

EXCHANGE RIGHT

VALUE-ADD PORTFOLIO 3 DST

PRIVATE PLACEMENT MEMORANDUM

100 CLASS I BENEFICIAL OWNERSHIP INTERESTS AT \$114,000 PER INTEREST
 MINIMUM PURCHASE: 0.87719% INTEREST (\$100,000 OF EQUITY AND \$64,316 OF DEBT)
 MAXIMUM OFFERING AMOUNT: \$11,400,000



This Private Placement Memorandum (“PPM”) is the controlling document for this offering. All potential investors in this offering must read this PPM, and no person may invest without first acknowledging receipt and review of this PPM in its entirety. ExchangeRight Value-Add Portfolio 3 DST, is a new Delaware Statutory Trust (the “Trust”) formed on April 27, 2022 pursuant to a Trust Agreement (the “Trust Agreement”). ExchangeRight Real Estate, LLC, a California limited liability company (the “Sponsor” or “ExchangeRight”), is the present owner of the Trust. The Trust is hereby offering (this “Offering”) to prospective Accredited Investors (as hereinafter defined) (“Investors”) 100 newly issued Class 1 beneficial ownership interests (the “Interests”) in the Trust at \$114,000 per Interest, pursuant to the terms of this confidential private placement memorandum, including all exhibits attached hereto and any supplements (this “Memorandum”).

THIS MEMORANDUM IS DATED JUNE 5, 2023

Please read this Private Placement Memorandum in its entirety and consult your tax and/or legal counsel before considering an investment in this offering. Past performance of the Sponsor, its Managing Partners, or their previous offerings is not indicative of future results.

Certain information set forth in this PPM contains mathematically derived pro forma information based on contractual lease obligations, fixed debt service obligations, and contractual operating expense and reimbursement requirements as well as certain leasing and other assumptions based on market conditions. In addition, this PPM contains targets and goals of this offering that describe strategies, outlooks, illustrations, or other non-historical matters, or financial measures. These statements and illustrations help to explain the business plan and involve known and unknown risks, uncertainties, and other factors that may cause the actual results to differ materially from what we are intending to accomplish. Given these uncertainties, you should not place undue reliance on these targets. Except for statements of historical fact, information contained herein constitutes the business strategies and intentions of the Trust. These targets reflect management's reasonable assumptions provided to allow potential investors the opportunity to understand management's goals so that they may be used as one factor in evaluating the investment.

These strategies and targets are not guarantees or projections of future performance; as such, undue reliance should not be placed on them.

There is no guarantee that ExchangeRight Value-Add Portfolio 3 DST (the "DST" or "Trust" or "Investment") will be successful or that the Manager will be successful in executing the Trust's objectives. In the event of a market downturn, there may be lengthened illiquidity and/or disruption in performance.

This Investment relies upon the decisions of the Manager. Prior successes by any previous investments or their principals, officers, or managers are not indicative of future performance, nor are they any guarantee of liquidity, of a shorter- or longer-term hold period,

against loss, or against an interruption or reduction in income—all of which are risks of real estate and real estate investments, including this Investment. The principals of the Manager have conflicts of interest that could impact the management of this Investment based on the needs and investment opportunities of other companies. This may lead to a conflict of interest between their various roles, including conflicts with the investors regarding decisions related to the Trust and management of the Trust.

Do not invest solely based on distributions that the Trust may be currently generating or targeting to generate. Any distributions will depend upon the successful operation of the properties that the Trust acquired. Returns are not guaranteed. There can be no assurance that liquidity will be obtained at any point in the future or that a future liquidity event would be profitable.

The coronavirus disease ("COVID-19") and its fallout presented significant and uncertain risks with respect to this Offering and the operations of the Properties and Tenants. Material economic disruption globally or especially in the United States could have a material impact on the value of this Investment and could significantly delay or thwart potential liquidity events. Local development may also impact property values, as is the case with all real estate and real estate investments.

The Trust will utilize leverage, which may magnify the impact of any risks, including fluctuations in interest rates, which may significantly affect the returns of this Investment. Please note that every real estate investment, including this Investment, is speculative, illiquid, has the potential for complete loss of principal, and carries downside risks due to variables such as potentially declining market values, re-leasing risk, interest rate risk, refinancing or financing risk, acts of God, and management and/or operations failures.

ExchangeRight Value-Add Portfolio 3 is a diversified portfolio of in-line and outparcel retail spaces shadow-anchored by net-leased and strong-performing national grocery and healthcare tenants. The portfolio is focused on properties that exhibit in-place cash flow with the potential to preserve capital and provide stable income via strategic leasing initiatives and tenant improvements.

EXCHANGERIGHT VALUE-ADD PORTFOLIO 3 DST

\$11,400,000

EQUITY OFFERING
AMOUNT

\$7,332,000

NON-RECOURSE
DEBT

\$18,732,000

TOTAL OFFERING
PRICE

5.25%

CURRENT
CASH FLOW

39.14%

OFFERING LOAN
TO VALUE

\$100,000

MINIMUM
PURCHASE

87.87%

LEASED
(AS OF 5/31/23)

8

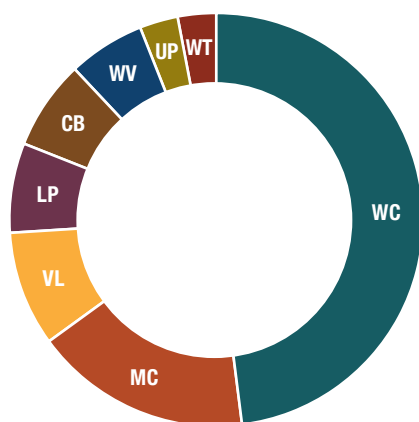
PROPERTIES

43

UNIQUE TENANTS

7

STATES



YEAR 1 % OF PRO FORMA NOI (EST.)

Walnut Creek	47.67%	Coopersburg	6.97%
Marlboro Crossroads	17.00%	Weeksville	5.83%
Vineland	9.26%	UnityPoint	3.06%
Laurel Plaza	7.19%	Watertown	3.02%

ExchangeRight and/or its principals are retaining a 0.5% ownership interest in the portfolio and are offering up to 99.5% of the beneficial interests in the DST to accredited investors. This Offering is designed for investors seeking to participate in a 1031 tax-deferred exchange as well as non-exchange investors seeking a diversified portfolio of value-added in-line retail real estate. Though offering objectives and pro forma are based on current contractual rent obligations and market assumptions, there is no guarantee that this offering will meet its investment objectives. Past performance of the Sponsor and any past offerings is not indicative of future results. Cash flow distribution is calculated by multiplying the current monthly investor distribution by 12, then dividing the result by the total available equity.

ExchangeRight Value-Add Portfolio 3 includes fee and leasehold interests with initial terms of 99 years for in-line and outparcel retail spaces of shopping centers that are shadow-anchored by national grocery and healthcare tenants (not included in this offering) diversified across seven states.

PROPERTY NAME	SHADOW ANCHOR (Not a Part of This Offering)	LOCATION	DAILY VEHICLE COUNT	MSA / CSA	NUMBER OF TENANTS (AS OF 5/31/23)	TOTAL IN-LINE & OUTPARCEL SQ. FT.	LEASED (AS OF 5/31/23)	YEAR 1 EST. NOI
WALNUT CREEK	Giant Eagle	Columbus, OH	65,284	Columbus, OH	14	29,169	100%	\$587,235
MARLBORO CROSSROADS	Giant Food	Upper Marlboro, MD	44,860	Washington, D.C.	4	7,027	100%	\$209,377
VINELAND	ShopRite	Vineland, NJ	17,552	Philadelphia, PA	4	5,064	100%	\$114,022
LAUREL PLAZA	ShopRite	Upper Deerfield Township, NJ	8,819	Philadelphia, PA	8	15,861	100%	\$88,543
COOPERSBURG	The GIANT Company	Coopersburg, PA	17,880	Allentown, PA	2	4,020	100%	\$85,906
WEEKSVILLE	Food Lion	Elizabeth City, NC	17,000	Virginia Beach-Norfolk, VA-NC	5	6,225	100%	\$71,876
UNITYPOINT	UnityPoint Health	Moline, IL	29,100	Davenport-Moline-Rock Island, IA-IL	1	1,905	100%	\$37,751
WATERTOWN PICK 'N SAVE CENTER	Pick 'n Save	Watertown, WI	13,200	Milwaukee, WI	5	26,643	56.34%	\$37,229
Total / Weighted Avg		7 States			43	95,914	87.87%	\$1,231,939

This offering includes fee & leasehold interests with spaces leased to retail and healthcare tenants in in-line and outparcel locations within seven different grocery-anchored shopping centers and one healthcare-anchored center across the United States. The centers are shadow-anchored by net-leased grocery and healthcare tenants, including GIANT Company, Giant Food, Pick 'n Save, ShopRite, Food Lion, and UnityPoint Health, which are not a part of this offering. The primary goals of this offering are to protect capital and provide stable income through strategic leasing and tenant improvements that are intended to add long-term value to the portfolio.

ExchangeRight intends to take advantage of its fully scalable platform and deep industry relationships to continue to strategically acquire in-line and outparcel retail spaces of shopping centers that are shadow-anchored by national grocery and retail stores with the goal of enhancing diversification and returns for investors through a future aggregation of similar properties into ExchangeRight's REIT platform.

THE CASH FLOW AND VALUE FROM EXCHANGERIGHT IS DIVERSIFIED BY



PROPERTY



LOCATION



TENANT



INDUSTRY



LEASE TERM



DEBT TERM

ExchangeRight's aggregation strategy is designed to structure a future potential acquisition of Value-Add Portfolio 3 by its REIT platform to provide investors with the option to (1) complete a tax-deferred 721 exchange into the acquiring ExchangeRight REIT; (2) complete another tax-deferred 1031 exchange; (3) cash out (not tax-deferred); or (4) any combination of the above exit options.



VAP 3 DST

721 EXCHANGE
1031 EXCHANGE
CASH OUT



REIT Platform

DST Ownership

Exit Strategy Options

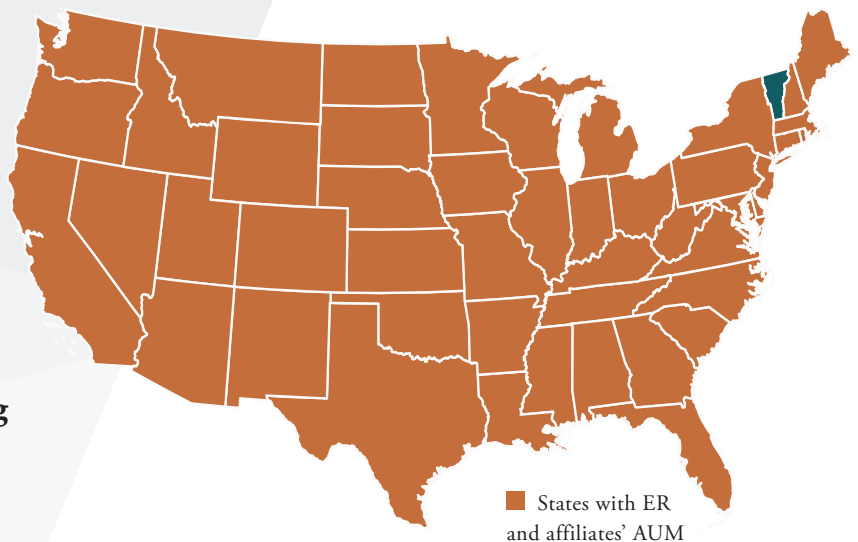
ExchangeRight intends to pursue an aggregation strategy to enhance diversification, liquidity, value, and exit optionality on behalf of investors, however there can be no guarantee that any of ExchangeRight's investment, liquidity, aggregation, and exit objectives, timing, and results will be achieved. The past performance of ExchangeRight and its principals is no guarantee of future results.



ExchangeRight provides a vertically integrated, fully scalable real estate platform.

- › Underwriting and Acquisitions
- › Financing and Structuring
- › Leasing and Tenant Retention
- › Marketing and Dispositions
- › Asset and Property Management
- › Analysis and Legal
- › Professional and Timely Investor Reporting
- › Monthly Investor Distribution Schedule

- › **\$5.6+ billion of assets under management**
- › **22+ million square feet under management**
- › **Focus on investment-grade, necessity-based retail and healthcare**
- › **Invested across 1,200+ properties**
- › **Diversified across 47 states**
- › **All full-cycle offerings (31 total thus far) have met or exceeded projected returns**
- › **All active offerings are meeting or exceeding investor cash flow distribution projections**
- › **Past performance is no guarantee of future results. All AUM statistics as of 5/31/23.**



Over 7,700 Investors

ENTRUST EXCHANGERIGHT WITH THE STEWARDSHIP
OF THEIR WEALTH AND INCOME

87 Offerings

ALL OFFERINGS ARE MEETING OR EXCEEDING
INVESTOR CASH FLOW DISTRIBUTION PROJECTIONS

Past performance of the Sponsor and any past offerings is not indicative of future results. Aggregation and liquidity objectives, timing, and results are not guaranteed. Distributions are processed from cash flow and are not guaranteed.

WALNUT CREEK PLAZA

3773-3841 SOUTH HAMILTON ROAD, COLUMBUS, OH 43125

100%

IN-LINE AND OUTPARCEL
SPACE LEASED

14

IN-LINE AND
OUTPARCEL TENANTS

29,169

IN-LINE SQUARE
FOOTAGE

2008

YEAR
BUILT

4.38 Years

WEIGHTED AVERAGE LEASE TERM
(AS OF 5/31/23)

8.19%

ESTIMATED
YEAR-1 CAP RATE

Walnut Creek Plaza is a neighborhood retail center shadow-anchored by Giant Eagle, located just ten miles from downtown Columbus, OH. The center's in-line space is comprised of 14 national and regional tenants, including Sherwin Williams, Bank of America, Mr. Hibachi, Republic Finance, in addition to a health care presence from Hometown Urgent Care and Urgent Care Specialists. The 5-mile population exceeds 190,000 and traffic drivers include immediate proximity to State Highway 317 and nearby tenants such as Ricart Auto Mall, Family Dollar, and O'Reilly Auto Parts.


SHADOW ANCHOR HIGHLIGHTS
 (NOT A PART OF THIS OFFERING)

Shadow Anchor	Giant Eagle
Remaining Lease Term (As of 5/31/23)	5.17 Years
Lease Term Expiration	7/31/28
Estimated 2021 Store Sales	\$41,498,996
Store Sales/SF	\$479.16



The estimated cap rate is calculated by dividing the estimated Year 1 NOI by the investor price minus the ending reserve balance.
There is no assurance that we will achieve our investment objectives for this property or offering.

MARLBORO CROSSROADS

5720-5728 CRAIN HIGHWAY, UPPER MARLBORO, MD 20772

100%

IN-LINE AND OUTPARCEL
SPACE LEASED

4

IN-LINE AND
OUTPARCEL TENANTS

7,027

IN-LINE SQUARE
FOOTAGE

1993

YEAR
BUILT

7.05 Years

WEIGHTED AVERAGE LEASE TERM
(AS OF 5/31/23)

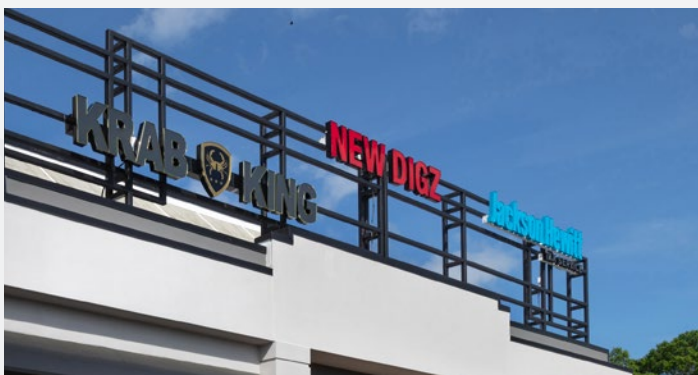
7.18%

ESTIMATED
YEAR-1 CAP RATE

Marlboro Crossroads is a neighborhood retail center shadow-anchored by Giant Food. The center is positioned off of the intersection of US Highway 301 and State Highway 4, two major highways that connect Upper Marlboro to the Washington D.C. and Baltimore, MD Metropolitan areas. Located in an affluent suburb of Washington D.C., this location has a 5-mile median household income of \$124,000, which is 1.75x higher than the US national average. Marlboro Crossroads features national and regional tenants including Starbucks and Jackson Hewitt, with a nearby tenant mix of Home Depot, CVS Pharmacy, and Upper Marlboro Ford dealership.


SHADOW ANCHOR HIGHLIGHTS
 (NOT A PART OF THIS OFFERING)

Shadow Anchor	Giant Food
Remaining Lease Term (As of 5/31/23)	5.09 Years
Lease Term Expiration	6/30/28
Estimated 2021 Store Sales	\$29,755,086
Store Sales/SF	\$488.18



The estimated cap rate is calculated by dividing the estimated Year-1 NOI by the investor price minus the ending reserve balance. There is no assurance that we will achieve our investment objectives for this property or offering.

VINELAND SHOPPING CENTER

1255 W LANDIS AVE, VINELAND, NJ, 08360

100%

IN-LINE AND OUTPARCEL
SPACE LEASED

4

IN-LINE AND
OUTPARCEL TENANTS

5,064

IN-LINE SQUARE
FOOTAGE

2013

YEAR
BUILT

1.99 Years

WEIGHTED AVERAGE LEASE TERM
(AS OF 5/31/23)

8.28%

ESTIMATED
YEAR-1 CAP RATE

Vineland Shopping Center is a community center located just over 30 miles outside of Philadelphia, PA. Shadow-anchored by ShopRite, traffic drivers include a neighboring Walmart ranked in the top 15% of Walmarts in NJ by visits (1/2022-12/2022), and within a mile and a half in proximity to State Highway 55, which has a daily traffic count of over 36,000. The 5-mile radius of the subject includes a variety of national tenants such as Walgreens, LIDL, Walmart Supercenter, Dollar Tree, Family Dollar, and Harbor Freight Tools. ShopRite, the shadow-anchor of the property, reported store sales of \$56.9 million in 2021, which is \$638 per square foot.



SHADOW ANCHOR HIGHLIGHTS (NOT A PART OF THIS OFFERING)

Shadow Anchor	ShopRite
Remaining Lease Term (As of 5/31/23)	10.09 Years
Lease Term Expiration	6/30/33
Estimated 2021 Store Sales	\$56,980,422
Store Sales/SF	\$638.51



The estimated cap rate is calculated by dividing the estimated Year-1 NOI by the investor price minus the ending reserve balance.
There is no assurance that we will achieve our investment objectives for this property or offering.

LAUREL PLAZA

1000-1020 N PEARL ST, UPPER DEERFIELD TOWNSHIP, NJ 08302

100%

IN-LINE AND OUTPARCEL
SPACE LEASED

8

IN-LINE AND
OUTPARCEL TENANTS

15,861

IN-LINE SQUARE
FOOTAGE

1999

YEAR
BUILT

3.53 Years

WEIGHTED AVERAGE LEASE TERM
(AS OF 5/31/23)

6.38%

ESTIMATED
YEAR-1 CAP RATE

Laurel Plaza is a neighborhood retail center shadow-anchored by ShopRite and located in Upper Deerfield, NJ. The subject property benefits from being a part of a retail corridor which includes Walmart, Aldi, Tractor Supply Company, Ollies Bargain Outlet, and Verizon wireless, all less than one mile away. ShopRite's sales, as the shadow-anchored tenant, are reported to be \$58.2 million in 2021, which is \$890 per square foot.


SHADOW ANCHOR HIGHLIGHTS
 (NOT A PART OF THIS OFFERING)

Shadow Anchor	ShopRite
Remaining Lease Term (As of 5/31/23)	15.01 Years
Lease Term Expiration	5/31/38
Estimated 2021 Store Sales	\$58,299,932
Store Sales/SF	\$890.27

The estimated cap rate is calculated by dividing the estimated Year-1 NOI by the investor price minus the ending reserve balance. There is no assurance that we will achieve our investment objectives for this property or offering.

COOPERSBURG COMMON

216 E FAIRMOUNT STREET, COOPERSBURG, PA 18036

100%

IN-LINE AND OUTPARCEL
SPACE LEASED

2

IN-LINE AND
OUTPARCEL TENANTS

4,020

IN-LINE SQUARE
FOOTAGE

1973

YEAR
BUILT

3.47 Years

WEIGHTED AVERAGE LEASE TERM
(AS OF 5/31/23)

10.06%

ESTIMATED
YEAR-1 CAP RATE

Coopersburg Common is shadow anchored by The Giant Company and is located in Coopersburg, PA. Coopersburg is an affluent suburb of Allentown, PA which features a 5-mile median household income of \$99,168. The center benefits from its proximity to State Highway 309 which has a daily traffic count of 17,880. The desirable location is reflected in the traffic to Coopersburg Common as The GIANT Company (shadow anchor) is in the top 30% in the state and sees an estimated one million visitors per year per RetailStat (formerly Creditintell).



SHADOW ANCHOR HIGHLIGHTS (NOT A PART OF THIS OFFERING)

Shadow Anchor	GIANT Company
Remaining Lease Term (As of 5/31/23)	4.69 Years
Lease Term Expiration	2/05/28
Estimated 2021 Store Sales	Does Not Report
Store Sales/SF	N/A



The estimated cap rate is calculated by dividing the estimated Year-1 NOI by the investor price minus the ending reserve balance.
There is no assurance that we will achieve our investment objectives for this property or offering.



It's our passion to empower people to be secure, free, and generous.

Pictures representative of similar corporate-backed stores in ExchangeRight's assets under management and are not actual locations in the portfolio.



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DESCRIPTION OF THE PROPERTIES & OFFERING

ExchangeRight Value-Add Portfolio 3 DST is a new Delaware statutory trust (the “**Trust**”) formed on April 27, 2022 pursuant to a Trust Agreement dated as of April 27, 2022 (the “**Trust Agreement**”). The Trust acquired a diversified portfolio of fee and/or 99-year ground leasehold interests (collectively, the “**Property Interests**”) in certain in-line retail space properties and outparcel retail spaces (collectively the “**In-Line Space**”) shadow-anchored by national grocery and healthcare tenants (not included in this Offering (as defined below)) diversified across eight shopping center properties across the United States. The Trust’s portfolio is focused on properties that exhibit in-place cash flow with the potential to preserve capital and provide stable income via strategic leasing initiatives and tenant improvements. The Trust’s portfolio consists of the following Property Interests in eight In-Line Space properties, as follows: (i) 216 E Fairmount Street, Coopersburg, Pennsylvania 18036-1634; (ii) 5720-5728 Crain Highway, Upper Marlboro, Maryland 20772; (iii) 604-648 S Church Street, Watertown, Wisconsin 53094-6229; (iv) 1000-1020 N Pearl Street, Upper Deerfield Township, New Jersey 08302; (v) 1255 W Landis Avenue, Vineland, New Jersey 08360; (vi) 3918 16th Street, Moline, Illinois 61265; (vii) 3773-3841 South Hamilton Road, Columbus, Ohio 43125; and (viii) 1805 Weeksville Road, Elizabeth City, North Carolina 27909 (collectively, the “**Properties**” and each a “**Property**”). The existing tenants and any new tenants at the Properties are referred to herein individually as a “**Tenant**” and collectively as the “**Tenants**.” ExchangeRight Real Estate, LLC, a California limited liability company (the “**Sponsor**” or “**ExchangeRight**”), is the present owner of the Trust. ExchangeRight Asset Management, LLC, a California limited liability company (the “**Manager**”), which is wholly owned by the Sponsor, has been appointed to manage the Trust pursuant to the Trust Agreement. **This Memorandum should be read in its entirety before making an investment decision.**

The Trust is hereby offering (this “**Offering**”) to prospective Accredited Investors (as hereinafter defined) (“**Investors**”) 100 newly-issued Class 1 beneficial ownership interests (the “**Interests**”) in the Trust at \$114,000 per Interest, pursuant to the terms of this confidential private placement memorandum, including all exhibits attached hereto and any supplements (this “**Memorandum**”). The Trust will offer and sell the Interests until the earlier of \$11,400,000 (the “**Maximum Offering Amount**”) of Interests are sold or until 12 months after the Loan Closing Date (as defined below), which date may be extended for an additional six month period (at the discretion of the Manager).

The Property Interests in the Properties have all been acquired over the period commencing December 7, 2022 through February 28, 2023 for an aggregate purchase price of \$14,099,771 from the ground lessors that own title to the Properties, which ground lessors are all Affiliates of the Sponsor (collectively, the “**Sellers/Lessors**”). The Property Interests in the Properties are owned 100% by the Trust.

On June 5, 2023 (the “**Loan Closing Date**”), the Trust closed a loan on the Properties in the amount of \$7,332,000 (the “**Loan**”) obtained from Barclays Capital Real Estate Inc. (the “**Lender**”). The Trust will sell beneficial interests in the Properties to the Investors in Interests. The difference between the purchase price for the Properties and the \$18,732,000 purchase price for the Interests (the “**Purchase Price**”), which consists of \$11,400,000 in equity and \$7,332,000 in debt, includes accountable reserves, transaction costs, legal fees, Offering costs, real estate and short-term financing costs (some of which are being paid to Affiliates of the Sponsor), acquisition fee to the Sponsor, Selling Commissions (as defined below), due diligence allowances, and related expenses.

The Trust is a passive owner of the Properties and will not be involved in any manner in the active management of the Properties. Concurrently with the Loan Closing Date, (i) the Trust will enter into a Master Lease Agreement (the “**Master Lease**”) with ExchangeRight Value-Add Portfolio 3 Master Lessee, LLC, a Delaware limited liability company (the “**Master Lessee**”), which is wholly owned by the Sponsor, under which the Master Lessee will pay rent to the Trust and sublease the Properties to the Tenants. Prior to any Disposition (as defined below) of the Properties by the Trust, the rent paid to the Trust by the Master Lessee is the Trust’s sole source of income and the sole source of funds available to make any monthly cash distributions to holders of Interests (individually, an “**Owner**,” and collectively, the “**Owners**”). The Properties and the rights under the Master Lease are the significant non-cash assets of the Trust.

The proceeds of this Offering will be used by the Trust to pay short term financing arrangements (some of which were with Affiliates of the Sponsor), commissions, costs, fees, and expenses relating to the acquisition of the Property Interests in the Properties and this Offering, as well as to redeem, on a one-for-one basis, the 100 Class 2

beneficial ownership interests in the Trust issued to the Sponsor on formation of the Trust (which Class 2 interests are currently the only outstanding ownership interests in the Trust). The Sponsor or its Key Principals (as defined below), are required by the Lender to maintain a 0.50% Class 1 beneficial interest in the Trust by purchasing a minimum of a 0.50% Interest in this Offering on the same terms and conditions as are available to all Owners and to hold such 0.50% Interest as long as the Loan is outstanding; provided that this 0.50% Interest will be purchased net of Selling Commissions and Expenses and certain other Sponsor related fees and expenses. Apart from this 0.50% Interest none of the Sponsor or its Affiliates will own any Class 1 interests and upon the sale of the Interests, no Class 2 interests will remain outstanding. The Trust will not close this Offering until all the Interests are sold and all the Class 2 interests are redeemed (or until the offering termination date, as set forth below). Pursuant to the Loan Documents (as defined below), within 12 months of the Loan Closing Date (which date may be extended for an additional six month period (at the discretion of the Manager)), any unissued Class 1 interests must be sold to third parties unrelated to the Sponsor or any Class 2 interests remaining outstanding must be contributed to the Trust in favor of the Class 1 beneficial owners for no additional consideration.

An investment in the Interests is highly speculative and involves substantial risks. Owners must be prepared to bear the economic risk of an investment in the Interests for an indefinite period of time and be able to withstand a total loss of their investment. See “Who May Invest” and “Risk Factors” below.

These securities have not been approved or disapproved by the U.S. Securities and Exchange Commission (“SEC”) or the securities regulatory authority of any state, nor has the SEC or any securities regulatory authority of any state passed upon the accuracy or adequacy of this Memorandum. Any representation to the contrary is a criminal offense.

These securities are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act of 1933, as amended (the “Securities Act” or “Act”) and applicable state securities laws, pursuant to registration or exemption therefrom. In addition, the Interests may only be transferred in compliance with the Trust Agreement and the terms of the Loan. Owners should be aware that they will be required to bear the financial risks of this investment for an indefinite period of time.

The main goals of the Trust are to (i) operate and hold the Properties pursuant to the Master Lease and the Loan Documents (as defined below) required by the Lender; (ii) preserve the capital investment of the Owners; (iii) realize income through the ownership and eventual sale, disposition, transfer, merger to facilitate a tax-deferred exchange pursuant to Section 1031 of the Code or exchange roll-up transaction pursuant to Section 721 of the Code with respect to the Properties (collectively, a “Disposition”); (iv) make monthly distributions to the Owners from the respective Master Lease payments; and (v) take only such other actions as the Manager deems necessary to carry out the foregoing. The Trust currently estimates monthly distributions to be in an amount sufficient to provide the following base rent annualized cash flow returns on the Owners’ investment:

- (i) 5.25% in year one;
- (ii) 5.30% in year two;
- (iii) 5.35% in year three;
- (iv) 5.40% in year four;
- (v) 5.45% in year five;
- (vi) 5.50% in year six;
- (vii) 5.55% in year seven;
- (viii) 5.60% in year eight;
- (ix) 5.65% in year nine; and
- (x) 5.70% in year 10.

In addition to the base rent presented above, the Master Lessee will pay bonus rent (“**Annual Bonus Rent**”) to the Trust equal to twenty percent (20%) of the effective annual revenues of the Properties over a predetermined annual effective gross revenue benchmark amount (the “**Master Lease Revenue Target**”). The Master Lease Annual Bonus Rent calculations will be based on a fiscal year term ending May 31st (“**Fiscal Year**”). The Master Lease

Revenue Target will be \$1,963,888 for the first full year of the Master Lease's term and will increase to an amount of \$2,427,722 for year ten of the Master Lease's term. See "Summary of the Master Lease – Bonus Rent." The Annual Bonus Rent, if any, will be paid annually in arrears within approximately 75 days following the end of each Fiscal Year. The Trust will direct the Master Lessee to make, on the Trust's behalf, any and all payments of any kind required under the Loan Documents. The Master Lessee is required to promptly furnish the Trust with any notice of default arising under the Loan and received by the Master Lessee. See "Summary of the Master Lease – Bonus Rent."

However, there is no assurance that the Trust will be able to meet any of the above goals, including as to the manner, amount and timing of any distributions to Owners, as any such distributions will depend on actual income earned by the Trust. As the Loan will be secured by the Properties, any default under the Loan could have a material adverse effect on the ability of the Trust to receive or distribute income. The Loan agreement (the "**Loan Agreement**") requires a Qualified Transfer (as defined in the Loan Agreement) of the Loan 12 months prior to the Loan Maturity Date or a cash flow sweep will commence. As the Trust's objective is to maximize value to Owners through a portfolio aggregation and sale, transfer, or merger prior to the cash flow sweep to facilitate a tax-deferred exchange pursuant to Section 1031 of the Code, or exchange roll-up transaction pursuant to Section 721 of the Code, this provision is not expected to have an impact on the Trust as it is expected to be able to achieve the Qualified Transfer requirements (refer to the "Exit Strategy" section of this Memorandum). As a result, 10 years of cash flows are being presented to show the expected cash flows of the Properties to the Trust including following a Qualified Transfer.

This Memorandum describes the key features of this Offering, including a description of a number of risks relating to an investment in the Interests. You should carefully read this entire Memorandum before you decide to invest. If you are considering an investment in the Interests for purposes of an exchange designed to comply with Section 1031 of the Internal Revenue Code of 1986, as amended (the "**Code**"), you should consult with your own tax advisor about this Offering's tax aspects and your individual situation. No representation or warranty of any kind is made with respect to the treatment of the Interests by the Internal Revenue Service (the "**IRS**"). The use of a Delaware statutory trust structure for this type of investment is a relatively recent development. The Trust is different from traditional investment vehicles in many aspects and due to its structure, the structure of this Offering and the terms of the Loan. You should also be aware that certain conflicts of interest may arise by and among the Owners and the Trust, the Sponsor, the Manager, the Master Lessee and their Affiliates.

In order to subscribe for Interests, prospective Investors will be required to (i) sign the Purchase Agreement, a copy of which is attached hereto as Exhibit B ("**Purchase Agreement**"); (ii) complete and sign the Subscription Agreement, a copy of which is attached hereto as Exhibit C ("**Subscription Agreement**"); and (iii) pay the full purchase price for their Interests, which payment will be held in the Trust's bank account until acceptance by the Manager, in its sole discretion, of that subscription. The Trust has not set a minimum offering amount for this Offering. All proceeds from the sale of Interests will be delivered directly to the Trust's operating account and be available for immediate use by the Trust at its discretion.

YOU SHOULD CAREFULLY CONSIDER THE FOLLOWING:

Do not construe the contents of this Memorandum as legal or tax advice. Consult your own independent counsel, accountant or business advisor as to legal, tax and related matters concerning an investment in Interests. Neither the Trust, the Sponsor, nor any of their affiliates makes any representation or warranty of any kind with respect to the acceptance by the IRS or any state taxing authority of your treatment of any item on your tax return or the tax consequences if you are investing in Interests as part of a like-kind exchange under Section 1031 of the Internal Revenue Code of 1986, as amended.

The Interests offered hereby are highly speculative and involve substantial risks. Prospective Investors must read and carefully consider the discussion set forth under "RISK FACTORS" for a complete discussion of risks. Issues to consider and risks of an investment in an Interest include, among other things, the following:

- The uncertainties surrounding the coronavirus disease ("**COVID-19**") or other pandemics and the impact on the global economy;
- complete reliance on the Manager and Master Lessee to operate, manage and maintain the Properties;

- limited to no control over the operation of the Properties and the timing of its Disposition pursuant to the Trust Agreement;
- lack of liquidity;
- lack of diversity of investment;
- various conflicts of interest among the Sponsor, the Manager, the Master Lessee and their Affiliates;
- various risks associated with ownership of real estate generally;
- the Purchase Price for the Interests offered; and
- certain tax risks.

The mailing address of the Trust for purposes of this Offering is 1055 E. Colorado Blvd., Suite 310, Pasadena, CA 91106 and its telephone number is 855-379-8172.

Prospective Investors must consult with their own independent legal, tax and financial advisors prior to purchasing the Interests. Purchase of the Interests is suitable only for persons of substantial means who have no need for liquidity in their investment. Prospective Investors should carefully consider the following:

1. This Memorandum does not constitute legal or tax advice to prospective Investors, and each prospective Investor must consult his own independent legal counsel, accountant and/or business advisor as to legal, tax and related matters concerning this investment.

2. The securities offered hereby may be offered and sold only to persons or entities who meet the investor suitability requirements set forth under “Who May Invest” in this Memorandum.

3. No person has been authorized by the Trust or the Sponsor to make any representations or furnish any information with respect to the Trust and/or the Interests other than as set forth in this Memorandum or other documents or information furnished by the Trust or the Sponsor upon request. However, authorized representatives of the Trust will, if such information is reasonably available, provide additional information that a prospective Investor (or his representatives) requests for the purpose of evaluating the merits and risks of the Offering.

4. This Memorandum has been prepared solely for the benefit of persons interested in the proposed private placement of Interests offered hereby. Without the prior written consent of the Trust, any reproduction or distribution of this Memorandum, the exhibits, or any other documents received from the Sponsor (the “**Memorandum Materials**”), in whole or in part, or the disclosure of any of their contents is expressly prohibited. The recipient, by accepting delivery of the Memorandum Materials, agrees to return this Memorandum, and all documents furnished herewith to the Trust or its representatives immediately upon request if the recipient does not purchase any of the Interests or if this Offering is withdrawn or terminated.

5. Trustees, custodians and fiduciaries of retirement and other plans subject to the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), or Code Section 4975 (including individual retirement accounts) should consider, among other things: (i) the substantial likelihood that the plan, although generally exempt from federal income taxation, would be subject to income taxation were its unrelated business taxable income from an investment in the Trust and other unrelated business taxable income to exceed \$1,000 in any taxable year (it is anticipated that the Trust will generate unrelated business taxable income); (ii) whether an investment in the Trust is advisable given the definition of plan assets under ERISA and the status of Department of Labor regulations regarding the definition of plan assets; (iii) whether an investment in the Trust is in accordance with plan documents and satisfies the diversification requirements of Section 404(a) of ERISA; (iv) whether the investment is prudent under Section 404(a) of ERISA, considering the nature of an investment in, and the compensation structure of, the Trust and the potential lack of liquidity of the Interests; (v) that the Trust has no history of operations; and (vi) whether the Trust, the Sponsor, the Manager or any of their respective affiliates is a fiduciary or party in interest to the plan. The prudence of a particular investment must be determined by the responsible fiduciary taking into account all the facts and circumstances of the qualified plan and of the investment. See “Federal Income Tax

Consequences -- Investment by Qualified Plans and IRAs -- Unrelated Business Taxable Income” and “Certain Considerations Applicable to ERISA, Governmental and Other Plan Investors.”

6. The Trust may reject the Purchase Agreement of a prospective Investor for any legal reason, including failure to conform to the requirements of this Offering or such other reasons as the Trust may determine. Once accepted by the Trust, the Purchase Agreement may not be revoked or terminated by the Owner for any reason, except as expressly set forth herein.

7. This Offering is made exclusively by this Memorandum. This Memorandum contains a summary of certain provisions of the transaction documents and certain other documents related to this Offering, which summaries are believed to be accurate, but only the full text of such documents contains complete information concerning the rights and obligations of the parties thereto. Such information necessarily incorporates significant assumptions and factual matters. A prospective Investor can obtain any additional information relating to an investment in the Interests that the Trust possesses or can acquire without unreasonable effort or expense that is necessary to verify the information that is provided in this Memorandum. See “Additional Information.”

8. Interests may not be sold, transferred, pledged or assigned without the prior written consent of the Sponsor or the Manager. The Sponsor or the Manager may disapprove any proposed transfer that may have adverse tax consequences to the Trust or the other Owners; that may violate or require registration or qualification under applicable securities laws or jeopardize any securities law exemption relied upon by the Trust; or that may result in the assets of the Trust being deemed to be plan assets of any Benefit Plan Investor (as defined in “Certain Considerations Applicable to ERISA, Governmental and Other Plan Investors”). Because the Interests are not registered under the Securities Act, or the securities laws of any state, Owners cannot transfer them unless: (a) they are registered under the Securities Act and any applicable state securities laws, which registration the Sponsor does not expect to occur, or (b) the Sponsor, with the advice of counsel, concludes that registration is not required under the Securities Act and applicable state laws. No public market exists for the Interests and none is expected to develop.

The securities offered hereby have not been registered under the Securities Act or the securities laws of any state and are being offered and sold in reliance on exemptions from the registration requirements of the Securities Act and such laws. The securities are subject to restrictions on transferability and resale and may not be transferred or resold except as permitted under the Securities Act and such laws pursuant to registration or exemption therefrom.

In making an investment decision, prospective Investors must rely on their own examination of the person or entity creating the securities and the terms of the Offering, including the merits and risks involved.

The Securities Act and the securities laws of certain jurisdictions grant purchasers of securities sold in violation of the registration or qualification provisions of such laws the right to rescind their purchase of such securities and to receive back their consideration paid. The Sponsor believes that the Offering described in this Memorandum is not required to be registered or qualified. Many of these laws granting the right of rescission also provide that suits for such violations must be brought within a specified time, usually one year from discovery of facts constituting such violation. Should any Owner institute such an action on the theory that this Offering was required to be registered or qualified, the Sponsor contends that the contents of this Memorandum constituted notice of the facts constituting such violation.

This Memorandum does not constitute an offer or solicitation by anyone in any jurisdiction in which such an offer or solicitation is not authorized, or in which the person making such an offer is not qualified to do so, or to any person to whom it is unlawful to make an offer or solicitation.

This Memorandum contains summaries of certain agreements and other documents. While the Trust believes these summaries are accurate, reference is made to the actual agreements and documents for more complete information about the rights, obligations and other matters in the agreements and documents. All summaries are qualified in their entirety by this reference. Copies of these agreements and other documents will be made available to you by the Trust upon request.

None of the Trust, the Sponsor or the Manager are making any representation to any prospective Investor regarding the legality or appropriateness of an investment in the Interests under any laws or

regulations. You should not consider any information contained in this Memorandum to be legal, business or tax advice. You should consult your own attorney and business and tax adviser for legal, business and tax advice regarding an investment in the Interests.

If the Maximum Offering Amount, which amount may be waived or lowered in the sole discretion of the Manager, has not been received and accepted within 12 months of the Loan Closing Date (which date may be extended for an additional six month period (at the discretion of the Manager)), then pursuant to the Loan Documents, any unissued Class 1 interests must be sold to third parties unrelated to the Sponsor or any Class 2 interests remaining outstanding must be contributed to the Trust in favor of the Class 1 beneficial owners for no additional consideration. There is no guaranty that the Maximum Offering Amount will be received or accepted.

This Offering is being conducted pursuant to Rule 506(b) of Regulation D and is not being conducted pursuant to Rule 506(c) of Regulation D. As a result, no general advertising or general solicitation is permitted in connection with the sale of the Interests. In the event that any such general advertising or general solicitation occurs, the Trust may not be able to qualify for an exemption from registration under the Securities Act.

