1 Tenant Improvements to be constructed by Landlord are described more particularly on Addendum B attached hereto.

8.2. Landlord shall secure the approval of governmental authorities, and all permits required by governmental authorities having jurisdiction over such approvals and permits for the Tenant Improvements, promptly after approval of the Final Plans.

8.3 Landlord shall use reasonable business efforts to obtain all necessary permits for construction of the Tenant Improvements and commence construction of the Tenant Improvements within 15 days after approval of the Final Budget or as soon thereafter as reasonably possible, subject to any applicable Force Majeure Delays, Construction Delays and Tenant Delays. Landlord shall commence and, once commenced, shall thereafter diligently proceed to construct and complete all Tenant Improvements, subject to any cessation that may be caused by Force Majeure Delays, Construction Delays and Tenant Delays.

8.4 Landlord will include the following functions in the construction of the Tenant Improvements as a part of the cost for the construction of the Tenant Improvements:

8.4.1 All design and programming, space planning and interior decorating services, such as selection of wall paint colors and/all wall coverings, furniture, fixtures, carpeting and any or all other decorator selection efforts as set out in the Final Plans, shall be provided as a part of the Tenant Improvements. Landlord shall consult with the Tenant with respect to all such decorating services and decisions, but in no event shall Landlord be obligated to provide such design and programming, space planning and interior decorating services to the extent the costs thereof would cause the cost of the Tenant Improvements to exceed the Tenant Improvement Reimbursement.

8.4.2 Require the contractor to clean up its work in the Premises promptly following the completion of the Tenant Improvements.

8.4.3. Require the contractor to construct the Tenant Improvements in compliance with all applicable laws and regulations, and all applicable city, county, state, and federal building codes, regulations and ordinances required for the Tenant's intended use, including, but not limited to, all provisions of the Labor Code of the State of Texas.

8.4.4. Within 60 days after Substantial Completion of the Tenant Improvements and receipt from the Contractor of all field changes, Landlord shall submit to Tenant a set of conformed plans ("as built") incorporating, in accordance with standard industry custom and practice, field changes made and changes and/or revisions that have been made subsequent to the submission of Such "as-or "record three and one-half 3W") 1.4Mb magnetic media diskettes in Auto CAD R 12.dwg (or later version) format or .DXF format, along with one complete set of mylar transparencies of drawings and one complete set of specifications.

9. Tenant Improvement Costs Adjustment and Right to Audit. Within 30 days of the issuance of a Certificate of Occupancy, or a final sign-off by the City of San Antonio, whichever occurs first, Landlord shall provide to Tenant a statement showing in reasonable detail all Tenant Improvement costs and the total amount payable hereunder by Tenant to Landlord. Upon approval of the statement by Tenant, payments by either party pursuant to the Lease and this Work Letter shall be adjusted as appropriate, based upon such statement. Tenant shall have the right to audit these costs for a period of 24 months from the date of acceptance by Tenant of the Premises. In the event the audit shows that Tenant is entitled to a reduction in payments to the Landlord under this Work Letter. Tenant shall provide Landlord with a copy of the audit summary and Landlord, within 30 days, shall refund to Tenant the amount of any overpayment made by Tenant and all future payments shall be adjusted as appropriate based upon the audit results. In the event the audit shows that Tenant owes additional payments to the Landlord under this Work Letter, Tenant shall provide Landlord with a copy of the audit summary and Tenant, within 30 days, shall pay to Landlord the additional amount of any underpayment made by Tenant.

10. Telephone/Computer Room and Equipment. Landlord will require its contractor to use reasonable business efforts to have constructed to Substantial Completion the telephone equipment room(s) including permanent power and HVAC, in compliance with the Space Plan and specifications provided by Tenant at least 30 days prior to the estimated Commencement Date as determined by Landlord, taking into consideration the impact of any change orders requested by Tenant.

11. Delay. Each date for Landlord's performance of its obligations to construct the Landlord's Work and Tenant Improvements, as set out in the Lease or this Work Letter, including but not limited to the Estimated Substantial Completion Date, shall be extended 1.5 days for each day of Construction Delay, Force Majeure Delay, or Tenant Delay. As used herein:

11.1.1 "Construction Delays" shall mean any delay at any time in progress of the Landlord's Work or the construction of the Tenant Improvements, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Landlord's control, but only to the extent such Construction Delays delay the commencement or completion of construction of the Landlord's Work or the construction of the Tenant Improvements.

11.1.2. "Tenant Delays" shall mean any delay at any time in progress of the Landlord's Work or the construction of the Tenant Improvements caused by (i) Tenant's failure or refusal to give authorizations or approvals within the time periods required herein, (ii) Tenant's failure or refusal to furnish any information, document, authorizations or approvals required to be furnished by Tenant to Landlord hereunder at the time and in the manner set forth

herein, (iii) Tenant's delay in approving Landlord's proposed Working Drawings, proposed Engineering Drawings, Preliminary Construction Budget or proposed Construction Schedule for a period of greater than 5 business days following Landlord's proposal to address any comments provided by Tenant as a disapproval to such items, (iv) Tenant's failure to timely pay sums due to Landlord under the terms of this Agreement or to take any action or perform any obligation required hereby within an allotted time period, (v) Tenant's failure to take any action in connection with obtaining a certificate of occupancy for the Premises which is intended to delay the Substantial Completion Date, or (vi) Tenant's request for Change Orders which results in a delay in Substantial Completion of the construction of the Landlord's Work or the construction of the Tenant Improvements.

11.1.3. "Force Majeure Delays" shall mean any delay at any time in the progress of the Landlord's Work or the construction of the Tenant Improvements by lightning, fire, storm, tornado, flood, washout, explosion, strike, lockout, labor disturbance, civil disturbance, riot, war, act of a public enemy, sabotage or other similar causes beyond the reasonable control of Landlord.