A WARNING ABOUT FORWARD-LOOKING STATEMENTS

Some of the statements in this Memorandum, expressly including “Risk Factors” and the targeted financial results attached as “Exhibit G – Pro Forma Rent and Cash Flow for the Properties” (the “Pro Forma”), as well as those statements using words such as “believes,” “expects,” “intends,” “estimates,” “projects,” “predicts,” “assumes,” “anticipates,” “plans,” “seeks” and comparable terms, are forward-looking statements. Forward-looking statements are not statements of historical fact, and they reflect the Trust’s views and assumptions as of the date of this Memorandum regarding future events and operating performance. Because the Trust has no operating history, most of the statements relating to it and its business plan are forward-looking statements. All forward-looking statements address matters that involve risks and uncertainties. Accordingly, there are important factors that could cause the Trust’s actual results to differ materially from those indicated in these statements. We believe that these factors, include, but are not limited to, those described under “Risk Factors,” including the following:

- the Trust’s income and ability to make distributions,
- the rate of growth and expansion of the local and regional economy where the Properties are located,
- future rental rates for the Properties,
- the growth of the In-Line Space tenant retail industry market,
- lease defaults and renewals, and
- operating expenses regarding the Properties.

This list of factors is not exhaustive and should be read with the other cautionary statements that are included in this Memorandum. The market data and forecasts used in this Memorandum were obtained from independent industry sources as well as from research reports prepared for other purposes. We have not independently verified the data obtained from these sources and we cannot assure you of the accuracy or completeness of the data. Forecasts and other forward-looking information obtained from these sources are subject to the same qualifications and the additional uncertainties regarding the other forward-looking statements in this Memorandum. All subsequent written and oral forward-looking statements attributable to the Trust or persons acting on its behalf are expressly qualified in their entirety by this section. You should specifically consider the factors identified in this Memorandum that could cause actual results to differ from those discussed in the forward-looking statements before making an investment decision. We do not undertake any obligation to publicly update or review any forward-looking statement, whether as a result of new information, future events or otherwise.

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WHO MAY INVEST

The Interests are being offered and sold in reliance on exemptions from the registration requirements of the Securities Act and applicable state securities laws. An investment in the Interests involves a high degree of risk and is suitable only for persons of substantial financial means who have no need for liquidity in any investment. See “Risk Factors.” Interests will be sold only to prospective Investors who: (i) buy a minimum of a 0.87719% Interest (\$100,000 of equity and \$64,316 of debt), subject to certain exceptions in the discretion of the Manager, and (ii) meet the requirements and make the representations set forth in the Purchase Agreement. See “Summary of the Purchase Agreement” and “How to Subscribe.” Among the other suitability requirements set forth in the Purchase Agreement, you must represent, among others, that you meet all of the following requirements:

(a) You are an “**Accredited Investor**” as defined in Rule 501(a) of Regulation D under the Securities Act. For purposes of this Memorandum, an “**Accredited Investor**” includes:

- Any natural person that: (i) has an individual net worth, or joint net worth with his or her spouse, of more than \$1,000,000; (ii) has individual income in excess of \$200,000, or joint income with his or her spouse or spousal equivalent (defined as a cohabitant occupying a relationship generally equivalent to that of a spouse) in excess of \$300,000, in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year; (iii) is a Licensed General Securities Representative (Series 7), Licensed Investment Adviser Representative (Series 65) and Licensed Private Securities Offerings Representative (Series 82); (iv) is a “knowledgeable employee” of a private fund, including, but not limited to, trustees and advisory board members of a private fund or an affiliated person of the private fund that oversees the private fund’s investments, as well as employees of the private fund or the affiliated person of the private fund who, in connection with the employees’ regular functions or duties, have participated in the investment activities of such private fund for at least 12 months; and (v) has a professional certification, designation or credential from an accredited educational institution that the SEC designates as qualifying for Accredited Investor status;
- any entity that owns investments in excess of \$5,000,000 and that was not formed for the specific purpose of investing in the securities offered;
- any investment adviser registered under federal or state law (and Exempt Reporting Advisers relying on Section 203(m) or 203(l) of the Investment Advisers Act of 1940, as amended);
- any rural business investment company (defined as entities who are approved by the U.S. Secretary of Agriculture and have entered into a participation agreement with the U.S. Secretary of Agriculture);
- any family office with at least \$5,000,000 in assets under management and that was not formed for the specific purpose of acquiring the securities offered, and whose investment is directed by a person capable of evaluating the merits and risks of the prospective investment;
- Any bank as defined in Section 3(a)(2) of the Securities Act, any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act whether acting in its individual or fiduciary capacity;
- Any broker-dealer registered under Section 15 of the Securities Exchange Act of 1934, as amended;
- Any insurance company as defined in Section 2(13) of the Securities Act;
- Any investment company registered under the Investment Company Act of 1940, as amended, and the rules and regulations promulgated thereunder (the “**Investment Company Act of 1940**”) or a business development company (as defined in Section 2(a)(48) of that Act);

- Any small business investment company licensed by the U.S. Small Business Administration under Section 301(c) or (d) or the Small Business Investment Act of 1958, as amended;
- Any plan established and maintained by a state, its political subdivisions or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets of more than \$5,000,000;
- Any private business development company (as defined in Section 202(a)(22) of the Investment Advisers Act of 1940, as amended);
- Any corporation, Massachusetts or similar business trust, partnership or organization described in Code Section 501(c)(3) that has total assets over \$5,000,000 and was not formed for the specific purpose of acquiring the Interests;
- Any trust, with total assets in excess of \$5,000,000 that was not formed for the specific purpose of acquiring the Interests and whose purchase is directed by a person who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of an investment in the Interests (as described in Rule 506(b)(2)(ii) under the Securities Act); and
- Any entity in which all of the equity owners are Accredited Investors.

For purposes of calculating your net worth, “**net worth**” is defined as the difference between total assets and total liabilities, excluding the value of your primary residence. In the case of fiduciary accounts, the net worth and/or income suitability requirements must be satisfied by the beneficiary of the account or by the fiduciary, if the fiduciary directly or indirectly provides funds for the purchase of the Interests.

(b) You are (i) a citizen or resident of the United States. (including certain former citizens and former long-term residents); (ii) a corporation (or other entity taxable as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States or of any political subdivision thereof; (iii) an estate, the income of which is subject to U.S. federal income taxation regardless of the source of such income; or (iv) a trust, if (A) the administration of the trust is subject to the primary supervision of a U.S. court and the trust has one or more U.S. persons with authority to control all substantial decisions or (B) the trust has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

(c) You have received, read and fully understand this Memorandum and are basing your decision to invest on the information contained in this Memorandum. You have relied only on the information contained in this Memorandum and have not relied on any representations made by any other person.

(d) You understand that an investment in the Interests is highly speculative and involves substantial risks and you are fully cognizant of and understand all of the risks relating to an investment in the Interests, including, but not limited to, those risks discussed in “Risk Factors.”

(e) Your overall commitment to investments that are not readily marketable is not disproportionate to your individual net worth and your investment in the Interests will not cause such overall commitment to become excessive.

(f) You have adequate means of providing for your financial requirements, both current and anticipated and have no need for liquidity in this investment.

(g) You can bear and are willing to accept the economic risk of losing your entire investment in the Interests.

(h) You are acquiring the Interests for your own account and for investment purposes only and have no present intention, agreement or arrangement for the distribution, transfer, assignment, resale or subdivision of the Interests.

(i) You have such knowledge and experience in financial and business matters that you are capable of evaluating the merits of investing in the Interests and have the ability to protect your own interests in connection with such investment.

Representations with respect to the foregoing and certain other matters will be made by each Owner in the Purchase Agreement and Subscription Agreement, forms of which are attached to this Memorandum as exhibits. The Trust will rely on the accuracy of each person's or entity's representations set forth therein and may require additional evidence that any such person or entity meets the applicable standards at any time prior to the Trust's acceptance of the Purchase Agreement. A prospective Investor is not obligated to supply any information requested by the Manager, but the Manager may reject any prospective Investor who fails to supply any such information.

If you do not meet the requirements described above, do not read further and immediately return the Memorandum Materials to the Trust or the applicable Broker-Dealer (as defined below). If you do not meet such requirements, this Memorandum shall not constitute an offer to sell the Interests to you.

Also, each prospective Owner must represent and warrant the following as an additional investment requirement:

The Owner understands that the tax consequences of an investment in an Interest, especially the qualification of the Interests under Section 1031 and the related "1031 Exchange" Rules, are complex and vary with the facts and circumstances of each individual Owner. The Owner represents and warrants that: (i) he has consulted his own independent tax advisor regarding an investment in an Interest and the qualification of the transaction under Section 1031, and (ii) he is not relying on (a) the Trust, the Sponsor, the Manager, any of their Affiliates, or their agents, including, without limitation, their counsel and accountants, or (b) any Broker-Dealer or the representatives of a Broker-Dealer through whom the Interest is purchased, for any tax advice whatsoever, including, without limitation, regarding the qualification of the Interest under Section 1031 or any other matter.

The investor suitability requirements stated above represent minimum suitability requirements, as established by the Trust, for Owners. However, satisfaction of these requirements by any such person or entity will not necessarily mean that an Interest is a suitable investment for such person or entity, or that the Trust will accept such person or entity as an Owner. Furthermore, the Trust, as appropriate, may modify such requirements, and such modification may raise the suitability requirements for Owners.

The written representations made by the prospective Investors will be reviewed to determine the suitability of each such person or entity. The Trust may refuse an offer to purchase the Interests if the Trust believes that such person or entity does not meet the applicable investor suitability requirements, the Interests otherwise constitute an unsuitable investment for such person or entity for any legal reason.

Compliance with Anti-Money Laundering Regulations

As part of the Trust's responsibility for the prevention of money laundering, the Trust and the Manager and his Affiliates, subsidiaries or associates may require a detailed verification of a subscriber's identity, any beneficial owner underlying the account and the source of any payment to the Trust.

The Trust and the Manager each reserve the right to request such information as is necessary to verify the identity of a subscriber and the underlying beneficial owner of an Investor's interest in the Trust. In the event of delay or failure by the subscriber or Owner to produce any information required for verification purposes, the Trust may refuse to accept a subscription or may cause the withdrawal of any such Owner from the Trust. The Manager, by written notice to any Owner, may suspend the payment of distribution proceeds to such Owner if the Manager deems it necessary to do so to comply with anti-money laundering regulations applicable to the Trust, the Manager, and his Affiliates, subsidiaries or associates or any of the Trust's other services providers.

Each Owner will be required to make such representations to the Trust as the Trust, the Manager and his Affiliates, subsidiaries or associates or any of the Trust's other service providers will require in connection with such anti-money laundering programs, including, without limitation, representations to the Trust that such Owner is not a

prohibited country, territory, individual or entity listed on the Department of Treasury's Office of Foreign Assets Control ("OFAC") website and that it is not directly or indirectly affiliated with any country, territory, individual or entity named on an OFAC list or prohibited by any OFAC sanctions programs. Such prospective Owner will also be required to represent to the Trust that amounts contributed by it to the Trust were not directly or indirectly derived from activities that may contravene federal, state or international laws and regulations, including anti-money laundering laws and regulations.

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HOW TO SUBSCRIBE

If, after carefully reading this entire Memorandum, you would like to purchase Interests, please complete and sign the enclosed Purchase Agreement and Subscription Agreement. The minimum purchase amount is a 0.87719% Interest (\$100,000 of equity and \$64,316 of debt), although the Manager may waive or lower the minimum purchase requirement for certain prospective Investors in its sole discretion.

Prospective Investors should deliver their completed and signed Purchase Agreement and the Subscription Agreement (including its financial statement as required by the Subscription Agreement) to the Manager at:

**Investor Relations
ExchangeRight Asset Management, LLC
c/o ExchangeRight Value-Add Portfolio 3 DST
1055 E. Colorado Blvd., Suite 310
Pasadena, CA 91106**

Prospective Investors should deliver an amount equal to the full amount of their purchase price for their Interests to the Trust either by (i) a check payable to “**ExchangeRight Value-Add Portfolio 3 DST**” or (ii) a wire transfer to ExchangeRight Value-Add Portfolio 3 DST.

For increased security, we will provide wiring instructions to all investors separately. Please call in advance of initiating any wire to verify account information. **No investor or their representatives should initiate a wire until such wiring instructions have been verified by phone with ExchangeRight’s Investor Relations department at 855-379-8172.**

This is not a minimum offering. All proceeds from the sale of Interests will be delivered directly to the Trust’s operating account and be available for immediate use by the Trust at its discretion. Pursuant to the Loan Documents, within 12 months of the Loan Closing Date (which date may be extended for an additional six month period (at the discretion of the Manager)), any unissued Class 1 interests must be sold to third parties unrelated to the Sponsor or any Class 2 interests remaining outstanding must be contributed to the Trust in favor of the Class 1 beneficial owners for no additional consideration. See “Plan of Distribution - No Minimum; Ownership by the Sponsor and/or one of the Owners of the Sponsor.”

Following receipt of your completed and signed Purchase Agreement and Subscription Agreement and verification of your investment qualifications, within 30 days of receipt the Manager will notify you of the receipt and whether it has determined to accept your subscription (in the Manager’s sole discretion).

If your subscription is accepted, you must deliver an amount equal to the full amount of your purchase price for your Interests to the Trust either by (i) a check or (ii) a wire transfer on or before the Funding Date (as defined in the Purchase Agreement). The Trust will provide you with at least two business days’ advance written notice of the Funding Date.

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SUMMARY

The following summary provides certain limited information about this Offering. It should be read in conjunction with, and is qualified in its entirety by, the detailed information appearing elsewhere in this Memorandum, including the documents attached as exhibits. You should read this entire Memorandum before deciding to make an investment.

General

- Defined Terms: An “**Affiliate**” of any natural person, corporation, partnership, trust, unincorporated association or other legal entity (a “**Person**”) shall, for purposes hereof, be any Person employed by or directly or indirectly controlling, controlled by or under common control with another Person.
- Risks: An investment in Interests is highly speculative and involves substantial risks. See “Risk Factors.”

The Offering

- Interests Offered: The Trust is offering 100 Interests at \$114,000 per Interest. The minimum purchase is a 0.87719% Interest (\$100,000 of equity and \$64,316 of debt), although the Manager may waive or lower the minimum purchase requirement in its sole discretion. See “Plan of Distribution” and “Description of Interests.”
- Offering Termination Date: The Trust will offer Interests until the earlier of (i) \$11,400,000 of Interests are sold or (ii) until 12 months after the Loan Closing Date, which date may be extended for an additional six month period (at the discretion of the Manager) (the “**Offering Termination Date**”).
- Estimated Use of Proceeds: The Offering of the Interests is being made for purposes of paying all fees and expenses related to the Offering, including proceeds used to acquire the assets (some of which were provided by Affiliates of the Sponsor). The Trust has not set a minimum offering amount for this Offering. All proceeds from the sale of Interests will be delivered directly to the Trust’s operating account and be available for immediate use by the Trust at its discretion. See “Estimated Use of Proceeds” and “Compensation of the Sponsor, Manager and their Affiliates.”
- Tax Considerations: In connection with the Offering, on the Loan Closing Date, we received a tax opinion (“**Tax Opinion**”) from our U.S. federal income tax counsel, Venable LLP (“**Tax Counsel**”), a legal opinion stating that: (i) the Trust should be treated as an investment trust described in Treasury Regulation Section 301.7701-4(c) that is classified as a “trust” under Treasury Regulation Section 301.7701-4(a); (ii) the Owners should be treated as “grantors” of the Trust; (iii) as “grantors,” the Owners should be treated as owning an undivided fractional interest in each of the Properties for federal income tax purposes; (iv) the Interests should not be treated as securities for purposes of Code Section 1031; (v) the Interests should not be treated as certificates of trust or beneficial interests for purposes of Code Section 1031; (vi) the Master Lease should be treated as a true lease and not a financing for federal income tax purposes; (vii) the Master Lease should be treated as a true lease and not a deemed partnership for federal income tax purposes; (viii) the discussions of the federal income tax consequences contained in the Memorandum are correct in all material respects; and (ix) certain judicially created doctrines should not apply to change the foregoing conclusions. A copy of the Tax Opinion is attached hereto as Exhibit F.

The opinion will be written to support the promotion or marketing of the Offering, and each Owner must seek advice based on the Owner's particular circumstances from an independent tax advisor.

Each Owner must report his proportionate share of taxable income or loss on his own federal income tax return. For a more complete discussion of the tax consequences of ownership of Interests, see "Federal Income Tax Consequences."

Each prospective Investor must consult with his tax advisor concerning the identification requirements under Code Section 1031 and other requirements for successfully completing a qualifying like-kind exchange under Code Section 1031.

THE PROSPECTIVE INVESTORS WILL ACQUIRE THEIR INTERESTS WITHOUT ANY REPRESENTATIONS OR WARRANTIES FROM THE TRUST, THE SPONSOR, THE MANAGER OR ANY OF THEIR AFFILIATES OR REPRESENTATIVES, AGENTS OR COUNSEL REGARDING THE TAX IMPLICATIONS OF THE TRANSACTION. EACH PROSPECTIVE INVESTOR MUST CONSULT HIS OR HER OWN INDEPENDENT ATTORNEYS, ACCOUNTANTS AND OTHER TAX ADVISORS REGARDING THE TAX IMPLICATIONS OF THE INVESTOR'S PURCHASE OF AN INTEREST, INCLUDING WHETHER SUCH PURCHASE WILL QUALIFY AS PART OF A PROPOSED TAX-DEFERRED EXCHANGE UNDER SECTION 1031 (A "SECTION 1031 EXCHANGE"), IF ONE IS CONTEMPLATED.

There are risks associated with the federal taxation of the purchase of an Interest, particularly where the purchase is intended to be part of a Section 1031 Exchange. Accordingly, all prospective Investors must consult their own independent legal, tax, accounting and financial advisors and must represent that they have done so as an investment requirement. You should carefully read the sections of this Memorandum entitled "Risk Factors – Tax Risks of a Code Section 1031 Exchange" and "Federal Income Tax Consequences" and consult with your personal tax advisor before making an investment in Interests. See "RISK FACTORS" below.

The Trust

Organization:

The Trust was formed on April 27, 2022 pursuant to its Trust Agreement. The Trust is newly formed and has no prior operating history. The Trust is a passive owner of the Properties and will not be involved in any manner in the active management of the Properties. See "The Trust and Summary of the Trust Agreement."

Owners:

The Trust will be owned by the Owners, who will hold all of the Interests in the Trust. See "The Trust and Summary of the Trust Agreement."

Trustee:

Gregory Harrison, an unaffiliated third party, and an officer of Stewart Management Company located in Wilmington, Delaware (the "Trustee") is the Trustee of the Trust pursuant to the Trust Agreement, as well as the Independent Director (as defined in the Trust Agreement). See "The Trust and Summary of the Trust Agreement."

Manager:	ExchangeRight Asset Management, LLC, a California limited liability company (the “ Manager ”), which is wholly owned by the Sponsor, is the Manager of the Trust. The Manager was formed in 2012. The Manager will manage the Trust in the manner provided in the Trust Agreement. See “The Trust and Summary of the Trust Agreement,” “Compensation of the Sponsor, the Manager and their Affiliates,” “The Manager” and “Conflicts of Interest.”
Trustee and Manager Compensation:	The Manager and the Trustee will receive the following compensation for their services from the Trust’s cash from operations: (1) The Trustee will receive an annual fee of \$750 for its services as Trustee. (2) The Manager will receive an annual asset management fee of 0.50% of the Purchase Price. It is anticipated that the Manager will assist in marketing and selling the Property Interests in the Properties, and thus, if the Manager provides such services, and if upon a Disposition of the Property Interests in the Properties the gross proceeds of any Disposition including the return of any reserves are in excess of \$18,732,000 (in cash or in kind), the Manager will be entitled to receive a fee equal to 2.0% of the gross proceeds of any such Disposition of the Properties pursuant to the Trust Agreement, with such amount to be in addition to any payments to unrelated third-party real estate brokers that the Trust hires to sell the Property Interests in the Properties and any payments to buyer’s brokers. See “The Trust and Summary of the Trust Agreement,” “Compensation of the Sponsor, the Manager and their Affiliates.”
Property Managers:	The Master Lessee has entered into property management agreements with either unrelated, third-party or Affiliated professional management companies, in the sole discretion of the Master Lessee (collectively the “ Property Managers ”), to handle all of the day-to-day management of the Properties. The Property Managers (including Affiliates of the Manager) will receive a fee of up to 4% of the gross rental income of the Properties.
The Master Lessee:	Concurrently with the acquisition of the Property Interests in the Properties, the Trust entered into the Master Lease with the Master Lessee, which is wholly owned by the Sponsor, under which the Master Lessee will pay rent to the Trust and sublease the Properties to the Tenants. The Trust entered into the Master Lease with Master Lessee under which the Trust, assigned to the Master Lessee all of the underlying Tenant leases and rents with respect to the Properties in exchange for the rental and other payments as provided under the Master Lease. See “The Trust and Summary of the Trust Agreement” and “Summary of the Master Lease.”
Master Lessee Capitalization:	The Master Lessee is a newly formed Delaware limited liability company wholly owned by ExchangeRight. Capitalization of the Master Lessee will be provided by the Manager through demand note (the “ Demand Note ”) to the Master Lessee, in the amount of \$104,830. The Manager’s Demand Note obligations will be reduced by the amount of any net earnings of the Master Lessee retained by Master Lessee.
Term of the Trust:	The Trust will terminate and dissolve and distribute all of its assets to the Owners in accordance with the Trust Agreement, on the first to occur of (i) the Disposition of all the Property Interests in the Properties; (ii) the expiration of 15 calendar years following the acquisition of the Property Interests in the Properties; or (iii) an LLC Conversion (the “ Trust Expiration Date ”). The

Properties must be sold before the Trust Expiration Date if the Manager determines, in its sole discretion, that a Disposition would be a reasonable course of action. See “Summary of the Trust Agreement.”

Side Letters:

Subject to certain restrictions in the Trust Agreement, the Manager reserves the right, in its sole and absolute discretion, to agree with an Owner to waive or modify the application of any provision of the Trust Agreement or fee or expense in connection with this Offering with respect to such Owner without obtaining the consent of any other Owner. Accordingly, the Trust and the Manager may enter into side letters or other writings with one or more Owners that have the effect of establishing rights under, or altering or supplementing the terms of, the Trust Agreement or any subscription agreement for Interests (including with any of its Affiliates that may invest in the Trust).

Trust Limitations:

The Trust is not empowered or permitted to (i) sell, transfer, exchange or otherwise dispose of the Properties, except as required under the Trust Agreement; (ii) invest any cash held by the Trust in anything other than U.S. Treasury obligations or deposits in federally-insured institutions; (iii) reinvest any monies of the Trust, except to make minor non-structural modifications or repairs to the Properties as permitted under the Trust Agreement; (iv) upon the Disposition of all the Property Interests in the Properties pursuant to the Trust Agreement, re-invest the proceeds of such Disposition; (v) renegotiate, alter or extend the terms of the Loan or enter into any new financing; (vi) renegotiate, alter or extend the terms of the Master Lease or enter into new leases, except in the case of the Master Lessee’s bankruptcy or insolvency; (vii) make any modifications to the Properties other than minor non-structural modifications, unless required by law; (viii) accept any capital contributions from Owners or other persons (other than pursuant to this Offering); or (ix) take any other action which would cause the Trust to be treated as a business entity for federal income tax purposes.

Rights of the Owners:

The sole right of the Owners as holders of Interests will be to receive distributions from the Trust if, as and when made as a result of the operations of the Trust or the Disposition of the Property Interests in the Properties. The Owners will have no voting rights, including as to whether or not the Properties are sold. See “The Trust and Summary of the Trust Agreement.”

Transferability of Interests:

The Interests are nontransferable unless such transfer is made in compliance with any limitations imposed by the Trust and the Lender and in compliance with applicable securities laws. See “Description of the Interests – Transferability of Interests.”

Distributions of Cash from Operations:

After payment of Loan interest and principal (if any), management fees, operating expenses and taxes, and reserve funding, as determined by the Manager, any net cash flow of the Trust will be distributed to the Owners in proportion to their Interests on a monthly basis. See “Business Plan.”

The Master Lease

Term:

The Master Lease will expire concurrently with the Trust’s termination. Neither the Trust nor the Master Lessee will have an option to renew the Master Lease. In the event that not all or a non-material portion of the Properties are damaged or destroyed by fire or other casualty and it is economically feasible to continue to operate the Properties, then the Master Lease shall continue in full force and effect, however, the Trust and Master Lessee shall adjust their

respective Annual Base Rent in an equitable fashion to reflect the economic effect of any such loss of a portion of the Properties. See “The Master Lessee and the Summary of the Master Lease.”

Rent:

All rent due under the Tenant leases for periods after the Master Lease is executed will be payable to the Master Lessee rather than the Trust. The respective Master Lease Annual Bonus Rent calculations are based on the Fiscal Year. The Master Lessee will use the rent received from the Tenant leases to pay to the Trust the Annual Base Rent (as defined in each of the respective Master Lease). In year 1, Annual Base rent is \$1,257,957 and increases to \$1,472,942 in year 10. Such Annual Base Rent includes amounts that are anticipated to be sufficient for the Trust to fund Owner Annual Base Rent Distributions (as set forth in the Pro Forma in Exhibit G), TI/LC Reserve Contributions (as set forth in the Pro Forma in Exhibit G), CapEx Reserve Contributions (as set forth in the Pro Forma in Exhibit G), the Manager’s annual asset management fee, and Lender’s debt service totaling \$479,482 (\$480,796 in leap years) per annum for the term of the Loan (with respect to the Trust) all in accordance with the figures presented in the Pro Forma in Exhibit G. Notwithstanding the foregoing, pursuant to the terms of the Master Lease, any interest earned by the Trust on the funds held by the Trust, shall be included in the amounts available for distribution from the Master Lessee and as such will be available to offset the respective Annual Base Rent amount payable by the Master Lessee to the Trust in the respective calendar year. The Trust will direct the Master Lessee to make, on the Trust’s behalf, any and all payments of any kind required under the Loan Documents or other agreements including any reserve contributions which are all included in the Master Lease Annual Base Rent. The Master Lessee is required to promptly furnish the Trust with any notice of default arising under the Loan and received by the Master Lessee. In the event that a Qualified Transfer is not achieved or the Properties are not sold prior to 12 months prior to the Loan Maturity Date, the full amount of the Available Cash (as defined in the Loan Documents) will continue to be paid but may be held by the Lender and used to pay down the Loan as required under the Loan Documents. In the event that not all or a non-material portion of the Properties are taken by eminent domain proceedings or damaged or destroyed by fire or other casualty and it is economically feasible to continue to operate the Properties, then the Master Lease shall continue in full force and effect, however, the Annual Base Rent shall be adjusted in an equitable fashion to reflect the economic effect of any such loss of a portion of the Properties. See “Summary of the Master Lease – Rent.”

The Master Lease’s Annual Base Rent obligations are structured to provide a 5.25% annualized distribution to the Owners for the first full year of the Master Lease term, which does not include the payment of Annual Bonus Rent, if earned. In addition to the Annual Base Rent, the Master Lessee will pay Annual Bonus Rent to the Trust equal to twenty percent (20%) of the effective annual revenues of the Properties over the Master Lease Revenue Target, if any. The Master Lease Revenue Target will be \$1,963,888 for the first full year of the Master Lease’s term and will increase to an amount of \$2,427,722 for the final full year of the Master Lease’s term. See “Summary of the Master Lease – Bonus Rent.” The Annual Bonus Rent will be paid annually in arrears within approximately 75 days following the end of each Fiscal Year. The Trust will direct the Master Lessee to make, on the Trust’s behalf, any and all payments of any kind required under the Loan Documents. The Master Lessee is required to promptly furnish the Trust with any notice of default arising under the Loan and received by the Master Lessee. The Sponsor expects, but cannot

guarantee, the Properties to generate Annual Bonus Rent, leading to increasing cash flow distribution potential for the Owners. See “Summary of the Master Lease – Bonus Rent.”

Rights and Duties of the Master Lessee; Payment of Expenses:

The Master Lessee has the sole and exclusive right to operate and maintain the Properties. The Master Lease is a “triple net” lease under which the Master Lessee will be responsible for paying all expenses relating to the Properties, without exception, including, but not limited to, operating expenses, taxes, insurance and the cost of non-structural capital improvements. However, the Master Lessee may utilize property and lender reserves to cover capital expenses and capital improvements as well as operating and asset management expenses, including unreimbursed tax and insurance payments, and bank, accounting, tax, and filing fees. In addition, any interest earned by the Trust on the funds held by the Trust, shall be included in the amounts available for distribution from the Master Lessee and as such will be available to offset the respective Annual Base Rent amount payable by the Master Lessee to the Trust in the respective calendar year. The Master Lessee will be responsible at its sole cost to provide the accounting, quarterly and annual reporting to the Trust. The Master Lessee must comply with all governmental statutes, laws, rules, regulations and ordinances affecting the Properties and maintain the entire exterior and interior of the Properties in good condition and repair. See “The Master Lessee and the Summary of the Master Lease.”

The Properties

Description:

During the period commencing December 7, 2022 through the February 28, 2023, the Trust acquired the Property Interests in certain In-Line retail Space shadow-anchored by national grocery and healthcare tenants (not included in this Offering) diversified across eight shopping center properties across the United States. The Trust’s portfolio is focused on properties that exhibit high in-place cash flows with the potential to preserve capital and provide stable income via strategic leasing initiatives and tenant improvements. The Trust’s portfolio consists of the following Property Interests in eight In-Line Space properties, as follows: (i) 216 E Fairmount Street, Coopersburg, Pennsylvania 18036-1634; (ii) 5720-5728 Crain Highway, Upper Marlboro, Maryland 20772; (iii) 604-648 S Church Street, Watertown, Wisconsin 53094-6229; (iv) 1000-1020 N Pearl Street, Upper Deerfield Township, New Jersey 08302; (v) 1255 W Landis Avenue, Vineland, New Jersey 08360; (vi) 3918 16th Street, Moline, Illinois 61265; (vii) 3773-3841 South Hamilton Road, Columbus, Ohio 43125; and (viii) 1805 Weeksville Road, Elizabeth City, North Carolina 27909 (collectively, the “**Properties**” and each a “**Property**”). The existing tenants and any new tenants at the Properties are referred to herein individually as a “**Tenant**” and collectively as the “**Tenants**.” See “Description of the Properties.”

Acquisition:

The Property Interests in the Properties have been acquired over the period commencing December 7, 2022 through February 28, 2023 for an aggregate purchase price of \$14,099,771 from the Sellers/Lessors. The Property Interests in the Properties are controlled 100% by the Trust, which are owned 100% by the Trust. The Trust will sell beneficial interests in the Properties to the Investors in Interests. The difference between the purchase price for the Properties and the \$18,732,000 purchase price for the Interests (the “**Purchase Price**”), which consists of \$11,400,000 in equity and \$7,332,000 in debt (solely on the Trust), includes accountable reserves, transaction costs, legal fees, Offering costs, real estate and short-term financing costs (some of which are

being paid to Affiliates of the Sponsor), acquisition fee to the Sponsor, Selling Commissions (as defined below), due diligence allowances, and related expenses.

Acquisition Terms and Financing:

Financing:	The Trust obtained a loan of \$7,332,000 (the “ Loan ”) from Lender in connection with the Properties, which Loan closed on the Loan Closing Date. The Loan has a 10-year fixed-rate term and an interest rate of 6.4500% per year with interest only payments for the entire term of the Loan. See “Acquisition Terms and Financing.”
Security Arrangements/Collateral:	The security for the payment and performance of all of the obligations under the Loan will be: (i) a first priority fee mortgage on the Properties in Maryland, New Jersey, Ohio, Pennsylvania and Wisconsin and a first priority deed of trust on the Properties in Illinois and North Carolina; (ii) a first priority assignment of the Master Lease and all subleases and rents; (iii) a first priority assignment of permits, licenses and contracts; (iv) a pledge of escrow, reserve and cash collateral accounts and sub-accounts; (v) an assignment of Tenants’ security deposits and letters of credit and (vi) UCC-1 financing statements. As the Loan will be secured by the Properties, any default under the Loan (including as a result of the failure of the Properties to generate sufficient cash flow) could have a material adverse effect on the ability of the Trust to receive or distribute income.
Recourse Provisions:	The Loan will be generally non-recourse to the Trust, but recourse to the Trust upon certain Recourse Events (as defined herein) and principals of the Sponsor for certain bad acts and environmental indemnification, but in all cases, non-recourse to the Investors. See “Acquisition Terms and Financing.”
Reserves:	The Loan Documents required the Trust to make the following reserve payments in connection with the Properties, which were held by the Lender on the Loan Closing Date pursuant to the terms of the Loan Documents: (i) a required repair reserve was withheld from Loan proceeds by Lender and deposited on the Trust’s behalf in the amount of \$144,273.25 on the Loan Closing Date (the “ Required Repair Reserve ”); (ii) a capital expense replacement reserve was withheld from Loan proceeds by Lender and deposited on the Trust’s behalf in the amount of \$676,408.20 on the Loan Closing Date, as well as a monthly payment in the amount of \$1,196.14 for replacements and repairs to the Properties (collectively, the “ Capital Reserve ”), which monthly payment amount shall be added to the monthly Loan payment due to the Lender on each Loan payment date; (iii) (A) an upfront tenant improvement and leasing commission reserve (“ Rollover Reserve ”) was withheld from Loan proceeds by Lender and deposited on the Trust’s behalf on the Loan closing in the amount of \$500,000 and (B) if a Default (as defined in the Loan Agreement) or Event of Default (as defined in the Loan Agreement) has occurred and is continuing, the Trust shall deposit with the Lender a monthly rollover reserve in the amount of \$7,974.08 (the “ Rollover Reserve Monthly Deposit ”) on each Loan payment date; (iv) any sum or termination fee payable to the Trust in connection with any Tenant’s election to exercise any early termination option contained in its respective lease of space at any of the Properties or in connection with any other termination, amendment or modification of any Lease, reduction of rents, shortening of the term or surrender of space thereunder on the date of the Trust’s receipt thereof (the “ Lease Termination Payments ” and together with the Rollover Reserve

and the Rollover Reserve Monthly Deposit collectively, the “**Leasing Reserve**”); and (v) a tenant improvement, leasing commissions and free rent or free rent abatements reserve was withheld from Loan proceeds by Lender and deposited on the Trust’s behalf in the amount of \$311,553.28 on the Loan Closing Date (the “**Unfunded Obligations Reserve**”). The Required Repair Reserve, the Capital Reserve, the Leasing Reserve and the Unfunded Obligations Reserve shall be collectively referred to herein as the “**Reserve Accounts**.” If the following events occur, the Lender shall also require the Trust to set up the following escrow accounts; (i) funds in the amount of up to \$1,861,723.94 (the “**Starbucks Escrow Funds**”), which amounts are currently held in escrow by Chicago Title Insurance Company in connection with certain expenses and other unpaid amounts that are to become due and payable under the Lease (as defined in the Loan Agreement) with Starbucks Corporation (as defined in the Loan Agreement) at the Marlboro Crossing Shopping Center Property (as defined in the Loan Agreement) and the Trust agreed that in the event the Trust (or any of its Affiliates) receives all or any portion of the Starbucks Escrow Funds in excess of \$279,894.98, the Trust shall promptly remit all such amounts in excess of \$279,894.98 to Lender to be deposited into the Unfunded Obligations Reserve Account (as defined in the Loan Agreement) and disbursed in accordance with Section 9.9 of the Loan Agreement; and (ii) funds in the amount of up to \$34,455.33 (the “**Shop Tenant Escrow Funds**”), which are currently held in escrow by Chicago Title Insurance Company in connection with potential shortfalls in tenant reimbursements for TICAM (as defined in the Loan Agreement) at the Walnut Creek Shopping Center Property (as defined in the Loan Agreement) and the Trust agreed that in the event the Trust (or any of its Affiliates) receives any disbursements of Shop Tenant Escrow Funds, the Trust shall promptly deposit all such amounts (or shall cause all such amounts to be promptly deposited) into the Deposit Account in accordance with Section 10.2(a)(iii) of the Loan Agreement. In addition, the Loan Documents required the Trust to make a Trust controlled reserve payment for an operations and asset management reserve that was withheld from Loan proceeds by Lender in the amount of \$1,500,000 on the Loan Closing Date (the “**Trust Operations and Asset Management Reserve**”).

Cash Collateral Subaccount:

The Lender has the right under the Loan Documents upon the occurrence of: (a) an Event of Default (as defined in the Loan Documents); (b) the Debt Service Coverage Ratio for the Properties being less than 1.50 to 1.00 (a “**DSCR Trigger Event**”); or (c) a Qualified Transfer Trigger Event (as defined below) (each a “**Cash Sweep Event**”) to sweep all Excess Cash (as defined in the Loan Documents) on each payment date during the continuation of a Cash Sweep Period (as defined below) (“**Excess Cash Reserve Funds**”). Excess Cash Reserve Funds shall be held by the Lender as additional security for the Loan; provided, however, during the continuance of an Event of Default (as defined in the Loan Documents), Lender has the right, but not the obligation, in its sole discretion to apply Excess Cash Reserve Funds to repayment of the Loan in such order and in such manner as Lender shall elect.

“**Cash Sweep Period**” shall mean each period commencing on the occurrence of a Cash Sweep Event and continuing until the earlier of (a) the Payment Date next occurring following the related Cash Sweep Event Cure, or (b) until payment in full of all principal and interest on the Loan and all other amounts payable under the Loan Documents.

“Cash Sweep Event Cure” shall mean (a) if the Cash Sweep Event is caused solely by an Event of Default, the acceptance by Lender of a cure of such Event of Default (which cure Lender is not obligated to accept and may reject or accept in its sole and absolute discretion), (b) if the Cash Sweep Event is caused solely by the occurrence of a DSCR Trigger Event, the achievement of a Debt Service Coverage Ratio of 1.55 to 1.00 or greater for two (2) consecutive calendar quarters, or (c) if the Cash Sweep Event is caused solely by the occurrence of a Qualified Transfer Trigger Event, the occurrence of a Qualified Transfer Trigger Event Cure (as defined below); provided, however, that, such Cash Sweep Event Cure set forth in this definition shall be subject to the following conditions, (i) no Event of Default shall have occurred and be continuing under the Loan Agreement or any of the other Loan Documents and (ii) the Trust shall have paid all of Lender’s reasonable expenses incurred in connection with such Cash Sweep Event Cure, including reasonable attorney’s fees and expenses.

“Qualified Transfer Trigger Event” shall mean the date 12 months prior to the Maturity Date (i.e., at the end of month 108 of the Loan).

“Qualified Transfer Trigger Event Cure” shall mean the occurrence of a Qualified Transfer; provided, however, for purposes of this definition, the Approved Transferee (as defined below) (i) in addition to all other attributes set forth in the Approved Transferee definition herein, must have, and at all times maintain, a minimum net worth of at least \$200,000,000 and total assets of at least \$400,000,000, as reasonably determined by Lender, (ii) must, in lieu of executing the guaranty described in Section 7.8(a)(vi) of the Loan Agreement, and prior to any release of Guarantor (as defined in the Loan Agreement), execute and deliver to Lender a full recourse guaranty in a form reasonably acceptable to Lender guaranteeing payment of the entire amount of the Debt (as defined in the Loan Agreement), (iii) must at all times own no less than 100% of the legal and beneficial ownership interests in the Trust, (iv) shall not be a Delaware statutory trust and (v) shall cause the Trust to effectuate a Conversion (as defined in the Loan Agreement) pursuant to Section 7.7 of the Loan Agreement; provided, however, a Conversion of the Trust shall not be required if prior to any Transfer (A) the Trust is solely owned by a Person under the Control (as defined in the Loan Agreement) of David Fisher, Joshua Ungerecht and Warren Thomas, and (B) the Trust shall no longer be treated as an investment trust pursuant to Regulation Section 301.7701-4(c) of the Code.

“Approved Transferee” shall mean (i) an Eligible Institution (as defined in the Loan Agreement) which is, or which is wholly-owned and Controlled by, a bank, savings and loan association, investment bank, insurance company, trust company, real estate investment trust, commercial credit corporation, pension plan, pension fund or pension advisory firm, mutual fund, government entity or plan or institution similar to any of the foregoing, (ii) any Person that (a) meets the requirements of a Qualified Transferee (as defined in the Loan Agreement) and is not a Sanctioned Entity (as defined in the Loan Agreement), (b) is regularly engaged in the business of owning or operating commercial properties, or interests therein, which are similar to the Property, (c) owns interests in, or operates, at least five (5) properties with a minimum of 750,000 square feet and (d) has either (1) total assets of at least \$100,000,000.00, as reasonably determined by Lender or (2) an Investment Grade Rating, or (iii) an Approved REIT (as defined in the Loan Agreement).

An LLC Conversion

The LLC:	If there were to be an event triggering an LLC Conversion, the Trust would be converted into an LLC. See “The Trust and Summary of the Trust Agreement” and “Summary of the Limited Liability Company Agreement.”
Events Triggering an LLC Conversion:	The Trust must convert to the LLC upon the first to occur of the following (collectively, a “ LLC Conversion ”): (i) the Manager determines that there will be a default on the Loan (due to, among other things, the failure of the Master Lessee to pay rent when due under the Master Lease); (ii) the Manager determines that the Loan has been paid in full and the Properties have not been sold within a reasonable period of time; (iii) the Trust Expiration Date; (iv) upon an Event of Default (as defined in the Loan Documents); or (v) if the Lender determines, in good faith, that an Event of Default is imminent, Lender has the right, upon written notice to direct the Trustee to cause a conversion. In connection with the LLC Conversion, the Trust will distribute to the Owners ownership interests in the LLC in exchange for, the Owners’ Interests. This exchange would be on a proportionate basis to their ownership in the Trust, except that the Managing Member, would receive one membership unit of a different class with nominal value in exchange for nominal consideration. There is no assurance that adverse consequences will not occur before the Disposition of the Property Interest in the Property. If the Property is transferred (or the Trust is converted) to the LLC, the Owners will likely lose their ability to participate in a future Section 1031 Exchange. See “Risk Factors” and “Summary of the Limited Liability Company Agreement.”
Exchange of Interests:	In connection with a LLC Conversion of the Trust, the Manager will distribute all of the Class A Units in the LLC to the Owners in exchange for, their Interests in the Trust. This exchange would be on a proportionate basis to their ownership in the Trust, except that the Managing Member would receive one membership unit of a different class with nominal value in exchange for nominal consideration. The rights and obligations of the Owners with respect to each other and the former Trust Estate, including the Properties, will be governed by the LLC Agreement, attached hereto as Exhibit E. After the LLC Conversion is completed, the Owners will no longer own beneficial interests in the Trust but, instead, will own membership interests in the LLC evidenced by the Class A Units. See “Summary of the Limited Liability Company Agreement.”
Business and Purpose of the LLC, if there were to be an LLC Conversion:	If there were to be a LLC Conversion, then: (i) the business and purposes of the LLC would be to engage solely in activities related to owning, holding, selling, assigning, transferring, operating, leasing, mortgaging, pledging and otherwise dealing with the Properties; (ii) until the Loan is paid in full, certain additional restrictions would apply to the LLC; and (iii) as a general matter, the ability of the LLC to engage in activities with respect to the Properties would not be subject to the same restrictions and limitations imposed on the Trust, the Trustee, and the Manager by the Trust Agreement.

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SPONSOR BACKGROUND

ExchangeRight is a private real estate investment firm focused on the acquisition and investment management of single- and multi-tenant retail properties nationwide. Formed in 2012, ExchangeRight has successfully executed an investment strategy based on a disciplined acquisition approach. The principals directly oversee all investment functions, including acquisition due diligence, financing, asset management and dispositions. ExchangeRight and its affiliates have experienced growing national demand for their offerings, with over \$5.6 billion in assets under management and targeting the acquisition of \$800+ million in additional net-leased assets per year. ExchangeRight's assets currently include over 1,200 properties which total over 22 million square feet and are located in 47 different states. The principals of ExchangeRight are Joshua Ungerecht, David Fisher and Warren Thomas (the "**Key Principals**"). See "Organization and Management." ExchangeRight is the sole member of the Manager and the Master Lessee. Accordingly, the Manager and the Master Lessee are Affiliates owned by the same entity and, thus, any agreements between the parties are not the result of arm's-length negotiations. See "Conflicts of Interest." ExchangeRight's principal place of business is 1055 E. Colorado Blvd., Suite 310, Pasadena, CA 91106.

BUSINESS PLAN

The Trust's Goals

The Trust expects to provide the Owners a return on their investment in two primary ways: (i) in the form of monthly cash distributions to the Owners; and (ii) upon any Disposition of the Property Interests in the Properties. See "Risk Factors – Disposition of the Properties and the Termination of the Trust," "The Trust and Summary of the Trust Agreement" and "The Summary of the Limited Liability Company Agreement."

The Trust plans to begin making cash distributions to the Owners in the month after their respective subscription is accepted and continue these monthly distributions during the term of the Trust. The distributions will come from the Trust's cash from operations, which is to consist solely of the rent paid under the Master Lease.

The Trust currently estimates monthly distributions to be in an amount sufficient to provide the following base rent annualized cash flow returns on the Owners' investment:

- (i) 5.25% in year one;
- (ii) 5.30% in year two;
- (iii) 5.35% in year three;
- (iv) 5.40% in year four;
- (v) 5.45% in year five;
- (vi) 5.50% in year six;
- (vii) 5.55% in year seven;
- (viii) 5.60% in year eight;
- (ix) 5.65% in year nine; and
- (x) 5.70% in year 10.

In addition to the base rent presented above, the Master Lessee will pay Annual Bonus Rent to the Trust equal to twenty percent (20%) of the effective annual revenues of the Properties over a predetermined annual Master Lease Revenue Target, if any. The Master Lease Annual Bonus Rent calculations will be based on the Fiscal Year. The Master Lease Revenue Target will be \$1,963,888 for the first full year of the Master Lease's term and will increase to an amount of \$2,427,722 for year ten of the Master Lease's term. See "Summary of the Master Lease – Bonus Rent." The Annual Bonus Rent will be paid annually in arrears, if any, within approximately 75 days following the end of each Fiscal Year. The Trust will direct the Master Lessee to make, on the Trust's behalf, any and all payments of any kind required under the Loan Documents. The Master Lessee is required to promptly furnish the Trust with

any notice of default arising under the Loan and received by the Master Lessee. See “Summary of the Master Lease – Bonus Rent.”

However, there is no assurance that the Trust will be able to meet these distributions or make any cash distributions at all. The manner, amount and timing of any distributions to Owners are dependent on the rent received by the Trust. The Loan Agreement requires a Qualified Transfer of the Loan 12 months prior to the Loan Maturity Date or a cash flow sweep will commence. As the Trust’s objective is to maximize value to Owners through a portfolio aggregation and sale, transfer, or merger prior to the cash flow sweep to facilitate a tax-deferred exchange pursuant to Section 1031 of the Code, or exchange roll-up transaction pursuant to Section 721 of the Code, this provision is not expected to have an impact on the Trust as it is expected to be able to achieve the Qualified Transfer requirements (refer to the “Exit Strategy” section of this Memorandum). As a result, 10 years of cash flows are being presented to show the expected cash flows of the Properties to the Trust including following a Qualified Transfer. Prior to any Disposition of the Property Interests in the Properties by the Trust, the rent paid to the Trust by the Master Lessee is the Trust’s sole source of income and the sole source of funds available to make any monthly cash distributions to the Owners. See “The Master Lessee and Summary of the Master Lease.”

Opportunity for Code Section 1031 Exchange

We expect that many prospective Investors will seek an investment in the Interests for purposes of completing an exchange of property as contemplated in Code Section 1031, which provides for non-recognition of gain or loss only if property held for use in a trade or business or for investment is exchanged for other like-kind property held for use in a trade or business or for investment. There are numerous requirements contained in the applicable provisions of the Code and Treasury Regulations concerning qualification for gain non-recognition under Code Section 1031. **If you are considering an investment in the Interests for purposes of an exchange designed to comply with Code Section 1031, you should consult with your own tax advisor about this Offering’s tax aspects and your individual situation. No representation or warranty of any kind is made with respect to the treatment of the Interests by the IRS. See “Risk Factors.”**

The use of a Delaware statutory trust (like the Trust) to acquire and hold property for purposes of a Section 1031 Exchange is a relatively new development under United States tax laws. This ownership structure is based primarily on Rev. Rul. 2004-86, which addresses whether a Delaware statutory trust will be treated as an “entity” taxable as a partnership. There are no authorities that directly address the tax treatment of the Trust other than Rev. Rul. 2004-86. It is possible that the IRS could revoke Rev. Rul. 2004-86 or, in the alternative, determine that the Trust does not comply with the requirements of that ruling or the underlying authorities. A determination that the Trust is not taxable as a trust (within the meaning of Treasury Regulation Section 301.7701-4) could have a significant adverse impact on the Owners.

Exit Strategy

The Manager anticipates selling this portfolio of the Property Interests in the Properties as a part of an anticipated larger aggregation strategy prior to 12 months from the Loan Maturity Date. The Sponsor currently manages over \$5.6 billion of assets diversified across 1,200+ properties and 47 states with significant experience acquiring and managing net-leased and shopping center properties. ExchangeRight intends to take advantage of its fully scalable platform and deep industry relationships to continue to strategically acquire in-line and outparcel retail spaces of shopping centers that are shadow-anchored by national grocery and healthcare tenants with the goal of enhancing diversification, returns, and liquidity for investors through a future aggregation of similar properties into ExchangeRight’s REIT platform. ExchangeRight’s aggregation strategy is designed to structure a future potential acquisition of the Trust by its REIT platform to provide investors with the option to complete a tax-deferred exchange of their DST interests for ownership in an operating partnership of a REIT or fund under Section 721 of the Internal Revenue Code, complete another 1031 exchange, cash out, or a combination of any of these exit options. There is no guarantee that any of these objectives will be achieved. While there can be no guarantee that the Sponsor will meet its goal or that a liquidity or exit transaction will take place within the targeted time frame, the Sponsor intends to pursue such an exit or liquidity event if we believe that it will be in the best interest of investors and will provide them with enhanced liquidity and value. The past performance of the Sponsor and any past offerings is not indicative of future results. Liquidity and exit objectives, timing, and results are not guaranteed.

To assist with the future execution of the exit strategy, the Loan Documents will provide that at any time following the date, which is 12 months from the Loan Closing Date, Lender's consent shall not be required in connection with a one-time transfer of all (but not less than all) of the outstanding ownership interests in the Trust to an Approved Transferee, and the replacement of Guarantor (as defined in the Loan Agreement) as the person who controls the Trust with such Approved Transferee. In addition, the Loan may be prepaid without penalty six months prior to Loan maturity.

Property Management

The Master Lessee has entered into property management agreements with the Property Managers to handle all of the day-to-day management of the Properties. The Property Managers (including Affiliates of the Manager) will receive a fee of up to 4% of the gross rental income of the Properties.

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SUMMARY OF THE LEASES

Prospective Investors are strongly encouraged to review the leases in their entirety with their own independent legal counsel before submitting an offer to purchase an Interest. See “RISK FACTORS – Real Estate Risks.” This summary highlights significant, but select and limited, terms of the leases and is not exhaustive and is qualified in its entirety by reference to the full leases, which are available from the Sponsor upon request.

<u>Property</u>	<u>Number of Tenants</u>	<u>Gross Leasable Area</u>	<u>Year One NOI**</u>	<u>Leased (May-2023)</u>	<u>Weighted Average Lease Term (as of 5/31/23)</u>
Coopersburg (Fairmount), PA	2	4,020	\$85,906	100%	3.47 years
Upper Marlboro (Crain), MD	4	7,027	\$209,377	100%	7.05 years
Watertown (Church), WI	5	26,643	\$37,229	56.34%	2.22 years
Upper Deerfield (Pearl), NJ	8	15,861	\$88,543	100%	3.53 years
Vineland (Landis), NJ	4	5,064	\$114,022	100%	1.99 years
Moline (16th), IL	1	1,905	\$37,751	100%	5.92 years
Columbus (Hamilton), OH	14	29,169	\$587,235	100%	4.38 years
Elizabeth City (Weeksville), NC	5	6,225	\$71,876	100%	3.79 years
Total Square Feet		95,914 sf			
Total Leased		84,281 sf	87.87%		
Total Vacant		11,633 sf	12.13%		

*This Offering is dated June 5, 2023. Year one net operating income is annualized to reflect a full year of pro forma operations from each Property for the master lease year ending May 31, 2024.

DESCRIPTION OF THE PROPERTIES

Coopersburg Common Shopping Center - Coopersburg (Fairmount), Pennsylvania Property

- Property:** An approximately 4,020 square foot In-Line Space Property located at 216 E Fairmount Street, Coopersburg, PA 18036-1634. The Property represents 4.39% of the shopping center's gross leasable area ("**GLA**"). The building was constructed in 1973.
- The Coopersburg Common Shopping Center is a neighborhood center anchored by GIANT Company. GIANT Company, which is not owned by the Trust nor a part of this Offering, has a lease expiration of February 5, 2028.
- Leases:** 100% leased with two tenants with weighted average lease terms of 3.47 years as of May 31, 2023. The Trust's leasehold interest includes Subway and Ecco Domani as tenants.
- Acquisition:** On December 7, 2022, a 99-year leasehold interest in the Property was acquired through a Property Interest by the Trust for \$767,652 from an Affiliate of the Sponsor, which purchase price reflects the same price that was paid to acquire the Property by the Affiliate of the Sponsor from an unaffiliated third party.
- Appraisal:** On April 24, 2023, an appraisal was prepared by Newmark Knight Frank Valuation & Advisory, LLC ("**Newmark**") for the Lender, which appraisal indicated that the Property had an estimated market value "As Is" of \$1,270,000. The appraisal was prepared solely for the Lender and its Affiliates and may not be relied upon by the Trust or the Owners and, thus, Owners must rely solely on the other information provided in this Memorandum and their own due diligence in determining a valuation of the Properties.
- Environmental:** On September 21, 2022, a Phase I was prepared by Partner Engineering and Science, Inc. ("**Partner**") for ExchangeRight, which Phase I may be relied upon by the Trust and the Owners. The Phase I indicated that there were no hazardous or toxic substances identified, present or being improperly generated, used, stored or disposed of at the Property. The Phase I included materials defined under the Resource Conservation and Recovery Act ("**RCRA**"). The Phase I concluded that at the time of the Phase I, there were no recognized environmental conditions identified in connection with the Property. Partner had no recommendations for further investigations, except to implement an Operations and Maintenance ("**O&M**") program in order to safely manage the suspect asbestos containing materials and lead based paint located at the Property. See "RISK FACTORS – Environmental Liability."
- Zoning:** CG General Commercial District.

[DESCRIPTION OF THE PROPERTIES CONTINUED ON THE NEXT PAGE]

Marlboro Crossroads - Upper Marlboro (Crain), Maryland Property

- Property:** An approximately 7,027 square foot In-Line Space Property located at 5720-5728 Crain Highway, Upper Marlboro, MD 20772. The Property represents 10.34% of the shopping center's GLA. The building was constructed in 1993.
- The Marlboro Crossroads shopping center is a neighborhood center anchored by Giant Food. Giant Food, which is not owned by the Trust nor a part of this Offering, has a lease expiration of June 30, 2028.
- Leases:** 100% leased with four tenants with weighted average lease terms of 7.05 years as of May 31, 2023. The Trust's leasehold interest includes Starbucks, Jackson Hewitt, Krab King, and New Digz Consignment as tenants.
- Acquisition:** On January 18, 2023, a 99-year leasehold interest in the Property was acquired through a Property Interest by the Trust for \$2,622,450 from an Affiliate of the Sponsor, which purchase price reflects the same price that was paid to acquire the Property by the Affiliate of the Sponsor from an unaffiliated third party.
- Appraisal:** On April 24, 2023, an appraisal was prepared by Newmark for the Lender, which appraisal indicated that the Property had an estimated market value "As Is" of \$3,540,000. The appraisal was prepared solely for the Lender and its Affiliates and may not be relied upon by the Trust or the Owners and, thus, Owners must rely solely on the other information provided in this Memorandum and their own due diligence in determining a valuation of the Properties.
- Environmental:** On November 30, 2022, a Phase I was prepared by Partner for ExchangeRight, which Phase I may be relied upon by the Trust and the Owners. The Phase I indicated that there were no hazardous or toxic substances identified, present or being improperly generated, used, stored or disposed of at the Property. The Phase I included materials defined under the RCRA. The Phase I concluded that at the time of the Phase I, there were no recognized environmental conditions identified in connection with the Property. Partner had no recommendations for further investigations. See "RISK FACTORS – Environmental Liability."
- Zoning:** CGO Commercial, General and Office.

[DESCRIPTION OF THE PROPERTIES CONTINUED ON THE NEXT PAGE]

Pick ‘n Save Center - Watertown (Church), Wisconsin Property

- Property:** An approximately 26,643 square foot In-Line Space Property located at 604-648 S Church St, Watertown, WI 53094-6229. The Property represents 30.51% of the shopping center’s GLA. The building was constructed in 1979 and renovated in 2009.
- The Pick ‘n Save Center shopping center is a neighborhood center anchored by Pick ‘n Save. Pick ‘n Save, which is not owned by the Trust nor a part of this Offering, has a lease expiration of December 31, 2030.
- Leases:** 56.34% leased with five tenants with weighted average lease terms of 2.22 years as of May 31, 2023. The Trust’s leasehold interest includes Pidder Padder Paws, The Gym, Oasis Salon & Spa, Papa Murphy’s, & C.C. of Southern Wisconsin as tenants.
- Acquisition:** On February 15, 2023, a 99-year leasehold interest in the Property was acquired by the Trust for \$609,000 from an Affiliate of the Sponsor, which purchase price reflects the same price that was paid to acquire the Property by the Affiliate of the Sponsor from an unaffiliated third party.
- Appraisal:** On April 24, 2023, an appraisal was prepared by Newmark for the Lender, which appraisal indicated that the Property had an estimated market value “As Is” of \$2,400,000. The appraisal was prepared solely for the Lender and its Affiliates and may not be relied upon by the Trust or the Owners and, thus, Owners must rely solely on the other information provided in this Memorandum and their own due diligence in determining a valuation of the Properties.
- Environmental:** On December 29, 2022, a Phase I was prepared by Partner for ExchangeRight, which Phase I may be relied upon by the Trust and the Owners. The Phase I indicated that there were no hazardous or toxic substances identified, present or being improperly generated, used, stored or disposed of at the Property. The Phase I included materials defined under the RCRA. The Phase I concluded that at the time of the Phase I, there were no recognized environmental conditions identified in connection with the Property. Partner had no recommendations for further investigations, except to implement an O&M program in order to safely manage the suspect asbestos containing materials and lead based paint located at the Property. See “RISK FACTORS – Environmental Liability.”
- Zoning:** GB General Business.

[DESCRIPTION OF THE PROPERTIES CONTINUED ON THE NEXT PAGE]

Upper Deerfield Shopping Center - Upper Deerfield (Pearl), New Jersey Property

- Property:** An approximately 15,861 square foot In-Line Space Property located at 1000-1020 N Pearl St, Upper Deerfield Township, NJ 08302. The Property represents 19.50% of the shopping center's GLA. The building was constructed in 1999.
- The Upper Deerfield Shopping Center is a neighborhood center anchored by ShopRite. ShopRite, which is not owned by the Trust nor a part of this Offering, has a lease expiration of May 31, 2038.
- Leases:** 100% leased with eight tenants with weighted average lease terms of 3.53 years as of May 31, 2023. The Trust's leasehold interest includes Best Food in Town, Joe's Pizza, H&R Block, Spinelli Jewelers, Hair Salon, House of Pain, Top Nails, and 77 Cleaners as tenants.
- Acquisition:** On December 7, 2022, a 99-year leasehold interest in the Property was acquired through a Property Interest by the Trust for \$1,246,879 from an Affiliate of the Sponsor, which purchase price reflects the same price that was paid to acquire the Property by the Affiliate of the Sponsor from an unaffiliated third party.
- Appraisal:** On April 21, 2023, an appraisal was prepared by Newmark for the Lender, which appraisal indicated that the Property had an estimated market value "As Is" of \$2,500,000. The appraisal was prepared solely for the Lender and its Affiliates and may not be relied upon by the Trust or the Owners and, thus, Owners must rely solely on the other information provided in this Memorandum and their own due diligence in determining a valuation of the Properties.
- Environmental:** On September 12, 2022, a Phase I was prepared by Partner for ExchangeRight, which Phase I may be relied upon by the Trust and the Owners. The Phase I indicated that there were no hazardous or toxic substances identified, present or being improperly generated, used, stored or disposed of at the Property. The Phase I included materials defined under the RCRA. The Phase I concluded that at the time of the Phase I, there were no recognized environmental conditions identified in connection with the Property. Partner had no recommendations for further investigations. See "RISK FACTORS – Environmental Liability."
- Zoning:** B-3 Business District 3.

[DESCRIPTION OF THE PROPERTIES CONTINUED ON THE NEXT PAGE]

Vineland Shopping Center - Vineland (Landis), New Jersey Property

- Property:** An approximately 5,064 square foot In-Line Space Property located at 1255 W Landis Ave, Vineland, NJ 08360. The Property represents 5.37% of the shopping center's GLA. The building was constructed in 2013.
- The Vineland Shopping Center is a neighborhood center anchored by ShopRite. ShopRite, which is not owned by the Trust nor a part of this Offering, has a lease expiration of June 30, 2033.
- Leases:** 100% leased with four tenants with weighted average lease terms of 1.99 years as of May 31, 2023. The Trust's leasehold interest includes Great Clips, Rite Care, Staffing Alternatives, and Nail Salon as tenants.
- Acquisition:** On December 7, 2022, a 99-year leasehold interest in the Property was acquired through a Property Interest by the Trust for \$1,237,000 from an Affiliate of the Sponsor, which purchase price reflects the same price that was paid to acquire the Property by the Affiliate of the Sponsor from an unaffiliated third party.
- Appraisal:** On April 21, 2023, an appraisal was prepared by Newmark for the Lender, which appraisal indicated that the Property had an estimated market value "As Is" of \$2,200,000. The appraisal was prepared solely for the Lender and its Affiliates and may not be relied upon by the Trust or the Owners and, thus, Owners must rely solely on the other information provided in this Memorandum and their own due diligence in determining a valuation of the Properties.
- Environmental:** On October 20, 2022, a Phase I was prepared by Partner for ExchangeRight, which Phase I may be relied upon by the Trust and the Owners. The Phase I indicated that there were no hazardous or toxic substances identified, present or being improperly generated, used, stored or disposed of at the Property. The Phase I included materials defined under the RCRA. The Phase I concluded that at the time of the Phase I, there were no recognized environmental conditions identified in connection with the Property; however, the Property was identified as a Classification Exception Area ("CEA"), Brownfields, State Hazardous Waste Site ("SHWS"), and Voluntary Cleanup Program ("VCP") site on the regulatory database due to its former use as a vehicle salvage yard and controlled recognized environmental conditions and historical recognized environmental conditions were identified. Partner recommended the following: (i) according to records reviewed, the Property parent parcel is overdue for a Biennial Certification in association with PI Number: 258144 and a Licensed Site Remediation Professional should be retained by the Property owner to complete the required Biennial Certification (and associated groundwater sampling) and (ii) continual compliance with the Property's CEA/Well Restriction Area restrictions and Biennial Certification requirements noted in the Conditional No Further Action letter, dated April 30, 2012, as a result of former site operations on the Property. See "RISK FACTORS – Environmental Liability."
- Zoning:** B4 Business zone.

[DESCRIPTION OF THE PROPERTIES CONTINUED ON THE NEXT PAGE]

UnityPoint Center - Moline (16th), Illinois Property

- Property:** An approximately 1,905 square foot In-Line Space Property located at 3918 16th St, Moline, IL 61265. The Property represents 4.50% of the shopping center's GLA. The building was constructed in 1966 and renovated in 2018.
- The property is anchored by a healthcare tenant, UnityPoint Health. UnityPoint Health, which is not owned by the Trust nor a part of this Offering, has a lease expiration of October 31, 2032.
- Leases:** 100% leased with one tenant with a weighted average lease term of 5.92 years as of May 31, 2023. The Trust's leasehold interest includes Jersey Mike's as the tenant.
- Acquisition:** On January 20, 2023, a 99-year leasehold interest in the Property was acquired through a Property Interest by the Trust for \$407,790 from an Affiliate of the Sponsor, which purchase price reflects the same price that was paid to acquire the Property by the Affiliate of the Sponsor from an unaffiliated third party.
- Appraisal:** On April 24, 2023, an appraisal was prepared by Newmark for the Lender, which appraisal indicated that the Property had an estimated market value "As Is" of \$710,000. The appraisal was prepared solely for the Lender and its Affiliates and may not be relied upon by the Trust or the Owners and, thus, Owners must rely solely on the other information provided in this Memorandum and their own due diligence in determining a valuation of the Properties.
- Environmental:** On December 28, 2022, a Phase I was prepared by Partner for ExchangeRight, which Phase I may be relied upon by the Trust and the Owners. The Phase I indicated that there were no hazardous or toxic substances identified, present or being improperly generated, used, stored or disposed of at the Moline Shopping Center. The Phase I included materials defined under the RCRA. The Phase I concluded that at the time of the Phase I, there were no recognized environmental conditions identified in connection with the Property; however, historical environmental conditions were identified and Partner recommended (i) continual implementation of the property use restrictions currently in-place under the NFR letter as a result of the former auto dealership operations at the Property; (ii) in the event of any future construction and/or excavation activities, the Safety Plan prepared by Terracon, dated March 13, 2018, should be implemented in order to properly manage known environmental conditions; and (iii) implementation of an O&M program in order to safely manage the suspect asbestos containing materials and lead based paint at the Property. See "RISK FACTORS - Environmental Liability."
- Zoning:** B4 Highway/Intensive business district.

[DESCRIPTION OF THE PROPERTIES CONTINUED ON THE NEXT PAGE]

Walnut Creek Plaza - Columbus (Hamilton), Ohio Property

- Property:** An approximately 29,169 square foot In-Line Space Property located at 3773-3841 South Hamilton Road, Columbus, OH 43125. The Property represents 25.19% of the shopping center's GLA. The building was constructed in 2008.
- The Walnut Creek Plaza is a neighborhood center anchored by Giant Eagle. Giant Eagle, which is not owned by the Trust nor a part of this Offering, has a lease expiration of July 31, 2028.
- Leases:** 100% leased with 14 tenants with weighted average lease terms of 4.38 years. The Trust's leasehold interest includes Sherwin Williams, Bank of America, Great Clips, Get Go, Donerick's Pub, Mr. Hibachi, Hot Head, Sunny's Nails, Hometown Urgent Care, Walnut Creek Dental East, Republic Finance, Urgent Care Specialists, Workforce Enterprises, and City Chinese as tenants.
- Acquisition:** On January 20, 2023, a fee and 99-year leasehold interest in the Property was acquired through a Property Interest by the Trust for \$6,442,000 from an Affiliate of the Sponsor, which purchase price reflects the same price that was paid to acquire the Property by the Affiliate of the Sponsor from an unaffiliated third party.
- Appraisal:** On April 24, 2023, an appraisal was prepared by Newmark for the Lender, which appraisal indicated that the Property had an estimated market value "As Is" of \$9,250,000. The appraisal was prepared solely for the Lender and its Affiliates and may not be relied upon by the Trust or the Owners and, thus, Owners must rely solely on the other information provided in this Memorandum and their own due diligence in determining a valuation of the Properties.
- Environmental:** On September 1, 2022, a Phase I was prepared by Partner for ExchangeRight, which Phase I may be relied upon by the Trust and the Owners. The Phase I indicated that there were no hazardous or toxic substances identified, present or being improperly generated, used, stored or disposed of at the Property. The Phase I included materials defined under the RCRA. The Phase I concluded that at the time of the Phase I, there were no recognized environmental conditions identified in connection with the Property. Partner had no recommendations for further investigations. See "RISK FACTORS – Environmental Liability."
- Zoning:** Z07-103; L-C-4 Limited Commercial District & CPD Commercial Planned Development.

[DESCRIPTION OF THE PROPERTIES CONTINUED ON THE NEXT PAGE]

Weeksville Crossing - Elizabeth City (Weeksville), North Carolina Property

- Property:** An approximately 6,225 square foot In-Line Space Property located at 1805 Weeksville Rd, Elizabeth City, NC 27909. The Property represents 15.13% of the shopping center's GLA. The building was constructed in 2007.
- The Weeksville Crossing shopping center is a neighborhood center anchored by Food Lion. Food Lion, which is not owned by the Trust nor a part of this Offering, has a lease expiration of October 2, 2027.
- Leases:** 100% leased with five tenants with weighted average lease terms of 3.79 years as of May 31, 2023. The Trust's leasehold interest includes China Garden, Nail Salon, Julius Star, No Loose Ends, and SECU as tenants.
- Acquisition:** On February 28, 2023, a 99-year leasehold interest in the Property was acquired through a Property Interest by the Trust for \$767,000 from an Affiliate of the Sponsor, which purchase price reflects the same price that was paid to acquire the Property by the Affiliate of the Sponsor from an unaffiliated third party.
- Appraisal:** On April 24, 2023, an appraisal was prepared by Newmark for the Lender, which appraisal indicated that the Property had an estimated market value "As Is" of \$1,200,000. The appraisal was prepared solely for the Lender and its Affiliates and may not be relied upon by the Trust or the Owners and, thus, Owners must rely solely on the other information provided in this Memorandum and their own due diligence in determining a valuation of the Properties.
- Environmental:** On September 29, 2022, a Phase I was prepared by Partner for ExchangeRight, which Phase I may be relied upon by the Trust and the Owners. The Phase I indicated that there were no hazardous or toxic substances identified, present or being improperly generated, used, stored or disposed of at the Weeksville Crossing Shopping Center. The Phase I included materials defined under the RCRA. The Phase I concluded that at the time of the Phase I, there were recognized environmental conditions identified in connection with the Property due to its historical use of industrial manufacturing. Partner recommended a limited subsurface investigation should be conducted in order to determine the presence or absence of soil, soil vapor, and/or groundwater contamination due to the historical use of the Property. Partner conducted a Phase II analysis on January 12, 2023. Based on the Phase II investigation, Partner concluded that the previously detected concentration in groundwater was likely due to the turbidity of previous groundwater samples and not indicative of a release at the Property. As such, Partner had no recommendations for further investigations. See "RISK FACTORS – Environmental Liability."
- Zoning:** I-1 Industrial.

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ESTIMATED USE OF PROCEEDS

The following table sets forth the estimated sources and uses of the Offering Proceeds. The table reflects the present intentions of the Sponsor and an unforeseen change of circumstances may require the Sponsor to modify the information set forth below. The Sponsor and its Affiliates will receive substantial compensation and fees in connection with the Offering and the Properties, as described in this Memorandum. The amounts listed below are estimates by the Sponsor. See “COMPENSATION OF THE SPONSOR, THE MANAGER AND AFFILIATES.”

<u>Source of Funds</u>	<u>Amount</u>	<u>% of Total Sources</u>	
Total Owner Equity	\$11,400,000	60.86%	
Senior Loan	\$7,332,000	39.14%	
Total Sources	\$18,732,000	100.00%	

<u>Use of Funds</u>	<u>Amount</u>	<u>% of Maximum Offering Amount</u>	<u>% of Total Sources</u>
<u>Costs of Acquisition</u>			
Total Acquisition Cost ⁽¹⁾	\$14,421,579		76.99%
Acquisition Fee ⁽²⁾	\$130,826	1.15%	0.70%
Reallowance of Acquisition Fee ⁽³⁾	\$114,000	1.00%	0.61%
Reserves for Taxes, Insurance, Operations, and Asset Management ⁽⁴⁾	\$2,400,943	21.06%	12.82%
Capital Reserves including Tenant Improvement and Leasing Commissions ⁽⁵⁾	\$787,252	6.91%	4.20%
Total Acquisition Related Costs	\$17,854,600		95.32%
<u>Selling Commissions and Expenses</u>			
Selling Commissions and Broker-Dealer's Marketing and Due Diligence Allowance ⁽⁶⁾	\$712,500	6.25%	3.80%
Syndication Costs ⁽⁷⁾	\$85,000	0.75%	0.45%
Third Party Due Diligence Reports ⁽⁸⁾	\$40,000	0.35%	0.21%
Organizational & Offering Costs ⁽⁹⁾	\$22,800	0.20%	0.12%
Marketing, Distribution, and Sponsorship ⁽¹⁰⁾	\$17,100	0.15%	0.09%
Total Selling Commissions and Expenses	\$877,400		4.68%
Total Uses	\$18,732,000		100.00%

Notes:

- (1) In purchasing the Properties and creating this Offering, the Sponsor utilized its own equity and equity raised from third parties through entities affiliated with the Sponsor. As proceeds are raised through the sale of Interests, all of this equity will be repaid to the Sponsor and the entities affiliated with the Sponsor. Repayment of this amount shall be made from distributions and redemption proceeds associated with the Class 2 Interests. Repayment is not an obligation of the Trust or secured by the Properties.

The acquisition of the Property Interests in the Properties resulted in \$860,656 of non-accountable acquisition related costs. The Trust received \$538,848 of seller credits at closing which reduced the acquisition related costs to a net of \$321,808. The acquisition related costs are made up of the following fees and expenses:

- \$120,000 of closing costs associated with the acquisition of the Property Interests in the Properties and previously paid by the Sponsor, which include escrow fees, title fees, attorneys' fees, prorations,

and document preparation fees. The Sponsor will be responsible for any such fees in excess of these sums and will be entitled to retain any unused funds on a nonaccountable basis.

- \$164,662 in financing costs payable to third parties and Affiliates of the Sponsor in connection with various equity and debt financing agreements associated with acquiring the Properties. The Sponsor will be responsible for any such fees in excess of these sums and will be entitled to retain any unused funds on a nonaccountable basis.
- \$160,000 in Appraisal, Phase 1 and Due Diligence expenses paid to third parties.
- \$64,994 in Loan Fees and financing costs payable as follows: (i) \$32,994 of this fee is payable to Bellwether Enterprise, an unaffiliated third party, as a loan broker fee (ii) \$32,000 will be used to reimburse the Sponsor on a nonaccountable basis for finance and acquisition fees associated with the line of credit issued to the Sponsor by Ameris Bank.
- \$100,000 in Lender legal fees.
- \$50,000 in Lender consultant fees.
- \$56,000 in local counsel legal opinion fees required by the Lender to close the Loan.
- \$120,000 to reimburse the Sponsor on a nonaccountable basis for legal fees for real estate matters (leases, contracts, title/survey, due diligence, etc.), including the legal fees for local counsel required for closings with respect to the acquisition of the Property Interests in the Properties. The Sponsor will be responsible for any such fees in excess of these sums and will be entitled to retain any unused funds on a nonaccountable basis.
- \$25,000 in fees associated with the establishment of single purpose entities for the acquisition of the Property Interests in the Properties and to satisfy the requirements of the Lender. The Sponsor will be responsible for any such fees in excess of these sums and will be entitled to retain any unused funds on a nonaccountable basis.

- (2) These funds will be used by the Trust to redeem 100% of the Sponsor's Class 2 interests on a proportionate basis. One Class 2 beneficial ownership interest will be redeemed in part for \$1,308.26 for each Class 1 beneficial ownership interest sold.
- (3) Up to a maximum of \$114,000 (1%) of the gross proceeds of the Offering of Interests may be paid to ExchangeRight Securities, LLC, a FINRA member Broker-Dealer ("**ERS**"), an Affiliate of the Trust and Sponsor to oversee the wholesaling activities of ExchangeRight's Senior Vice Presidents of Sales and National Account Director to the extent that these activities involve direct interaction with retail investors; provided, however, any such fees that are not paid to ERS will be retained by the Sponsor on a nonaccountable basis. Such funds may be reallocated pro-rata based on the redemption of the Class 2 beneficial ownership interests. Up to \$1,140 may be reallocated for each Class 1 beneficial ownership interest sold.
- (4) This amount will be retained by the Trust on an accountable basis as a reserve to be used for future repairs and replacements at the Properties and tenant improvements and leasing commissions and operational and asset management costs incurred in the course of managing the Properties and the portfolio, including unreimbursed tax and insurance payments, and bank, accounting, tax, and filing fees incurred by Master Lessee on behalf of the Trust. A majority of these reserves were withheld from Loan proceeds by Lender and deposited on the Trust's behalf on the Loan closing.
- (5) These \$787,252 of reserves were withheld from Loan proceeds by Lender and deposited on the Trust's behalf on the Loan closing for capital reserves including tenant improvement or leasing commissions or operational costs incurred during the loan term and will be retained by the Trust on an accountable basis.
- (6) Offers and sales of Interests will be made on a "best efforts" basis by broker-dealers ("**Broker-Dealers**") who are members of Financial Industry Regulatory Authority ("**FINRA**"). The following fees will be paid from the proceeds of the Offering (the "**Offering Proceeds**") in connection with the marketing and syndication of the Interests: (i) Selling Commissions of up to \$570,000 (5%) of the Offering Proceeds ("**Selling Commissions**") to the Broker-Dealers; (ii) a nonaccountable marketing and due diligence allowance of up to \$114,000 (1%) of the Offering Proceeds to the Broker-Dealers; and (iii) \$28,500 (0.25%)

of the Offering Proceeds to ERS, which may be reallocated to the Broker-Dealers at the discretion of ERS (collectively, the “**Selling Commissions and Expenses**”). The aggregate amount of the Selling Commissions and Expenses will not exceed 6.25% of the Maximum Offering Amount; provided, however, the Sponsor may pay higher marketing and due diligence allowances for certain Broker-Dealers, which Broker-Dealers would accept reduced Selling Commissions on a pro rata basis. The Sponsor will be responsible for any Selling Commissions and Expenses in excess of these sums and will be entitled to retain any unused funds on a nonaccountable basis. The Sponsor may pay reduced Selling Commissions and Expenses or waive such sums with respect to Interests purchased by Affiliates and other persons. See “Plan of Distribution.” In the event an Investor independently uses the services of a registered investment advisor (“**RIA**”) and not a Broker-Dealer in connection with the purchase of Interests, no Selling Commissions will be payable with respect to its purchase of such Interests, which will have the effect of increasing the amount of Interests purchased by such Investor (but not including any amounts due to the Broker-Dealer of record and up to 0.25% that is reallocated to ERS). The payment of any fees or similar compensation to such RIA will be the sole responsibility of such Investor, and the Trust will have no liability for any such compensation. The proceeds to the Trust per Interest will not be affected by this waiver of Selling Commissions.

- (7) This \$85,000 will be made up of the following (the Sponsor will be responsible for any such fees in excess of these sums and will be entitled to retain any unused funds on a nonaccountable basis fees and expenses):
 - \$20,000 is a nonaccountable fee paid to the Sponsor or third parties to pay for syndication costs of the Offering, including costs for preparation and printing of the Offering materials and documents, “Blue Sky” costs, sales and marketing expenses and various other costs associated with the Offering. The Sponsor will be responsible for any such fees in excess of these sums and will be entitled to retain any unused funds on a nonaccountable basis.
 - \$15,000 in miscellaneous document/loan closing legal expenses.
 - \$20,000 for preparation of the PPM and Offering document paid to third parties.
 - \$30,000 for preparation of the Tax Opinion paid to third parties.
- (8) The Sponsor will be reimbursed on a nonaccountable basis for expenses incurred in connection with the Offering for third party due diligence costs. These costs include fees for review of the Offering to due diligence firms. In addition, these fees include site visit, inspection, and other review and diligence costs incurred as part of the acquisition of the Property Interests in the Properties. As part of this diligence, Sponsor has incurred costs including, but not limited to, sales reports, subscriptions for market research data, and demographic reports.
- (9) The Sponsor will be reimbursed on a nonaccountable basis for expenses incurred in connection with the Offering and the organization of the Trust, including, but not limited to, single purpose entity formation, legal and accounting fees, marketing expenses, and other costs and expenses directly related to the Offering and organization of the Trust, all of which are being initially paid by the Sponsor. The Sponsor anticipates that the expenses incurred in connection with the Offering and the organization of the Trust will not be greater than \$22,800 (0.20% of the Maximum Offering Amount). The Sponsor will be responsible for any such fees in excess of these sums and will be entitled to retain any unused funds on a nonaccountable basis.
- (10) This \$17,100 will be paid to the Sponsor to reimburse the Sponsor for accounting fees, due diligence expenses, marketing, distribution, and sponsorship costs with respect to the Offering. The Sponsor will be responsible for any such fees in excess of these sums and will be entitled to retain any unused funds on a nonaccountable basis.

RISK FACTORS

An investment in the Interests is highly speculative and involves a high degree of risk. Interests should not be purchased by any person who cannot afford the loss of its entire investment. You should carefully consider the risks described below, especially tax risks, as well as the other information in this Memorandum, when evaluating whether to make an investment in the Interests. The risks described below are not the only risks associated with an investment in the Interests. You should also consult with your own legal, tax and financial advisors about an investment in the Interests. If any of the following risks actually occur, the Trust's business, financial condition and results of operation could be materially and adversely affected and you could lose all or part of your investment.

You and your advisors are invited to ask questions and to request information about the terms and conditions of this Offering for the purpose of evaluating the merits and risks of an investment in the Interests. The Trust will provide such information to the extent it possesses the information or can acquire it without unreasonable effort or expense. See "Access to Information."

Legal Counsel to ExchangeRight, the Trust and Their Affiliates Does Not Represent the Owners. Each Owner must acknowledge and agree in the Purchase Agreement that legal counsel, including Venable LLP as Tax Counsel and Belice, Inc. ("**Counsel**"), represents ExchangeRight, the Trust, the Manager, the Master Lessee and their Affiliates and does not represent, and shall not be deemed under the applicable codes of professional responsibility, to have represented or to be representing, any or all of the Owners.

Real Estate Risks

The Trust Owns Legal Title on Only a Small Parcel on One of the Properties. For eight of the eight Properties, the Trust only acquired a 99-year ground lease interests in the Properties and the Trust does not own legal title to those eight Properties (except for a small gas station parcel on the Columbus (Hamilton), Ohio Property) and the Owners will only hold beneficial ownership interests in the Trust. The sole right of the Trust will be to operate those eight Properties as provided under their respective ground leases that established their respective Property Interests.

The COVID-19 pandemic may impact long term economic and geopolitical conditions in a manner that adversely affects the Trust's operations, results and value. In December 2019, a novel strain of coronavirus (known as COVID-19) surfaced in Wuhan, China, which has resulted in the temporary closure of many corporate offices, retail stores, and manufacturing facilities globally. These closures have caused the disruption of manufacturing supply chains and local and global economies, the duration of which remains uncertain. As of the date of this Memorandum, COVID-19 is prevalent across the world, which may result in additional market disruptions. The extent to which COVID-19 may negatively affect our operations or operations at the Properties is difficult to predict. Any potential impact on such operations and performance will depend to a large extent on future developments and new information that may emerge regarding the duration and severity of COVID-19 and the actions taken by authorities and other entities to contain COVID-19 or treat its impact. These potential impacts, while uncertain, could adversely affect our performance. In the event of further COVID-19 disruptions, a new pandemic or outbreak, there can be no assurance that the Properties will be able to maintain normal business operations for an extended period of time or will not lose the services of key personnel on a temporary or long-term basis due to illness or other reasons. These conditions could result in our inability to achieve our investment objectives, adversely affect the value of the Properties, negatively impacting our performance, and cause losses on your investment in Interests.