11.2 Except for Tenant Delays that occur due to failure of Tenant to make its payments to Landlord under the terms of the Lease or this Work Letter, no Construction Delay, Force Majeure Delay or Tenant Delay shall be deemed to have occurred unless Landlord has provided written notice, of the event giving rise to such claim, in compliance with the Lease, to Tenant specifying that a delay is claimed to have occurred because of actions, inaction or circumstances specified in the notice in reasonable detail which notice will be provided as soon as practicable but not to exceed 30 days from the date Landlord's Construction Representative has actual knowledge of the delay. If such actions, inaction or circumstances qualify as a Construction Delay, Force Majeure Delay, or Tenant Delay, then a Construction Delay, Force Majeure Delay or Tenant Delay, as applicable, shall be deemed to have occurred only if such notice is timely given.

11.3. Except for Tenant Delays that occur due to failure of Tenant to make its payments to Landlord under the terms of the Lease or this Work Letter Construction Delays and Force Majeure Delays shall delay the Commencement Date only in the event that Substantial Completion of the Landlord's Work or Tenant Improvements is delayed, despite Landlord's reasonable efforts to adapt and compensate for such delays, which efforts Landlord shall be obligated to make (provided Tenant agrees to pay such additional cost incurred by Landlord.)

11.4. Construction Delays and Force Majeure Delays which occur at the same time shall be recognized hereunder only to the extent the same not concurrent with any other Construction Delay or Force Majeure Delay which is effective hereunder. For example, if there are ten days of Construction Delays and four days of Force Majeure Delays which occur during the same ten day period of such Construction Delays, then the Commencement Date would be extended by only ten days; on the other hand, if such Construction Delays and Force Majeure Delays did not occur during the same period, the Commencement Date will be extended by 14 days.

11.5. *Intentionally deleted.*

11.6. Upon 30 days written notice to Landlord if Tenant fails or elects not to cure the default as provided in Paragraph 14 of the Lease (Landlord Default), Tenant may assume the responsibility for providing the Tenant Improvements itself. If Tenant elects to provide Tenant Improvements itself, then Tenant, its officers, employees, agents, contractors and assignees, shall have free access to the Premises and the Building at all reasonable times for the purpose constructing the Tenant Improvements and for any other purposes reasonably related thereto; and

11.7. Except as expressly set out in this Work Letter, any uncured default by Landlord under the terms of this Landlord's Work Letter shall constitute a default under the Lease and shall entitle Tenant to exercise all remedies set forth in the Lease.

12. Representatives.

12.1 Tenant has designated Tenant's Construction Representative as its sole representative with respect to the matters set forth in this Landlord's Work Letter who, until further notice to Landlord, shall have the full authority and responsibility to act on behalf of Tenant as required in this Work Letter and whose address, for purposes of any notices to be given regarding matters pertaining to this Work Letter only, is Tenant's Address for Work Letter Notice as set forth in Section 1.

12.2. Landlord has designated Landlord's Construction Representative as its sole representative with respect to the matters set forth in this Work Letter who, until further notice to Tenant, shall have the full authority and responsibility to act on behalf of Landlord as required in this Landlord's Work Letter and whose address, for purposes of any notices to be given regarding matters pertaining to this Landlord's Work Letter only, is Landlord's Address for Work Letter Notice as set forth in Section 1.

13. **Construction Meetings.** During the course of construction, meetings shall be held between the Contractor, Landlord and Tenant at least once per week, unless Tenant directs otherwise, at a time and place which is mutually convenient. An initial construction meeting shall be held within five days of the date the Contractor is selected.

14. **Delivery.** Delivery of all plans and drawings referred to in this Work Letter shall be by commercial messenger service or personal hand delivery, unless otherwise agreed by Landlord and Tenant. All written notices shall be as provided in the Lease with a copy to the parties designated construction representative.

15. **ICRIP Designation Rights.** Tenant shall use its best efforts to implement ICRIP designation rights which may waive all City fees associated with the development of the Premises.

16. **Exemption Certificates.** Tenant agrees to provide confirmation of its tax exempt status to Contractor related to any exemption certificates that Contractor will file with the State of Texas claiming an exemption under Section 151.009 of the Texas Tax Code to Landlord and/or to the Contractor or its subcontractors related to any portion of the Landlord's Work or Tenant Improvements that qualifies for an exemption under the Texas Tax Code, including but not limited to any items of tangible personal property, fixtures and services therefor.

17. **Early Access.** Prior to the Commencement Date, Tenant shall be provided access to the Premises for the purpose of installing its phone systems, installing furniture and performing other work necessary to outfit and equip the Premises for Tenant's use (the "Early Access Activities"). Not less than three (3) business days prior to the date Tenant desires to commence performance of the Early Access Activities, Tenant shall deliver written notice thereof to Landlord (the "Early Access Notice"), which notice shall contain and/or shall be accompanied by: (1) a description of and schedule for the Early Access Activities; (2) the names and addresses of all contractors, subcontractors and material suppliers for whom and which such early access is being requested; and (3) such other information as Landlord may reasonably request with respect to such Early Access Activities, and thereafter Tenant shall have the right to access the Premises prior to the Commencement Date to perform the Early Access Activities in accordance with the terms of this paragraph; provided, however, that Tenant shall not interfere with the completion of Landlord's Work hereunder and shall cause its contractors to work in harmony with Landlord and its contractors. Tenant's contractors shall first provide evidence of required insurance to Landlord before commencing work onsite. In the event Tenant's early access rights hereunder delay the Commencement Date, such delay shall be considered a "Tenant Delay" hereunder. Tenant's entry upon the Premises during the Early Access Period shall be limited to the Early Access Activities, and Tenant does hereby agree to assume all risk of loss or damage to its machinery, equipment, fixtures, and other personal property.

18. **Entire Agreement.** Tenant acknowledges that this Work Letter, together with the Lease, constitutes the entire agreement of Landlord and Tenant with respect to the construction of the Landlord's Work and the Tenant Improvements and that, except for Landlord's obligations to complete the Landlord's Work and the Tenant Improvements, Landlord has no obligations to make any modifications, alterations or improvements to the Building or the Premises as a condition to the occurrence of the Commencement Date or Tenant's obligations under the Lease.