General Risks of Investment in Real Estate. The economic success of an investment in the Trust will depend upon the results of operations of the Properties and compliance by the Tenants and Master Lessee with the terms of their leases, which will be subject to risks typically associated with investments in real estate. Fluctuations in vacancy, operating expenses and tax rates can adversely affect operating results or render the Disposition of the Property Interests in the Properties difficult or unattractive and cause an inability to achieve a reasonable return. No assurance can be given as to the future occupancy of the Properties or the accuracy of the Trust's assumption of the

future costs of operating the Properties since such matters will depend on events and factors beyond the Trust's control. These factors include, among others:

- changes in national, regional or local economic conditions, which could negatively impact a Tenant's ability to pay rent in a timely fashion or at all;
- changes in local market conditions or characteristics, including new construction of In-Line Space retail buildings that compete with the Properties;
- changes in interest rates and in the availability, costs and terms of borrowings, which may make the Disposition or refinancing of the Property Interests in the Properties difficult;
- changes in federal, state or local regulations and controls affecting rents, prices of goods, fuel and energy consumption, environmental restrictions, real estate taxes, zoning and other factors affecting real property;
- continued validity and enforceability of the Tenant leases;
- the financial condition of the Tenants;
- the ongoing need for capital improvements;
- changes in operating costs such as utilities; and
- acts of nature, such as earthquakes, tornadoes and floods.

The occurrence of any one or more of these events could materially affect the Properties and the Tenants' revenues. Any reduced income could lead to the Tenants' failure to pay rent to the Master Lessee. The assets of the Master Lessee are limited and if the Tenants fail to pay rent when due with respect to the Properties it is possible (even likely) that the Master Lessee will default on its obligations to the Trust under the Master Lease. Any failure by the Master Lessee to pay rent to the Trust or to pay the various expenses for the Properties could result in the Trust defaulting under its obligations with respect to the Loan.

Environmental Liability. Federal, state and local laws may impose liability on a property owner for releases or the otherwise improper presence on the premises of hazardous substances without regard to fault or knowledge of the presence of such substances. A property owner may be held liable for environmental releases of such substances that occurred before it acquired its Property Interests in the Properties and that are not discovered until after it sells the property. If any hazardous substances are found at any time on the Properties, the Owners may be held jointly and severally liable for all cleanup costs, fines, penalties and other costs regardless of whether they owned their Interests when the releases occurred or the hazardous substances were discovered. Under one such law, the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), a purchaser of property may qualify for certain defenses to and exemptions from liability under CERCLA by obtaining a new or updated Phase I Environmental Site Assessment that qualifies as an "All Appropriate Inquiry" under CERCLA within 180 days before acquiring the property. Partner has previously issued Phase I Environmental Site Assessments on the Properties in accordance with ASTM E1527-13 (individually a "**Phase I**" or collectively, the "**Phase I Assessments**") on behalf of ExchangeRight, copies of which are available from the Manager upon request. See "Description of the Properties" below for a summary of each of the Phase I Assessments. A Phase I does not involve any invasive testing and was limited to a physical walk through or inspection of the Properties and a review of the related governmental records. Consequently, there are no assurances that any additional environmental problems with the Properties would be exposed by new Phase I Assessments.

Uncertain Economic Conditions. Previous to the COVID-19 pandemic, there had been a recovery in the real estate sector, all of which could now be lost, including, but not limited to, increases in interest rates, market volatility and inflation and, thus, it is unclear how stable the real estate markets currently are or will be as the government pulls back from its unprecedented participation in the bond market to previously keep interest rates low.

As a result, there can be no assurance that the Properties will achieve anticipated cash flow levels. Further, recent world events evolving out of COVID-19 have created significant uncertainty concerning security and the stability of world and United States economies. Any negative change in the general economic conditions in the United States could adversely affect the financial condition and operating results of the Property. In addition, the Properties' revenues and operating results may be affected by uncertain or changing economic and market conditions. If global economic and market conditions, or economic conditions in the United States or other key markets, remain uncertain or persist, spread, or deteriorate further, the Tenants may experience material impacts in their financial condition, which may affect the Properties' operating results.

Unfavorable Changes in Market and Economic Conditions Could Hurt Commercial Property Occupancy or Rental Rates. The demand, price and rents for In-Line Space properties where the Properties are located have historically been positively and negatively affected by the location's economic performance, any decrease in such could adversely affect the market for the Properties.

The Sponsor's Exit Strategies may not be Available or Successful. Although potential exit strategies include aggregating this investment along with the Sponsor's previous ExchangeRight portfolios and any additional portfolios that are syndicated subsequent to this portfolio, such proposed exit strategies may not be successful at the time which may not allow the Sponsor or any individual investor in a portfolio to achieve the best returns and each portfolio, including this portfolio, and this portfolio could remain illiquid longer than anticipated. Since there can be no assurance that any such roll-up transaction will be available or successful, the Trust may not be able to dispose of the Properties as contemplated under the Trust Agreement due to unfavorable economic or other conditions, all of which could adversely affect returns to the Owners.

Natural Disasters. The Properties are located in certain states that are particularly susceptible to various natural disasters including, without limitation, windstorms, floods, hurricanes, tornadoes and other natural disasters indigenous to those states. In general, any natural disasters affecting the Properties could affect the Tenants and the ability and incentive of the Tenants to make timely rental payments. Accordingly, the rates of delinquencies and defaults on the leases at the Properties could be greater than with a pool of properties involving different geographic diversification. The Lender will not require and the Trust does not intend to procure flood or earthquake insurance for all of the Properties.

Losses from Natural Catastrophes May Exceed Insurance Coverage. The Master Lessee will be obligated under the Master Lease to carry for the benefit of the Trust and the Lender the types and amounts of insurance customarily obtained on retail properties where the Properties are located. However, some losses, generally of a catastrophic nature, such as losses from earthquakes, floods, hurricanes, tornadoes or other meteorological and atmospheric conditions, may be subject to policy limitations or not covered at all. If there is a substantial loss, this insurance coverage may not be sufficient to pay the full current market value or current replacement value of the Properties. Inflation, changes in building codes and ordinances, environmental considerations and other factors also might make it infeasible to use insurance proceeds to replace the Properties after it has been damaged or destroyed.

Potential Liability for Environmental or Toxic Mold Contamination Could Result in Substantial Costs. Under various federal, state and local laws, ordinances and regulations, the Trust could be liable for the costs to investigate and remove or remediate hazardous or toxic substances on or in the Properties, often regardless of whether the Trust and/or the Owners knew of, or were responsible for, the presence of these substances. These costs may be substantial. If hazardous or toxic substances are present on the Properties or if the Trust fails to properly remediate such substances, the Trust's ability to sell or rent the Properties or to borrow or establish credit using the Properties as collateral may be adversely affected. There has also been litigation about indoor exposure to certain types of toxic molds that has been increasing as the public becomes aware that such exposure can cause a variety of health effects and symptoms, including allergic reactions. Toxic molds can be found almost anywhere and can grow on virtually any organic substance, as long as moisture and oxygen are present. There are molds that can grow on wood, paper, carpet, foods and insulation. When excessive moisture accumulates in buildings or on building materials, mold growth will often occur, particularly if the moisture problem remains undiscovered or unaddressed. It is impossible to eliminate all mold and mold spores in the indoor environment. The difficulty in discovering indoor toxic-mold growth could lead to an increased risk of lawsuits by affected persons and the risk that the cost to remediate toxic mold will exceed the value of the Properties. Further, there are currently attempts to exclude damage caused by toxic mold

growth from certain liability provisions in insurance policies, so there is no guarantee that insurance coverage for toxic mold will be available now or in the future.

Uninsured Losses. The Master Lessee will be obligated to maintain insurance coverage against liability for personal injury and property damage. There is no guarantee that the insurance obtained will be sufficient to cover any liabilities. Furthermore, insurance against certain risks, such as earthquakes and/or floods, may be unavailable or may only be available at commercially unreasonable rates or in amounts that are less than the full market value or replacement cost of the Properties. The Manager will not be obtaining flood or earthquake insurance for all of the Properties unless required by the Lender. In addition, there can be no assurance that particular risks that are currently insurable will continue to be insurable on an economical basis or that current levels of coverage will continue to be available. If a loss occurs that is partially or completely uninsured, the Owners may lose all or a part of their investment in the Interests. In addition, the Manager may carry Errors and Omissions insurance and/or directors and Officers insurance, which would provide coverage for the Trust. While insurance may help reduce the risk of loss, it increases costs and thus lowers the potential return to the Owners.

No Guaranteed Cash Flow. There can be no assurance that cash flow or profits will be generated by the Properties, which may affect the ability of the Master Lessee to pay rent due under the Master Lease. If the Master Lease is terminated for any reason, the Properties will have to be sold or transferred to the LLC and a lack of cash flow or profits will have an adverse impact on the return to the Owners.

Competition. Numerous other retail properties comparable to those of the Properties are located within the vicinity of the Properties. These competitive properties may reduce demand for the leasable space of the Properties. It is possible that a Tenant will move to existing or new retail facilities in the surrounding area, which could adversely affect the financial performance of the Properties. Competition from nearby properties could make it more difficult to attract new tenants. The Properties also will experience competition for real property investments from individuals, corporations and other entities engaged in real estate investment activities if and when the Trust attempts to sell the Property Interests in the Properties. Other property and real estate investments may be more attractive than the Properties.

Real Estate Investments are Illiquid. Real estate property generally cannot be sold quickly. The Trust may not be able to dispose of the Properties as required under the Trust Agreement due to unfavorable economic or other conditions. In addition, provisions in the Trust Agreement severely limit situations in which the Manager is permitted to sell the Property Interests in the Properties, which could adversely affect returns to the Owners. See “Risk Factors – Rigid and Inflexible Sale Requirements for the Properties; No Guaranteed Return.”

Easements. Various utility and other easements in favor of third parties exist on the Properties. These easements provide encumbrances against the Properties. Although the Manager does not believe the easements will inhibit the Trust’s ability to meet its obligations, no assurance of this can be provided.

Risks Relating to Title. The Properties will be subject to various matters affecting title. Such matters are set forth on title commitments and surveys that were obtained by the Sponsor as part of its due diligence before the Sellers/Lessors acquired the Properties. The Manager will make the title commitments and surveys available to Owners upon request. Although the Sellers/Lessors will receive owner’s title insurance policies insuring their interest in the Properties, there is no guarantee that the title insurance will cover all title issues affecting the Properties, that the title company will pay any claim, that the title insurance will be sufficient to cover any damages, or that the Sellers/Lessors or the Trust will not incur costs in making a title insurance claim. If an uninsured title issue arose or if the title company refused to pay any claim, the return to the Owners might be reduced and, in an extreme case, the value of the Properties and the respective Property Interests might be substantially lowered.

Energy Shortages and Allocations. There may be shortages or increased costs of fuel, natural gas or electric power or allocations thereof by suppliers or governmental regulatory bodies in the area where the Properties are located. It is not possible to predict the extent, if any, to which such shortages, increased prices or allocations will occur or the degree to which such events might influence the Tenants. Any shortages or increased costs of energy that materially adversely affect the Tenants may affect the ability of the Tenants to pay rent, which may result in the Master Lessee not being able to pay rent to the Trust.

Limited Representations and Warranties. The Trust acquired the Property Interests in the Properties with only limited representations and warranties from the Sellers/Lessors regarding the Properties. As a result, if defects in the Properties or other matters adversely affecting the Properties are discovered, the Trust may not be able to pursue a claim for damages against Sellers/Lessors. The extent of damages that the Trust may incur as a result of such matters cannot be predicted, but potentially could have a significant adverse effect on the value of the Properties and the return to the Owners.

Compliance with The Americans with Disabilities Act of 1990. The Properties will be required to comply with the Americans with Disabilities Act of 1990 (the “ADA”), which compliance is the responsibility of the Master Lessee. The ADA generally requires that buildings be made accessible to people with disabilities. Compliance with the ADA requirements could require removal of access barriers, and non-compliance could result in the imposition of fines by the U.S. government or an award of damages to private litigants, or both. Expenditures related to compliance with the provisions of the ADA could adversely affect the Master Lessee’s results of operations and financial condition and its ability to pay rent to the Trust.

Terrorist attacks and other acts of violence or war may adversely impact operating results. Terrorist attacks against the United States, or United States interests generally, may negatively affect the Trust’s operations and its ability to make distributions to the Owners. Attacks or armed conflicts could have a direct adverse impact on the Properties and operations through damage, destruction, loss or increased security costs. Any terrorism insurance that the Trust obtains may be insufficient to cover the loss for damages to the Properties as a result of terrorist attacks. Furthermore, any terrorist attacks or armed conflicts could result in increased volatility in or damage to the United States and worldwide financial markets and economy. Adverse economic conditions could affect the ability of the Tenants to pay rent, which could cause the Master Lessee to default on its obligations under the Master Lease.

Condemnation of the Land. The Properties, or a portion of the Properties, could become subject to an eminent domain action by government or regulatory authorities. Such an action could have a material adverse effect on the marketability of the Property Interests in the Properties or the amount of return on investment for the Owners or result in a premature Disposition of the Property Interests in the Properties.

Mechanics’ Liens. Any person who supplies services or materials to a real estate project may have a lien against the project securing any amounts owed to such person under state law. Therefore, even if a subcontractor is paid its contract fees, if that subcontractor fails to pay its subcontractors or the materials supplier, then the subcontractor and materials supplier who were not paid will have mechanics’ lien rights against the Properties. Although the Master Lessee intend to use procedures to prevent the occurrence of mechanics’ liens, no assurance can be given that mechanic liens will not appear against the Properties. If a mechanics’ lien does appear, the Manager must negotiate to obtain its release or the person holding such lien will have the right to bring an action to foreclose on the Properties to satisfy amounts due under the lien. The Lender will require the Trust to cause the Properties to remain lien free.

Regulatory Matters. Future changes in land use and environmental laws and regulations, whether federal, state or local, may impose new restrictions on the development, construction or Disposition of the Property Interests in the Properties. The ability of the Trust to sell the Property Interests in the Properties or to operate the Properties as currently intended may be adversely affected by such regulations.

Trust Structure and Operating Risks

The Trust is an Inflexible Ownership Mechanism. Prospective Investors should be aware that the Trust is an extremely inflexible means to own real property. As a passive owner of the Properties, the Trust will not be involved in the active management of the Properties. The Trust lacks the ability to change its course of action due to circumstances beyond its control. If adverse circumstances arise for any reason, even with respect to only one of the eight Properties, the Trust cannot renegotiate the terms of the Loan, renegotiate the Master Lease or any sublease with any of the Tenants, obtain additional capital or sell the Property Interests in the Properties (except as provided in the Trust Agreement), invest any cash held by the Trust (including reserves) in anything other than U.S. Treasury obligations or deposits in federally-insured institutions, or accept additional contributions from any person, including any Owner. Therefore, the occurrence of adverse circumstances for any reason, even with respect to only one of the

eight Properties, could trigger an LLC Conversion. See “Business Plan – The Trust’s Conversion to the LLC” discussion below. Moreover, whereas the term of the Trust is 15 years and the Master Lease is expected to expire concurrently with the Trust’s termination, the Loan matures in June 2033; thus, as a result of the restrictions on the Trust discussed in “The Trust and Summary of the Trust Agreement” below, the Trust will effectively have to either sell all of the Property Interests in the Properties and terminate or undertake a LLC Conversion before the Loan matures (even though the Trust’s and Master Lease’s term shall not have expired).

Inability to Amend Business Plan. The Trust lacks the ability to change its business due to circumstances beyond its control. If adverse circumstances arise for any reason, the Trust lacks the ability to renegotiate the Loan, renegotiate the Master Lease or the subleases with any of the Tenants, obtain additional capital or sell the Property Interests in the Properties. Therefore, if adverse circumstances arise for any reason, even with respect to only one of the eight Properties, an LLC Conversion might be triggered. See “LLC Conversion” below.

Owners Must Rely on Management and They Have No Voting Rights. All decisions regarding management and operation of the Trust will be made exclusively by the Manager and the Trustee, and the Owners will have no right to vote on any matters. The Trustee and the Manager will not consult with the Owners when making any decisions with respect to the Trust or the Properties, including with regard to the collection of rent, the making of any distributions and any Disposition of the Property Interests in the Properties. Prospective Investors that decide to purchase Interests must entrust all aspects of the management and operation of the Trust to the Manager and the Trustee or their successor(s). As a result, prospective Investors should carefully evaluate the business experience and performance of the Manager and its principals. The Manager is a recently formed entity with limited operating history and assets and has no fiduciary duty to the Owners. There is no assurance that the Manager will effectively or successfully manage and operate the Trust and its assets or the Disposition of the Property Interests in the Properties. The Manager may retain independent contractors to provide various services to the Trust. The independent contractors will also have no fiduciary duty to the Owners and may not perform successfully. The Manager will not be responsible for managing the Properties, which will be managed by the Master Lessee pursuant to the Master Lease. See “Business Plan,” “Organization and Management,” “The Manager,” “The Master Lessee,” “Conflicts of Interest,” “Prior Performance of the Sponsor and its Affiliates,” “Limited Fiduciary Duty” and “The Trust and Summary of the Trust Agreement.”

The Manager Has No Substantial Assets. The Manager does not have any substantial assets. Thus, there is no assurance that the Manager will have the financial resources to serve and satisfy its obligations to the Trust. The Manager’s lack of financial resources could adversely affect its ability to satisfy its financial obligations and to manage the Trust. This Memorandum does not contain financial statements for the Manager.

The Success of Your Investment Depends on Key Management, the Loss of Which Could Materially Adversely Affect the Trust and its Business and Operations. The ability of the Manager to effectively and successfully manage and operate the Trust is dependent on the continued efforts and abilities of Key Principals, Joshua Ungerecht, David Fisher and Warren Thomas, who hold senior management positions in the Sponsor, the Manager and the Master Lessee. The loss of the services of one or any of these key people could have a material adverse effect on the Trust’s business, financial condition and results of operations and negatively impact your investment.

Key Members of Management Hold Other Positions. The Key Principals do and will engage in other activities outside of the business of the Trust and are employed independently of the Trust. None of these shared management personnel are obligated to allocate a specific amount of time to their duties as members of management of the Manager, and they may devote more time and attention to other activities than they devote to the operations of the Trust and the Properties. See “Organization and Management.”

Conflicts of Interest. Conflicts of interest between the Trust and the various roles, activities and duties of the Sponsor, the Manager, the Master Lessee and their principals and executives are likely to occur from time to time. The Manager will have conflicts of interest in allocating management time, services and functions between the Trust and the Properties and other current and future activities. There is no guarantee that the Manager will have sufficient staff, consultants, independent contractors and business and property managers to adequately perform its duties. The Owners will not have any right to any interest in any future entities or business ventures formed or developed by the Manager or any of their Affiliates. Any conflicts of interest may result in the rights of the Trust not being adequately

protected to the detriment of its Owners. None of the agreements or arrangements, including those relating to compensation, between the Trust, the Manager or their Affiliate, is the result of arm's-length negotiations. See "Conflicts of Interest."

The Owners Do Not Have Legal Title to the Properties. The Owners will not have legal title to the Properties; the Owners will only hold beneficial ownership interests in the Trust. The Owners will not have any right to seek an in-kind distribution of the Properties or divide or partition the Properties. Moreover, the Owners will not have any decision-making authority or voting rights, including no vote as to whether or not the Properties are sold. The sole right of the Owners will be to receive distributions from the Trust if, as and when made as provided under the Trust Agreement and permitted under the Loan Documents.

No Decision Rights regarding Disposition Requirements for the Properties; No Guaranteed Return. The Owners will not have any vote or decision-making authority with respect to the Disposition of the Property Interests in the Properties. If the Manager determines, in its sole discretion, that the Disposition of the Property Interests in the Properties are reasonable, then the Trust may sell the Property Interests in the Properties. Moreover, whereas the term of the Trust is 15 years and the Master Lease is expected to expire concurrently with the Trust's termination, the Loan matures in June 2033; thus, as a result of the restrictions on the Trust discussed in "The Trust and Summary of the Trust Agreement" below, the Trust will effectively have to either sell all of the Property Interests in the Properties and terminate or undertake a LLC Conversion before the Loan matures (even though the Trust's and Master Lease's term shall not have expired). The Disposition will occur without regard to the tax position, preferences or desires of any of the Owners, and the Owners will have no right to approve (or disapprove) of the timing or terms of the Disposition of the Property Interests in the Properties. An Owner may or may not be able to defer the recognition of gain for federal, state or local income tax purposes when the Disposition occurs. The Owners will not have any decision or voting rights with respect to when a Disposition is made, even if the Owners believe a different return would be preferable considering market conditions and other factors. If a Disposition does not occur before the Trust Expiration Date, the Trust will be converted into the LLC pursuant to an LLC Conversion. If this occurs, the Owners may not receive a positive return on their investment. There is no assurance that adverse consequences will not occur before the Disposition of the Property Interests in the Properties. If the Properties are transferred (or the Trust is converted) to the LLC, the Owners will likely lose their ability to participate in a future Section 1031 Exchange.

No Certainty of Distributions. While the Trust currently intends to make cash distributions to the Owners, there can be no assurance as to the manner, amount or timing of such distributions, including whether actual distributions will be sufficient to provide approximately the following estimated cash flow returns on the Owners' investment: (i) 5.25% in year one; (ii) 5.30% in year two; (iii) 5.35% in year three; (iv) 5.40% in year four; (v) 5.45% in year five; (vi) 5.50% in year six; (vii) 5.55% in year seven; (viii) 5.60% in year eight; (ix) 5.65% in year nine; and (x) 5.70% in year 10. However, there is no assurance that the Trust will be able to meet these distributions, or that such distributions will, in fact, be made at all. Distributions, if any, will be subject to the payment of interest and principal on the Loan, costs, fees and expenses and the maintenance of reserves and may be restricted or suspended if the Manager determines in its sole discretion it would be in the best interests of the Trust. The Manager intends to distribute sufficient cash from activities of the Trust to enable the Owners to pay any tax imposed on any taxable income generated by the Trust but there can be no guarantee that the Trust will be able to do so. To the extent the Manager uses any reserves to pay distributions, the Trust may fully or partially deplete reserves needed for future contingencies.

Limited Duties to the Owners. The Trustee and the Manager will not owe any duties to the Owners other than those limited duties set forth in the Trust Agreement. In performing their duties, the Trustee and the Manager will only be liable to the Owners for willful misconduct, bad faith, fraud or gross negligence. The Sponsor and the other Owners will have no fiduciary duty to any Owner, as this duty may be applicable to other investments such as a partnership, limited liability company or corporation. Accordingly, the Owners may have a more limited right of action than would otherwise be the case absent such duty. See "Limited Fiduciary Duty."

New Venture. The Trust is a new entity with no operating history, and there is no assurance that the Trust will be profitable. The Trust's goals are highly speculative and there is no assurance that the Trust will be able to meet any of its obligations. If you purchase Interests, you should be aware that you may not earn a substantial return on your investment, if at all, and you may lose your entire investment. See "Business Plan."

Receipt of Compensation Regardless of Profitability. The Manager and the Trustee are entitled to receive certain significant fees and other compensation, payments and reimbursements regardless of whether the Trust is profitable and such fees will be received prior to any distributions being made to the Owners. See “Compensation of the Sponsor, The Manager and their Affiliates.”

Lack of Diversification. The Trust may only lease the Properties. The Trust generally cannot acquire or develop any property or investments other than the Properties. Thus, an investment in the Trust will not provide any diversity as to asset type. This lack of diversification substantially increases the risks associated with an investment in the Interests. Adverse market conditions could have a material and adverse impact on your investment in the Trust, including any return on your investment. See “Description of the Properties.”

Loss on Dissolution or Termination. In the event of a Disposition, the ability of an Owner to recover all or any portion of such Owner’s investment will depend on the amount of net proceeds realized from the liquidation and the amount of claims to be satisfied therefrom. There can be no assurance that the Trust or the LLC will recognize any gains or realize net proceeds on liquidation, and you may not recover any portion of your investment.

Limitation of Liability/Indemnification of the Manager and the Trustee. The Manager, the Trustee and their attorneys, agents and employees will be entitled to indemnification from their errors of judgment and other acts or omissions not constituting willful misconduct, bad faith, fraud or gross negligence as a result of certain indemnification provisions in the Trust Agreement. See “The Trust and Summary of the Trust Agreement.” A successful claim for indemnification would deplete the Trust’s assets by the amount paid and adversely affect your investment.

Master Lease Structure and Operating Risks

Dependence on Master Lessee. The Properties are leased to the Master Lessee pursuant to the Master Lease. The Master Lessee is solely responsible for subleasing the Properties to the Tenants, as well as for collecting rents and other expenses from the Tenants. In addition, the Master Lease is a “triple net” lease under which the Master Lessee will be responsible for paying all expenses relating to the Properties, including, but not limited to, operating expenses, taxes, loan payments, insurance and the cost of minor non-structural improvements, although the Master Lessee will rely upon the operations at the Properties to pay such expenses. Whereas the Trust will be responsible for any Capital Expenses (as defined in the Master Lease), the Trust will not be responsible for any Capital Expenses or, otherwise, for making or performing (or incurring any cost, expense or expenditure for the making or performing of) any repairs, replacements or improvements to, for and/or in respect of any of the Properties that the Trust determines (in its sole discretion) that it is not permitted to be responsible for, make, perform and/or incur pursuant to the terms of the Trust Agreement.

Dependence on Tenants’ Rent. Negative financial circumstances for the Tenants could result in their reduced income, which could lead to the Tenants’ failure to pay rent to the Master Lessee under the Master Lease. The assets of the Master Lessee are limited, and if the Tenants fail to pay rent when due with respect to the Properties, the Master Lessee may default on its obligations under the Master Lease. In addition, while the Sponsor anticipates that rents under the Leases will increase over time, there is no assurance that rents will increase and can in fact decrease.

No Guarantee that Tenants’ Will Exercise their Lease Options. All of the Tenants’ leases include options for the Tenants to extend their lease terms. See “Summary of the Leases.” However, there can be no assurance that the Tenants will exercise their respective options to extend their lease terms. As a result, such leases would be terminated and the Master Lessee would be required to seek new tenants for the Properties upon expiration of the Tenants’ leases. There is no assurance that the Master Lessee will be successful in doing so. Vacancies in the Properties for any period of time could materially and adversely affect the amount of rental income to the Master Lessee, which could cause the Master Lessee to default on its obligation under the Master Lease to pay rent to the Trust.

Re-Leasing Risk. All of the Properties are In-Line Space retail properties. See “Description of the Properties.” As a result, the Master Lessee must successfully negotiate new leases with those Tenants or seek new

tenants for the Properties upon expiration of the Tenants' leases. There is no assurance that the Master Lessee will be successful in doing so. Vacancies in the Properties for any period of time could materially and adversely affect the amount of rental income to the Master Lessee, which could cause the Master Lessee to default on its obligation under the Master Lease to pay rent to the Trust.

Retention of Increased Properties' Revenues by Master Lessee. The Master Lessee will pay an Annual Base Rent to the Trust (as set forth in the Master Lease); monthly base rent will be one-twelfth of the respective Annual Base Rents. In addition, the Master Lessee may pay an Annual Bonus Rent to the Trust. The terms of the Master Lease may not be renegotiated during the term of the Trust. As a result, if more favorable economic conditions exist in the future in the location where the Properties are located, the Trust will only partially benefit from increases in market rental rates in such location. Accordingly, the Master Lessee will retain operating revenues from the Properties that exceed their respective Annual Base Rents and Annual Bonus Rents to the Trust under the Master Lease.

No Substantial Assets of the Master Lessee. The Master Lessee will not have any substantial assets. If Tenants fail to pay rent in an aggregate amount that exceeds the operating expenses of the Properties, the Master Lessee will be likely to default in its obligation to pay rent to the Trust.

The Master Lessee has Limited Capital. The Master Lessee's capitalization consists solely of the Demand Note from the Manager, and the Manager will be under no obligation to contribute capital to the Master Lessee other than the amount of the Demand Note. If the Master Lessee needs funds to pay its respective Annual Base Rent under the Master Lease or satisfy its other obligations under the Master Lease, it will need to call upon the Manager to contribute the amount of the Demand Note. However, no assurance can be given that the amount of the Demand Note will be sufficient to enable the Master Lessee to pay their respective Annual Base Rent or to fund its obligations under the Master Lease, or that the Manager will be able to fund the Demand Note if called upon by the Master Lessee to do so. If the Master Lessee is unable to pay their respective Annual Base Rent or satisfy its obligations under the Master Lease, the Master Lessee would be in default on the Master Lease and the Trust would likely terminate the Master Lease, subject to terms of the Loan Documents. In such event, the Trust (or the LLC, if applicable) may not be able to enter into the Master Lease for the Properties on terms similar to the Master Lease.

The Manager may not be able to Fund the Demand Note. The Master Lessee is capitalized with a Demand Note. The Manager has in the past, and anticipates that in the future it will, through affiliates, master lease additional properties in transactions structured similarly to this Offering. Although the Manager has met all its funding obligations in the past, there can be no assurance that the Manager will be able to satisfy the Demand Note to the Master Lessee. In the event the Master Lessee is unable to pay their respective Annual Base Rent or satisfy its obligations under the Master Lease, the Trust may experience loss of income.

Acquisition Terms and Financing Risks

Leverage. As a result of the use of debt, a decrease in the Properties' rental revenues could materially and adversely affect the Properties' cash flows and, in turn, the Trust's ability to make payments when due, which could result in a default under the terms of the Loan. Any default under the Loan could have a material adverse effect on the ability of the Trust to receive or distribute income. No assurance can be given that future cash flow will be sufficient to make the debt service payments on any borrowed funds and to cover operating expenses. If the Properties' revenues are insufficient to pay debt service and operating expenses, the Trust is required to use its reserves, if any, to do so. The Trust cannot seek additional funds or capital contribution from the Owners. If the Trust is unable to pay debt service, the Lender could foreclose on the Properties and the Owners could lose their entire investment.

Carve-Outs to Nonrecourse Liability on the Loan. The Loan will be recourse to the Trust upon certain events listed below (the "Recourse Events"). Recourse may be had against Joshua Ungerecht, David Fisher and/or Warren Thomas for certain bad acts as described below and environmental indemnification. The non-recourse "bad act" carve-outs that are in the Loan Documents are as follows:

(a) fraud or intentional misrepresentation by an Exculpated Party (as defined in the Loan Agreement) in connection with the execution and the delivery of this Agreement, the Note (as defined in the Loan Agreement),

the Mortgage, any of the other Loan Documents, or any certificate, report, financial statement or other instrument or document furnished to Lender at the time of the closing of the Loan or during the term of the Loan;

- (b) the gross negligence or willful misconduct of an Exculpated Party;
- (c) any Exculpated Party's misapplication or misappropriation of Rents (as defined in the Loan Agreement) received by the Trust during the continuance of an Event of Default;
- (d) any Exculpated Party's misapplication or misappropriation of tenant security deposits (including the failure to deliver to Lender tenant security deposits upon foreclosure or deed in lieu thereof, to the extent not applied in accordance with the applicable Leases prior to the occurrence of an Event of Default) or Rents collected in advance;
- (e) the misapplication or the misappropriation of Insurance Proceeds (as defined in the Loan Agreement) or Awards (as defined in the Loan Agreement) by any Exculpated Party;
- (f) the Trust's failure to pay Property Taxes (as defined in the Loan Agreement), Insurance Premiums (as defined in the Loan Agreement), and Other Charges (as defined in the Loan Agreement) (provided that there shall be no liability hereunder to the extent that (A) sums sufficient to pay such amounts have been deposited in escrow with Lender pursuant to the terms hereof and the Trust has not made a claim against such escrowed amounts or otherwise taken action to restrict Lender from applying such sums for the purpose of paying such items and Lender's access to such funds has not been constrained or restricted in any manner, or (B) there is insufficient cash flow from the operation of the Properties to pay such items), charges for labor or materials or other charges that can create liens on the Properties beyond any applicable notice and cure periods specified herein;
- (g) the Trust's failure to return or to reimburse Lender for all Personal Property (as defined in the Loan Agreement) taken from any Individual Property by or on behalf of the Trust and not replaced with Personal Property of the same utility and of the same or greater value;
- (h) material physical waste to any Individual Property caused by the acts or omissions of any Exculpated Party;
- (i) the Trust's failure during the continuance of any Event of Default to (A) deliver to Lender upon demand all Rents and books and records relating to the Properties or (B) comply with all written notices and instructions of Lender delivered pursuant to the terms of the Assignment of Property Management Agreement;
- (j) the Trust's assertion or raising of any defense to a proceeding instituted by Lender (whether judicial or otherwise) for the foreclosure of the Mortgage following an Event of Default caused by the Trust's failure to timely pay the Monthly Payment Amount (as defined in the Loan Agreement) or the Debt due on the Maturity Date (as defined in the Loan Agreement), which defense is determined by a court of competent jurisdiction to be without merit or brought in bad faith;
- (k) the breach by The Trust of any representation, warranty or covenant set forth in Section 10.2(a) of the Loan Agreement;
- (l) the breach of any representation, warranty or covenant of the Trust with respect to itself or any SPE Component Entity set forth in Article 6 of the Loan Agreement;
- (m) the breach by the Trust of any representation, warranty or covenant set forth in Section 7.7 of the Loan Agreement;
- (n) any default under (unless such default arises solely in connection with the failure of Master Lessee to pay rent under the Master Lease solely as a result of the Properties not generating sufficient Operating Income (as defined in the Loan Agreement)), or termination for any reason except for any termination approved by the Lender in writing (including, without limitation, any termination that results from a default under the Master Lease in connection

with the failure of Master Lessee to pay rent under the Master Lease as a result of the Properties not generating sufficient Operating Income) of, the Master Lease by any party thereunder or the Trust's failure to comply with Section 5.25 of the Loan Agreement;

- (o) any amendment to the Trust Agreement without the prior written consent of Lender;
- (p) the breach of any representation or warranty contained in Section 4.45 or Section 4.46 or any covenant in Section 5.26 or Section 5.28 of the Loan Agreement;
- (q) any claims of the beneficial interest owners in or members of the Trust regarding (A) the determination or potential determination that the beneficial interests in the Trust are not eligible replacement property for a tax-deferred exchange of property under Section 1031 of the Code pursuant to Revenue Ruling 2004-86 or (B) any tax consequences resulting from the dissolution or conversion of the Trust;
- (r) the filing by the Trust, the Guarantor, any trustee of the Trust, or any principal, officer, manager, or director of any of the foregoing of an action to (A) partition any Individual Property or any part thereof, or (B) to compel the sale thereof;
- (s) criminal acts of the Trust, Guarantor, any Affiliate of the Trust or Guarantor, or any of their respective agents or representatives resulting in the seizure, forfeiture or loss of all or part of the Properties;
- (t) the breach by the Trust of any covenant contained in Section 5.27 of the Loan Agreement;
- (u) the failure to pay any deductible under a windstorm/named storm Policy (as defined in the Loan Agreement) to the extent that such deductible exceeds five percent (5%) of the total insurable value of such Individual Property;
- (v) the failure to comply with any requirement set forth in the Post-Closing Letter (as defined in the Loan Agreement);
- (w) following a Casualty (as defined in the Loan Agreement), the failure and/or inability to rebuild the Improvements to the same size and utility (e.g. square footage and revenue production) as existed prior to such Casualty, in each case, as a result of an Individual Property's (as defined in the Loan Agreement) non-compliance with applicable Legal Requirements (as defined in the Loan Agreement);
- (x) following a Casualty, the failure of the Net Proceeds (as defined in the Loan Agreement) received from the property insurance carriers for any Individual Property to be sufficient to pay 100% of the cost of fully restoring the Improvements (as defined in the Loan Agreement) at such Individual Property;
- (y) any claim or demand that a Ground Lessor Tenant (as defined in the Loan Agreement) is or was entitled to receive a notice of sale as set forth in its respective lease (a "**Notice of Sale**"), as a result of the Trust and/or the ground lessor failing to provide Ground Lessor Tenant the Notice of Sale, as required pursuant to its lease;
- (z) the Trust's failure to deliver a condominium association estoppel certificate in form and substance reasonably satisfactory to Lender with respect to the Shop Rite Shopping Center (Vineland) Property (as defined in the Loan Agreement); provided, however, liability under this subsection shall terminate upon the Trust's delivery to Lender of a fully executed estoppel certificate confirming no defaults and/or unpaid assessments under the applicable condominium declaration, association bylaws or related condominium documents affecting such Property; or
- (aa) (A) the breach (by any party thereto) of the terms, covenants and/or conditions contained in those certain letter agreements (individually or collectively, the "**Letter Agreements**") dated May 19, 2023, by and among the Trust, as ground lessee, the applicable ground lessor and the applicable fee master lessee with respect to the Shop Rite Shopping Center (Vineland) Property (as defined in the Loan Agreement) and the Shop Rite Shopping Center (Upper Deerfield) Property (as defined in the Loan Agreement) or (B) if any such Letter Agreement shall be modified, changed, altered, amended, supplemented, terminated or surrendered without Lender's prior written consent.

The Loan shall also be fully recourse to the Trust upon certain Recourse Events and the principals of the Sponsor if one or more of the following Recourse Events occurs: (i) of a breach by the Trust, any SPE Component Entity (as defined in the Loan Agreement), Master Lessee or any Master Lessee SPE Component Entity (as defined in the Loan Agreement) of any of the covenants set forth in Article 6 of the Loan Agreement, (ii) the Trust incurs any Indebtedness (as defined in the Loan Agreement) (including pursuant to a Property Assessed Clean Energy lien) other than the Loan and Permitted Debt (as defined in the Loan Agreement) without the prior written consent of Lender or except as expressly permitted in the Loan Agreement, (iii) of the occurrence of a Prohibited Transfer (as defined in the Loan Agreement), (iv) the Property or any part thereof shall become an asset in a bankruptcy or insolvency proceeding initiated by the Trust or Master Lessee, (v) the Trust, the Key Principals, Master Lessee, or any Affiliate, officer, director, or representative which Controls (as defined in the Loan Agreement), directly or indirectly, the Trust, the Key Principals or Master Lessee files, or joins in the filing of, an involuntary petition against the Trust or Master Lessee under any Creditors Rights Laws (as defined in the Loan Agreement), or solicits or causes to be solicited creditors or colludes with creditors for the filing of any involuntary petition against the Trust from any Person under any Creditors Rights Laws, (vi) the Trust or Master Lessee files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under any Creditors Rights Laws, or solicits or causes to be solicited petitioning creditors for any involuntary petition from any Person, (vii) any Affiliate, officer, director, or representative which Controls the Trust or Master Lessee consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for the Trust, Master Lessee or any portion of the Property, (viii) the breach of any of the terms of Section 7.6 of the Loan Agreement; (viii) if the Trust, Manager or Trustee fails to comply with all (or violates any) applicable laws and regulations of the State of Delaware as the same pertain to the Trust's existence as a DST, (ix) if the Trust, Manager or Trustee fails to comply with all (or violates any) applicable securities laws and/or regulations (including, but not limited to, the Investment Company Act of 1940) as the same pertain to the solicitation, sale and/or offering of beneficial ownership interests in the Trust to Investors, (x) if the Trust surrenders the leasehold estate created by the Ground Lease (as defined in the Loan Agreement) or terminates or cancels the Ground Lease or modifies, changes, supplements, alters or amends the Ground Lease, in each case, without Lender's prior written consent, (xi) the breach of any of the terms of Section 7.7 of the Loan Agreement, or (xii) if any Ground Lease (as defined in the Loan Agreement) is terminated, cancelled or otherwise ceases to exist for any reason and the ground lessor thereunder has not entered into a new ground lease with Lender (or Lender's designee) on the same or substantially similar terms and conditions as the Ground Lease.

Guaranty. The Trust has no non-cash assets other than the Properties and the Master Lease, and the Owners will be prohibited from contributing additional assets to the Trust.

Required Cash Flow Sweep 12 months Prior to the Loan Maturity Date. The Lender has the right under the Loan Documents 12 months prior to the Loan Maturity Date to sweep all Available Cash (as defined in the Loan Documents) on each payment date unless a Qualified Transfer is achieved. If the Qualified Transfer is not achieved or the Properties are not sold prior to this time or the Loan Documents are not restructured, these cash flow sweeps will prevent the Manager from making any targeted cash distributions to the Owners in such years.

Lack of Independent Appraisals of the Properties. Although the Lender obtained appraisals on each of the Properties, these appraisals were prepared solely for the Lender and its Affiliates and may not be relied upon by the Sponsor, the Trust or the Owners. The Trust will not be obtaining independent third-party appraisals or valuations of the Properties and will not be seeking separate reliance language from the appraisers that prepared the appraisals for the Lender. Accordingly, Owners must rely solely on the other information provided in this Memorandum and their own due diligence in determining a valuation of the Properties and the risks associated with the purchase of Interests. **Each prospective Investor must consult with their own legal, tax and business advisors concerning the validity and reasonableness of investing in an Interest.**

Certain Private Offering and Liquidity Risks

Maximum Offering Amount May Not Be Raised. We are seeking gross proceeds from this Offering of \$11,400,000. There can be no assurances that the Maximum Offering Amount will be raised.

No Minimum Offering; Ownership by the Sponsor and/or One of the Owners of the Sponsor. There is no minimum amount of Offering Proceeds that must be raised or minimum number of Owners required in connection

with this Offering. All proceeds from the sale of Interests will be delivered directly to the Trust's operating account and be available for immediate use by the Trust at its discretion. ExchangeRight or its principals, are required by the Lender to purchase and retain at least a 0.50% Class 1 beneficial interest in the Trust as long as the Loan is outstanding, and will become an Owner with the Investors that become Owners.

Determination of Interest Purchase Price. The purchase price of the Interests has been arbitrarily determined and is not the result of arm's length negotiations. It has been determined primarily by the capital needs and expenses of the Trust, the Sponsor, the Manager, the Master Lessee to acquire the Properties and complete the Offering and is not the result of arm's-length negotiations. It bears no relationship to any established criteria of value such as book value or earnings per Interest or any combination thereof. The \$18,732,000 aggregate purchase price for the Interests (including indebtedness, the down payment for the purchase of the Properties and commissions, costs, fees and expenses relating to the acquisition of the Property Interests in the Properties (including fees to Affiliates of the Sponsor) and this Offering) will be substantially more than the price paid by the Trust to purchase the Properties. Further, the price of the Interests is not based on past earnings of the Trust, nor does the price necessarily reflect the current market value for the Properties.

Limited Transferability of Securities. To purchase Interests, you must make certain representations, including that you are acquiring the Interest in investment and not for distribution or resale, you understand the Interests are not freely transferable and you must bear the economic risk of investment in an Interest for an indefinite period of time. The Interests have not been registered under the Securities Act or applicable state securities laws and the Interests cannot be sold unless they are subsequently registered or an exemption from such registration is available and unless you comply with the other applicable provisions of the Trust Agreement. There is no public or other trading market for the Interests and it is highly unlikely that any market will develop. Therefore, you cannot expect to be able to liquidate your investment in case of an emergency. Further, the sale of the Interests may have adverse federal income tax consequences. Any transfer of the Interests under the Trust Agreement will be subject to (i) compliance with applicable federal and state securities laws; (ii) the delivery to the Manager of assignee's or transferee's written acceptance and adoption of the Trust Agreement; (iii) the limit of Owners to no more than 250 persons at any time; (iv) the limit that no Owner will own more than 19.99% of the beneficial interest in the Trust, unless approved by the Lender; and (v) any notice or other requirements in the Loan Documents. See "Description of the Interests – Transfer Restrictions."

Lack of Secondary Market. There can be no assurance (and it is very unlikely) that a secondary resale market for the Interests will develop or, if it does develop, that it will provide the Owners with liquidity for their investments or that it will continue for as long as the Interests remain outstanding. The Interests will not be listed on any securities exchange.

Unregistered Offerings. The offerings of the Interests will not be registered with the SEC under the Securities Act or with the securities authorities of any state. The Interests are being offered in reliance on exemptions from the registration provisions of the Securities Act and state securities laws applicable to offers and sales to prospective Investors meeting the prospective investor suitability requirements set forth herein. If the Sponsor, the Trust, or the Selling Group members should fail to comply with the requirements of such exemptions, Owners may have the right to rescind their purchase of the Interests, as applicable. This might also occur under the applicable state securities laws and regulations in states where the Interests will be sold without registration or qualification pursuant to a private offering or other exemption. If a number of the Owners were successful in seeking rescission, the Trust and the Manager would face severe financial demands that would adversely affect the Trust as a whole and, thus, the investment in the Interests by the remaining Owners. Such event would have a material adverse effect on the Trust.

Lack of Regulatory Review. Since the Offering is nonpublic and, as such, not registered under federal or state securities laws, you will not have the benefit of a review of this Memorandum by the SEC or any state securities commissions or other regulatory authorities prior to your investment. The terms and conditions of the Offering will not comply with the guidelines and regulations established for securities offerings that are required to be registered and qualified with those authorities.

Availability of Exemptions for Other Offerings. Other offerings by Affiliates of the Sponsor and the Manager have been made in reliance on exemptions from the registration provisions of federal and state securities

laws. No assurance, however, can be given that such exemptions were available or that the compliance requirements were met. If exemptions were not available for those offerings, the Trust, as well as the partners and principals involved in such other offerings, could incur significant liability, including return of amounts paid to investors. Because the officers and principals of the Manager are also officers and principals of each other and the Master Lessee or partners and/or principals involved in these other offerings, the management resources of the Manager and the Trust could be adversely affected by liabilities incurred with respect to those other offerings.

Prohibition on Bad Actors. This Offering is intended to be made in compliance with Rule 506(b) of Regulation D promulgated under the Securities Act. The SEC has recently changed the requirements of Regulation D offerings to include a prohibition on the participation of certain “bad actors.” The Trust will obtain representations from the Manager and its principals and the Selling Group Members that the applicable party is not a “bad actor” as that term is defined in Rule 506(d) of Regulation D. In the event that a statutory “bad actor” participates in the Offering, the Trust may lose its exemption from registration of the Interests. Pursuant to Rule 506(e) of Regulation D, certain events that would otherwise have designated an Offering participant as a “bad actor” but which occurred prior to the effective date of Rule 506(d), are required to be disclosed to all potential investors. These disclosures are set forth in “Plan of Distribution – Disclosures regarding Certain Broker-Dealers who are Offering and Selling the Interests.” See “Plan of Distribution.”

Pro Forma Budgets/Targeted Aggregate Cash Flows. Any pro forma budgets or targeted cash flows included in this Memorandum (such as the Pro Forma, attached hereto as Exhibit G) are forward-looking statements that involve significant risk and uncertainty. All materials or documents supplied by the Trust or its Affiliates, including any such Pro Forma budgets or cash flows, should be considered speculative and are qualified in their entirety by the assumptions, information and risks disclosed in this Memorandum. The assumptions and facts upon which such Pro Forma is based are subject to variations that may arise as future events actually occur and to a complex series of events, many of which are outside the control of the Trust, the Sponsor, the Manager and the Master Lessee. The Pro Forma included herein is based on assumptions regarding future events. There is no assurance that actual events will correspond with these assumptions. Actual results for any period may or may not approximate Pro Forma targets and may differ significantly. You should consult with your tax and business advisors about the validity and reasonableness of the factual, accounting and tax assumptions. Neither the Trust nor any other person or entity makes any representation or warranty as to the future profitability of the Trust or of an investment in the Interests.

No Representation of Owners. Each of the Owners acknowledges and agrees that counsel, the Manager, the Trust and their Affiliates do not represent and shall not be deemed under the applicable codes of professional responsibility to have represented or to be representing any or all of the Owners in any respect.

Risks Relating to Admission of ERISA Investors to the Trust. In considering an investment in the Trust of a portion of the assets of a Benefit Plan Investor (as defined in “Certain Considerations Applicable to ERISA, Governmental and Other Plan Investors”), a fiduciary of such Benefit Plan Investor should consider (i) whether the investment satisfies the diversification requirements of Section 404 of ERISA; and (ii) whether the investment is prudent, since the Interests are not freely transferable and there may not be a market created in which the Interests may be sold or otherwise disposed. As discussed under “Certain Considerations Applicable to ERISA, Governmental and Other Plan Investors,” the Manager intends to conduct the operations of the Trust so that the assets of the Trust will not be deemed to constitute “plan assets” of Benefit Plan Investors. If, however, the Trust were deemed to hold “plan assets” of Benefit Plan Investors, (i) ERISA’s fiduciary standards would apply to the Trust and might materially affect the operations of the Trust, and (ii) any transaction with the Trust could be deemed a transaction with each Benefit Plan Investor and may cause transactions into which the Trust might enter in the ordinary course of business to constitute prohibited transactions under ERISA and Section 4975 of the Code. In order to avoid having the Trust’s assets treated as “plan assets,” the Manager may seek to manage the assets and activities of the Trust so as to qualify as an “operating company,” and that may adversely affect the operations of the Trust. For example, the Manager may decide to liquidate a given investment at an otherwise disadvantageous time based on these requirements. As an alternative means of avoiding the Trust’s assets being treated as “plan assets,” the Manager may restrict the acquisition and transfer of Interests to ensure that the ownership interest of Benefit Plan Investors does not become “significant” with respect to any class of the Trust’s equity interests, and such restrictions could delay or preclude an investor’s ability to transfer its Interests. See “Certain Considerations Applicable to ERISA, Governmental and Other Plan Investors.”

Unrelated Business Taxable Income. If a taxpayer is an individual retirement accounts (“IRA”) or other tax-exempt entity, it will receive unrelated business taxable income and its share of cost recovery deductions or tax losses may be limited or suspended. A portion of the income and gain generated by the Trust from the operation and sale or other taxable disposition of the Properties will constitute “unrelated business taxable income” (“UBTI”) to tax-exempt Investors such as IRAs and pension plans, depending primarily on the extent of acquisition debt used by the Trust to acquire the Properties. Also, an exception from the requirement to treat certain income and gain as UBTI that is potentially available to pension plans (but not IRAs) may not be available with respect to the Properties. See “Federal Income Tax Consequences – Unrelated Business Taxable Income.” In addition, if a tax-exempt charitable remainder trust is allocated any UBTI from the Trust in a taxable year, then it will be subject to a 100% excise tax on all of its UBTI. Finally, an Investor’s status as a tax-exempt Investor may result in its share of the Trust’s cost recovery deductions or tax losses being limited or suspended in any taxable year.

No Independent Review/No Managing Dealer. Currently the Sponsor has not engaged the services of a Managing Dealer and it is uncertain whether a Managing Dealer will be used for this Offering. Under federal securities laws, an independent broker-dealer is expected to take steps to ensure that the information contained in this Memorandum is accurate and complete. The steps are typically taken by the “Managing Underwriter” or “Managing Dealer” who participates in the preparation of an offering memorandum. In addition, the Managing Dealer has certain duties related to an offering, including a duty to a prospective investor to ensure that an investment in a security is suitable for that prospective investor, a duty to conduct adequate due diligence with respect to the offering and a duty to comply with federal and state securities laws. If a Managing Dealer is not engaged for this Offering, this independent review and analysis of the Memorandum and this Offering will not be conducted.

Tax Risks of a Code Section 1031 Exchange

THIS SECTION WAS WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF THE OFFERING. EACH INVESTOR SHOULD SEEK ADVICE BASED ON HIS, HER OR ITS PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR CONCERNING THE INCOME AND OTHER TAX CONSEQUENCES OF PARTICIPATION IN THIS INVESTMENT.

General. There are substantial risks associated with the federal income tax aspects of a purchase of an Interest that is intended to be part of a Section 1031 Exchange. The following paragraphs summarize some of these tax risks to an Owner with respect to the purchase of an Interest. **Because the tax aspects of this Offering are complex and certain of the tax consequences may differ depending on individual tax circumstances, each prospective Investor should consult with and rely on its own tax advisor about this Offering’s tax aspects in light of its individual situation. No representation or warranty of any kind is made with respect to the IRS’s acceptance of the treatment of any item of income, deduction, gain, loss, credit or any other item by an Owner and there can be no assurance that the IRS will not challenge any such treatment.**

Acquisition of the Interests May Not Qualify as a Section 1031 Exchange. An Interest may not qualify under Section 1031 for tax-deferred exchange treatment, and even if it does, a portion of the proceeds from an Owner’s sale of his or her property to be relinquished (the “**Relinquished Property**”) could constitute taxable “boot” (as defined below). Whether any particular acquisition of an Interest will qualify as a tax-deferred exchange under Section 1031 depends on the specific facts involved, including, without limitation, the nature and use of the Relinquished Property and the method of its disposition, the use of a qualified intermediary and a qualified exchange escrow and the lapse of time between the sale of the Relinquished Property and the identification and acquisition of the replacement property (the “**Replacement Property**” or “**Replacement Properties**”). None of the Sponsor or its Affiliates, counsel or agents are examining or analyzing any prospective Investor’s circumstances to determine whether such Owner’s acquisition of Replacement Property qualifies as a Section 1031 Exchange. **Moreover, no opinion or assurance is being provided to the effect that any individual prospective Investor’s transaction will qualify under Section 1031. Such examinations or analyses are the sole responsibility of each prospective Investor, who must consult with his or her own legal, tax, accounting and financial advisors before purchasing an Interest.** If the factors surrounding an Owner’s disposition of the Relinquished Property and his or her acquisition of the Interests do not meet the requirements of Section 1031, the disposition of the Relinquished Property will be taxed as a sale and the IRS will assess interest and possibly penalties for failure to timely pay such taxes as a result of such sale. Also, merely designating an Interest in connection with an Owner’s Section 1031 Exchange does not assure

the Owner that there will be Interests available to purchase when the Owner executes the Purchase Agreement and actually causes his, her, or its qualified intermediary to transfer funds to complete the purchase of the Interests.

Changes to the Section 1031 Exchange Rules Could Negatively Impact an Owner's Exit Strategy. The U.S. Congress periodically evaluates various proposed modifications to the Section 1031 Exchange rules that could, if enacted, prospectively repeal or restrict the ability to utilize a Section 1031 Exchange to achieve tax deferral on gain in connection with the disposition of real property or beneficial interests in a fixed investment trust. It is possible that repeal or amendment of Code Section 1031 or the Treasury Regulations promulgated thereunder could negatively impact the use of a Section 1031 Exchange in connection with an Owner's exit strategy.

Classification for Purposes of Code Section 1031. The Sponsor believes the Offering described in this Memorandum is structured in a manner that the Interests should be treated for Code Section 1031 purposes as direct ownership interests in each of the Properties and not as interests in a partnership or securities. If the Interests were to so be treated by the IRS or a court as any of the foregoing, then no Owner would be able to use its acquisition of Interests as part of a Section 1031 Exchange to defer gain under Code Section 1031. The IRS may challenge the tax treatment related to the Interests as described in this Memorandum.

In connection with the Offering, on the Loan Closing Date, we obtained an opinion from Tax Counsel in connection with the Offering that: (i) the Trust should be treated as an investment trust described in Treasury Regulation Section 301.7701-4(c) that is classified as a "trust" under Treasury Regulation Section 301.7701-4(a); (ii) the Owners should be treated as "grantors" of the Trust; (iii) as "grantors," the Owners should be treated as owning an undivided fractional interest in each of the Properties for federal income tax purposes; (iv) the Interests should not be treated as securities for purposes of Code Section 1031; (v) the Interests should not be treated as certificates of trust or beneficial interests for purposes of Code Section 1031; (vi) the Master Lease should be treated as a true lease and not a financing for federal income tax purposes; (vii) the Master Lease should be treated as a true lease and not a deemed partnership for federal income tax purposes; (viii) the discussions of the federal income tax consequences contained in the Memorandum are correct in all material respects; and (ix) certain judicially created doctrines should not apply to change the foregoing conclusions.

The issues which are the subject of such opinion have not been definitely resolved by statute, administrative action or case law. This opinion will be based on the facts and circumstances set forth in the opinion and is not a guarantee of the current status of the law, and, as such, it should not be treated as a guarantee that the IRS or a court would concur with the conclusion in the opinion. If any of such facts or circumstances were to change, the tax consequences to Owners described in the opinion and in this Memorandum could change. See "Federal Income Tax Consequences."

Identification Rules. Treasury Regulation Section 1.1031(k)-1(c)(4) permits taxpayers to identify alternative and multiple Replacement Properties under Code Section 1031. In general, a taxpayer must identify all potential Replacement Properties by midnight on the 45th day after the taxpayer's transfer of the Relinquished Property (the "**identification period**"). Any "like kind" property received by the taxpayer before the end of the identification period is deemed to have been identified before the end of the identification period. In addition, taxpayers are permitted to identify three properties without regard to the fair market value of the properties (the so-called "**three property rule**") or multiple properties with a total fair market value not in excess of 200% of the value of the Relinquished Property (the "**200% rule**"). In the event that the IRS successfully challenges the valuation of a Replacement Property under the 200% rule, and as a result the Replacement Properties identified by the taxpayer exceed 200% of the value of the taxpayer's Relinquished Property, the taxpayer's identification may be treated as invalid, which may invalidate the taxpayer's like-kind exchange under Section 1031. A taxpayer will also be treated as satisfying the Code Section 1031 identification rules with respect to any Replacement Property otherwise properly identified before the end of the identification period and received before the end of the period (the "**exchange period**") beginning on the date the taxpayer transfers the Relinquished Property and ending at midnight on the earlier of the 180th day thereafter or the due date (including extensions) for the taxpayer's return of the income tax imposed by the Code for the taxable year in which the transfer of the Relinquished Property occurs), but only if the taxpayer receives before the end of the exchange period identified Replacement Property the fair market value of which is at least 95 percent of the aggregate fair market value of all identified Replacement Properties (the "**95% rule**").

For purposes of both the 200% rule and the 95% rule, “fair market value” means the fair market value of the applicable property without regard to any liabilities secured by the property. Thus, a taxpayer identifying under the 200% rule for an unencumbered Relinquished Property having a value of \$20 million could only identify Replacement Property(ies) having an aggregate gross fair market value (without regard to any liabilities which may encumber such property(ies)) of \$40 million, in which case the identification of a single Replacement Property having a \$30 million equity value but which is secured by a \$20 million liability (and, thus, having a \$50 million gross value) would violate the 200% rule.

The Trust holds a total of eight properties. The Properties will not constitute a single property for purposes of the three property rule and the Owners will not be able to rely on the three property rule for this Offering. The identification rules of Code Section 1031 are strictly construed, and an Owner’s exchange will not qualify for deferral of gain under Code Section 1031 if too many properties or properties having too much value (including by reason of not excluding the effect of the Loan for “fair market value” purposes) are identified, if the properties are not correctly identified, or if the deadlines for identification are not met. Owners will have to rely on the 200% rule or 95% rule with respect to the Offering and should seek the advice of their tax advisors prior to subscribing for the Interests or making an identification.

Code Section 467 Rent Allocation. Although the issue is not completely settled under existing law, under Code Section 467 of the Code, if the Master Lessee were to defer payment of rent the Owners may still be required to report and pay tax on rent in accordance with the Annual Base Rent schedule set forth on each of the Master Lease. As a result, Owners may be required to recognize rental income even though all of the rent may not be currently paid and, in such circumstances, may have to use funds from other sources to pay tax on such income. In addition, Owners may have to recognize imputed interest income on such deferred amounts.

Form of Ownership. The utilization of a Delaware statutory trust (like the Trust) to acquire and hold real property for purposes of a Section 1031 Exchange is based primarily on Rev. Rul. 2004-86, which addresses whether a Delaware statutory trust will be treated as an “entity” taxable as a partnership. The IRS based its conclusion in the Revenue Ruling on the following elements: (i) the DST is treated as an entity separate from its owners (and not as a co-ownership or agency arrangement); (ii) the DST is an “investment” trust and not a business entity” for federal income tax purposes; (iii) the DST is a “grantor trust” for federal income tax purposes, with the holders of Interests in the DST treated as the grantors of the DST; and (iv) the holders of Interests in the DST are treated as directly owning Interest in real property held by the DST. There are no authorities that directly address the tax treatment of the Trust other than Rev. Rul. 2004-86. It is possible that the IRS could revoke Rev. Rul. 2004-86 or, in the alternative, determine that the Trust does not comply with the requirements of that ruling or the underlying authorities. A determination that the Trust is not taxable as a trust (within the meaning of Treasury Regulation Section 301.7701-4) likely would have a significant adverse impact on the Owners. Because the holding of Rev. Rul. 2004-86 is based on certain factual assumptions regarding the DST described in the ruling, not all of which apply to the Trust, and because there are provisions in the Trust Agreement that are not mentioned in the limited facts laid out in the ruling, there can be no guarantee that the Interests will satisfy the requirements of Code Section 1031.

No Decision Rights Regarding the Disposition of the Property Interests in the Properties. The Owners will not have any vote or decision-making authority with respect to the Disposition of the Property Interests in the Properties, particularly with respect to the timing thereof. If the Manager determines, in its sole discretion, that the Disposition of the Property Interests in the Properties is reasonable, then the Trust may sell the Property Interests in the Properties. This Disposition will occur without regard to the tax position, preferences or desires of any of the Owners, and the Owners will have no right to approve (or disapprove) of the Disposition of the Property Interests in the Properties. An Owner may or may not be able to defer the recognition of gain for federal, state or local income tax purposes when this Disposition occurs.

Conversion to the LLC Likely Impairs Future Deferral Under Code Section 1031. In the event of a LLC Conversion, the Trust will be converted into the LLC and the Owners’ Interests in the Trust will be converted to interests in the LLC. The LLC will be treated as a partnership for federal income tax purposes. Unlike interests in the Trust, interests in the LLC will not be treated as direct ownership interests in real property for federal income tax purposes (including for purposes of a Section 1031 Exchange). Thus, if an LLC Conversion were to occur, it is

unlikely that any of the Owners will thereafter be able to defer the recognition of gain with respect to their interests in the LLC under Code Section 1031.

An LLC Conversion will occur under the circumstances set forth in the Trust Agreement without regard to the tax consequences that arise as a result of the transaction. Under current law, an LLC Conversion should not be subject to federal income tax pursuant to Code Section 721. An LLC Conversion could be subject, however, to state or local income, transfer or other taxes. In addition, there can be no assurances that an LLC Conversion will not be taxable under the federal income or other tax laws in effect at the time the LLC Conversion occurs. Because an LLC Conversion could occur in several situations, it is not possible to determine all of the tax consequences to the Owners in the event that an LLC Conversion does occur. Prospective Investors should consult their own tax advisors regarding the tax consequences of an LLC Conversion and the effect of the Properties being held by the LLC rather than the Trust. An LLC Conversion, if made, will occur only as permitted in accordance with Section 9.2 of the Trust Agreement. An event which would cause an LLC Conversion with respect to any of the assets of the Trust is not expected at this time based on current and foreseeable circumstances.

Delayed Closing; Inability to Close. An Owner who is completing a Section 1031 Exchange should be aware that closing on his acquisition of Replacement Property must occur before midnight on the earlier of (i) the 180th day after the date on which the Owner transferred the property relinquished in the exchange, or (ii) the due date (including extensions) for the Owner's return for the taxable year in which the transfer of the Relinquished Property occurs. No extensions will be granted or other relief afforded by the IRS to taxpayers who do not satisfy this requirement. Therefore, a delayed closing on the acquisition of an Interest could adversely affect the qualification of an exchange under Code Section 1031.

Because there can be no assurance that an Investor's offer to acquire an Interest will be accepted, a prospective Investor pursuing a Code Section 1031 Exchange is strongly encouraged to (if and to the extent he is otherwise permitted to do so under the particular identification rules applicable to him) "identify" the maximum number of alternative Replacement Properties and not to identify only his prospective interest in each of the Property Interests in the Properties purchased in this Offering.

Deferral of Tax under State Law. Some states adopt Code Section 1031 in whole, other states adopt it in part and still other states impose their own requirements to qualify for deferral of gain under state law. In addition, while many states follow federal tax law by treating the owner of an interest in a fixed investment trust as owning an interest in the assets held by the Trust, other state laws may differ and could result in the imposition of income or other taxes on such entities. Each prospective Investor must consult its own tax advisor as to the qualification of a transaction for deferral of gain under state law. See "Federal Income Tax Consequences."

The Use of Certain Exchange Proceeds and Other Aspects of the Offering May Result in Taxable "Boot." In a Section 1031 Exchange, money or non-qualifying property received or deemed received in addition to the like-kind property is referred to as "boot." Furthermore, gain realized on the relinquished property transaction is recognized up to the amount of "boot" received or deemed received in the replacement property transaction. Generally, any personal property that may be part of the Properties, amounts used to establish reserves and impounds or other items that are not attributable to the purchase of real estate will not be treated as an interest in real estate and may be treated as "boot." Owners should be aware that the IRS may take the position that certain costs, escrows, reserves and impounds, as well as seller credits established or paid in connection with the sale of relinquished property and purchase of replacement property may be deemed "boot" and be taxable income to the investor. The prepaids, reserves, and impounds are \$31,881.95 per Interest. A significant portion of this amount per interest is expected to be attributable to reserves and impounds funded from Loan proceeds at closing as a requirement of the Loan. It is possible that such amounts, if sufficient additional funds are borrowed by the Owners in excess of the indebtedness of an Owner's prior investment, will not be treated as taxable boot. It is also possible that these reserves will be treated as cash boot.

In addition, the IRS could take the position that the increase in the purchase price of the Properties paid by the Owners would not be considered as an interest in real estate and may be treated as taxable "boot." Also, to the extent that the Owner's share of the Loan associated with the Interest purchased by the Owner is less than the Owner's debt on the Relinquished Property, such difference will constitute taxable "boot" to the Owner (and reportable

currently by the Owner) to the extent of the Owner's realized gain from his sale of his Relinquished Property. **No opinion is being provided by the Trust, the Manager, the Sponsor or their Affiliates or counsel with respect to the amount of "boot" in the transaction. Owners must consult their own independent tax advisor regarding these items.**

Other Requirements of Code Section 1031. Code Section 1031(a) provides for non-recognition of gain or loss only if real property held for use in a trade or business or for investment is exchanged for other real property of like-kind held for use in a trade or business or for investment. There are numerous requirements contained in the applicable provisions of the Code and Treasury Regulations concerning qualification for non-recognition of gain under Code Section 1031. Each Owner will have to determine with such Owner's own tax advisors whether an Owner's purchase of an Interest as part of a Section 1031 Exchange satisfies the requirements of Code Section 1031. See "Federal Income Tax Consequences."

Potential Significant Tax Costs If Interests Were Deemed to Be Interests in a Partnership. If the Owners are treated for federal income tax purposes as having purchased interests in a partnership, the Owners who purchased their Interests as part of a Section 1031 Exchange would not qualify for deferral of gain under Code Section 1031, and each Owner who had relied on deferral of such Owner's gain from a disposition of other interests in real property would immediately recognize such gain and be subject to federal income tax thereon. Additionally, since such determination would of necessity come after such Owner had purchased his Interest, such Owner may have no cash from the disposition of the Relinquished Property with which to pay the tax. Given the illiquid and long-term nature of an investment in the Interests, there would be no practical means of generating cash from an investment in the Interests to pay the tax. In such circumstances, an Owner will have to use funds from other sources to satisfy this tax liability.

Possible Adverse Tax Treatment for Closing Costs and Reserves. A portion of the proceeds of the Offering will be used to pay each Owner's pro rata share of closing costs, expenses, and other costs of the Offering. In addition, a portion of the proceeds of the Offering may be treated as having been used to purchase an interest in reserves established by the Sponsor rather than for real estate. Because the tax treatment of certain expenses of the Offering, closing costs, financing costs or reserves is unclear and may vary depending upon the circumstances, no advice or opinion of Tax Counsel will be given regarding the tax treatment of such costs and the treatment of proceeds attributable to the reserves, which may be taxable to those Owners who purchase their Interests as part of a Section 1031 Exchange. Therefore, each prospective Investor should seek the advice of a qualified tax advisor as to the proper treatment of such items.

Compliance with Revenue Ruling 2004-86. Tax Counsel believes that the powers and authority granted to the Trustee, Manager, Owners, and the Trust in the Trust Agreement fall within the limited scope of the powers and authority that may be exercised with respect to an "investment trust." The Trust Agreement authorizes the Trust to own the Properties, receive distributions from the Properties, and make distributions thereof, enter into any agreements with qualified intermediaries for purposes of an Owner's acquisition of an Interest pursuant to Section 1031, and notify the relevant parties of any defaults under the transaction documents. Additionally, the Trust Agreement expressly denies the Manager any power or authority to undertake any actions that are not permitted to be undertaken by an entity that is treated as a "trust" within the meaning of Treasury Regulation Section 301.7701-4 and not treated as a "business entity" within the meaning of Treasury Regulation Section 301.7701-3. Furthermore, the Trust Agreement expressly prohibits the Trustee, Manager, Owners and the Trust from exercising any of the enumerated powers that are prohibited under Revenue Ruling 2004-86.

The Trust has been structured with a view to the trust addressed in Rev. Rul. 2004-86. However, distinctions exist between the Trust Agreement and other related arrangements and the trust and other related arrangements described in Revenue Ruling 2004-86. Tax Counsel believes these distinctions are not material. These distinctions include, but are not limited to the following, which Tax Counsel views as those distinctions necessitating discussion and analysis: (i) the conversion of the Trust for tax purposes by the Sponsor from a "disregarded entity" for federal income tax purposes into an investment trust prior to admission of the Owners; (ii) the ongoing role of the Sponsor's affiliate as Manager, but with powers limited to those permitted to be exercised by the Trustee; (iii) the potential conversion of the Trust into a Delaware limited liability company that would constitute a partnership for federal income tax purposes as a result of a LLC Conversion; (iv) the Trust's acceptance of multiple contributions from

purchasers of Class 1 Interests over time, rather than through a single contribution, (v) the fact that the Sponsor may retain a beneficial interest in the Trust during the period of the Offering, and the indirect owners of the Sponsor will purchase and own one Class 1 Interest in the Offering; (vi) the fact that the Trust Agreement empowers the Manager (and only the Manager) to determine in its sole discretion when a Disposition of the Property Interests in the Properties would be reasonable using its commercially reasonable business judgment and, thus, when the Properties shall be sold; (vii) the obligation of the Trust to pay the Capital Expenses (as defined in the Master Lease) of the Properties, which includes capital expenditures with a term that exceeds the term of the Master Lease, and the right of the Master Lessee to use reserves to pay such Capital Expenses; and (viii) the owners of ExchangeRight (which owns the Manager and the Master Lessee) have executed certain limited guaranties with respect to the Loan.

If, however, the IRS or a court were to disagree with the opinion of Tax Counsel, the Interests may be treated for federal income tax purposes as interests in a partnership and not as interests in real estate, and Owners would not be able to use their acquisition of Interests as part of a Section 1031 Exchange to defer gain under Code Section 1031.

The above is a summary of Tax Counsel's comparison of the Trust to the trust arrangement described in Revenue Ruling 2004-86. For the entire discussion, please see the Tax Opinion a copy of which is attached hereto as Exhibit F.

Failure to Completely Syndicate the Offering may Impact Compliance with Revenue Ruling 2004-86. Rev. Rul. 2004-86 also requires that an entity may have only a single class of ownership interest in order to be treated as an "investment trust." The trust classification regulations allow for two classes of interests, however, where the use of a second class is merely incidental to a trust's investment purposes, as is the case with the Class 1 Interests and Class 2 Interests. There is a risk that where a sponsor does not completely syndicate an offering and keeps the remaining interests in the trust along with receiving fees through a master lease arrangement, such sponsor is in essence receiving a preferred interest in the trust, or a second class of interest. However, due to the fact that the management fee is intended to be at market rate, we do not believe that this should negatively impact the Trust's treatment as an "investment trust."

Status as a True Lease for Federal Income Tax Purposes. Transactions structured as leases may be recharacterized for federal income tax purposes to reflect their economic substance. For example, in appropriate circumstances a purported lease of property may be recharacterized as a sale of the property providing for deferred payments (i.e., a financing). Such a recharacterization in this context would have significant and adverse tax consequences. For example, if the Master Lease were to be recharacterized as a financing, then for tax purposes, the Owner would be treated as having immediately sold the acquired Interest in the Properties to the Master Lessee (which would be treated as having purchased the Properties from the Owners in exchange for an installment note). The rent payments under the Master Lease would be recharacterized as interest and principal payments on a loan incurred to finance the Master Lessee's purchase of the Properties. The Master Lessee would be entitled, as the owner of the Properties for tax purposes, to claim any depreciation deductions. An Owner would be unable to treat the acquired Interest as qualified "replacement property" in a Section 1031 Exchange because the Interest would constitute an interest in real property that the Owner would not hold for investment. As a result, Owners attempting to participate in Section 1031 Exchanges would not be treated as having received qualified replacement property when they acquired their Interest. Such a recharacterization would thus have a significant adverse impact on the tax consequences of an investment in an Interest.

Rev. Proc. 2001-28 sets forth advance ruling guidelines for "true lease" status. We have not sought, and do not expect to request, a ruling from the IRS under Revenue Procedure 2001-28. These ruling guidelines provide certain criteria that the IRS will require to be satisfied in order to issue a private letter ruling that a lease is a "true lease" for federal income tax purposes. In the event of an examination by the IRS, the IRS and, ultimately, the courts of applicable jurisdiction, would consider these ruling guidelines, together with existing cases and rulings, for purposes of determining whether a lease qualifies as a true lease for federal income tax purposes. However, Tax Counsel does not believe that strict compliance with Rev. Proc. 2001-28 is required to conclude that the Master Lease should be characterized as a true lease for federal income tax purposes. Rather, Tax Counsel believes that satisfying most of the material ruling guidelines should be sufficient for purposes of determining the characterization of the Master Lease for federal income tax purposes. Tax Counsel believes the Master Lease satisfies most of the pertinent material conditions set forth in Rev. Proc. 2001-28 and that the Master Lease should be treated as a true lease rather than as a

financing for federal income tax purposes. Similarly, if the Master Lessee were treated as a mere agent of the Trust rather than as a lessee, the power of the Master Lessee to make improvements to the Properties and to re-lease the Properties could be attributed to the Trust, and the Trust could be deemed to have powers prohibited under Rev. Rul. 2004-86. We have considered the issue and, after having consulted with Tax Counsel, have concluded that the Master Lessee should not be treated as an agent of the Trust. However, there is no assurance that the IRS would agree with these positions.

Tax Penalties. The Tax Opinion obtained from Tax Counsel on the Loan Closing Date and attached hereto as Exhibit F is written to support the promotion or marketing of this transaction. Each prospective Investor must seek advice based on the prospective Investor's particular circumstances from an independent tax advisor.

Other Tax Risks

Limitations on Losses and Credits from Passive Activities. Losses from passive trade or business activities generally may not be used to offset "portfolio income," such as interest, dividends and royalties, or salary or other active business income. Deductions from such passive activities generally may be used to offset only passive income. Interest deductions attributable to passive activities are treated as passive activity losses, and not as investment interest. Thus, such interest deductions are subject to limitation under the passive activity loss rule and not under the investment interest limitation rule. Credits from passive activities generally are limited to the tax attributable to the income from passive activities. Passive activities include trade or business activities in which the taxpayer does not materially participate and also generally include rental activities. The Owner's income and loss from the Trust will likely constitute income and loss from passive activities. A taxpayer may deduct passive losses from rental real estate activities against other income if: (i) more than half of the personal services performed by the taxpayer in trades or businesses are performed in a real estate trade or business in which the taxpayer materially participates, and (ii) the taxpayer performs more than 750 hours of service during the tax year in real property trades or businesses in which the taxpayer materially participates. See "Federal Income Tax Consequences."

Limitation on Excess Business Losses. Under the recent Tax Cuts and Jobs Act of 2017 (the "TCJA"), as revised by the Coronavirus Aid, Relief, and Economic Security Act of 2020 (the "CARES Act"), excess business losses of a taxpayer other than a corporation are not allowed for taxable years beginning after December 31, 2020. Such losses are carried forward and treated as part of the taxpayer's net operating loss carryforward in subsequent taxable years. An excess business loss for the taxable year is the excess of aggregate deductions of the taxpayer attributable to trades or businesses of the taxpayer over the sum of aggregate gross income or gain of the taxpayer plus a threshold amount. The threshold amount, which is indexed for inflation, was \$250,000 (or twice the applicable threshold amount in the case of a joint return) for 2018. The provision applies after the application of the passive loss rules and applies at the partner or shareholder level in the case of a partnership or S corporation.

Limitation on Deductibility of Business Interest. The TCJA, as revised by the CARES Act, provides a new limitation on the deduction of business interest (i.e., interest paid or accrued on indebtedness allocable to a trade or business) for U.S. federal income tax purposes. In general, and subject to certain exceptions, including for a real estate trade or business if an election is made, business interest expense (i.e., business interest in excess of a taxpayer's business interest income for the taxable year) is not deductible to the extent such interest exceeds 50%, for a taxpayer's 2019 and 2020 taxable years, and 30%, for tax years beginning in 2021, of a taxpayer's adjusted taxable income (as defined in Section 163(j) of the Code, as revised by the TCJA and the CARES Act); provided, that (i) a taxpayer that is a partnership is only entitled to deduct up to 30% of its adjusted taxable income with respect to its 2019 taxable year and (ii) a taxpayer may elect to use its 2019 adjusted taxable income to determine its 2020 business interest limitation. Note that the limitation on the deductibility of business interest does not apply to investment interest.

Adjusted taxable income means the taxable income of the taxpayer computed without regard to (i) any item of income, gain, deduction, or loss which is not properly allocable to a trade or business; (ii) any business interest deductions or business interest income; and (iii) the amount of any net operating loss deduction. For taxable years beginning before January 1, 2022, adjusted taxable income is computed without regard to deductions allowable for depreciation, amortization, or depletion, but after January 1, 2022, depreciation and amortization are taken into account to reduce adjusted taxable income for purposes of computing the limitation. Any net business interest expense of a taxpayer in excess of the limitation is not currently deductible by the taxpayer and is carried forward to future

years. Taxpayers that conduct certain real estate businesses may elect not to have this interest expense limitation apply to them, provided that they use an alternative depreciation system to depreciate certain property.

Limitation on Losses under the At-Risk Rules. An Owner that is an individual or closely held corporation will be unable to deduct losses from the Trust, if any, to the extent such losses exceed the amount such Owner is “at risk.” Losses not allowed under the at-risk provisions may be carried forward to subsequent taxable years and used when the amount at risk increases or when the Owner generates gain on the disposition of the activity. However, the rules regarding the applicability of the at risk rules to a particular Owner are complex and vary with the facts and circumstances particular to each Owner. Prospective Investors should consult their tax advisors with respect to the tax consequences to them of the rules described herein. See “Federal Income Tax Consequences.”

Potential Tax Liability in Excess of Cash Distributions. It is possible that an Owner’s tax liability resulting from its Interest will exceed its share of cash distributions from the Trust. This may occur because (i) cash flow from the Properties may be used to fund nondeductible expenses of the Properties; (ii) all cash from operations of the Properties must be deposited in the Deposit Account (as defined in the Loan Documents) pursuant to the requirements in the Loan Document; or (iii) in an extremely rare circumstance, a substitution of the Properties may result in taxable gain without cash proceeds. Thus, there may be years in which an Owner’s tax liability exceeds its share of cash distributions from the Trust. The same consequences may result from a sale or transfer of an Interest, whether voluntary or involuntary, that gives rise to ordinary income or capital gain. If any of these circumstances occur, an Owner would have to use funds from other sources to satisfy its tax liability.

Risk of Audit. An audit of an Owner’s tax returns by the IRS or any other taxing authority could result in a challenge to, and disallowance of, some of the deductions claimed on such returns. An audit also could challenge the qualification of a Section 1031 Exchange. No assurance or warranty of any kind can be made with respect to the deductibility of any items, or the qualification of a Section 1031 Exchange, in the event of either an audit or litigation resulting from an audit. An audit of an Owner’s tax returns also could arise as a result of an examination by the IRS or any other taxing authority of tax returns filed by the Sponsor or its Affiliates, or another Owner, or any information return filed by the Trust.

Changes in Federal Income Tax Law. The discussion of tax aspects contained in this Memorandum is based on law presently in effect and certain proposed Treasury Regulations. Nonetheless, prospective Investors should be aware that new administrative, legislative or judicial action could significantly change the tax aspects of an investment in an Interest. Any such change may or may not be retroactive with respect to transactions entered into or contemplated before the effective date of such change and could have a material adverse effect on an investment in an Interest.

The rules dealing with U.S. federal income taxation are constantly under review by persons involved in the legislative process and by the IRS and the U.S. Department of Treasury, resulting in revisions of resolutions and revised interpretations of established concepts as well as statutory changes. In particular, the TCJA, which generally takes effect for taxable years beginning on or after January 1, 2018 (subject to certain exceptions), makes many significant changes to the U.S. federal income tax laws. To date, the IRS has issued only limited guidance with respect to certain of the new provisions, and there are numerous interpretive issues that will require guidance. Technical corrections legislation may be needed to clarify certain aspects of the new law and give proper effect to Congressional intent. There can be no assurance, however, that technical clarifications or changes needed to prevent unintended or unforeseen tax consequences will be enacted by Congress in the near future.

An investment in an Interest involving solely real property was not impacted by the TCJA. Specifically, subject to certain transition rules, for transfers effective after December 31, 2017, Section 1031 Exchanges are only allowed with respect to real property that is not held primarily for sale. Generally, tangible personal property and intangible property are no longer eligible for Section 1031 Exchanges. Thus, Owners will be able to utilize a Section 1031 Exchange to achieve tax deferral on gain in connection with the disposition of real property, but not with respect to tangible or intangible personal property. However, no assurance can be given that the currently anticipated U.S. federal income tax treatment of an Interest will not be modified by future legislative, judicial or administrative changes possibly with retroactive effect. For example, repeal or amendment of Code Section 1031 or the Treasury Regulations

promulgated thereunder could negatively impact the use of a Section 1031 Exchange in connection with an Owner's exit strategy.

Tax Shelter, Listed Transaction and Reportable Transaction Disclosure. A taxpayer's ability to claim privilege on any communication with a federally authorized tax preparer involving a tax shelter is limited. In addition, taxpayers and material advisors are required to comply with disclosure and list maintenance requirements for reportable transactions. Reportable transactions include transactions that generate losses under Code Section 165 and may include certain large like-kind exchanges entered into by corporations.

The Trust believes, and Tax Counsel believes, they are not required to, and do not intend to, make any filings pursuant to these disclosure or list maintenance requirements. There can be no assurances that the IRS will agree with this determination by the Trust and Tax Counsel. Significant penalties could apply if a party fails to comply with these rules, and such rules are ultimately determined to be applicable.

State and Local Taxes. In addition to federal income tax consequences, a prospective Investor should consider the state and local tax consequences of an investment in an Interest. Prospective Investors must consult with their own tax advisors concerning the applicability and impact of any state and local tax laws. Owners may be required to file state tax returns in some or all of the states where the Properties are located in connection with the ownership of an Interest. See "Federal Income Tax Consequences."