Signature Page - Work Letter

In Witness Whereof, the parties have caused their representatives to set their hands.

Tenant

San Antonio Early Childhood Education Municipal Development Corporation, a Texas nonprofit corporation

/s/ Kathleen Bruck
Signature

Kathleen Bruck
Name

CEO
Title

10.1.2013
Date

Landlord

Flamingo Cay, LLC,
a Texas limited liability company

By: GFR Development Services, LLC,
a Texas limited liability company, its Manager

By: /s/ Mark D. Granados
Name: Mark D. Granados
Title: President

Attachment A to Work Letter
BASE BUILDING IMPROVEMENTS

Landlord will construct at Landlord's sole cost and expenses the following components or features, which shall not be a part of Tenant Improvements unless otherwise indicated in the Lease, this Attachment A or Attachment B:

- (a) All site work for the property of which the Premises is part including the construction of at least two access routes to the Premises from the nearest public street.
- (b) All underground utility connections to the Premises including an electrical transformer large enough in capacity to serve the Tenant's proposed use; Telephone and cable service to the building; water service to the building for potable, fire/life safety and landscape systems including separately metered water service for these purposes if required; sewer service to the Premises up until the point where the services goes under the building slab and other plumbing needs outside the building slab (except for plumbing related to required fire sprinkler systems located inside the building and under the slab which are part of the Base Building Improvements) in accordance with the Preliminary Drawings.
- (c) A permanent surface parking lot including drainage systems, landscaping, stripping, curbing, lighting, handicap access, required signage and any other improvements typically associated with development of a parking facility large enough to accommodate approximately 250 full size automobiles or such lesser number as may be approved by Tenant.
- (d) A concrete tilt wall constructed building of at least 50,000 interior square feet with steel frame exit doors and dual pane, low E window systems.
- (e) A 20 year all weather roofing system on the building including use of materials with insulating and light reflecting capabilities.
- (f) Exterior landscaping in accordance with City of San Antonio development standards for the entire Premises including automatic sprinkler systems to reach every planted space.
- (g) Electric panels in quantity as required by the final plans, connected to the Building electrical distribution system. Provide an electric area(s) in the Building to be occupied by Tenant, which will be the point of origin for Tenant's electrical distribution. The capacity of electrical is to be adequate for lighting and general office use, including the use of desktop computers.
- (h) Concrete floors with trowelled finish, level to specified tolerances and designed to support a minimum live load of 100 lbs per square foot;
- (i) Primary fire sprinkler distribution, if required by local Building Code, including secondary piping and sprinkler heads as required for the Building and suitable for Tenant's secondary distribution. The cost of installation of the sprinkler head drops serving the Premises, however, will be part of the Tenant Improvements and charged to Tenant as set out in the Work Letter.

-
- (j) Telecommunications riser to be provided to the Premises to allow Tenant to hook up its own telephone switch and distribute telecommunications throughout Premises.
 - (k) An allowance of \$15,000.00 for Tenant to construct and install exterior signage, including but not limited to Tenant's Monument Sign, being the same Signage Allowance specified in Exhibit C above.
-

Attachment B to Work Letter
TENANT IMPROVEMENTS

The improvements to be constructed by Landlord as Tenant Improvements under the terms of the Work Letter include the following, as well as all items set forth in the Final Construction Budget as approved:

- (a) Tenant ceilings and lighting;
- (b) Floor finish in the Premises;
- (c) Interior finishes of any kind within the Premises;
- (d) Interior partitions, doors and hardware within the Premises;
- (e) HVAC equipment
- (f) Air distribution devices to or within the Premises, suitable for Tenant's secondary distribution;
- (g) Distribution of electrical services, plumbing services, HVAC and sprinklers within the Premises and domestic hot water heater and associated hot water piping
- (h) Any and all signs for Tenant and the power to such sign devices;
- (i) Security, fire and life-safety systems within the Premises, including exit signs, intercoms and extinguishers;
- (j) Additional and/or above standard electrical capacity; and
- (k) Fiber optic access.
- (l) Costs to construct Tenant's Monument Sign to the extent such costs are in excess of the \$15,000 Signage Allowance provided in Attachment A to Work Letter.
- (m) The cost not to exceed \$50,000.00 related to distribution of drain lines and water supply lines under the building slab sufficient in capacity to serve all of Tenant's bathrooms and other plumbing needs. In the event the cost of this work exceeds \$50,000.00 it shall be paid by Landlord as part of the Base Building Improvements.
- (n) Exterior playground systems and equipment as determined by Tenant, provided, however, that the cost thereof shall not be less than \$150,000.00 nor be more than \$450,000.00 without the prior written consent of Landlord
- (o) All information technology cable and electrical requirements including cable work to serve the following: all telephone systems; audio visual devices including but not limited to smart boards and projection systems and; all printer and computer locations.
- (p) All low voltage electrical systems as designed by Tenant including but not limited to door access controls; intrusion alarms, panic devices and any other security systems that Tenant deems appropriate

Exhibit D: Location of Tenant's Monument Sign

LOCATION OF TENANT'S MONUMENT SIGN

To be determined by Landlord and Tenant.

SIGN CRITERIA

This Exhibit is attached to and a part of that certain Lease executed by and between FLAMINGO CAY, LLC, a Texas limited liability company (“Landlord”), and SAN ANTONIO EARLY CHILDHOOD EDUCATION MUNICIPAL DEVELOPMENT CORPORATION, a Texas nonprofit corporation (“Tenant”). The cost for the initial signs to be provided as part of the Tenant Improvements and any coordination required among Landlord, Tenant and any sign vendor therefor will be managed by Landlord as part of the Tenant Improvements. All signs constructed by Tenant that are not a part of the Tenant Improvements shall also be subject to this sign criteria.

POLICY

The following sign criteria has been established to assist tenants in complying with their lease. These basis standards have been made to govern the design, fabrication and application of Tenant signage and are intended to afford all tenants with good visual identification, both day and night, and to protect against poorly designed and badly proportioned signage. This Exhibit E designates the type and style of standard sign on the wall above the Tenant’s Premises, located within the sign band of the Building. Except as otherwise set forth in the Lease, signs are to be installed and paid for by the Tenant.

The Landlord, however, reserves the right to grant reasonable variances when considered to be beneficial to the Building’s appearance, on an individual basis.

GENERAL REQUIREMENTS

- A. The Tenant will submit three (3) sets of fully detailed sign drawings to the Landlord for his approval. All drawings will be reviewed and approved or rejected within thirty (30) days of receipt by the Landlord. Under no circumstances are any signs to be erected at this center without Landlord’s approval. Signs installed without Landlord approval or not conforming to the sign criteria will be removed from the Building at Tenant’s expense.
- B. Unless such signage is provided by Landlord as a part of the Tenant Improvements, the Tenant will be responsible for having a licensed sign company obtain all permits required, at his expense.
- C. Unless such signage is provided by Landlord as a part of the Tenant Improvements, the Tenant is responsible for obtaining its own licensed electrical contractor to perform any primary electrical work required to hook up service to its sign, at its expense. Coordination to be performed by the Tenant. An accessible disconnect switch must be installed within 25’ of the sign.
- D. The Tenant is responsible for maintaining its signs. If the sign is not maintained properly, the Landlord will have the authority to repair as required at the Tenant’s expense.
- E. It is the responsibility of the Tenant and the sign company to follow all sign criteria set forth by the Landlord and any city sign ordinance.

-
- F. Any damage to property caused by installation or removal of signage by any contractors will be repaired at the contractor's expense. This does not include repairs to fascia, which will be performed by the Landlord after takedown of existing signage.

BUILDING AND FASCIA SIGNS

A. Number of Signs:

Only two (2) signs are permitted on the Building. Exceptions will be evaluated by Landlord on a case by case basis.

B. Location of Signs:

Signs must be located as provided in Exhibit D of the Lease.

C. Type of Signs Permitted:

All individual signs are to be reverse channel lit letters with aluminum background panel on a raceway mounted to building fascia sign band. No exposed wiring.

D. Size and Design Requirements:

1. The maximum overall length shall not exceed 80% of the lease frontage (i.e. a 20' frontage lease will have a maximum sign length of 16').
2. The maximum overall vertical letter height shall not exceed 36" on the fascia, with one (1) line of copy. If two lines of copy, the overall total letter height shall not exceed 48". The minimum vertical letter height shall not be less than 16".
3. Reverse channel lit letters to be constructed of .063 (minimum) aluminum and paint finish to be determined. Illumination to be 15mm 6500 snow white neon. Letter return to be 3" with 2" standoffs. Aluminum background panel to be 1/8" thick with 3" outline around reverse channel lit letters and 7"x7"x.125 aluminum raceway behind panel. Background panel color to be painted Matthews paint #30136 silver.
4. All transformers and conduits are to be contained within raceway and must be installed in a manner that will not damage fascia.
5. Raceway color to match building fascia.
6. There will be no flashing lights, animation, exposed neon, or storefront graphics allowed in the center at any time.
7. Style of letters are to be subject to Landlord approval.

WINDOW GRAPHICS

- A. The copy should be unobtrusive and constructed of white computer cut, first surface vinyl letters with a 2" maximum height for hours of operation, front door address to be 6" white vinyl numbers at transom above entry door. Telephone/email information and acceptable credit payment information is allowable to be placed in the front door glass area. Back door address to be 6" black vinyl numbers on door.
- B. There may be no illuminated or painted signs behind glass areas.

SIGN TEXT

Sign text shall be limited to Tenant's trade name (if any) as it appears in the Lease.

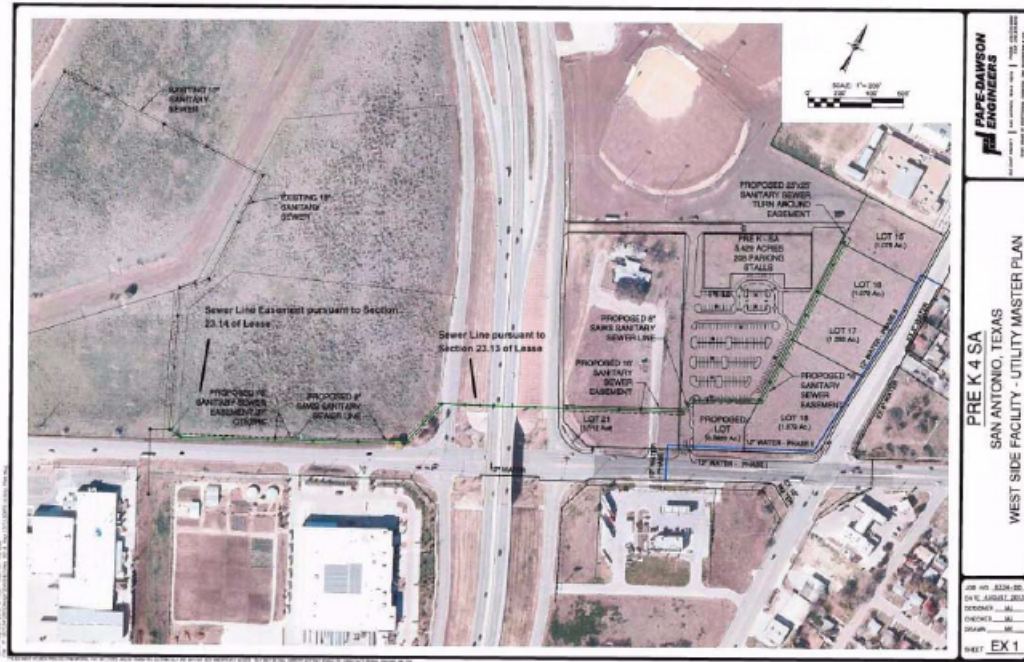
Landlord reserves the right to limit the use of Tenant's customary logo.