Accuracy-Related Penalties and Interest. In the event of an audit that disallows an Owner's deductions or disqualifies an Owner's Section 1031 Exchange, Owners should be aware that the IRS could assess significant penalties and interest on tax deficiencies. The Code provides for penalties relating to the accuracy of tax returns equal to 20% of the portion of the tax underpayment to which the penalty applies. The penalty applies to any portion of any understatement that is attributable to (i) negligence or disregard of rules or regulations; (ii) any substantial understatement of income tax; or (iii) any substantial valuation misstatement. A substantial valuation misstatement occurs if the value of any property (or the adjusted basis) is 150% or more of the amount determined to be the correct valuation or adjusted basis. This penalty generally doubles if the valuation is overstated by 200% or more or is attributable one or more "non-disclosed economic substance" transactions or to a gross valuation misstatement. In addition to these provisions, a 20% accuracy related penalty is imposed for listed or reportable transactions having a significant tax avoidance purpose. This penalty is increased to 30% if the transaction is not properly disclosed on the taxpayer's federal income tax return. Failure to disclose such a transaction can also prevent the applicable statute of limitations from tolling in certain circumstances and can subject the taxpayer to additional disclosure penalties ranging from \$10,000 to \$200,000, depending on the facts of the transaction. Any interest attributable to unpaid taxes associated with a non-disclosed reportable transaction may not be deductible for federal income tax purposes.

Alternative Minimum Tax. The alternative minimum tax applies with respect to certain taxpayers to taxable income adjusted by designated items of tax preference. The limitations on the deduction of passive losses also apply for purposes of computing alternative minimum taxable income. Prospective Investors should consult with their own tax advisors concerning the applicability of the alternative minimum tax.

Medicare Tax. Section 1411 of the Code generally imposes on certain individuals, trusts, and estates an additional tax of 3.8% on the lesser of (i) "net investment income", or (ii) the excess of modified adjusted gross income over a threshold amount. Prospective Investors should consult with their own tax advisors regarding the possible implications of the Medicare tax in light of their individual circumstances.

ACQUISITION TERMS AND FINANCING

Acquisition Terms

During the period commencing December 7, 2022 through February 28, 2023, the Trust acquired the Property Interests in the Properties directly from their respective Sellers/Lessors, which are Affiliates of the Sponsor. The Property Interests in the Properties are controlled 100% by the Trust. The difference between the purchase price for the Properties and the \$18,732,000 purchase price for the Interests (the “**Purchase Price**”), which consists of \$11,400,000 in equity and \$7,332,000 in debt, includes accountable reserves, transaction costs, legal fees, Offering costs, real estate and short-term financing costs (some of which are being paid to Affiliates of the Sponsor), acquisition fee to the Sponsor, Selling Commissions (as defined below), due diligence allowances, and related expenses. In conjunction with the purchase of the Properties, the Master Lessee became the lessor under the Tenants’ leases.

Federal, state and local laws impose liability on a landowner for releases or the otherwise improper presence on the premises of hazardous substances. This liability is without regard to fault for, or knowledge of, the presence of such substances. A landowner may be held liable for hazardous materials brought onto the property before it acquired title and for hazardous materials that are not discovered until after it sells the property. Similar liability may occur under applicable state law. The Sellers/Lessors have made no representations and warranties in the Property ground leases regarding the presence or release of hazardous materials at or from the Properties. The Trust acquired the Property Interests in the Properties on an “as is” basis. If losses arise from hazardous substance contamination that cannot be recovered from a responsible party, the financial viability of the Properties may be substantially affected. In an extreme case, the Properties may be rendered worthless or the Trust may be obligated to pay cleanup and other costs in excess of the value of the Properties.

Basic Loan Terms

On the Loan Closing Date, the Trust placed a loan on the Properties in the amount of \$7,332,000 (the “**Loan**”) obtained from Lender. The Loan has a 10-year fixed-rate term and an interest rate of 6.4500% per year with interest only payments for the entire term of the Loan. The loan documents include the following documents (collectively, the “**Loan Documents**”) with respect to the Properties: (i) the Loan Agreement dated as of the Loan Closing Date between the Trust and Lender for the Loan; (ii) the Promissory Note made by the Trust payable to the order of Lender evidencing the Loan; (iii) the Guaranty Agreement executed by the Key Principals for the benefit of Lender; (iv) the Deeds of Trust and Security Agreements executed by the Trust in favor of the Lender for the Illinois and North Carolina Properties; (v) the Mortgages and Security Agreements executed by the Trust in favor of the Lender for the Maryland, New Jersey, Ohio, Pennsylvania and Wisconsin Properties; (vi) the Assignments of Leases and Rents and Security Agreement executed by the Master Lessee for the benefit of the Lender; (vii) the Environmental Indemnity Agreement executed by the Trust and each guarantor, as indemnitors, for the benefit of the Lender; (viii) the Assignment and Subordination of Management Agreement and Consent of Manager executed by and among the Trust, as assignor, Lender, as assignee and the Manager; (ix) the Deposit Account Control Agreement between the Trust, the Lender and PNC Bank, N.A.; (x) the Cash Management Agreement among the Trust, the Manager, the Lender and PNC Bank, N.A.; (xi) the Assignment of Agreements between the Trust, as assignor and Lender, as assignee; and (xii) any other document necessary to enter into the Loan. Complete copies of the Loan Documents are available upon request to the Sponsor.

The Trust may be required to inform the Lender of all transfers of Interests as set forth in the Loan Documents and under the Trust Agreement. Further, no Owner, and no transferee of an Interest may own more than 19.99% of the beneficial interests in the Trust, unless approved by the Lender. No additional financing or monetary encumbrances of the Properties, or the Interests, shall be permitted during the term of the Loan.

The Lender may foreclose on the Properties upon various events of default. If the Lender were to foreclose, you would likely lose your entire investment and could suffer adverse tax consequences. See “Risk Factors.”

Security Arrangements/Collateral

As security for the payment and performance of all of the obligations under the Loan, the following will be used as collateral: (i) a first priority fee mortgage on the Properties in Maryland, New Jersey, Ohio, Pennsylvania and

Wisconsin and a first priority deed of trust on the Properties in Illinois and North Carolina; (ii) a first priority assignment of the Master Lease and all subleases and rents; (iii) a first priority assignment of permits, licenses and contracts; (iv) a pledge of escrow, reserve and cash collateral accounts and sub-accounts; (v) an assignment of Tenants' security deposits and letters of credit; and (vi) UCC-1 financing statements.

Secondary Market Transaction

The Lender has the right at any time (i) to participate, syndicate or securitize all or any portion of its interest in the Loan; (ii) to cause the Loan to be split into senior and one or more junior or mezzanine loans in whatever proportion the Lender deems appropriate; and (iii) to create one or more senior and subordinate notes (i.e., an A/B or A/B/C structure) or multiple components of such note or notes, and thereafter to sell, assign, participate, syndicate or securitize all or any part of any variant of the Loan. Any of the foregoing may be referred to as "Secondary Market Transaction." The Trust will reasonably cooperate with the Lender to facilitate any Secondary Market Transaction and the rating of the Loan and of each securitization in which one or more loans are included; provided that the Trust shall not be required to incur any out-of-pocket expense in connection therewith, except as a result of the affirmative actions by the Trust. The Trust's cooperation obligation shall continue until the Loan has been paid in full.

Events of Default

The occurrence of any one or more of the following events constitute an "**Event of Default**" under the Loan Documents:

(a) if any portion of the Debt (as defined in the Loan Agreement) is not paid on or prior to the date the same is due or if the entire Debt is not paid on or before the Maturity Date (as defined in the Loan Agreement);

(b) except as otherwise expressly provided in the Loan Documents, if any of the Property Taxes (as defined in the Loan Agreement) or Other Charges (as defined in the Loan Agreement) are not paid when the same are due and payable, unless there is sufficient money in the Tax and Insurance Reserve Account (as defined in the Loan Agreement) for payment of amounts then due and payable and Lender's access to such money has not been constrained or restricted in any manner;

(c) if (i) the Policies (as defined in the Loan Agreement) are not kept in full force and effect, (ii) the Acord 28 (as defined in the Loan Agreement) (or similar) certificate is not delivered to Lender in accordance with Section 8.1 of the Loan Agreement or (iii) certified copies of the Policies are not delivered to Lender upon request, provided such copies are available;

(d) if (i) the Trust breaches in any material respect any covenant with respect to itself or any SPE Component Entity (as defined in the Loan Agreement) (if any) contained in Article 6 of the Loan Agreement or (ii) a Prohibited Transfer (as defined in the Loan Agreement) occurs;

(e) if any representation or warranty of, or with respect to, the Trust, Guarantor (as defined in the Loan Agreement), any SPE Component Entity, or any member, general partner, principal or beneficial owner of any of the foregoing, made herein, in any other Loan Document, or in any certificate, report, financial statement or other instrument or document furnished to Lender at the time of the closing of the Loan or during the term of the Loan shall have been false or misleading in any material respect when made;

(f) any failure by the Trust, Manager or the Trustee to comply with all (or the violation of any) applicable laws and regulations of the State of Delaware as the same relate to the Trust's existence as a DST;

(g) if (i) the Trust, or any managing member or general partner of the Trust, Guarantor, any SPE Component Entity (if any), Master Lessee or any Master Lessee SPE Component Entity shall commence any case, proceeding or other action (A) under any Creditors Rights Laws (as defined in the Loan Agreement), seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, or (B) seeking appointment of a receiver, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Trust, any managing member or general partner of the Trust,

Guarantor, any SPE Component Entity (if any), Master Lessee or any Master Lessee SPE Component Entity shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Trust, any managing member or general partner of the Trust, Guarantor, any SPE Component Entity (if any), Master Lessee or any Master Lessee SPE Component Entity any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged or unbonded for a period of sixty (60) days; or (iii) there shall be commenced against the Trust, any managing member or general partner of the Trust, Guarantor, any SPE Component Entity (if any), Master Lessee or any Master Lessee SPE Component Entity any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order for any such relief which shall not have been vacated, discharged, or stayed or bonded pending appeal within sixty (60) days from the entry thereof; or (iv) the Trust, any managing member or general partner of the Trust, Guarantor, any SPE Component Entity (if any), Master Lessee or any Master Lessee SPE Component Entity shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Trust, any managing member or general partner of the Trust, Guarantor, any SPE Component Entity (if any), Master Lessee or any Master Lessee SPE Component Entity shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due;

(h) if the Trust shall be in default beyond applicable notice and grace periods under any other mortgage, deed of trust, deed to secure debt or other security agreement covering any part of the Property, whether it be superior or junior in lien to the Mortgage (as defined in the Loan Agreement);

(i) if any Individual Property (as defined in the Loan Agreement) becomes subject to any mechanic's, materialman's or other Lien other than a Lien for any Property Taxes (as defined in the Loan Agreement) or Other Charges (as defined in the Loan Agreement) (excluding any PACE Lien) not then due and payable and the Lien (as defined in the Loan Agreement) shall remain undischarged of record (by payment, bonding or otherwise) for a period of thirty (30) days;

(j) if any federal tax lien is filed against the Trust, any member or general partner of the Trust, Guarantor, or any SPE Component Entity (if any) or any Individual Property and same is not discharged of record (by payment, bonding or otherwise) within thirty (30) days after same is filed;

(k) if a judgment is filed against the Trust in excess of \$50,000 which is not vacated, dismissed, discharged or bonded over within thirty (30) days;

(l) if any default occurs under any guaranty or indemnity executed in connection herewith and such default continues after the expiration of applicable grace periods, if any;

(m) if the Trust shall permit any event within its control to occur that would cause any REA (as defined in the Loan Agreement) to terminate without notice or action by any party thereto or would entitle any party to terminate any REA and the term thereof by giving notice to the Trust; or any REA shall be surrendered, terminated or canceled for any reason or under any circumstance whatsoever except as provided for in such REA; or any term of any REA shall be modified or supplemented without Lender's prior written consent, such consent not to be unreasonably withheld, conditioned or delayed; or the Trust shall fail, within ten (10) Business Days after demand by Lender, to exercise its option to renew or extend the term of any REA or shall fail or neglect to pursue diligently all actions necessary to exercise such renewal rights pursuant to such REA except as provided for in such REA;

(n) (A) any provision of the Condominium Documents (as defined in the Loan Agreement) or any section, sentence, clause, phrase or word or the application thereof in any circumstance is held invalid and such invalidity could materially or adversely affect the Trust or the Property as reasonably determined by Lender, (B) the Condominium (as defined in the Loan Agreement) shall become subject to any action for partition by any condominium unit owner which could reasonably be expected to result in partition and said action has been commenced and not dismissed within thirty (30) days after commencement thereof, or (C) the Condominium is withdrawn from the condominium regime established under the Condominium Act;

- (o) if the Trust breaches in any material respect any covenant contained in Section 10.2 of the Loan Agreement and such breach continues for two (2) Business Days (as defined in the Loan Agreement) after written notice from Lender;
- (p) if a default occurs under the Master Lease;
- (q) if a default occurs under the Property Management Agreement or Manager resigns or is removed without Lender's prior written consent;
- (r) the breach of any representation or warranty contained in Section 4.45 or Section 4.46 or any covenant in Section 5.26 or Section 5.28 of the Loan Agreement;
- (s) if the Trust breaches any covenant contained in Section 7.7 of the Loan Agreement;
- (t) the Trust shall fail to pay any charges, fees, assessments or other amounts, including without limitation, the Common Charges (as defined in the Loan Agreement) after the expiration of any applicable notice and cure periods set forth in the Condominium Documents, imposed upon the Trust under the Condominium Documents or by the Condominium Association (as defined in the Loan Agreement); or any of the Condominium Documents shall be modified, changed, altered, amended, terminated or supplemented without Lender's consent;
- (u) if the Trust shall continue to be in default under any other term, covenant or condition of the Loan Agreement or any of the Loan Documents not covered in the foregoing clauses of Section 11.1 of the Loan Agreement, for more than ten (10) days after notice from Lender in the case of any default which can be cured by the payment of a sum of money or for thirty (30) days after notice from Lender in the case of any other default, provided that if such default (other than any default which can be cured by the payment of a sum of money) cannot reasonably be cured within such thirty (30) day period and the Trust shall have commenced to cure such default within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as it shall require the Trust in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of sixty (60) days; or
- (v) the breach by the Trust of any covenant contained in Section 5.27 of the Loan Agreement.

Recourse Provisions

The Loan will be recourse to the Trust upon certain events (as defined in the Loan Agreement) and recourse may be had against Joshua Ungerecht, David Fisher and/or Warren Thomas for (i) "bad acts" as described below and (ii) environmental Indemnification. The non-recourse "bad act" carve-outs that are in the Loan Documents are as follows:

- (a) fraud or intentional misrepresentation by an Exculpated Party (as defined in the Loan Agreement) in connection with the execution and the delivery of this Agreement, the Note (as defined in the Loan Agreement), the Mortgage, any of the other Loan Documents, or any certificate, report, financial statement or other instrument or document furnished to Lender at the time of the closing of the Loan or during the term of the Loan;
- (b) the gross negligence or willful misconduct of an Exculpated Party;
- (c) any Exculpated Party's misapplication or misappropriation of Rents (as defined in the Loan Agreement) received by the Trust during the continuance of an Event of Default;
- (d) any Exculpated Party's misapplication or misappropriation of tenant security deposits (including the failure to deliver to Lender tenant security deposits upon foreclosure or deed in lieu thereof, to the extent not applied in accordance with the applicable Leases prior to the occurrence of an Event of Default) or Rents collected in advance;

(e) the misapplication or the misappropriation of Insurance Proceeds (as defined in the Loan Agreement) or Awards (as defined in the Loan Agreement) by any Exculpated Party;

(f) the Trust's failure to pay Property Taxes (as defined in the Loan Agreement), Insurance Premiums (as defined in the Loan Agreement), and Other Charges (as defined in the Loan Agreement) (provided that there shall be no liability hereunder to the extent that (A) sums sufficient to pay such amounts have been deposited in escrow with Lender pursuant to the terms hereof and the Trust has not made a claim against such escrowed amounts or otherwise taken action to restrict Lender from applying such sums for the purpose of paying such items and Lender's access to such funds has not been constrained or restricted in any manner, or (B) there is insufficient cash flow from the operation of the Properties to pay such items), charges for labor or materials or other charges that can create liens on the Properties beyond any applicable notice and cure periods specified herein;

(g) the Trust's failure to return or to reimburse Lender for all Personal Property (as defined in the Loan Agreement) taken from any Individual Property by or on behalf of the Trust and not replaced with Personal Property of the same utility and of the same or greater value;

(h) material physical waste to any Individual Property caused by the acts or omissions of any Exculpated Party;

(i) the Trust's failure during the continuance of any Event of Default to (A) deliver to Lender upon demand all Rents and books and records relating to the Properties or (B) comply with all written notices and instructions of Lender delivered pursuant to the terms of the Assignment of Property Management Agreement;

(j) the Trust's assertion or raising of any defense to a proceeding instituted by Lender (whether judicial or otherwise) for the foreclosure of the Mortgage following an Event of Default caused by the Trust's failure to timely pay the Monthly Payment Amount (as defined in the Loan Agreement) or the Debt due on the Maturity Date (as defined in the Loan Agreement), which defense is determined by a court of competent jurisdiction to be without merit or brought in bad faith;

(k) the breach by The Trust of any representation, warranty or covenant set forth in Section 10.2(a) of the Loan Agreement;

(l) the breach of any representation, warranty or covenant of the Trust with respect to itself or any SPE Component Entity set forth in Article 6 of the Loan Agreement;

(m) the breach by the Trust of any representation, warranty or covenant set forth in Section 7.7 of the Loan Agreement;

(n) any default under (unless such default arises solely in connection with the failure of Master Lessee to pay rent under the Master Lease solely as a result of the Properties not generating sufficient Operating Income (as defined in the Loan Agreement)), or termination for any reason except for any termination approved by the Lender in writing (including, without limitation, any termination that results from a default under the Master Lease in connection with the failure of Master Lessee to pay rent under the Master Lease as a result of the Properties not generating sufficient Operating Income) of, the Master Lease by any party thereunder or the Trust's failure to comply with Section 5.25 of the Loan Agreement;

(o) any amendment to the Trust Agreement without the prior written consent of Lender;

(p) the breach of any representation or warranty contained in Section 4.45 or any covenant in Section 5.28 of the Loan Agreement

(q) any claims of the beneficial interest owners in or members of the Trust regarding (A) the determination or potential determination that the beneficial interests in the Trust are not eligible replacement property for a tax-deferred exchange of property under Section 1031 of the Code pursuant to Revenue Ruling 2004-86 or (B) any tax consequences resulting from the dissolution or conversion of the Trust;

(r) the filing by the Trust, the Guarantor, any trustee of the Trust, or any principal, officer, manager, or director of any of the foregoing of an action to (A) partition any Individual Property or any part thereof, or (B) to compel the sale thereof;

(s) criminal acts of the Trust, Guarantor, any Affiliate of the Trust or Guarantor, or any of their respective agents or representatives resulting in the seizure, forfeiture or loss of all or part of the Properties;

(t) the breach by the Trust of any covenant contained in Section 5.27 of the Loan Agreement;

(u) the failure to pay any deductible under a windstorm/named storm Policy (as defined in the Loan Agreement) to the extent that such deductible exceeds five percent (5%) of the total insurable value of such Individual Property;

(v) the failure to comply with any requirement set forth in the Post-Closing Letter (as defined in the Loan Agreement);

(w) following a Casualty (as defined in the Loan Agreement), the failure and/or inability to rebuild the Improvements to the same size and utility (e.g. square footage and revenue production) as existed prior to such Casualty, in each case, as a result of an Individual Property's (as defined in the Loan Agreement) non-compliance with applicable Legal Requirements (as defined in the Loan Agreement);

(x) following a Casualty, the failure of the Net Proceeds (as defined in the Loan Agreement) received from the property insurance carriers for any Individual Property to be sufficient to pay 100% of the cost of fully restoring the Improvements (as defined in the Loan Agreement) at such Individual Property;

(y) any claim or demand that a Ground Lessor Tenant (as defined in the Loan Agreement) is or was entitled to receive a Notice of Sale as set forth in its respective lease, as a result of the Trust and/or the ground lessor failing to provide Ground Lessor Tenant the Notice of Sale, as required pursuant to its lease;

(z) the Trust's failure to deliver a condominium association estoppel certificate in form and substance reasonably satisfactory to Lender with respect to the Shop Rite Shopping Center (Vineland) Property (as defined in the Loan Agreement); provided, however, liability under this subsection shall terminate upon the Trust's delivery to Lender of a fully executed estoppel certificate confirming no defaults and/or unpaid assessments under the applicable condominium declaration, association bylaws or related condominium documents affecting such Property; or

(aa) (A) the breach (by any party thereto) of the terms, covenants and/or conditions contained in those certain letter agreements (individually or collectively, the "**Letter Agreements**") dated May 19, 2023, by and among the Trust, as ground lessee, the applicable ground lessor and the applicable fee master lessee with respect to the Shop Rite Shopping Center (Vineland) Property (as defined in the Loan Agreement) and the Shop Rite Shopping Center (Upper Deerfield) Property (as defined in the Loan Agreement) or (B) if any such Letter Agreement shall be modified, changed, altered, amended, supplemented, terminated or surrendered without Lender's prior written consent.

The Loan shall also be fully recourse to the Trust upon certain Recourse Events and the principals of the Sponsor if one or more of the following Recourse Events occurs: (i) of a breach by the Trust, any SPE Component Entity (as defined in the Loan Agreement), Master Lessee or any Master Lessee SPE Component Entity (as defined in the Loan Agreement) of any of the covenants set forth in Article 6 of the Loan Agreement, (ii) the Trust incurs any Indebtedness (as defined in the Loan Agreement) (including pursuant to a Property Assessed Clean Energy lien) other than the Loan and Permitted Debt (as defined in the Loan Agreement) without the prior written consent of Lender or except as expressly permitted in the Loan Agreement, (iii) of the occurrence of a Prohibited Transfer (as defined in the Loan Agreement), (iv) the Property or any part thereof shall become an asset in a bankruptcy or insolvency proceeding initiated by the Trust or Master Lessee, (v) the Trust, the Key Principals, Master Lessee, or any Affiliate, officer, director, or representative which Controls (as defined in the Loan Agreement), directly or indirectly, the Trust, the Key Principals or Master Lessee files, or joins in the filing of, an involuntary petition against the Trust or Master Lessee under any Creditors Rights Laws (as defined in the Loan Agreement), or solicits or causes to be solicited creditors or colludes with creditors for the filing of any involuntary petition against the Trust from any Person under

any Creditors Rights Laws, (vi) the Trust or Master Lessee files an answer consenting to or otherwise acquiescing in or joining in any involuntary petition filed against it, by any other Person under any Creditors Rights Laws, or solicits or causes to be solicited petitioning creditors for any involuntary petition from any Person, (vii) any Affiliate, officer, director, or representative which Controls the Trust or Master Lessee consents to or acquiesces in or joins in an application for the appointment of a custodian, receiver, trustee, or examiner for the Trust, Master Lessee or any portion of the Property, (viii) the breach of any of the terms of Section 7.6 of the Loan Agreement; (ix) if the Trust, Manager or Trustee fails to comply with all (or violates any) applicable laws and regulations of the State of Delaware as the same pertain to the Trust's existence as a DST, (x) if the Trust, Manager or Trustee fails to comply with all (or violates any) applicable securities laws and/or regulations (including, but not limited to, the Investment Company Act of 1940) as the same pertain to the solicitation, sale and/or offering of beneficial ownership interests in the Trust to Investors, (xi) if the Trust surrenders the leasehold estate created by the Ground Lease (as defined in the Loan Agreement) or terminates or cancels the Ground Lease or modifies, changes, supplements, alters or amends the Ground Lease, in each case, without Lender's prior written consent, (xii) the breach of any of the terms of Section 7.7 of the Loan Agreement, or (xiii) if any Ground Lease (as defined in the Loan Agreement) is terminated, cancelled or otherwise ceases to exist for any reason and the ground lessor thereunder has not entered into a new ground lease with Lender (or Lender's designee) on the same or substantially similar terms and conditions as the Ground Lease.

Reserves

The Loan Documents required the Trust to make certain reserve payments in connection with the Properties, which include the following, which were held by the Lender on the Loan Closing Date pursuant to the terms of the Loan Documents: (i) a required repair reserve was withheld from Loan proceeds by Lender and deposited on the Trust's behalf in the amount of \$144,273.25 on the Loan Closing Date (the "**Required Repair Reserve**"); (ii) a capital expense replacement reserve was withheld from Loan proceeds by Lender and deposited on the Trust's behalf in the amount of \$676,408.20 on the Loan Closing Date, as well as a monthly payment in the amount of \$1,196.14 for replacements and repairs to the Properties (collectively, the "**Capital Reserve**"), which monthly payment amount shall be added to the monthly Loan payment due to the Lender on each Loan payment date; (iii) (A) an upfront tenant improvement and leasing commission reserve ("**Rollover Reserve**") was withheld from Loan proceeds by Lender and deposited on the Trust's behalf on the Loan closing in the amount of \$500,000 and (B) if a Default (as defined in the Loan Agreement) or Event of Default (as defined in the Loan Agreement) has occurred and is continuing, the Trust shall deposit with the Lender a monthly rollover reserve in the amount of \$7,974.08 (the "**Rollover Reserve Monthly Deposit**") on each Loan payment date; (iv) any sum or termination fee payable to the Trust in connection with any Tenant's election to exercise any early termination option contained in its respective lease of space at any of the Properties or in connection with any other termination, amendment or modification of any Lease, reduction of rents, shortening of the term or surrender of space thereunder on the date of the Trust's receipt thereof (the "**Lease Termination Payments**" and together with the Rollover Reserve and the Rollover Reserve Monthly Deposit collectively, the "**Leasing Reserve**"); and (v) a tenant improvement, leasing commissions and free rent or free rent abatements reserve was withheld from Loan proceeds by Lender and deposited on the Trust's behalf in the amount of \$311,553.28 on the Loan Closing Date (the "**Unfunded Obligations Reserve**"). The Required Repair Reserve, the Capital Reserve, the Leasing Reserve and the Unfunded Obligations Reserve shall be collectively referred to herein as the "**Reserve Accounts**." If the following events occur, the Lender shall also require the Trust to set up the following escrow accounts; (i) funds in the amount of up to \$1,861,723.94 (the "**Starbucks Escrow Funds**"), which amounts are currently held in escrow by Chicago Title Insurance Company in connection with certain expenses and other unpaid amounts that are to become due and payable under the Lease (as defined in the Loan Agreement) with Starbucks Corporation (as defined in the Loan Agreement) at the Marlboro Crossing Shopping Center Property (as defined in the Loan Agreement) and the Trust agreed that in the event the Trust (or any of its Affiliates) receives all or any portion of the Starbucks Escrow Funds in excess of \$279,894.98, the Trust shall promptly remit all such amounts in excess of \$279,894.98 to Lender to be deposited into the Unfunded Obligations Reserve Account (as defined in the Loan Agreement) and disbursed in accordance with Section 9.9 of the Loan Agreement; and (ii) funds in the amount of up to \$34,455.33 (the "**Shop Tenant Escrow Funds**"), which are currently held in escrow by Chicago Title Insurance Company in connection with potential shortfalls in tenant reimbursements for TICAM (as defined in the Loan Agreement) at the Walnut Creek Shopping Center Property (as defined in the Loan Agreement) and the Trust agreed that in the event the Trust (or any of its Affiliates) receives any disbursements of Shop Tenant Escrow Funds, the Trust shall promptly deposit all such amounts (or shall cause all such amounts to be promptly deposited) into the Deposit Account in accordance with Section 10.2(a)(iii) of the Loan Agreement. In addition, the Loan Documents

required the Trust to make a Trust controlled reserve payment for an operations and asset management reserve that was withheld from Loan proceeds by Lender in the amount of \$1,500,000 on the Loan Closing Date (the “**Trust Operations and Asset Management Reserve**”).

Cash Collateral Subaccount

The Lender has the right under the Loan Documents upon the occurrence of: (a) an Event of Default (as defined in the Loan Documents); (b) the Debt Service Coverage Ratio for the Properties being less than 1.50 to 1.00 (a “**DSCR Trigger Event**”); or (c) a Qualified Transfer Trigger Event (as defined below) (each a “**Cash Sweep Event**”) to sweep all Excess Cash (as defined in the Loan Documents) on each payment date during the continuation of a Cash Sweep Period (as defined below) (“**Excess Cash Reserve Funds**”). Excess Cash Reserve Funds shall be held by the Lender as additional security for the Loan; provided, however, during the continuance of an Event of Default (as defined in the Loan Documents), Lender has the right, but not the obligation, in its sole discretion to apply Excess Cash Reserve Funds to repayment of the Loan in such order and in such manner as Lender shall elect.

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THE SPONSOR AND ITS MANAGEMENT

The Sponsor’s Management Team

The Manager and the Master Lessee are all wholly owned by ExchangeRight. See also “Conflicts of Interest.” The following persons comprise the key management of ExchangeRight and hold the positions indicated below.

<u>Name</u>	<u>Position</u>	<u>Entity</u>
David Fisher	Managing Member	ExchangeRight
Joshua Ungerecht	Managing Member	ExchangeRight
Warren Thomas	Managing Member	ExchangeRight
David Van Steenis	Chief Financial Officer and Chief Investment Officer	ExchangeRight
Louis Swingrover	Chief Operating Officer	ExchangeRight
Susana Dryden	Chief Compliance Officer and Chief People Officer	ExchangeRight
Kevin Steines	Chief Accounting Officer	ExchangeRight
Roger Taylor	Director of Asset Management	ExchangeRight

David Fisher – Managing Member – David began his career with KPMG in the Tax department, and then worked in tax, treasury, and acquisitions for Wells Fargo for over nine years. He was North American Head of Asset and Structured Finance for HSBC’s Investment Banking division. David and his banking teams executed international financings totaling in excess of \$8 billion. He graduated from the University of Northern Iowa in 1993, Magna Cum Laude in Accounting, and earned national honors with the Elijah Watt Sells Award on the May 1993 CPA exam. David is primarily responsible for the acquisition, asset management, and financing aspects of the businesses.

Joshua Ungerecht – Managing Member – Together with Warren Thomas, Joshua has overseen the stewardship of client equity into real estate since 2003. Joshua graduated from The Master’s College, Summa Cum Laude with a B.A. in Theology, Apologetics, and Missions, and is currently on leave from Talbot Graduate School, where he was pursuing an M.A. in Philosophy of Religion and Ethics. He also maintains Series 7, 22, 24, 63, 65, 66, and 79 Securities Licenses and an active California real estate license. Joshua serves as chairman of the board for Saving Innocence, a non-profit focused on rescuing children in Los Angeles County from human trafficking.

Warren Thomas, CPA – Managing Member – Warren has over 35 years of experience as a CPA and has been an active commercial real estate investor for the past 25 years. Prior to focusing on the securitized 1031 exchange market in 2003, he developed an extensive tax practice including estate planning, financial planning, and real estate advisory services. He graduated in 1978 from Biola University with a B.S. in Business Administration, specializing in Accounting. He also earned a master’s degree in Taxation from Golden Gate University in 1993. He maintains Series 6, 7, 22, 24, 39, 63, 66 and 79 Securities Licenses.

David Van Steenis, CFA, CPA – Chief Financial Officer and Chief Investment Officer – David currently serves as Chief Financial Officer and Chief Investment Officer for ExchangeRight and Telos Capital. He is focused on acquisitions including the analysis, legal, closing, and syndication functions of the business as well as the asset management departments and financial reporting for the Company. David began his career with KPMG in the financial services audit practice, where he served both private and public banking and investment management clients. Most

recently, David was with Kaufman Jacobs Real Estate Investments where he was involved in the investment acquisition, capital markets, and financial reporting aspects of their real estate private equity business. Mr. Van Steenis graduated from Trinity Christian College with highest honors with a B.S. in Accounting and a Finance concentration. David is a CPA, a CFA Charterholder, and a member of the CFA Society of Iowa.

Louis Swingrover – Chief Operating Officer - Louis currently serves as the Chief Operating Officer for ExchangeRight and Telos Capital. Louis is focused on strategic business, operational, and transformational development at ExchangeRight, and provides executive direction to the Marketing, Creative, Editorial, Public Relations, Software Engineering, Information Technology, Investor Relations, and Sales teams. Prior to joining ExchangeRight, Louis worked as a strategic marketing and business development consultant from 2012 to 2019; co-founded, profitably operated, and sold a boutique corporate compliance firm dedicated to serving sponsors of alternative investment offerings and their investors from 2008 to 2012; and has operated as a serial entrepreneur since 2002. Louis holds a B.A. in Intercultural Studies with a minor in Biblical Studies from Biola University and holds an M.A. in Philosophy from Gonzaga University.

Susana Dryden – Chief Compliance Officer and Chief People Officer - Susana serves as the Chief Compliance Officer and Chief People Officer for ExchangeRight and Telos Capital. She is focused on the development, training, and expansion of the firm's departments. Susana also serves as a Registered Principal and the Chief Compliance Officer for ExchangeRight Securities, LLC a FINRA member Broker Dealer, that oversees the wholesale activities of ExchangeRight. Susana began her career in the industry in 2007 with JRW Investments, Inc. In 2014, she was primarily responsible for forming the Broker Dealer, Lighthouse Capital Group, LLC which now oversees JRW Investments. She serves as a Registered Principal and CCO of these firms as well. Susana has been critical to the growth and development of the issuer and other affiliate firms, and ensures the various companies operate in compliance with the regulations instituted by FINRA and the SEC.

Kevin Steines, CPA – Chief Accounting Officer – Kevin currently serves as Chief Accounting Officer for ExchangeRight and Telos Capital. He is focused on the financial reporting for the Company. Prior to joining ExchangeRight, Kevin enjoyed a successful career in public accounting. He started his career at Gabelmann & Associates in their audit practice. Most recently, Kevin spent seven years with Honkamp Krueger & Co, P.C., a regional CPA firm based out of Dubuque, IA. Mr. Steines oversaw the day to day operations of the accounting and tax practice for one of Honkamp Krueger's satellite offices. His focus was on corporate and individual tax planning and preparation, financial statement preparation, general business consulting, strategic planning, and franchise services. He graduated in 2006 from Ashford University with a B.S. in Business Administration and Accounting with a Finance concentration, where he was awarded Outstanding Accounting Student for his class. Kevin is a CPA.

Roger Taylor – Director of Asset Management – Roger serves as the Director of Asset Management for ExchangeRight. He is responsible for supervisory oversight of ExchangeRight's real estate portfolio. Roger has directed the management of multi-million square foot portfolios of retail and commercial real estate for institutional investors nationwide and internationally. Roger has years of experience in the management of the entire lifecycle of real estate investments and the people who drive value. Before joining ExchangeRight, Roger oversaw the CIM Group's retail and entertainment portfolio. Prior to that he guided a large Class A and B commercial property management team on behalf of AIG/Lincoln (a European AIG Global Real Estate / Lincoln Properties joint venture). Roger earned an MBA from Pepperdine University with a finance emphasis and he is qualified as a Member of the Royal Institute of Chartered Surveyors (MRICS) via the Finance and Investment pathway.

Other Key Personnel. The Manager has the exclusive authority to manage and control all aspects of the business of the Trust. In the course of its management, the Manager may, in its absolute discretion, employ such persons, including Affiliates of the Manager, as it deems necessary for the efficient operation of the Trust.

The Property Managers

The Master Lessee has entered into property management agreements with unrelated, third-party professional Property Managers to handle all of the day-to-day management of the Properties.

THE MANAGER

Generally

ExchangeRight Asset Management, LLC, a California limited liability company, is the manager of the Trust. See “Organization and Management.” ExchangeRight is the sole member of the Manager and the Master Lessee. Accordingly, the Manager and the Master Lessee are Affiliates owned by the same entity and, thus, any agreements between the parties are not the result of arm’s-length negotiations. See “Conflicts of Interest.” The Manager’s principal place of business is 1055 E. Colorado Blvd., Suite 310, Pasadena, CA 91106, Attn: Investor Relations and its telephone number is 855-379-8172.

Exclusive Authority

The Manager has the exclusive authority to manage and control all aspects of the Trust’s business, subject to certain limitations provided in the Trust Agreement. The Manager is specifically authorized to take each of the following actions with respect to the Trust: (i) acquire Property Interests in the Properties subject to the underlying Tenant leases; (ii) enter into and comply with the terms of the Loan Documents; (iii) enter into the Master Lease with the Master Lessee; (iv) collect rents and make distributions to the Owners in accordance with the Trust Agreement; (v) enter into any agreement for purposes of completing Section 1031 Exchanges of real property with a Qualified Intermediary as defined in Code Section 1031; (vi) notify the relevant parties of any default by them under the Trust Agreement, the Master Lease or any other transaction documents; (vii) enter into a new Master Lease or other arrangement with respect to the Properties or renegotiate or refinance the Loan or any other debt secured by the Properties, but only if, with respect to any of the foregoing necessary due to the bankruptcy or insolvency of the Master Lessee; (viii) complete a LLC Conversion or Disposition of the Property Interests in the Properties, as the case may be; and (ix) take actions necessary to conserve and protect the Trust Estate. The Manager may, in its sole discretion, employ such persons, including Affiliates of the Manager, as it deems necessary for the efficient operation of the Trust. See “The Trust and Summary of the Trust Agreement.”

The Manager may resign at any time by providing at least 60 days’ prior written notice to the Trust, and the Trust may remove the Manager for cause (as defined in the Trust Agreement) at any time by providing written notice to the Manager.

Reimbursement of Expenses

The Trust will reimburse the Manager for all reasonable expenses incurred in connection with performing its duties on behalf of the Trust.

Indemnity

The Trust will agree to hold the Manager, as its agent, harmless from any liability in connection with the Trust Agreement or any transaction or document contemplated thereby, except for willful misconduct, bad faith, fraud or gross negligence of the Manager and to the fullest extent permitted by law, advance to the Manager expenses incurred in its defense of any claims in connection with the Trust Agreement or any transaction or document contemplated thereby, subject to repayment in the event a court finds that the Manager was not entitled to indemnification. See “The Trust and Summary of the Trust Agreement.”

Compensation

The Manager will receive an annual asset management fee of 0.50% of the Purchase Price during the hold period. In addition, it is anticipated that the Manager will assist in marketing and selling the Property Interests in the Properties, and thus, if the Manager provides such services, and if upon a Disposition of the Property Interests in the Properties the gross proceeds of any Disposition including the return of any reserves are in excess of \$18,732,000 (in cash or in kind), the Manager will be entitled to receive a fee equal to 2.0% of the gross proceeds of any such Disposition of the Property Interests in the Properties pursuant to the Trust Agreement, with such amount to be in addition to any payments to unrelated third-party real estate brokers that the Trust hires to sell the Property Interests

in the Properties and any payments to buyer's brokers. See "Compensation of the Sponsor, the Manager and their Affiliates."

Limited Fiduciary Duty

The Manager will not owe any duties to the Owners other than those limited duties expressly set forth in the Trust Agreement. In performing its duties under the Trust Agreement, the Manager will only be liable to the Owners for willful misconduct, bad faith, fraud or gross negligence. If you have questions about the limited fiduciary duties of the Manager, you should consult your own legal counsel. See "Limited Fiduciary Duty" and "The Trust and Summary of the Trust Agreement."

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THE MASTER LESSEE

Generally

ExchangeRight Value-Add Portfolio 3 Master Lessee, LLC, a Delaware limited liability company, is the Master Lessee of the Properties. See “Organization and Management.” The Master Lessee was formed on September 28, 2022 and, as such, has no operating history. See “Organization and Management.”

ExchangeRight is the sole member of the Master Lessee. Accordingly, the Manager, the Property Manager and the Master Lessee are Affiliates owned by the same entity and, thus, any agreements between the parties are not the result of arm’s-length negotiations. See “Conflicts of Interest.” The Master Lessee’s principal place of business is 1055 E. Colorado Blvd., Suite 310, Pasadena, CA 91106, Attn: Investor Relations and its telephone number is 855-379-8172.

The Master Lessee is a newly formed Delaware limited liability company wholly owned by ExchangeRight. Capitalization of the Master Lessee will be provided by the Manager through the Demand Note to the Master Lessee, in the amount of \$104,830. The Manager’s Demand Note obligations will be reduced by the amount of any net earnings of the Master Lessee retained by Master Lessee.

Rights and Duties of the Master Lessee

Pursuant to the terms of the Master Lease, the Master Lessee assumed all obligations and liabilities of the Trust with respect to the Tenant leases on the Loan Closing Date and is entitled to receive all rent due from the Tenants thereunder. The Master Lessee has the sole and exclusive right to operate and maintain the Properties. The Master Lessee, at their sole cost and expense and without reimbursement or contribution from the Trust, other than reserve reimbursements, is required to keep, repair, and maintain the entire exterior and interior of the Properties in good condition and repair and in good compliance with all legal requirements. The Trust has no obligation for repairs, replacements, or maintenance of the Properties. See “The Master Lessee and the Summary of the Master Lease.”

Indemnity

The Master Lessee agreed to indemnify the Trust, including the Owners, to the extent the Trust or an Owner becomes liable as a result of certain actions of the Master Lessee. See “The Master Lessee and the Summary of the Master Lease.”

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PRIOR PERFORMANCE OF THE SPONSOR AND ITS AFFILIATES

The Trust and the Master Lessee are all newly-formed entities with no operating history and the Manager is a recently-formed entity with limited operating history. The Key Principals of the Sponsor have been collectively engaged in the real estate business for over 55 years and during that time have consummated a significant amount of real estate transactions. See “Organization and Management.” The principal business of ExchangeRight and the Manager is the acquisition and management of investment property. ExchangeRight is a private real estate investment firm focused on the acquisition and investment management of single and multi-tenant retail properties nationwide. The Key Principals directly oversee all investment functions, including acquisition due diligence, financing, asset management and dispositions. Affiliates of the Sponsor previously acquired or have under contract over \$5.6 billion of assets including over 1,200 properties that total over 22 million square feet and are located in 47 different states.

Completed Prior Programs

Offering	Description	Program Offering Date	Targeted Annualized Return	Program Close Date	Actual Annualized Return	Investment Multiple
Net-Leased Preferred Equity Fund 1	Shorter-term fund to acquire and sell net-leased assets for the Sponsor.	4/30/2012	Range of 12%-20%	12/31/2016	12.93%	1.28X
Net-Leased Preferred Equity Fund 2	Shorter-term fund to acquire and sell net-leased assets for the Sponsor.	12/5/2014	Range of 8%-12%	7/25/2018	10.11%	1.24X
Acquisition Notes	Company that issued short term debt capital to the Sponsor to acquire and sell net-leased assets.	6/1/2012	Range of 12%-14%	10/16/2017	12.00%	1.39X
Acquisitions Notes 2	Company that issued short term debt capital to the Sponsor to acquire and sell net-leased assets.	2/9/2015	10.00%	8/14/2020	10.00%	1.31X
Acquisition Notes 3	Company that issued short term debt capital to the Sponsor to acquire and sell assets.	7/1/2017	Range of 8.25%-10%	8/14/2020	10.00%	1.18X
Multifamily 1 – Van Mark Creek Apartments	One apartment community consisting of 144 units.	4/27/2015	7.16%	4/5/2019	7.27% - 8.84%	1.29X – 1.35X
Multifamily 2 – Mira Bella and San Martin Apartments	Two apartment communities consisting of 378 units.	7/31/2015	6.68%	11/13/2019	6.82% - 8.27%	1.29X – 1.33X

Multifamily 3 – Lakeside at Arbor Place Apartments	One apartment community consisting of 246 units.	7/1/2016	6.54%	9/12/2019	11.08% - 14.51%	1.35X – 1.46X
Multifamily 4 – North Austin Apartment Portfolio	Three apartment communities consisting of 442 units.	10/27/2016	6.52%	1/28/2021	6.80% - 9.71%	1.29X – 1.37X
Multifamily 5 – Crystal Lake Florida Apartments	One apartment community consisting of 224 units.	1/25/2017	6.44%	8/23/2019	8.51% - 12.55%	1.22X – 1.29X
Multifamily 6 – El Paso Apartment Portfolio	Two apartment communities consisting of 393 units in El Paso, Texas.	1/30/2018	5.96%	11/17/2021	14.52% - 17.91%	1.55X – 1.68X
Net-Leased Portfolio 1	Portfolio of two long-term net-leased properties leased to Family Dollar. One of the two properties sold in January 2015 and the other sold in August 2019.	4/5/2012	7.25%	8/29/2019	9.40% – 10.58%	1.46X – 1.51X
Net-Leased Portfolio 2	Portfolio of seven long- term net-leased properties leased to Family Dollar (6) and Dollar General (1).	9/1/2012	7.33%	9/26/2019	9.22% – 12.12%	1.65X – 1.79X
Net-Leased Portfolio 3	Portfolio of nine long-term net-leased properties leased to Family Dollar (8) and Dollar General (1).	2/8/2013	7.37%	9/29/2020	9.10% – 11.50%	1.69X – 1.88X
Net-Leased Portfolio 4	Portfolio of 11 long-term net-leased properties leased to Family Dollar (8), Dollar General (1), Aaron’s (1) and Advance Auto Parts (1).	9/23/2013	7.70%	3/30/2021	7.73% - 9.98%	1.58X – 1.74X
Net-Leased Portfolio 5	Portfolio of 14 long-term net-leased properties leased to Family Dollar (5), Dollar General (4), Advance Auto Parts (2), AutoZone (1), Sherwin Williams (1) and The Christ Hospital (1).	2/4/2014	7.24%	12/9/2021	7.34% - 9.43%	1.57X – 1.72X

Net-Leased Portfolio 6	Portfolio of 16 long-term net-leased properties leased to Family Dollar (3), Dollar General (8), Advance Auto Parts (1), AutoZone (1), CVS (1), Dollar Tree (1) and Tractor Supply (1).	5/9/2014	7.65%	4/1/2022	7.67% - 8.91%	1.60X – 1.68X
Net-Leased Portfolio 7	Portfolio of 16 long-term net-leased properties leased to Family Dollar (4), Dollar General (8), Advance Auto Parts (1), CVS (1), Napa Auto Parts (1), and O'Reilly Auto Parts (1).	9/24/2014	7.79%	2/9/2022	7.81% - 10.57%	1.57X – 1.76X
Net-Leased Portfolio 8	Portfolio of 13 long-term net-leased properties leased to Advance Auto Parts (3), AutoZone (2), CVS (1), Dollar General (2), Family Dollar (1), Franciscan Alliance (1), Ross Stores (1) and Tractor Supply (2).	2/2/2015	7.35%	10/15/2019	7.69% - 11.23%	1.36X – 1.51X
Net-Leased Portfolio 9	Portfolio of 22 long-term net-leased properties leased to Advance Auto Parts (4), AutoZone (4), CVS (1), Dollar General (9), Hobby Lobby (1), Napa Auto Parts (2) and TCF National Bank (1).	4/21/2015	7.24%	9/7/2022	7.25% - 8.27%	1.53X – 1.59X
Net-Leased Portfolio 10	Portfolio of 22 long-term net-leased properties leased to Advance Auto Parts (3), AutoZone (1), CVS (1), Dollar General (5), Dollar Tree (1), Family Dollar (4), Napa Auto Parts (2), O'Reilly Auto Parts (2), PNC Bank (1) and Tractor Supply (2).	9/3/2015	7.14%	10/27/2022	7.26% - 8.24%	1.52X – 1.58X
Net-Leased Portfolio 11	Portfolio of 17 long-term net-leased properties leased to Advance Auto Parts (3), CVS (1), Dollar General (5), Family Dollar (2), Hobby Lobby (1),	12/4/2015	6.78%	8/31/2022	6.81% - 7.63%	1.46X – 1.51X

	Napa Auto Parts (3), Sherwin-Williams (1) and Walgreens (1).					
Net-Leased Portfolio 12	Portfolio of 19 long-term net-leased properties leased to Advance Auto Parts (3), Dollar General (9), Family Dollar (1), Fresenius Medical Care (1), Kroger (1), Napa Auto Parts (2), Tractor Supply (1), and Walgreens (1).	4/14/2016	6.30%	12/18/2019	7.01% - 11.30%	1.25X – 1.40X
Net-Leased Portfolio 13	Portfolio of 20 long-term net-lease properties leased to Advance Auto Parts (1), CVS (1), Dollar General (5), Family Dollar (4), Hobby Lobby (1), Napa Auto Parts (1), Sherwin Williams (4), Tractor Supply (1) and Walgreens (2).	9/1/2016	6.80%	10/29/2020	7.35% - 10.74%	1.31X – 1.43X
Net-Leased Portfolio 14	Portfolio of 17 long-term net-lease properties leased to Advance Auto Parts (1), Athletico Physical Therapy (1), Dollar General (6), Fresenius Medical Care (2), MedSpring (1), Napa Auto Parts (1), O'Reilly Auto Parts (1), Tractor Supply (1) and Walgreens (3).	12/2/2016	6.55%	3/25/2021	6.77% - 10.73%	1.29X – 1.46X
Net-Leased Portfolio 15	Portfolio of 16 long-term net-lease properties leased to Advance Auto Parts (2), CVS (1), Dollar General (6), Family Dollar (1), Fresenius Medical Care (1), Goodwill (1), Hobby Lobby (1), Indianapolis Osteopathic Hospital (1) and Walgreens (2).	3/2/2017	6.53%	11/1/2021	6.54% - 10.82%	1.30X- 1.47X
Net-Leased Portfolio 16	Portfolio of 19 long-term net-lease properties leased to Advance Auto Parts (3), Dollar General (7), Family Dollar (1), Hobby Lobby (1), Sherwin Williams (1),	5/31/2017	6.79%	3/2/2022	7.08% - 11.25%	1.34X – 1.51X

	Tractor Supply (2) and Walgreens (4).					
Net-Leased Portfolio 17	Portfolio of 16 long-term net-leased properties leased to Advance Auto Parts (1), Dollar General (7), Goodwill (1), Pick ‘n Save (1), Napa Auto Parts (1), Tractor Supply (2), Verizon Wireless (1) and Walgreens (2).	8/10/2017	6.91%	6/24/2022	7.04% - 10.34%	1.34X – 1.49X
Net-Leased Portfolio 18	Portfolio of 17 long-term net-leased properties leased to Advance Auto Parts (1), CVS (1), Dollar General (6), Fresenius Medical Care (1), Hobby Lobby (1), Napa Auto Parts (1), Tractor Supply (2) and Walgreens (4).	11/10/2017	6.65%	7/26/2022	6.67% - 10.00%	1.31X – 1.46X
Net-Leased Portfolio 19	Portfolio of 21 long-term net-leased properties leased to Advance Auto Parts (2), CVS (1), Dollar General (9), Fresenius Medical Care (2), Hobby Lobby (1), Napa Auto Parts (2), Verizon Wireless (1) and Walgreens (3).	12/21/2017	6.78%	8/24/2022	6.93% - 10.29%	1.32X – 1.48X
Net-Leased Portfolio 21	Portfolio of 20 long-term net-leased properties leased to Advance Auto Parts (1), Dollar General (6), Fresenius Medical Care (3), Hobby Lobby (1), Napa Auto Parts (2), O’Reilly Auto Parts (1), Tractor Supply (3) and Walgreens (3).	4/9/2018	6.44%	9/14/2022	6.68% - 8.88%	1.30X – 1.38X

Current Programs

Offering	Description	Program Offering Date	Targeted Annualized Return	Actual Annualized Return
Essential Income REIT – Class I	Income REIT offering of an identified portfolio of single-tenant, net-leased properties	4/13/2023	6.27%	6.27%

	with primarily investment-grade tenants.			
Essential Income REIT – Class A	Income REIT offering of an identified portfolio of single-tenant, net-leased properties with primarily investment-grade tenants.	4/13/2023	5.89%	5.89%
Essential Income REIT – Class S	Income REIT offering of an identified portfolio of single-tenant, net-leased properties with primarily investment-grade tenants.	4/13/2023	5.20%	5.20%
Net-Leased Preferred Equity Fund 3	Shorter-term fund to acquire and sell net-leased assets for the Sponsor.	7/27/2016	8.25%	8.25%
Net-Leased Preferred Equity Fund 4	Shorter-term fund to acquire and sell net-leased assets for the Sponsor.	11/28/2018	7.00%	7.00%
Net-Leased Preferred Equity Fund 5	Shorter-term fund to acquire and sell net-leased assets for the Sponsor.	10/15/2020	5.25%	5.25%
Net-Leased Preferred Equity Income Fund	Preferred equity investment to acquire single-tenant, net-leased properties with primarily investment-grade tenants.	4/4/2019	6.53%	6.96%
Net-Leased Portfolio 20	Portfolio of 16 long-term net-leased properties leased to Advance Auto Parts (3), BioLife Plasma Services (1), Dollar General (4), Fresenius Medical Care (1), Napa Auto Parts (1), a Pick ‘n Save (1), Tractor Supply (2), Verizon Wireless (1) and Walgreens (2).	2/22/2018	6.86%	6.86%
Net-Leased Portfolio 22	Portfolio of 15 long-term net-leased properties leased to BioLife Plasma Services (1), CVS (1), Dollar General (4), Family Dollar (1), First Midwest Bank (1), Fresenius Medical Care (1), Pick ‘n Save (1), Tractor Supply (2) and Walgreens (3).	6/7/2018	6.52%	6.52%

Net-Leased Portfolio 23	Portfolio of 24 long-term net-leased properties leased to Advance Auto Parts (2), AutoZone (2), Dollar General (8), Family Dollar (2), GIANT Food Store (1), Tractor Supply (2) and Walgreens (7).	8/28/2018	6.24%	6.36%
Net-Leased Portfolio 24	Portfolio of 24 long-term net-leased properties leased to Advance Auto Parts (2), BioLife Plasma Services (2), CVS (1), Dollar General (5), Dollar Tree (1), Fresenius Medical Care (1), Pick ‘n Save (1), Sherwin Williams (1), Tractor Supply (3) and Walgreens (7).	10/23/2018	6.23%	6.23%
Net-Leased Portfolio 25	Portfolio of 21 long-term net-leased properties leased to BioLife Plasma Services (2), Dollar General (8), Family Dollar (2), Hobby Lobby (1), Hy-Vee (1), Tractor Supply (3) and Walgreens (4).	12/20/2018	6.22%	6.27%
Net-Leased Portfolio 26	Portfolio of 19 long-term net-leased properties leased to Advance Auto Parts (1), AutoZone (1), CVS (1), Dollar General (5), Hy-Vee (1), Pick ‘n Save (1), Tractor Supply (4), and Walgreens (5).	3/6/2019	6.19%	6.22%
Net-Leased Portfolio 27	Portfolio of 18 long-term net-leased properties leased to Advance Auto Parts (1), BioLife Plasma Services (1), Dollar General (4), Dollar Tree (1), Hy-Vee (1), O’Reilly Auto Parts (2), Pick ‘n Save (1), Tractor Supply (1), and Walgreens (6).	5/7/2019	6.41%	6.41%
Net-Leased Portfolio 28	Portfolio of 23 long-term net-leased properties leased to Dollar General (6), Dollar Tree (1), Fresenius Medical Care (1), Hobby Lobby (2), O’Reilly Auto Parts (1), Pick ‘n Save (2), Tractor Supply (2), and Walgreens (8).	7/10/2019	6.38%	6.86%

Net-Leased Portfolio 29	Portfolio of 24 long-term net-leased properties leased to BioLife Plasma Services (1), CVS (1), Dollar General (10), Fresenius Medical Care (2), Hobby Lobby (1), Tractor Supply (2), and Walgreens (7).	9/5/2019	6.95%	7.02%
Net-Leased Portfolio 30	Portfolio of 21 long-term net-leased properties leased to AutoZone (1), Dollar General (8), Fresenius Medical Care (1), Giant Eagle (1), Hobby Lobby (1), Tractor Supply (4), and Walgreens (5).	10/23/2019	6.93%	6.98%
Net-Leased Portfolio 31	Portfolio of 25 long-term net-leased properties leased to Advance Auto Parts (1), BioLife Plasma Services (1), CVS (4), Dollar General (7), Giant Eagle (1), Hobby Lobby (2), Hy-Vee (1), Tractor Supply (5), and Walgreens (3).	12/9/2019	6.80%	6.84%
Net-Leased Portfolio 32	Portfolio of 27 long-term net-leased properties leased to Advance Auto Parts (1), BioLife Plasma Services (1), CVS (7), Dollar General (7), Fresenius Medical Care (2), Hobby Lobby (2), Tractor Supply (4), and Walgreens (3).	2/11/2020	6.67%	6.68%
Net-Leased Portfolio 33	Portfolio of 11 long-term net-leased properties leased to Dollar General (7), Tractor Supply (2) and Walgreens (2).	3/24/2020	5.18%	5.18%
Net-Leased Portfolio 34	Portfolio of 4 long-term net-leased properties leased to Ballad Health (1), Dollar General (1), FedEx (1) and Walgreens (1).	4/30/2020	5.16%	5.16%
Net-Leased Portfolio 35	Portfolio of 4 long-term net-leased properties leased to Tractor Supply (2) and Walgreens (2).	6/17/2020	6.00%	6.01%
Net-Leased Portfolio 36	Portfolio of 2 long-term net-leased properties leased to Pick 'n Save (2).	7/1/2020	6.21%	6.21%

Net-Leased Portfolio 37	Portfolio of 11 long-term net-leased properties leased to CVS (1), Dollar General (2), Dollar Tree (1), Fresenius Medical Care (4), Tractor Supply (1) and Walgreens (2).	7/10/2020	6.20%	6.20%
Net-Leased Portfolio 38	Portfolio of 13 long-term net-leased properties leased to CVS (2), Dollar General (7), Pick 'n Save (1), Tractor Supply Co. (2) and Walgreens (1).	7/29/2020	6.17%	6.18%
Net-Leased Portfolio 39	Portfolio of 18 long-term net-leased properties leased to BioLife Plasma Services (1), Dollar General (7), Dollar Tree (2), Giant Eagle (1), Pick 'n Save (1), Tractor Supply (2) and Walgreens (4).	9/2/2020	6.22%	6.23%
Net-Leased Portfolio 40	Portfolio of 21 long-term net-leased properties leased to AutoZone (1), CVS (5), Dollar General (5), Dollar Tree (1), Kroger (1), O'Reilly Auto Parts (1), Sherwin Williams (1), Tractor Supply (2) and Walgreens (4).	10/19/2020	6.25%	6.30%
Net-Leased Portfolio 41	Portfolio of 18 long-term net-leased properties leased to BioLife Plasma Services (2), CVS (1), Dignity Health (1), Dollar General (4), Dollar Tree (1), Fresenius Medical Care (1), Hobby Lobby (1), Natural Grocers (1), Tractor Supply (2), Walgreens (2) and Walmart Neighborhood Market (2).	11/24/2020	6.33%	6.35%
Net-Leased Portfolio 42	Portfolio of 14 long-term net-leased properties leased to CVS (1), Dollar General (3), Family Dollar (2), Fresenius Medical Care (1), Tractor Supply (1), Walgreens (4) and Walmart Neighborhood Market (2).	12/22/2020	6.32%	6.35%
Net-Leased Portfolio 43	Portfolio of 16 long-term net-leased properties leased to Dollar Tree (1), Fresenius Medical Care (2), Lowe's (1), M&T Bank (1), Natural Grocers (1), Sherwin Williams (3),	2/9/2021	6.10%	6.14%

	Tractor Supply (2), Walgreens (4) and Whole Foods Market (1).			
Net-Leased Portfolio 44	Portfolio of 5 long-term net-leased properties leased to Dollar General (2), Natural Grocers (2), and Walgreens (1).	2/16/2021	5.19%	5.22%
Net-Leased Portfolio 45	Portfolio of 17 long-term net-leased properties leased to BioLife Plasma Services (2), Dollar General (5), Family Dollar (1), Fresenius Medical Care (3), Sherwin Williams (4), Tractor Supply (1) and Walgreens (1).	3/22/2021	6.26%	6.26%
Net-Leased Portfolio 46	Portfolio of 16 long-term net-leased properties leased to CVS (2), Dollar General (2), Dollar Tree (3), Family Dollar (1), Fresenius Medical Care (2), Giant Foods (1), PNC Bank (1), Publix Super Market (1) and Walgreens (3).	4/30/2021	6.29%	6.29%
Net-Leased Portfolio 47	Portfolio of 12 long-term net-leased properties leased to Branch Banking and Trust Company (1), Dollar General (2), Dollar Tree (2), Fresenius Medical Care (1), Giant Eagle (1), Kroger (1), Napa Auto Parts (1), Verizon Wireless (1), Walgreens (1) and Walmart Supercenter (1).	6/4/2021	6.10%	6.10%
Net-Leased Portfolio 48	Portfolio of 21 long-term net-leased properties leased to CVS (3), Dollar General (5), Dollar Tree (1), First Midwest Bank (3), Food 4 Less (1), Fresenius Medical Care (1), Memorial Health System (1), Sherwin Williams (1), Verizon Wireless (1) and Walgreens (4).	6/30/2021	6.16%	6.16%
Net-Leased Portfolio 49	Portfolio of 28 long-term net-leased properties leased to the following 29 tenants CVS (1), Dollar General (15), Dollar Tree (1), Fresenius Medical Care (1), Hobby Lobby (2), Octapharma Plasma (1), Pick 'n Save (1),	8/12/2021	6.16%	6.18%

	Valspar (1), Verizon Wireless (1) and Walgreens (5).			
Net-Leased Portfolio 50	Portfolio of 30 long-term net-leased properties leased to CVS (1), Dollar General (7), Dollar Tree (2), Family Dollar (2), First Midwest Bank (4), Fresenius Medical Care (1), Octapharma Plasma (2), Publix (1), Sherwin Williams (2), Walgreens (5) and WellMed (3).	9/10/2021	6.10%	6.13%
Net-Leased Portfolio 51	Portfolio of 24 long-term net-leased properties leased to 27 tenants as follows: Bank of America (2), Citizens Bank (1), Dollar General (7), Dollar Tree (1), Family Dollar (2), Fresenius Medical Care (1), Hy-Vee (1), O'Reilly Auto Parts (1), Sherwin Williams (1), Tractor Supply (1), Verizon Wireless (1), Walgreens (6) and WellMed (2).	10/27/2021	6.11%	6.11%
Net-Leased Portfolio 52	Portfolio of 26 long-term net-leased properties leased to CVS (3), Dollar General (5), Dollar Tree (1), Family Dollar (2), First Midwest Bank (3), Fresenius Medical Care (1), Hobby Lobby (1), Natural Grocers (1), Octapharma (1), Sam's Club (1), Tractor Supply (2), and Walgreens (5).	11/30/2021	6.06%	6.06%
Net-Leased Portfolio 53	Portfolio of 25 long-term net-leased properties leased to CVS (1), Dollar General (7), Dollar Tree (3), Family Dollar (1), Kroger (1), Schnucks (1), Sherwin Williams (2), Walgreens (7), Webster Bank (1) and WellMed (1).	12/22/2021	5.76%	5.81%
Net-Leased Portfolio 54	Portfolio of 36 long-term net-leased properties leased to 37 tenants as follows: Bank of America (1), CVS (3), Dollar General (12), Dollar Tree (3), Family Dollar (4), Fresenius Medical Care (1), Hannaford Grocery (1), Kum & Go (1), Market 32 (1), Novant Health (2), Price Chopper (1), Sherwin	2/18/2022	5.57%	5.57%

	Williams (2), Tractor Supply (3) and Walgreens (2).			
Net-Leased Portfolio 55	Portfolio of 34 long-term net-leased properties leased to 7-Eleven (1), Citizens (1), CVS (3), Dollar General (7), Dollar Tree (1), Family Dollar (1), Huntington Bank (1), Napa Auto Parts (1), O'Reilly Auto Parts (2), Pick 'n Save (1), PNC Bank (2), Publix (1), Schnucks (1), Sherwin Williams (2), U.S. Bank (3) and Walmart Neighborhood Market (6).	4/8/2022	5.00%	5.00%
Net-Leased Portfolio 56	Portfolio of 33 long-term net-leased properties leased to CVS Pharmacy (9), Dollar General (4), Dollar Tree (1), Family Dollar (7), Food Lion (1), Hobby Lobby (3), O'Reilly (2), PNC Bank (1), Scheels All Sports (1), Sherwin Williams (1), TJ Maxx (1), Walgreens (1), Woods Supermarket (1).	6/21/2022	4.40%	4.40%
Net-Leased Portfolio 57	Portfolio of 6 long-term net-leased properties leased to Fresenius Medical Care (1), Kroger (2), Kroger Fuel Station (1), Walgreens (2), Wegmans Food Market (1).	7/29/22	5.00%	5.00%
Net-Leased Portfolio 58	Portfolio of 25 long-term net-leased properties leased to Aldi (1), CVS Pharmacy (2), Dollar General (6), Dollar Tree (8), Family Dollar (3), Family Dollar and Dollar Tree combo store (1), Hobby Lobby (1), Huntington Bank (1), Walgreens (2).	8/31/2022	5.00%	5.00%
Net-Leased Portfolio 59	Portfolio of 15 long-term net-leased properties leased to CVS Pharmacy (2), Dollar General (5), Dollar Tree (3), Fresenius Medical Care (1), Mariano's (1), Tractor Supply (1), Walgreens (2).	10/13/2022	4.80%	4.80%

Net-Leased Portfolio 60	Portfolio of 14 long-term net-leased properties leased to 16 tenants as follows: BioLife Plasma Services (1), CVS (1), Dollar General (3), Dollar Tree (3), Family Dollar (2), GIANT Company (1), Hobby Lobby (1), Inspira Health Network (1), ShopRite (2)and ShopRite Liquor (1)	12/7/2022	4.80%	4.80%
Net-Leased Portfolio 61	Portfolio of 16 long-term net-leased properties leased to AutoZone (1), BioLife Plasma Services (1), CVS (3), Dollar General (1), Dollar General Market (1), Dollar Tree (1), Family Dollar (3), Giant Eagle (1), Giant Food (1), Metro Market (1), Tractor Supply (1) and UnityPoint Health (1)	1/20/23	5.00%	5.00%
Net-Leased Portfolio 62	Portfolio of 17 long-term net-leased properties leased to BioLife Plasma Services (1), CVS (1), Dollar General (9), Family Dollar (2), FedEx (1), Food Lion (1), Fresenius Medical Care (1) and Pick ‘n Save (1)	3/14/23	5.00%	5.00%
Net-Leased Portfolio 63	Portfolio of 15 long-term net-leased properties leased to BioLife Plasma Services (1), Daybreak Market & Fuel (1), Dollar General (6), Dollar General Plus (1), Dollar Tree (2), FedEx (1), Schnucks (1), Tops Friendly Market (1) and Tractor Supply (1)	5/24/23	5.00%	5.00%
Essential Grocery	All-cash offering of a long-term net-leased property to Shoprite in Uniondale, NY.	7/26/2022	4.09%	4.09%
Net-Leased High LTV 1 DST	Portfolio of two long-term net-leased properties leased to CVS Pharmacy (1) and Dollar General (1).	8/25/2022	4.00%	4.00%
Net-Leased High LTV 2 DST	Portfolio of two long-term net-leased properties leased to	11/18/2022	0.00%	0.00%

	Dollar General (2) and SSM Health Care System (1).			
Value-Add Portfolio 1	Portfolio of five 99-year ground leasehold interests in certain in-line retail space properties and outparcel retail spaces shadow-anchored by national grocery stores (not included in the offering) diversified across the Eastern U.S.	9/24/2021	5.60%	5.66%
Value-Add Portfolio 2	Portfolio of two fee simple interests and ten 99-year ground leasehold interests for an aggregate of 12 property interests in certain in-line retail space properties and outparcel retail spaces shadow-anchored by national grocery and retail tenants (not included in the offering) diversified across 12 shopping center properties across the United States.	6/10/2022	5.20%	5.20%

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COMPENSATION OF THE SPONSOR, THE MANAGER AND THEIR AFFILIATES

The following is a general description of the reimbursement and compensation that the Sponsor, the Manager and their Affiliates currently expect to receive in connection with this Offering or the management of the Trust, including the Properties. ExchangeRight is the sole member of the Manager and the Master Lessee. The agreements between the Trust, the Sponsor and the Manager are not the result of arm's-length negotiations, and they should not be considered as such. Certain conflicts of interest may arise between these entities and the Owners. See "Conflicts of Interest."

Form of Compensation	Description	Estimated Amount of Compensation
Offering and Organization Stage:		
Syndication Costs:	The Sponsor or third parties will receive a nonaccountable fee of \$85,000 (0.75% of the Maximum Offering Amount) to pay for syndication costs of the Offering, including costs for preparation and printing of the Offering materials and documents, "Blue Sky" costs, sales and marketing expenses and various other costs associated with the Offering. See "Estimated Use of Proceeds."	\$85,000.
Organizational & Offering Costs:	The Sponsor will be reimbursed on a nonaccountable basis for out-of-pocket expenses incurred in connection with the Offering and the organization of the Trust, including, but not limited to, single purpose entity formation, legal and accounting fees, marketing expenses, and other costs and expenses directly related to the Offering and organization of the Trust, all of which are being initially paid by the Sponsor. The Sponsor anticipates that the expenses incurred in connection with the Offering and the organization of the Trust will not be greater than \$22,800 (0.20% of the Maximum Offering Amount). The Sponsor will be responsible for any such fees in excess of these sums and will be entitled to retain any unused funds on a nonaccountable basis. In addition, other than loan broker fees, Lender's legal and Lender and Lender consultant fees, in the event the costs and fees described in the Estimated Use of Proceeds are less than anticipated, the Sponsor will retain any excess amount.	\$22,800.
Loan Fees:	The Sponsor will be reimbursed on a nonaccountable basis for \$32,000 for finance and acquisition fees associated with the line of credit issued to the Sponsor by Ameris Bank and used by the Trust to acquire the Properties.	\$32,000.

Form of Compensation	Description	Estimated Amount of Compensation
Equity Finance Costs:	\$164,662 is to be paid to entities Affiliated with the Sponsor as compensation for funds provided to the Trust to initially acquire the Properties. The Sponsor may be entitled to a small portion of these fees for its management services in connection with the operation of these Affiliated entities. See “Estimated Use of Proceeds.”	This amount cannot be determined at this time.
Redemption of Class 2 Interests:	A portion of the proceeds of this Offering will be used to redeem, on a one-for-one basis, the 100 Class 2 beneficial ownership interests in the Trust issued to the Sponsor in order to form the Trust (which Class 2 interests are currently the only outstanding ownership interests in the Trust). Upon the sale of the Interests, no Class 2 interests will remain outstanding. ExchangeRight, or its principals, are is required by the Lender to maintain a 0.50% Class 1 beneficial interest in the Trust by purchasing a minimum of a 0.50% Interest in this Offering on the same terms and conditions as are available to all Investors and to hold such 0.50% Interest as long as the Loan is outstanding; provided that this 0.50% Interest will be purchased net of Selling Commissions and Expenses and certain other Sponsor related fees and expenses. Apart from this 0.50% Interest none of the Sponsor or its Affiliates will own any Class 1 interests. The Sponsor currently does not plan to close this Offering until all the Interests are sold and all the Class 2 interests are redeemed.	\$1,308.26 paid to the Sponsor per Class 2 interest for aggregate amount of \$130,826.
Reallowance of Acquisition Fee:	ERS has been engaged to oversee the wholesaling activities of ExchangeRight’s Senior Vice Presidents of Sales and National Account Director to the extent that these activities involve direct interaction with retail investors and up to \$1,140 may be paid for each Class 1 beneficial ownership interest sold up to a maximum of \$114,000 (1.0%) of the gross proceeds of the Offering of Interests; provided, however, any such fees that are not paid to ERS will be retained by the Sponsor on a nonaccountable basis.	Up to \$1,140 for each Class 1 beneficial ownership interest sold.
ERS Selling Commissions:	ERS, an Affiliate of the Trust and the Sponsor, has been engaged to oversee the sale of the Sponsor’s real estate offerings and shall be paid \$28,500 (0.25%) of the gross proceeds of the Offering of Interests as part of the Selling Commissions, which may be reallocated to Broker-Dealers; provided,	Up to \$285 for each Class 1 beneficial ownership interest sold.

Form of Compensation	Description	Estimated Amount of Compensation
	however, any such fees that are not reallocated to ERS will be retained by the Sponsor on a nonaccountable basis.	
Operating Distributions:	Until the closing of this Offering and all the Interests have been sold, the Sponsor and the respective equity finance investors will receive their pro rata portion of any cash available for distribution from the operation of the Properties.	The amount cannot be determined at this time.
Selling Commissions and Expenses:	Principals of the Manager of the Trust may also be acting as a prospective Investor's registered representative or registered supervisor (or both), in which case they may receive Selling Commissions and Expenses as a result of their sales efforts with respect to the Interests.	The amount cannot be determined at this time.
Real Estate Commissions:	JRW Realty, Inc., a licensed real estate broker and an Affiliate of the Sponsor, earned a real estate commissions for the services it provided in connection with the initial identification and subsequent purchase of the entire shopping center parcels by the Sponsor. A portion of such funds were reallocated to ExchangeRight. Any such funds earned by JRW Realty, Inc. are paid by property sellers as part of their brokerage costs, and not the Trust.	The amount cannot be determined at this time.
Operating Stage:		
Reimbursement of Manager's Expenses:	The Trust will reimburse the Manager for all reasonable expenses incurred in connection with performing its duties on behalf of the Trust.	The amount cannot be determined at this time. See "Pro Forma Rent and Cash Flow for the Properties" attached hereto as Exhibit G.
Asset Management Fee:	The Manager will receive an annual asset management fee of 0.50% of the Purchase Price.	The amount cannot be determined at this time. See "Pro Forma Rent and Cash Flow for the Properties" attached hereto as Exhibit G.
Property Management Fee:	The Master Lessee has entered into property management agreements with the Property Managers to handle all of the day-to-day management of the Properties. The Property Managers (including Affiliates of the Manager) will receive a fee of up to 4% of the gross rental income of the Properties.	The amount cannot be determined at this time. See "Pro Forma Rent and Cash Flow for the Properties" attached hereto as Exhibit G.

Form of Compensation	Description	Estimated Amount of Compensation
Master Lease Operating Profit:	The Master Lessee will retain operating revenues from the Properties that exceed the respective Annual Base Rent due to the Trust under the respective Master Lease.	The amount cannot be determined at this time.
Liquidation:		
Disposition Fee:	It is anticipated that the Manager will assist in marketing and selling the Property Interests in the Properties, and thus, if the Manager provides such services, and if upon a Disposition of the Property Interests in the Properties the gross proceeds of any Disposition including the return of any reserves are in excess of \$18,732,000 (in cash or in kind), the Manager will be entitled to receive a fee equal to 2.0% of the gross proceeds of any such Disposition of the Property Interests in the Properties pursuant to the Trust Agreement, with such amount to be in addition to any payments to unrelated third-party real estate brokers that the Trust hires to sell the Property Interests in the Properties and any payments to buyer's brokers.	The amount cannot be determined at this time.

If the LLC Conversion occurs, the Sponsor, the Manager or an Affiliate thereof will be the Managing Member of the LLC. The Managing Member will receive an administrative fee, a finance coordination fee, real estate commissions and other compensation for service performed on behalf of the LLC, including for serving as the Managing Member, which compensation shall not exceed the then customary rate for similar services.

The Sponsor will not be involved in any manner with the Trust or the Properties after the close of the Offering (except as a result of its relationship to the Manager and the Master Lessee) and will receive no further compensation.

The fees received by the Manager are based on a fixed monthly payment, whereas the distributions made to the Owners are based on the Trust's net profits and are paid after expenses, taxes and other costs. The Trustee will receive a flat fee, which is \$750 per annum.

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THE TRUST AND SUMMARY OF THE TRUST AGREEMENT

The rights and obligations of the Owners will be governed by the Trust Agreement, a copy of which is attached hereto as Exhibit A. You should carefully review the entire Trust Agreement before making an investment. The following is a general description of the Trust and a summary of some of the significant provisions of the Trust Agreement. This summary is qualified in its entirety by the full text of the Trust Agreement.

General

The Trust was formed as a Delaware Statutory Trust under the laws of the State of Delaware on April 27, 2022 by the Sponsor and the Trustee. The Trust Agreement was entered into on April 27, 2022 by and among the Trustee, the Sponsor and the Manager, a copy of which is attached hereto as Exhibit A (the “**Trust Agreement**”). The principal place of business of the Trust is 1055 E. Colorado Blvd., Suite 310, Pasadena, CA 91106 and its telephone number is 855-379-8172. The Trust is a passive owner of the Properties and will not be involved in any manner in the active management of the Properties.

The Trust Estate

The trust estate consists of (i) the real property consisting of, and all improvements on, the Properties; (ii) the rights and remedies under the Master Lease; (iii) amounts in or to be deposited in the Reserve Accounts (see “Acquisition Terms and Financing”); and (iv) any proceeds of the foregoing (collectively, the “**Trust Estate**”).

Ownership

The Trust is authorized to issue 100 Class 1 beneficial ownership interests (which are the Interests offered to prospective Investors) and 100 Class 2 beneficial ownership interests. In order to form the Trust, the Sponsor subscribed for all of the 100 Class 2 interests, which are currently the only outstanding ownership interests in the Trust, in exchange for nominal capital. The Sponsor or its principals, are required by the Lender to maintain a 0.50% Class 1 beneficial interest in the Trust by purchasing a minimum of a 0.50% Interest in this Offering on the same terms and conditions as are available to all Investors and to hold such 0.50% Interest as long as the Loan is outstanding; provided that this 0.50% Interest will be purchased net of Selling Commissions and Expenses and certain other Sponsor related fees and expenses. Apart from this 0.50% Interest none of the Sponsor or its Affiliates will own any Class 1 interests and upon the sale of the Interests, no Class 2 interests will remain outstanding.

Redemption of the Sponsor’s Class 2 Ownership Interests

The proceeds of this Offering will be used by the Trust, in part, to redeem all of the Sponsor’s Class 2 interests on a one-for-one basis whereby one Class 2 interest will be redeemed for \$1,308.26 paid to the Sponsor for each Class 1 interest sold. As a result, no Class 2 interests will remain outstanding. See “Estimated Use of Proceeds,” “Plan of Distribution” and “– Rights of Owners.”

Pursuant to the Loan Documents, within 12 months of the Loan Closing Date (which date may be extended for an additional six month period (at the discretion of the Manager)), any unissued Class 1 interests must be sold to third parties unrelated to the Sponsor or any Class 2 interests remaining outstanding must be contributed to the Trust in favor of the Class 1 beneficial owners for no additional consideration.

The Trust’s Goals

The main goals of the Trust are to (i) operate and hold the Properties pursuant to the Master Lease and the Loan Documents (as defined below) required by the Lender; (ii) preserve the capital investment of the Owners; (iii) realize income through the ownership and eventual sale, disposition, transfer, merger to facilitate a tax-deferred exchange pursuant to Section 1031 of the Code or exchange roll-up transaction pursuant to Section 721 of the Code with respect to the Property Interests in the Properties (collectively, a “**Disposition**”); (iv) make monthly distributions to the Owners from the Master Lease payments; and (v) take only such other actions as the Manager deems necessary to carry out the foregoing. The Master Lease Annual Bonus Rent calculations will be based on the Fiscal Year.

The Trust currently estimates monthly distributions to be in an amount sufficient to provide the following base rent annualized cash flow returns on the Owners' investment:

- (i) 5.25% in year one;
- (ii) 5.30% in year two;
- (iii) 5.35% in year three;
- (iv) 5.40% in year four;
- (v) 5.45% in year five;
- (vi) 5.50% in year six;
- (vii) 5.55% in year seven;
- (viii) 5.60% in year eight;
- (ix) 5.65% in year nine; and
- (x) 5.70% in year 10.

However, there is no assurance that the Trust will be able to meet any of the above goals, including as to the manner, amount and timing of any distributions to Owners, as any such distributions will depend on actual income earned by the Trust. See "Risk Factors" and "Business Plan."

The Trustee

Gregory Harrison, an unaffiliated third party, and an officer of Stewart Management Company located in Wilmington, Delaware is the Trustee of the Trust pursuant to the Trust Agreement, as well as the Independent Director (as defined in the Trust Agreement). See "The Trust and Summary of the Trust Agreement."

The Trustee is only authorized and empowered to (i) accept legal process served on the Trust in the State of Delaware; (ii) execute any certificates that are required to be executed under the Delaware Statutory Trust Act and file such certificates with the Delaware Secretary of State; and (iii) take such action or refrain from taking such action under the Trust Agreement as may be directed in a writing delivered to the Trustee by the Manager.

The Trustee will be reimbursed for its expenses and held harmless from liability by the Manager, subject to certain exceptions.

The Trustee may resign at any time by providing at least 60 days' prior written notice to the Manager and the Lender, and the Manager may remove the Trustee for cause (as defined in the Trust Agreement) at any time by providing written notice to the Trustee.

As compensation for its services, the Trustee will receive fees as agreed to between the Sponsor and the Trustee. These fees are \$750 per year.

The Manager

ExchangeRight Asset Management, LLC, a California limited liability company, is the manager of the Trust. The Manager's sole member is the Sponsor. Accordingly, the Manager and the Master Lessee are all owned by the Sponsor. The agreements between the Trust, the Manager and the Sponsor are not the result of arm's-length negotiations, and they should not be considered as such. Certain conflicts of interest may arise between these entities and the Owners. See "Conflicts of Interest."

The Manager will receive an annual asset management fee of 0.50% of the Purchase Price of the Properties during the hold period. It is anticipated that the Manager will assist in marketing and selling the Property Interests in the Properties, and thus, if the Manager provides such services, and if upon a Disposition of the Property Interests in

the Properties the gross proceeds of any Disposition including the return of any reserves are in excess of \$18,732,000 (in cash or in kind), the Manager will be entitled to receive a fee equal to 2.0% of the gross proceeds of any such Disposition of the Property Interests in the Properties pursuant to the Trust Agreement, with such amount to be in addition to any payments to unrelated third-party real estate brokers that the Trust hires to sell the Property Interests in the Properties and any payments to buyer's brokers. The Trust shall pay a \$750 annual Trustee fee. See "Compensation of the Sponsor, the Manager and their Affiliates."

Rights of the Owners

The sole right of the Owners as holders of Interests will be to receive distributions from the Trust if, as and when made as a result of the operations of the Trust or the Disposition of the Property Interests in the Properties. The Owners will have no voting rights, including as to whether or not the Properties are sold.

Representations of Owners

Under the Trust Agreement, Owners will make certain representations substantially similar to those contained in the Purchase Agreement. See "Who May Invest."

Side Letters

Subject to certain restrictions in the Trust Agreement, the Manager reserves the right, in its sole and absolute discretion, to agree with an Owner to waive or modify the application of any provision of the Trust Agreement or fee or expense in connection with this Offering with respect to such Owner without obtaining the consent of any other Owner. Accordingly, the Trust and the Manager may enter into side letters or other writings with one or more Owners that have the effect of establishing rights under, or altering or supplementing the terms of, the Trust Agreement or any subscription agreement for Interests (including with any of its Affiliates that may invest in the Trust).