PROHIBITED SIGNS

- A. Temporary trailer signs and/or trailer marquee signs.
- B. Iridescent painted signs.
- C. Temporary banners of any kind.
- D. Flags or pennants of any kind.
- E. Blade signs of any kind.

Approved Sign Company:

Prestige Sign Group, Inc.
Contact: Bret Kullins
Phone: 210-826-2332



FIRST AMENDMENT TO LEASE

This First Amendment to Lease (this "Amendment") is entered into to be effective as of April 8, 2016 (the "Effective Date"), by and between **Flamingo Cay, LLC**, a Texas limited liability company ("Landlord"), and **San Antonio Early Childhood Education Municipal Development Corporation**, a Texas nonprofit corporation ("Tenant"), as an amendment to that certain Lease dated October 1, 2013 (the "Lease"), between Landlord and Tenant concerning certain premises currently containing approximately 5.43 acres of land, a single story building containing approximately 50,000 square feet, a parking lot containing approximately 250 parking spaces, and multiple playground areas, as more particularly described in the Lease (the "Existing Premises"). All capitalized terms not defined herein shall have the meanings ascribed to them in the Lease.

Landlord and Tenant desire to redefine the Premises and hereby agree to amend the Lease as follows:

1. **Premises.** The Premises shall be redefined to be Lot 23, Block 6, New City Block 11379, Pre-K4 SA, West MAOZ, in the City of San Antonio, Bexar County, Texas, according to a plat thereof recorded in Volume 9670, Page 187-188, Deed and Plat Records of Bexar County, Texas; it being agreed that any portion of the original description of the Premises not described above shall no longer be encumbered by the Lease. The parties agree to execute a Memorandum of Lease reflecting the new description of the Premises, if necessary. Landlord and Tenant acknowledge and agree that the number of parking spaces in the Parking Facilities is 207. Accordingly, the "No. of Parking Spaces," as defined in Section 1 of the Lease, shall be modified by deleting "250" and replacing it with "207." Additionally, (ii) in the definition for "Premises" in Section 1 of the Lease shall be modified by deleting "250" and replacing it with "207."
2. **Cross Access and Parking.** The City of San Antonio, Texas ("COSA"), currently owns approximately 4.476 acres of land adjacent to the west side of the Premises and located at 1243 Enrique M. Barrerra Parkway, in San Antonio, Texas, as more particularly described on Exhibit "A" attached hereto and made a part hereof for all purposes (the "COSA Property"). Landlord hereby agrees that, in the event that COSA desires to have cross access rights on the Premises ("Access Rights"), Landlord shall grant such reasonable, non-exclusive rights in accordance with the terms of this paragraph. The Access Rights would be unique to COSA with COSA allowed to assign its rights to Tenant, would terminate upon the sale of the COSA Property by COSA or the termination of the Lease, and would not run with the land as a benefit to the COSA Property; provided, however, that the Access Rights will run with the land as a burden to the Premises for so long as Tenant is occupying the Premises and the Lease remains in full force and effect and for so long as COSA owns the COSA Property. Additionally, the Access Rights would not include any rights to park on the Premises, and COSA's parking needs and requirements shall be fulfilled without any burden on the Premises.
3. **Effect of Amendment.** Except as amended by this Amendment, the Lease shall remain in full force and effect and is ratified by Landlord and Tenant. In the event the terms, covenants, or conditions of this Amendment conflict with the terms, covenants, or conditions of the Lease, the terms of this Amendment shall control.

4. **Time.** Time is of the essence in all matters pertaining to the performance of this Amendment. If, however, the final date of any period set forth in this Amendment falls on a Saturday, Sunday, or legal holiday under the laws of the United States or the State of Texas, then, in such event, the time of such period shall be extended to the next day that is not a Saturday, Sunday, or legal holiday.

5. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one agreement, binding on all of the parties hereto notwithstanding that all of the parties hereto are not signatories to the same counterpart.

Executed to be effective as of the date set forth above.

LANDLORD:

Flamingo Cay, LLC,
a Texas limited liability company

By: GFR Development Services, LLC,
a Texas limited liability company,
its Manager

By: /s/ Mark D. Granados
Mark D. Granados, President

Date: 4-8-16

TENANT:

**San Antonio Early Childhood Education
Municipal Development Corporation,**
A Texas nonprofit corporation

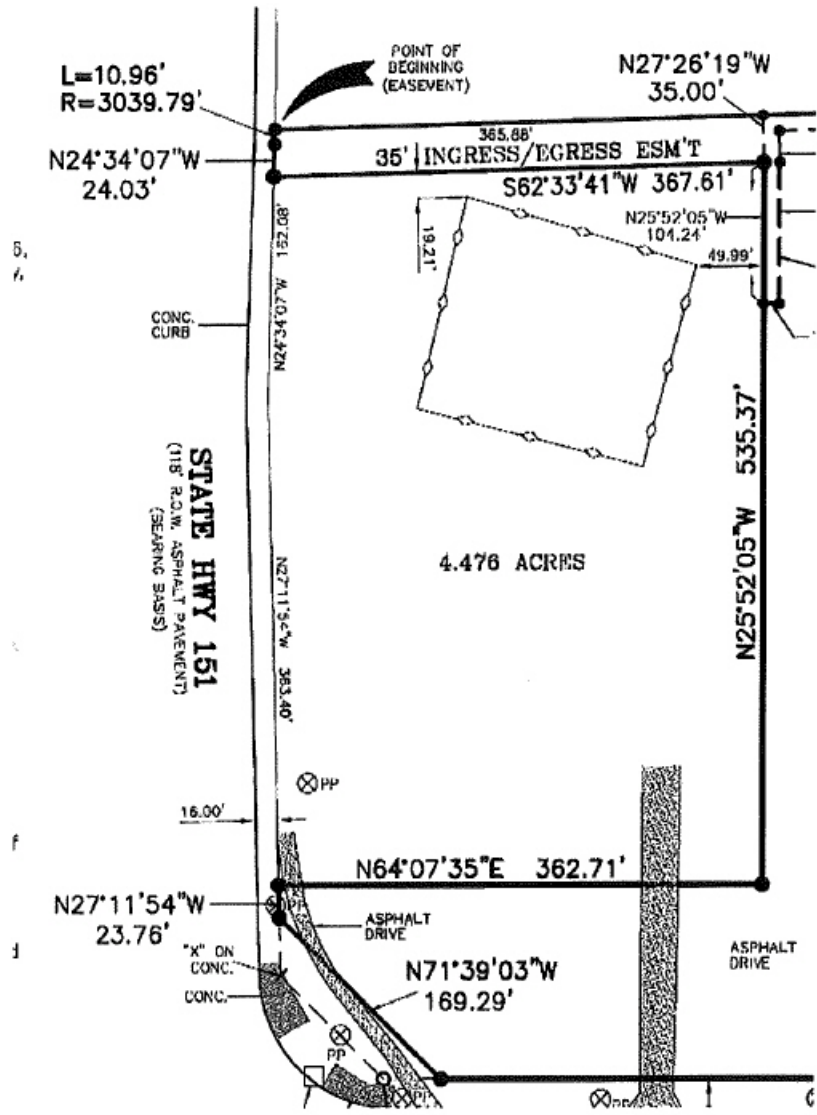
By: /s/ Kathleen Bruck
Name: Kathleen Bruck
Title: CEO, Pre-K4 5A

Date: 4/7/2016

Reviewed as to Form:

/s/
Counsel for Corporation

EXHIBIT A



THIRD AMENDMENT TO LEASE

This Third Amendment to Lease (this "Amendment") is entered into to be effective as of March 31, 2021 (the "Effective Date"), by and between **PRE K San Antonio, LLC**, a California limited liability company ("Landlord"), and **San Antonio Early Childhood Education Municipal Development Corporation**, a Texas nonprofit corporation ("Tenant"), as an amendment to that certain Lease dated October 1, 2013, as amended on April 8, 2016, as amended on February 1, 2021 (as amended, the "Lease"), between Landlord and Tenant concerning certain premises currently containing approximately 5.43 acres of land, a single story building containing approximately 50,000 square feet, a parking lot containing approximately 250 parking spaces, and multiple playground areas, as more particularly described in the Lease (the "Existing Premises"). All capitalized terms not defined herein shall have the meanings ascribed to them in the Lease.

In consideration of the promises and the mutual covenants herein contained, Landlord and Tenant hereby agree to amend the Lease in the following respects only:

1. **Option to Renew Term.** The first paragraph of Section 4.02 of the Lease is amended to add the following sentence: "Notwithstanding the foregoing, the last day for Tenant to exercise its first Option to Renew Term for Years 8-15 is June 2, 2021."
2. **First Purchase Option.** The following sentence is inserted as the 2nd sentence of Section 4.04: "Notwithstanding the foregoing, the last day for Tenant to exercise its First Purchase Option is June 2, 2021."
3. **Effect of Amendment.** Except as amended by this Amendment, the Lease shall remain in full force and effect and is ratified by Landlord and Tenant. In the event the terms, covenants, or conditions of this Amendment conflict with the terms, covenants, or conditions of the Lease, the terms of this Amendment shall control.
4. **Time.** Time is of the essence in all matters pertaining to the performance of this Amendment. If, however, the final date of any period set forth in this Amendment falls on a Saturday, Sunday, or legal holiday under the laws of the United States or the State of Texas, then, in such event, the time of such period shall be extended to the next day that is not a Saturday, Sunday, or legal holiday.
5. **Counterparts; Electronic Signatures.** This Amendment may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one agreement, binding on all the parties hereto notwithstanding that all the parties hereto are not signatories to the same counterpart. Signatures may be by facsimile, pdf, docu-sign, adobe or other commercially accepted electronic signature program.

LANDLORD:

RU PRE K San Antonio, LLC,
a California limited liability company

By: MODIV Operating Partnership, LP, a
Delaware limited partnership, its
sole member

By: MODIV Inc., a
Maryland corporation,
its General Partner

By: /s/ Raymond J. Pacini
Name: Raymond J. Pacini
Title: Chief Financial Officer

Date: April 2, 2021

TENANT:

**San Antonio Early Childhood Education Municipal
Development Corporation,**
A Texas nonprofit corporation

By: /s/ Sarah Baray
Name: Sarah Baray
Title: CEO

Date: March 31, 2021

FOURTH AMENDMENT TO LEASE

This Fourth Amendment to Lease (this "Amendment") is entered into to be effective as of June 2, 2021 (the "Effective Date"), by and between **PRE K San Antonio, LLC**, a California limited liability company ("Landlord"), and **San Antonio Early Childhood Education Municipal Development Corporation**, a Texas nonprofit corporation ("Tenant"), as an amendment to that certain Lease dated October 1, 2013, as amended on April 8, 2016, as amended on February 1, 2021, as amended on March 31, 2021 (as amended, the "Lease"), between Landlord and Tenant concerning certain premises currently containing approximately 5.43 acres of land, a single story building containing approximately 50,000 square feet, a parking lot containing approximately 250 parking spaces, and multiple playground areas, as more particularly described in the Lease (the "Existing Premises"). All capitalized terms not defined herein shall have the meanings ascribed to them in the Lease.

In consideration of the promises and the mutual covenants herein contained, Landlord and Tenant hereby agree to amend the Lease in the following respects only:

1. **Option to Renew Term.** The first paragraph of Section 4.02 of the Lease is amended to add the following sentence: "Notwithstanding the foregoing, the last day for Tenant to exercise its first Option to Renew Term for Years 8-15 is June 9, 2021."
2. **First Purchase Option.** The following sentence is inserted as the 2nd sentence of Section 4.04: "Notwithstanding the foregoing, the last day for Tenant to exercise its First Purchase Option is June 9, 2021."
3. **Effect of Amendment.** Except as amended by this Amendment, the Lease shall remain in full force and effect and is ratified by Landlord and Tenant. In the event the terms, covenants, or conditions of this Amendment conflict with the terms, covenants, or conditions of the Lease, the terms of this Amendment shall control.
4. **Time.** Time is of the essence in all matters pertaining to the performance of this Amendment. If, however, the final date of any period set forth in this Amendment falls on a Saturday, Sunday, or legal holiday under the laws of the United States or the State of Texas, then, in such event, the time of such period shall be extended to the next day that is not a Saturday, Sunday, or legal holiday.
5. **Counterparts; Electronic Signatures.** This Amendment may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one agreement, binding on all the parties hereto notwithstanding that all the parties hereto are not signatories to the same counterpart. Signatures may be by facsimile, pdf, docu-sign, adobe or other commercially accepted electronic signature program.

LANDLORD:

RU PRE K San Antonio, LLC,
a California limited liability company

By: MODIV Operating Partnership, LP, a
Delaware limited partnership, its
sole member

By: MODIV Inc., a
Maryland corporation, its
General Partner

By: /s/ Raymond J. Pacini
Name: Raymond J. Pacini
Title: Chief Financial Officer

Date: June 2, 2021

TENANT:

**San Antonio Early Childhood Education Municipal
Development Corporation,**
A Texas nonprofit corporation

By: /s/ Sarah Baray
Name: Sarah Baray
Title: CEO

Date: June 2, 2021

FIFTH AMENDMENT TO LEASE

This Fifth Amendment to Lease (this "Amendment") is entered into to be effective as of June 9, 2021 (the "Effective Date"), by and between **PRE K San Antonio, LLC**, a California limited liability company ("Landlord"), and **San Antonio Early Childhood Education Municipal Development Corporation**, a Texas nonprofit corporation ("Tenant"), as an amendment to that certain Lease dated October 1, 2013, as amended on April 8, 2016, as amended on February 1, 2021, as amended on March 31, 2021, as amended on June 9, 2021 (as amended, the "Lease"), between Landlord and Tenant concerning certain premises currently containing approximately 5.43 acres of land, a single story building containing approximately 50,000 square feet, a parking lot containing approximately 250 parking spaces, and multiple playground areas, as more particularly described in the Lease (the "Existing Premises"). All capitalized terms not defined herein shall have the meanings ascribed to them in the Lease.

In consideration of the promises and the mutual covenants herein contained, Landlord and Tenant hereby agree to amend the Lease in the following respects only:

1. **Extension of Term for Years 8-15.** Tenant hereby exercises its Option to Renew Term for Years 8-15 as provided in Section 4.02 of the Lease and the Term is hereby extended to July 31, 2029, subject to Tenant's Option to Renew Term for Years 16-23 as provided in Section 4.02.
2. **Increase in Monthly Base Rent.** Beginning on August 1, 2021, and continuing on the first day of each calendar month thereafter through December 1, 2029, Tenant shall pay to Landlord a monthly Base Rent of \$77,000 per month.
3. **Effect of Amendment.** Except as amended by this Amendment, the Lease shall remain in full force and effect and is ratified by Landlord and Tenant. In the event the terms, covenants, or conditions of this Amendment conflict with the terms, covenants, or conditions of the Lease, the terms of this Amendment shall control.
4. **Time.** Time is of the essence in all matters pertaining to the performance of this Amendment. If, however, the final date of any period set forth in this Amendment falls on a Saturday, Sunday, or legal holiday under the laws of the United States or the State of Texas, then, in such event, the time of such period shall be extended to the next day that is not a Saturday, Sunday, or legal holiday.
5. **Counterparts; Electronic Signatures.** This Amendment may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one agreement, binding on all the parties hereto notwithstanding that all the parties hereto are not signatories to the same counterpart. Signatures may be by facsimile, pdf, docu-sign, adobe or other commercially accepted electronic signature program.
6. **Term Completion Incentive.** The Term Completion Incentive of Two Million Dollars (\$2,000,000.00) shall be due and payable from Landlord to Tenant no later than January 31, 2022.

7. **Representation.** Landlord and Tenant acknowledge that CBRE, Inc. is acting as the Broker for the Tenant in this transaction, and Landlord agrees to pay a commission to CBRE, Inc. pursuant to separate agreement.

LANDLORD:

RU PRE K San Antonio, LLC,
a California limited liability company

By: MODIV Operating Partnership, LP, a
Delaware limited partnership, its
sole member

By: MODIV Inc., a
Maryland corporation, its
General Partner

By: /s/ Raymond J. Pacini
Name: Raymond J. Pacini
Title: Chief Financial Officer

Date: June 9, 2021

TENANT:

**San Antonio Early Childhood Education Municipal
Development Corporation,**
A Texas nonprofit corporation

By: /s/ Sarah Baray
Name: Sarah Baray
Title: CEO

Date: June 9, 2021

ASSIGNMENT AND ASSUMPTION OF LEASE

ASSIGNMENT AND ASSUMPTION OF LEASE (this "Assignment") made as of the 8th day of April, 2016 by and between Flamingo Cay, LLC, a Texas limited liability company ("**Assignor**"), and Rich Uncles Real Estate Investment Trust I, a California real estate investment trust ("**Assignee**").

W I T N E S S E T H:

WHEREAS, Assignor and Assignee entered into that certain Purchase and Sale Agreement, dated February 22, 2016, by and between Assignor and Assignee, as amended by that certain First Amendment to Purchase and Sale Agreement dated March 21, 2016 and by that certain Second Amendment to Purchase and Sale Agreement dated April 5, 2016 (as amended, the "**Agreement**") covering the Premises (as hereinafter defined); and

WHEREAS, Assignor has simultaneously herewith conveyed to the Assignee all of Assignor's right, title and interest in and to the premises located at 1235 Old Highway 90 W, San Antonio, Texas (the "**Premises**"), and in connection therewith, Assignor has agreed to assign to Assignee all of Assignor's right, title and interest in and to that certain lease dated October 1, 2013, between Assignor, as landlord, and the San Antonio Early Childhood Education Municipal Development Corporation, as tenant, and the guaranties and other documents related thereto, if any, as amended by that certain First Amendment to Lease dated April 5, 2016 (as amended, the "**Lease**").

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignor hereby assigns unto Assignee, all of the right, title and interest of Assignor in and to the Lease, to have and to hold the same unto Assignee, its successors and assigns from and after the date hereof, subject to the terms covenants and conditions of the Lease.
2. Assignee assumes the performance of all of the obligations of Assignor arising or accruing under the Lease from and after the date hereof. Assignee agrees to indemnify, protect, defend and hold Assignor harmless from and against any and all claims, demands, liabilities, losses, costs, damages or expenses including, without limitation, reasonable attorneys' fees and costs (collectively, "**Claims**") arising as a result of any act, omission or obligation of Assignee arising or accruing with respect to the Lease on or after the date hereof, including, without limitation, any failure by Assignee to comply with any applicable law from and after the date hereof with respect to the security deposit under the Lease transferred to Assignee on the date hereof.
3. Assignor hereby agrees to indemnify, protect defend and hold Assignee harmless from and against any and all Claims arising as a result of any act, omission or obligation of Assignor arising or accruing with respect to the Lease prior to the date hereof, including, without limitation, any failure by Assignor to comply with any applicable laws prior to the date hereof with respect to the security deposit under the Lease that are being transferred to Assignee on the

Subsidiary	State of Incorporation / Formation	Percentage of Ownership
Generation Income Properties, LP	Delaware	90.65%
GIP TRS Inc	Maryland	100%
GIP REIT OP Limited LLC	Delaware	100%
GIP DB SPE, LLC	Delaware	100%
GIPVB SPE, LLC	Delaware	100%
GIPDC 3707 14th St LLC	Delaware	100%
GIPFL 1300 S Dale Mabry LLC	Delaware	100%
GIPAL JV 15091 SW ALABAMA 20	Delaware	100%
GIPVA 2510 WALMER AVE, LLC	Delaware	100%
GIPVA 130 CORPORATE BLVD, LLC	Delaware	100%
GIPFL JV 1106 CLEARLAKE ROAD, LLC	Delaware	100%
GIPRI 332 Valley St LLC	Delaware	100%
GIPFL 508 S Howard Ave, LLC	Delaware	100%
GIPNC 201 Etheridge Road LLC	Delaware	100%
GIPFL 702 Tillman Place, LLC	Delaware	100%
GIPIL 525 S Perryville RD, LLC	Delaware	100%
GIPCO 585 24 1/2 ROAD, LLC	Delaware	100%
GIP 3134 W 76TH STREET, LLC	Delaware	100%
GIPFL 10002 N DALE MABRY, LLC	Delaware	100%
GIPAZ 199 N PANTANO ROAD, LLC	Delaware	100%
GIP 13, LLC	Delaware	100%
GIPCA 258 Bernard Street, LLC	Delaware	100%
GIPTX 6919 North Service Road, LLC	Delaware	100%
GIPOH 5405 Tiffin Avenue, LLC	Delaware	100%
GIPOH 7970 E Harbor Road, LLC	Delaware	100%
GIPME 1905 Hallowell Road, LLC	Delaware	100%
GIPPA 23 Wert Drive, LLC	Delaware	100%
GIPME 409 US Route 2, LLC	Delaware	100%
GIPOH 6696 State Route 95, LLC	Delaware	100%
GIPGA 2383 Lake Harbin Road, LLC	Delaware	100%
GIPFL 2601 Westhall Lane, LLC	Delaware	100%
GIPCA 991 Nut Tree Road, LLC	Delaware	100%
GIPTX 1235 Old Highway 90 West, LLC	Delaware	100%
GIPCA 707 North Broadway, LLC	Delaware	100%

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in this Registration Statement on FormS-11 of our report dated March 28, 2023 with respect to the audited consolidated financial statements of Generation Income Properties, Inc. for the years ended December 31, 2022 and 2021.

We also consent to the references to us under the heading “Experts” in such Registration Statement.

/s/ MaloneBailey, LLP
www.malonebailey.com
Houston, Texas
September 29, 2023

Calculation of Filing Fee Tables

FORM S-11
(Form Type)

Generation Income Properties, Inc.
(Exact name of Registrant as specified in its charter)

Table 1: Newly Registered and Carry Forward Securities

	Security Type	Security Class Title	Fee Calculation or Carry Forward Rule	Amount Registered	Proposed Maximum Offering Price Per Unit	Maximum Aggregate Offering Price	Fee Rate	Amount of Registration Fee
Fees to be Paid	Equity	Common Stock, par value \$0.01 per share	457(c)	3,000,000 ⁽¹⁾	\$4.00 ⁽²⁾	\$12,000,000	0.0001102	\$1,322.40
	Total Offering Amounts					\$12,000,000		\$1,322.40
	Total Fees Previously Paid							—
	Total Fee Offsets							—
	Net Fee Due							\$1,322.40

- (1) This Registration Statement relates to shares of our common stock, par value \$0.01 per share, which will be (1) distributed by Modiv Operating Partnership, L.P., a Delaware limited partnership (“Modiv OP”) to the holders of Class C units of Modiv OP, including Modiv Inc., now known as Modiv Industrial, Inc. (“Modiv”), and the subsequent distribution by Modiv to the holders of its common stock and (2) offered by the selling shareholder named herein. The amount of our shares of common stock to be registered represents the maximum number of shares of our common stock that will be distributed as described above and offered by the selling shareholder named herein.
- (2) The proposed maximum offering price per share is estimated solely for purposes of calculating the registration fee according to Rule 457(c) under the Securities Act based on the average of the high and low prices of the registrant’s common stock quoted on The Nasdaq Capital Market on September 25, 2023.