Trust Limitations

The Trust is not empowered or permitted to (i) sell, transfer, exchange or otherwise dispose of the Properties except as required under the Trust Agreement; (ii) invest any cash held by the Trust in anything other than U.S. Treasury obligations or deposits in federally-insured institutions; (iii) reinvest any monies of the Trust, except to make minor non-structural modifications or repairs to the Properties permitted under the Trust Agreement; (iv) upon the Disposition of the Property Interests in the Properties pursuant to the Trust Agreement, re-invest the proceeds of such Disposition; (v) renegotiate, alter or extend the terms of the Loan or enter into any new financing; (vi) renegotiate, alter or extend the terms of the Master Lease or enter into new leases, except in the case of the Master Lessee's bankruptcy or insolvency; (vii) make any modifications to the Properties other than minor non-structural modifications, unless required by law; (viii) accept any capital or contributions from Owners or other persons (other than pursuant to this Offering); or (ix) take any other action which would cause the Trust to be treated as a business entity for federal income tax purposes.

Distributions of Cash from Operations

After payment of management fees, operating expenses and taxes, as determined by the Manager, and after the reductions for reserves, debt service and requirements imposed by the Lender, the Trust's net cash flows will be distributed to the Owners in proportion to their Interests on a monthly basis. See "Business Plan."

Distributions upon Dissolution

Upon the dissolution of the Trust, any cash remaining after the winding up of the Trust's affairs in accordance with the laws of Delaware Statutory Trust Act will be distributed to the Owners in proportion to their Interests. See "– Term and Dissolution," "– Disposition of the Properties," and "– LLC Conversion."

Term and Dissolution

The Trust will terminate and dissolve and distribute all of its assets to the Owners in accordance with the Trust Agreement, on the first to occur of (i) the Disposition of all the Property Interests in the Properties; (ii) the expiration of 15 calendar years following the acquisition of the Property Interests in the Properties; or (iii) an LLC Conversion (the “**Trust Expiration Date**”). The Property Interests in the Properties must be sold before the Trust Expiration Date if the Manager determines, in its sole discretion, that a Disposition would be a reasonable course of action.

Disposition of the Property Interests in the Properties

It is anticipated that the Manager will assist in marketing and selling the Property Interests in the Properties, and thus, if the Manager provides such services, and if upon a Disposition of the Property Interests in the Properties the gross proceeds of any Disposition including the return of any reserves are in excess of \$18,732,000 (in cash or in kind), the Manager will be entitled to receive a fee equal to 2.0% of the gross proceeds of any such Disposition of the Property Interests in the Properties pursuant to the Trust Agreement, with such amount to be in addition to any payments to unrelated third-party real estate brokers that the Trust hires to sell the Property Interests in the Properties and any payments to buyer’s brokers. The Trust will then dissolve and the Owners will no longer have any ownership interest in the Trust. See “– Term and Dissolution” and “– Distributions upon Dissolution.”

LLC Conversion

The Trust must convert to a Delaware limited liability company (the “**LLC**”) managed by the Sponsor, the Manager or one of their affiliates (the “**Managing Member**”) upon the first to occur of the following (collectively, a “**LLC Conversion**”): (i) the Manager determines that there will be a default on the Loan (due to, among other things, the failure of the Master Lessee to pay rent when due under the Master Lease); (ii) the Manager determines that the Loan has been paid in full and the Properties have not been sold within a reasonable period of time; (iii) the Trust Expiration Date; (iv) upon an Event of Default (as defined in the Loan Documents); or (v) if the Lender determines, in good faith, that an Event of Default is imminent, Lender has the right, upon written notice to direct the Trustee to cause a conversion. In connection with a LLC Conversion of the Trust, the Manager will distribute to the Owners ownership interests in the LLC in exchange for, the Owners’ Interests. This exchange would be on a proportionate basis to their ownership in the Trust, except that the Managing Member, would receive one membership unit of a different class with nominal value in exchange for nominal consideration. The LLC will be treated as a partnership for federal income tax purposes. See “Summary of the Limited Liability Company Agreement” and “Business Plan.”

Reports to Owners

The Manager will keep customary and appropriate books and records of account for the Trust at the Manager’s principal place of business. See “The Manager.” The Owners (or their duly authorized representatives) may inspect, examine and copy the Trust’s books and records at any time during normal business hours upon reasonable notice. The Manager shall maintain appropriate books and records in order to provide reports of income and expenses to each Owner as necessary for such Owner to prepare their income tax returns.

Amendment

The Trust Agreement may only be amended by a writing signed by the Manager and the Owners adversely affected by the amendment, if any. As long as the Loan remains outstanding, no amendment will be effective unless consent from the Lender is obtained. In addition, the Manager generally has the right to amend the Trust Agreement, without the consent of the Owners, upon the request of the Lender if the Lender determines that an amendment is necessary to satisfy certain requirements under the Loan Documents. No amendment may be made to the Trust, however, which would cause the Trust to cease to be treated as a trust for federal income tax purposes.

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SUMMARY OF THE MASTER LEASE

The rights and obligations of the Trust, and compensation to be paid to the Trust, regarding the leasing of the Properties to the Master Lessee will be governed by the Master Lease, copies of which are attached hereto as Exhibit D. You should carefully review the entire Master Lease before making an investment. The following is a summary of some of the significant provisions of the Master Lease. The summary is qualified in its entirety by the full text of the Master Lease. The Master Lessee and the Manager are wholly-owned subsidiaries of ExchangeRight. As a result, the terms of the Master Lease is not the result of arm's-length negotiations and should not be so considered as such.

Generally

The Trust and the Master Lessee entered into the Master Lease whereby the Trust leased their respective Properties to the Master Lessee and assigned, transferred and quit claimed without warranty to the Master Lessee, and the Master Lessee accepted, all of the Trust's right, title, and interest in and to the Tenant leases. On the Loan Closing Date, the Master Lessee assumed all obligations and liabilities of the Trust with respect to the Tenant leases and are entitled to receive all rent due from the respective Tenants thereunder. The Trust appointed the Master Lessee as their agent and attorney-in-fact during the term of the Master Lease for purposes of executing any and all documents required to be entered into and complete any transaction that will be approved by the Trust (to the extent such approval is required) and to take any other action with respect to the Properties that the Master Lessee shall be authorized to take on behalf of the Trust, other than with respect to any transaction involving a substitution or other disposition of the Properties. As a result, the Master Lessee is solely responsible for administering and complying with the terms of the Tenant leases applicable to the lessor.

Upon termination or expiration of the Master Lease, all Tenant leases then affecting the Properties will be deemed to be automatically assigned to the Trust, and the Trust will be deemed to automatically assume all duties and obligations of the Master Lessee under the Tenant leases without any further action on the part of the Master Lessee.

Term

The Master Lease will expire concurrently with the Trust's termination. The Master Lease will terminate before their expiration date, and without additional cost to the Trust, upon a Disposition of the Properties by the Trust. The Master Lease is currently expected to be assumed by the LLC at the time of an LLC Conversion. Neither the Trust nor the Master Lessee has an option to renew the Master Lease.

Rent

All rent due under the Tenant leases for periods after the Master Lease is executed will be payable to the Master Lessee rather than the Trust. The Master Lease Annual Bonus Rent calculations are based on the Fiscal Year. The Master Lessee will use the rent received from the Tenant leases to pay to the Trust the respective Annual Base Rent established in each of the Master Lease. Such Annual Base Rent includes amounts that are anticipated to be sufficient for the Trust to fund Owner Annual Base Rent Distributions (as set forth in the Pro Forma in Exhibit G), TI/LC Reserve Contributions (as set forth in the Pro Forma in Exhibit G), CapEx Reserve Contributions (as set forth in the Pro Forma in Exhibit G), the Manager's annual asset management fee, and Lender's debt service totaling \$479,482 (\$480,796 in leap years) per annum for the term of the Loan all in accordance with the figures presented in the Pro Forma in Exhibit G. The Master Lease's Annual Base Rent obligations are structured to provide a 5.25% annualized return to the Owners for the first full year of the Master Lease term, which percentage return does not include the payment of Annual Bonus Rent, if any.

Master Lessee's Rent

All rent due under the Properties' Tenant leases for periods after the Master Lease is executed is payable to the Master Lessee rather than the Trust. The Master Lessee will use the rent received from their respective Tenant leases to pay to the Trust the Annual Base Rent established in each of the Master Lease. Notwithstanding the foregoing, pursuant to the terms of the Master Lease, any interest earned by the Trust on the funds held by the Trust shall be included in the amounts available for distribution from the Master Lessee and as such will be available to

offset the respective Annual Base Rent amount payable by the Master Lessee to the Trust in the respective calendar year.

The Annual Base Rent for each year of the Master Lease shall be as follows:

Year 1	\$1,257,957
Year 2	\$1,272,340
Year 3	\$1,198,041
Year 4	\$1,433,741
Year 5	\$1,465,758
Year 6	\$1,440,141
Year 7	\$1,375,841
Year 8	\$1,491,542
Year 9	\$1,498,555
Year 10	\$1,472,942

Master Lease Rent

All rent due under the Properties' Tenant leases for periods after the Master Lease is executed is payable to the Master Lessee rather than the Trust. The Master Lessee will use the rent received from its Tenant leases to pay to the Trust the Annual Base Rent established in the Master Lease.

The Annual Base Rent for each year of the Master Lease shall be as follows:

In the event that a Qualified Transfer is not achieved or the Properties are not sold prior to 12 months prior to the Loan Maturity Date, the full amount of the Available Cash will continue to be paid but may be held by the Lender and used to pay down the Loan as required under the Loan Documents. In the event that not all or a non-material portion of the Properties are taken by eminent domain proceedings or damaged or destroyed by fire or other casualty and it is economically feasible to continue to operate the Properties, then the Master Lease shall continue in full force and effect, however, the Annual Base Rent for the Master Lease shall be adjusted in an equitable fashion to reflect the economic effect of any such loss of a portion of the Properties.

Bonus Rent

In addition to the Annual Base Rent presented above, the Master Lessee will pay Annual Bonus Rent to the Trust equal to twenty percent (20%) of the effective annual revenues of the Properties over the Master Lease Revenue Target. The Master Lease Revenue Target will be \$1,963,888 for the first full year of the Master Lease's term and will increase to an amount of \$2,427,722 for the final full year of the Master Lease's term.

The Master Lease Revenue Targets for Fiscal Years 1 – 10 of the Master Lease shall be as follows:

Year 1	\$1,963,888
Year 2	\$2,016,394
Year 3	\$1,968,608
Year 4	\$2,240,979
Year 5	\$2,296,798
Year 6	\$2,293,611
Year 7	\$2,250,086
Year 8	\$2,395,169
Year 9	\$2,428,606
Year 10	\$2,427,722

The Annual Bonus Rent will be paid annually in arrears within approximately 75 days following the end of each Fiscal Year. The Sponsor expects, but cannot guarantee, the Properties to generate Annual Bonus Rent, leading to increasing cash flow distribution potential for the Owners.

Payment of the Properties' Expenses

The Master Lessee will be obligated to bear all costs of operating, maintaining, repairing, and managing and leasing the Properties (including property taxes, property insurance and utilities' costs) other than Capital Expenses (as defined below), but may use Lender required reserves owned by the Trust to pay said costs, as described below.

The Trust are financially responsible for casualty and condemnation restoration and all "**Capital Expenses**" of the Properties, which means all costs and expenses incurred in connection with the Properties that are normally capitalized, including, but not limited to: (i) repairs and replacements to roofs, chimneys, gutters, downspouts, paving, curbs, ramps, driveways, balconies, porches, patios, decks, foundations, exterior walls and all load bearing walls, exterior doors and doorways, windows, elevators, fences and gates, and (ii) exterior painting, with the Master Lessee assuming full and sole responsibility for the operation, repair, replacement, maintenance and management of the Properties.

Moreover, the Trust is not responsible for any Capital Expenses or, otherwise, for making or performing (or incurring any cost, expense or expenditure for the making or performing of) any repairs, replacements or improvements to, for and/or in respect of any of the Properties that the Trust determines (in its sole discretion) that it is not permitted to be responsible for, make, perform and/or incur pursuant to the terms of the Trust Agreement. In order to help the Trust defray its costs and expenses related to the Properties and to help the Master Lessee defray their costs and expenses related to the Properties, the Loan Documents require the Trust to make the following reserve payments in connection with the Properties, which were held by the Lender on the Loan Closing Date pursuant to the terms of the Loan Documents: (i) a required repair reserve was withheld from Loan proceeds by Lender and deposited on the Trust's behalf in the amount of \$144,273.25 on the Loan Closing Date (the "**Required Repair Reserve**"); (ii) a capital expense replacement reserve was withheld from Loan proceeds by Lender and deposited on the Trust's behalf in the amount of \$676,408.20 on the Loan Closing Date, as well as a monthly payment in the amount of \$1,196.14 for replacements and repairs to the Properties (collectively, the "**Capital Reserve**"), which monthly payment amount shall be added to the monthly Loan payment due to the Lender on each Loan payment date; (iii) (A) an upfront tenant

improvement and leasing commission reserve (“**Rollover Reserve**”) was withheld from Loan proceeds by Lender and deposited on the Trust’s behalf on the Loan closing in the amount of \$500,000 and (B) if a Default (as defined in the Loan Agreement) or Event of Default (as defined in the Loan Agreement) has occurred and is continuing, the Trust shall deposit with the Lender a monthly rollover reserve in the amount of \$7,974.08 (the “**Rollover Reserve Monthly Deposit**”) on each Loan payment date; (iv) any sum or termination fee payable to the Trust in connection with any Tenant’s election to exercise any early termination option contained in its respective lease of space at any of the Properties or in connection with any other termination, amendment or modification of any Lease, reduction of rents, shortening of the term or surrender of space thereunder on the date of the Trust’s receipt thereof (the “**Lease Termination Payments**” and together with the Rollover Reserve and the Rollover Reserve Monthly Deposit collectively, the “**Leasing Reserve**”); and (v) a tenant improvement, leasing commissions and free rent or free rent abatements reserve was withheld from Loan proceeds by Lender and deposited on the Trust’s behalf in the amount of \$311,553.28 on the Loan Closing Date (the “**Unfunded Obligations Reserve**”). The Required Repair Reserve, the Capital Reserve, the Leasing Reserve and the Unfunded Obligations Reserve shall be collectively referred to herein as the “**Reserve Accounts**.” If the following events occur, the Lender shall also require the Trust to set up the following escrow accounts; (i) funds in the amount of up to \$1,861,723.94 (the “**Starbucks Escrow Funds**”), which amounts are currently held in escrow by Chicago Title Insurance Company in connection with certain expenses and other unpaid amounts that are to become due and payable under the Lease (as defined in the Loan Agreement) with Starbucks Corporation (as defined in the Loan Agreement) at the Marlboro Crossing Shopping Center Property (as defined in the Loan Agreement) and the Trust agreed that in the event the Trust (or any of its Affiliates) receives all or any portion of the Starbucks Escrow Funds in excess of \$279,894.98, the Trust shall promptly remit all such amounts in excess of \$279,894.98 to Lender to be deposited into the Unfunded Obligations Reserve Account (as defined in the Loan Agreement) and disbursed in accordance with Section 9.9 of the Loan Agreement; and (ii) funds in the amount of up to \$34,455.33 (the “**Shop Tenant Escrow Funds**”), which are currently held in escrow by Chicago Title Insurance Company in connection with potential shortfalls in tenant reimbursements for TICAM (as defined in the Loan Agreement) at the Walnut Creek Shopping Center Property (as defined in the Loan Agreement) and the Trust agreed that in the event the Trust (or any of its Affiliates) receives any disbursements of Shop Tenant Escrow Funds, the Trust shall promptly deposit all such amounts (or shall cause all such amounts to be promptly deposited) into the Deposit Account in accordance with Section 10.2(a)(iii) of the Loan Agreement. In addition, the Loan Documents required the Trust to make a Trust controlled reserve payment for an operations and asset management reserve that was withheld from Loan proceeds by Lender in the amount of \$1,500,000 on the Loan Closing Date (the “**Trust Operations and Asset Management Reserve**”).

So long as the Reserve Accounts have not been totally depleted and subject to any required approvals of the Lender, the funds in the Reserve Accounts will be available to and may be withdrawn by the Master Lessee, upon receipt of consent from the Trust, to pay for costs and expenses in connection with Capital Expenses. The Master Lessee’s use of the funds in the Reserve Accounts shall be without expense or obligation of the Master Lessee to repay the Trust or to replenish the Reserve Accounts. If the Reserve Accounts are not available for any reason and funds of the Master Lessee are used to pay for expenses for which the Trust is responsible, such amounts will be treated as a loan from the Master Lessee to the Trust, which the Master Lessee may recover, including a reasonable rate of interest, in the Master Lessee’s sole discretion, out of the Reserve Accounts (if not depleted), by set off against the Master Lease’s Annual Base Rent, or from the proceeds from a Disposition of the Property Interests in the Properties. So long as the Reserve Accounts have not been totally depleted, the funds in the Reserve Accounts will also be available to and may be withdrawn by the Trust to pay for the costs of casualty and condemnation restoration and Capital Expenses, if permitted pursuant to the Loan Documents.

Rights and Duties of the Master Lessee

The Master Lessee has the sole and exclusive right and obligation to operate and maintain the Properties. The Master Lessee, at their sole cost and expense, will be responsible for complying with all governmental statutes, laws, rules, regulations and ordinances affecting the Properties or the use thereof, including all such requirements of the National Board of Fire Underwriters or other similar bodies and all requirements of the Americans With Disabilities Act of 1990. The Master Lessee, at their sole cost and expense and without reimbursement or contribution from the Trust, with the exception of the above reserve reimbursements, is required to keep, repair and maintain the entire exterior and interior of the Properties in good condition and repair and in good compliance with all legal requirements.

The Master Lease will prohibit the Master Lessee from making any alterations, additions or improvements to the Properties unless such alterations, additions or improvements are (i) consented to in a prior writing by the Trust and in compliance with the Loan Documents and (ii) minor, non-structural alterations, additions, or improvements, required by law or permitted under the Tenant leases. The Master Lessee will be prohibited from entering into any new sublease with respect to the Properties that permit alterations, additions or improvements to the Properties other than minor, non-structural alterations, additions or improvements or those required by law.

The Master Lessee is required to procure and maintain, at its sole cost and expense, insurance coverage against the following risks: (i) casualty loss at full replacement cost of any improvement on the Properties, naming the Trust as the insured and the Lender as the payee; (ii) liability for personal injury and property damage; (iii) loss or damage from explosion or breakdown of boilers, air conditioning equipment or other electrical apparatus; (iv) workers compensation claims; (v) fire and other risk of loss of contents and other personal property; and (vi) abatement or loss of rent in the case of fire or other casualty. All such insurance coverage must be in form and substance satisfactory to the Trust and Lender, except that flood and earthquake insurance will not be procured for all the Properties unless specifically disclosed in the "Description of the Properties" section of this Memorandum or required by the Lender. In the event that not all or a non-material portion of the Properties are taken by eminent domain proceedings or damaged or destroyed by fire or other casualty and it is economically feasible to continue to operate the Properties, then the Master Lease shall continue in full force and effect, however, the Annual Base Rent shall be adjusted in an equitable fashion to reflect the economic effect of any such loss of a portion of the Properties.

Upon termination of the Master Lease, the Master Lessee is required to surrender the Properties to the Trust in as good condition as when the Master Lessee took possession thereof. The Master Lessee is required to remove from the Properties all furniture, fixtures and other movable property, if any, belonging to the Master Lessee. For each day that the Master Lessee remain in possession of the Properties after the Master Lease terminate, the Master Lessee is required to pay holdover rent that is double the daily amount of the Annual Base Rent. The rights and obligations under the Tenant leases will not be affected by the termination of the Master Lease.

The Master Lessee has the sole authority to negotiate and enter into subleases of the Properties without the consent of the Trust, provided that any such lease conforms in all respects to the specifications set forth in the Master Lease. Notwithstanding the right to sublease the Properties, the Master Lease will prohibit the Master Lessee from assigning or transferring the Master Lease or any interest thereunder, and the Master Lessee will remain obligated to fulfill all duties and obligations set forth in the Master Lease with respect to the Properties that the Master Lessee subleases.

The Master Lessee will be prohibited from taking certain actions with respect to hazardous materials on, around or otherwise in connection with the Properties. The Master Lessee is required, at its sole cost and expense, to comply with all environmental laws. The Master Lessee is required to provide the Trust and Lender (in connection with the Properties) with a copy of all notices, citations or similar communications regarding an actual or alleged violation of environmental laws or imposition of fines, liens or similar penalties with respect to any such violations. The Master Lessee is required to indemnify and hold harmless the Trust, the Owners and the Lender from any claims, damages or similar consequences arising from the Master Lessee's actions or inactions with respect to hazardous materials, compliance with environmental laws or other obligations under the Master Lease with respect to environmental matters and the Properties.

Default

The occurrence of any one or more of the following matters will constitute an event of default by the Master Lessee under the Master Lease: (i) failure to pay rent when due; (ii) failure to pay, within 10 days after receiving notice of such failure, any moneys due under the Master Lease; (iii) failure to observe or perform any covenant with respect to subletting; (iv) failure to comply with any warranty, representation or covenant with respect to environmental matters; (v) failure to cure any hazardous condition created by the Master Lessee in violation of law or the Master Lease; (vi) failure to observe or perform any other covenant, agreement or condition of the Master Lease for 30 days after receiving notice of such failure; (vii) the levy upon writ of execution or the attachment by legal process of the Master Lessee's leasehold interest, or the filing or creation of a lien in respect of such interest, if not released or discharged within 10 days of such filing; (ix) the insolvency or bankruptcy of the Master Lessee; (x) the

appointment of a trustee for the Master Lessee and such appointment is not discharged within 60 days; or (xi) bankruptcy, reorganization, liquidation, or similar proceedings are instituted against the Master Lessee or by the Master Lessee and are not dismissed within 60 days of such institution.

In the event of default, the Trust may terminate the Master Lease, terminate the Master Lessee's right to possess the Properties without terminating the Master Lease, or enforce the provisions of the Master Lease by a suit in equity or at law for specific performance or the enforcement of any appropriate legal or equitable remedy, including monetary damages. If the Trust terminates the Master Lessee's right to possession without terminating the Master Lease, the Master Lessee must immediately vacate the Properties, if the Master Lease has any such possession, and any such termination of the right of possession will not terminate the Master Lessee's obligation to pay all rent due under the Master Lease. Any actions or remedies with respect to an event of default are subject and subordinate to the Loan Documents.

A default under the Master Lease arising from the Master Lessee's failure to pay to the Trust an amount when due will result in a default under the Loan.

Liability

The Master Lessee agreed to indemnify the Trust, including the Owners, to the extent the Trust or an Owner becomes liable as a result of certain actions of the Master Lessee.

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SUMMARY OF THE PURCHASE AGREEMENT

Each prospective Investor will be required to execute a Purchase Agreement, a copy of which is attached hereto as Exhibit B. You should carefully review the entire Purchase Agreement before making an investment. The following is a summary of some of the significant provisions of the Purchase Agreement. This summary is qualified in its entirety by the full text of the Purchase Agreement.

Submission of Offer to Purchase

The Purchase Agreement contains additional information on how to purchase the Interests. See also “How to Subscribe.”

Investor Suitability Requirements

The Purchase Agreement contains additional information regarding the requirements and suitability of investors to that contained in “Who May Invest.” By signing the Purchase Agreement, prospective Investors represent that they meet all the requirements listed in “Who May Invest” as well as make the additional agreements and acknowledgments set forth therein, including that they are an Accredited Investor.

No Tax Advice

THE INVESTORS WILL ACQUIRE THEIR INTERESTS WITHOUT ANY REPRESENTATIONS OR WARRANTIES FROM THE TRUST, THE SPONSOR, THE MANAGER OR ANY OF THEIR AFFILIATES OR REPRESENTATIVES, AGENTS OR COUNSEL REGARDING THE TAX IMPLICATIONS OF THE TRANSACTION. THE TRUST RECEIVED AN OPINION OF TAX COUNSEL ON WHICH EACH OWNER MAY RELY, BUT ONLY CONCERNING THE MATTERS SPECIFICALLY ADDRESSED THEREIN. THE OPINION IS WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF A PARTICULAR TRANSACTION, AND EACH PROSPECTIVE INVESTOR SHOULD SEEK ADVICE BASED ON THE PROSPECTIVE INVESTOR'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR. A COPY OF THE TAX OPINION IS ATTACHED HERETO AS EXHIBIT F.

EACH INVESTOR MUST CONSULT HIS OR HER OWN INDEPENDENT ATTORNEYS, ACCOUNTANTS AND OTHER TAX ADVISORS REGARDING THE TAX IMPLICATIONS OF THE INVESTOR'S PURCHASE OF AN INTEREST, INCLUDING WHETHER OR NOT SUCH PURCHASE WILL QUALIFY AS PART OF A PROPOSED TAX-DEFERRED EXCHANGE UNDER SECTION 1031, IF ONE IS CONTEMPLATED.

Accordingly, all prospective Investors must consult their own independent legal, tax, accounting and financial advisors and must represent that they have done so as an investment requirement.

Termination of the Purchase Agreement

The Purchase Agreement may be terminated if the conditions to the closing are not satisfied as set forth in the Purchase Agreement. If the Purchase Agreement is terminated, prospective Investors will have no right to acquire any portion of the Interests and will have no claims against the Trust for expenses, lost profits or otherwise.

SUMMARY OF THE LIMITED LIABILITY COMPANY AGREEMENT

After an LLC Conversion occurs, the rights and obligations of the Owners, as members of the LLC holding membership interests therein, will be governed by the LLC Agreement, a copy of which is attached hereto as Exhibit E. You should carefully review the entire LLC Agreement before making an investment. The following is a summary of some of the significant provisions of the LLC Agreement. This summary is qualified in its entirety by the full text of the LLC Agreement. As provided in the Trust Agreement, however, the Manager may, in its discretion and upon advice of counsel, utilize such other form of transaction to accomplish the transaction contemplated by the LLC Conversion, provided that such alternative form is entered into to preserve and protect the Trust's assets for the benefit of the Owners and is permitted under the Loan Documents.

Generally

In connection with the conversion of the Trust into the LLC, the Interests held by the Owners will be converted into interests in the LLC, which will be represented by the Class A Units. This exchange would be on a proportionate basis to their ownership in the Trust, except that the Managing Member would receive the Class B Unit with nominal value in exchange for nominal consideration. After the LLC Conversion is completed, the Owners will no longer own beneficial interests in the Trust. As members in the LLC, the rights and obligations of the Owners with respect to each other and the former Trust Estate, including the Properties, will be governed by the LLC Agreement.

The nature of the business and the purposes of the LLC will be to engage solely in activities related to owning, holding, selling, assigning, transferring, operating, leasing, mortgaging, pledging and otherwise dealing with the Properties. Until the Loan is repaid in full, the LLC will be organized solely for purposes in connection with the Properties, will not engage in any business unrelated to the ownership of the Properties, and will not have any assets other than those related to the Properties. The ability of the LLC to engage in activities with respect to the Properties will not be subject to the significant restrictions and limitations imposed on the Trust, the Trustee and the Manager by the Trust Agreement.

In the event of a LLC Conversion, the Interests owned by the Sponsor or an owner of the Sponsor will be exchanged for ownership interests in the LLC, which involves certain risks that potential Investors should consider, including, but not limited to, the Sponsor retaining rights as a member of the LLC and may therefore have an effective veto right with respect to major decisions.

Authority and Responsibilities of the Managing Member

The holder of the Class B Unit in the LLC will be appointed to serve as the Managing Member to hold such office until the Managing Member is removed or it withdraws or resigns. The Managing Member will designate a board of one or more directors who shall serve (other than the Independent Director, as defined below) at the complete discretion of the Managing Member. As long as the Loan is outstanding, the board must include at least one director who, for the five years prior to his appointment, has not been, and will not be during his appointment, related to, controlled or employed by, or otherwise affiliated with the LLC or its Affiliates in any way (an “**Independent Director**”).

The Managing Member will have broad authority, power, and discretion to manage and control the business affairs of the LLC under the direction of the board, including the complete power to do all things necessary or incident to the management and conduct of the LLC's business. The board and the Managing Member will be charged with the responsibility of taking all action necessary for the LLC to qualify as a “special purpose” entity so long as the Loan is outstanding.

The Managing Member and its Affiliates will be entitled to receive various fees, commissions, or other compensation for services performed on behalf of the LLC. The Managing Member and its Affiliates will not be reimbursed for overhead expenses incurred in connection with the LLC. The LLC will pay directly or reimburse the Managing Member as the case may be, for all costs and expenses of the LLC's operations.

At all times during the term of the LLC, the Managing Member will have a special power of attorney as the attorney-in-fact for each member with the power and authority to act in the name and on behalf of each member to execute and take other actions with respect to documents that are not inconsistent with the provisions of the LLC Agreement.

The Managing Member will be prohibited from resigning or withdrawing as the Managing Member or doing anything that would require its resignation or withdrawal without the vote of more than 75% of the Class A Units entitled to vote (a “**Super Majority Vote**”). So long as the Loan is outstanding, however, the Managing Member may not resign and may be removed only for “cause” by a Super Majority Vote. Upon termination, removal, or withdrawal of the Sponsor as Managing Member, the Sponsor’s Class B Unit shall be redeemed for \$100 and the Sponsor shall be paid all earned but unpaid fees and other compensation in cash within 60 days of the date of termination, removal, or withdrawal.

Except for transfers to Affiliates, the Managing Member may not sell, assign, hypothecate, encumber or otherwise transfer any part or all of its Class B Unit without an affirmative Super Majority Vote. The transfer of the Class B Unit shall require the consent of the Lender so long as the Loan is outstanding. The transferee of an assignment of the Class B Unit in compliance with these approval and consent requirements shall be substituted as the Managing Member.

Indemnification of Managing Member

The LLC will indemnify the Managing Member (to the extent of the LLC’s assets) for any loss or damage incurred by the Managing Member, its Affiliates, the LLC, or the members in connection with the business of the LLC. Any indemnification right of the Managing Member will be subordinate, however, to the rights of any holder of an obligation, including the Loan, with respect to the Properties.

Rights and Obligations of Members

The members will have no obligation to make contributions of capital or loan funds to the LLC except to the extent of such member’s share of undistributed profits, if any, and the amount of any distributions made to such member by the LLC in violation of the Delaware Limited Liability Company Act. No member will be liable for the LLC’s debts or other obligations, except as otherwise may be provided under the Loan Documents.

The members will not have the right to take part in the management or control of the business or affairs of the LLC, to transact any business for the LLC, or to sign for or bind the LLC. The members will have the right to receive information required for federal income tax reporting and certain other financial information and to inspect certain LLC records. The members will have only limited voting rights with respect to certain other matters.

Distributions and Tax Matters

It is intended that the LLC will make periodic distributions of substantially all cash determined by the Managing Member to be distributable, subject to the following: (i) a restriction or suspension for periods when the Managing Member determines in its reasonable discretion that doing so is in the LLC’s best interest; (ii) the payment, and maintenance of reasonable reserves for payment, of the LLC’s obligations; and (iii) the payment of, or other provision for, all currently due operating expenses of the LLC (including any fees that are due and payable to the Managing Member or its Affiliates for services rendered to the LLC) and all amounts due and payable under the Loan Documents. All distributions made with respect to the Class A Units will be in the ratio of the number of Class A Units held by each member on the date of such allocation to the total outstanding Class A Units as of such date. If the LLC is required to make a tax payment to a government authority as a result of a member’s ownership interest in the LLC, any such tax payment will be deemed a distribution to such member and the LLC will recover the amount of such tax payment from future distributions otherwise payable to such member.

All income of the LLC will be allocated to the members in proportion to their Class A Units. The Managing Member will be required to use its best efforts to meet the applicable requirements for the LLC to be classified for federal income tax purposes as a partnership. The Managing Member will be appointed to represent the LLC and its

members as the Tax Matters Member (as defined in the LLC Agreement) in connection with all examinations by tax authorities of the Company's affairs, and any other tax administrative or judicial proceeding, and will be authorized to take any action in connection with any tax examination, audit, administrative or judicial proceeding of the Company to the extent permitted by applicable law if reasonably determined to be in the best interest of the members. Each member will cooperate with the Tax Matters Member and do or refrain from doing any or all things reasonably requested by the Tax Matters Member including as needed to comply with the revised partnership audit procedures. The Managing Member shall cause the LLC to timely file all applicable tax returns with the appropriate authorities and to distribute, within 90 days after the LLC's fiscal year end, all LLC information necessary in the preparation of the members' individual income tax returns.

Transfer of Units

No transfer of a Unit or any interest therein may be made unless the Managing Member, in its sole discretion, has consented in writing to such transfer. In addition, no transfer may be made if the effect of such transfer would be for the LLC to be classified as a publicly traded limited partnership for federal income tax purposes or for the underlying assets owned by the Trust to constitute "plan assets" under ERISA of any Benefit Plan Investor. The Managing Member may require an opinion of counsel acceptable to the Managing Member that such transfer will not violate any federal or state securities laws or any provisions of any underlying loan agreements. A transferee will not become a substituted member in the LLC unless (i) the Managing Member, in its sole discretion, has consented to such substitution; (ii) the transferee has assumed any and all of the obligations under the LLC Agreement with respect to the Units to which the transfer relates; (iii) a transfer fee sufficient to cover all reasonable expenses required in connection with the transfer have been paid by or for the account of the transferee; and (iv) all agreements, certificates or amended certificates and all other documents have been executed and filed and all other acts have been performed which the Managing Member deems necessary to make the transferee a substituted member in the LLC. Notwithstanding the above, no assignment of any Units may be made if the Units to be assigned, when added to the total of all other Units and Managing Member interest assigned within the 13 immediately preceding months would, in the opinion of the LLC's counsel, result in a termination of the LLC as a partnership under the Code.

Meetings of the Members

The Managing Member may call a meeting of the members at any time with respect to any matter. Members whose combined Units constitute more than 50% of all Units then outstanding and entitled to vote may request that the Managing Member call a meeting to vote and take action with respect to any issue on which the members may vote pursuant to the LLC Agreement. Upon receiving a proper written request stating the purpose of the meeting, the Managing Member will be required to mail, within 20 days after receipt of such request, written notice of the meeting to all members, stating the general nature of the business to be conducted at such meeting, and such meeting will be required to be held at a time and place on a date not fewer than five days or more than 60 days after the date the Managing Member mails such notice.

Termination and Winding Up

The LLC will be dissolved upon the occurrence of any of the following events:

- (i) the happening of any event of dissolution specified in the Certificate of Formation;
- (ii) a determination by the Managing Member to terminate the LLC;
- (iii) the entry of a decree of judicial dissolution;
- (iv) the Disposition of the Property Interests in the Properties held by the LLC, or the receipt of the final payment on any seller financing provided by the LLC on the Disposition of the Property Interests in the Properties, if later; or

(v) so long as no amount remains outstanding under the Loan, the death, insanity, withdrawal, retirement, resignation, expulsion, insolvency or dissolution of the Managing Member unless the business of the LLC is continued by a Super Majority Vote within 90 days following the occurrence of such event.

In the event of the LLC's dissolution, the LLC's affairs will be terminated and wound up in accordance with Delaware law and the LLC's remaining assets will be distributed to the members as provided for in proportion to their Class A Units and the holder of the Class B Unit will receive consideration equal to the amount it paid for its Class B Unit. Notwithstanding the above, the LLC may not be dissolved at any time during which the Loan remains outstanding.

LIMITED FIDUCIARY DUTY

The Sponsor, the Master Lessee and the other Owners will have no fiduciary duty to any Owner, as such duty may be applicable to other investments such as a partnership, limited liability company or corporation.

The Trust Agreement provides that (i) neither the Trustee nor the Manager will be liable to the Owners for any act or omission performed or omitted by it except for acts or omissions arising out of willful misconduct, bad faith, fraud or gross negligence, and (ii) the Owners will indemnify the Trustee and the Manager and their Affiliates and each of their directors, officers, employees and agents for any liability suffered by them arising out of their activities in connection with the Trust, except for liabilities resulting from willful misconduct, bad faith, fraud or gross negligence. See "The Trust and Summary of the Trust Agreement." Accordingly, the Owners may be liable to the Trust and have a more limited right of action than would otherwise be the case absent such provisions.

CONFLICTS OF INTEREST

ExchangeRight is owned by the Key Principals (Joshua Ungerecht, David Fisher and Warren Thomas) and it is the sole member of the Manager and the Master Lessee, which can create a conflict of interest among the multiple roles it, its principals and its Affiliates fulfill. See "Organization and Management." Accordingly, the Manager and the Master Lessee are Affiliates owned by the same entity and, thus, any agreements between the parties are not the result of arm's-length negotiations. In addition, ExchangeRight may act as the manager of other limited liability companies and/or as the general partner of limited partnerships and may form other business entities. ExchangeRight may have additional responsibilities to provide management and services to a number of other entities in addition to the Manager and the Master Lessee. The principal areas in which conflicts may be anticipated to occur include, but are not limited to, those described below. There can be no assurances there may not be other conflicts.

Sale of Interests by the Selling Group

Members of the Selling Group will make offers and sales of Interests on a "best efforts" basis. Offers and sales of Interests will be made on a "best efforts" basis by broker-dealers ("**Broker-Dealers**") who are members of Financial Industry Regulatory Authority ("**FINRA**"). The following fees will be paid from the proceeds of the Offering (the "**Offering Proceeds**") in connection with the marketing and syndication of the Interests: (i) Selling Commissions of up to \$570,000 (5%) of the Offering Proceeds ("**Selling Commissions**") to the Broker-Dealers; (ii) a nonaccountable marketing and due diligence allowance of up to \$114,000 (1%) of the Offering Proceeds to the Broker-Dealers; and (iii) \$28,500 (0.25%) of the Offering Proceeds to ERS, which may be reallocated to the Broker-Dealers at the discretion of ERS (collectively, the "**Selling Commissions and Expenses**"). Principals of the Manager of the Trust may also be acting as an Owner's registered representative or registered supervisor (or both), in which case they may receive Selling Commissions and Expenses as a result of their sales efforts with respect to the Interests. This presents a conflict of interest that may affect their judgment in making an investment recommendation to such Owner. Accordingly, each prospective Investor must choose to make an investment in Interests based on their own independent review of the merits and risks of this Offering.

The compensation described in this section and elsewhere in this Memorandum, and other compensation or benefits provided by the Trust, may be more or less than the overall compensation on similar or other products. Prospective investors may inquire of their registered representative regarding conflicts of interest and compensation.

Compensation of the Manager and its Affiliates

Since the Manager and the Master Lessee are all wholly owned by ExchangeRight, the payments to the Sponsor, the Manager and the Master Lessee set forth under “Compensation of the Sponsor, the Manager and their Affiliates” have not been determined by arm’s-length negotiations, and they should not be considered as such. In addition, the Trust shall reimburse the Manager for all reasonable expenses incurred in connection with performing its duties on behalf of the Trust. See “Risk Factors – Trust Structure and Operating Risks” and “The Trust and Summary of the Trust Agreement.”

Interests in Other Activities

ExchangeRight and its Affiliates, including the Manager may engage in other business ventures for their own account or for the account of others. These ventures may or may not be related to the business of the Trust and may include properties that compete with the Properties.

Legal Representation

Counsel and Tax Counsel represent ExchangeRight and the Trust with respect to certain matters related to this Offering. It is anticipated that such multiple representation will continue in the future. Counsel and Tax Counsel have also represented other entities and may also represent future entities formed by ExchangeRight and its Affiliates. As a result, conflicts may arise in the future. If such conflicts cannot be resolved or the consent of the respective parties to the continuation of the multiple representation cannot be obtained after full disclosure of any such conflict, Counsel and/or Tax Counsel will withdraw from representing one or more of the conflicting interests with respect to the specific matter involved. In such event, additional legal counsel may be retained by one or more of the parties to assure their interests are adequately protected.

Counsel and Tax Counsel do not represent the prospective Investors or Owners. Prospective Investors seeking legal advice should retain their own counsel, consult their own advisors about an investment in the Interests and conduct any due diligence they deem appropriate to verify the accuracy of the representations or information in this Memorandum.

Venable LLP has acted solely as U.S. federal income Tax Counsel with respect to the Offering, and has not acted as securities counsel, real estate counsel, finance counsel, or in any other capacity with respect to the Offering. As Tax Counsel, Venable LLP has not conducted any due diligence or reviewed any of the reports or other due diligence materials with respect to the Properties, the financing of the Properties, or any financial Pro Forma or similar information with respect to the Properties or the Offering. Tax Counsel’s opinion and advice to the Sponsor relates solely to U.S. federal income tax issues and does not include advice on state or local income tax issues, property taxes, transfer taxes, stamp duty, lease tax or other non-income taxes, or any other non-tax issues. Venable LLP does not represent the prospective Investors or Owners. Prospective Investors seeking legal advice should retain their own counsel, consult their own advisors about an investment in the Interests and conduct any due diligence they deem appropriate to verify the accuracy of the representations or information in this Memorandum.

Obligations to Other Entities and Other Opportunities

None of the Manager, the Master Lessee or any of their Affiliates or members of their management is required to devote its full time and effort to the affairs of the Trust or to the Properties. Conflicts of interest may occur with respect to the obligations that the Manager owes to the Trust, as well as similar obligations of its Affiliates to other entities. Each member of management of the Manager, the Master Lessee or any of their Affiliates reserves the right to invest in, pursue, develop, own, manage, operate or otherwise participate in (including, without limitation, as an investor in, lender to or consultant or advisor to, or director, officer or manager of, any other entity) all business opportunities of any nature for its own account, including opportunities that may directly or indirectly compete with the Trust or the Properties. No such member of management shall have any obligation to first present such business opportunities to the Trust or allow the Trust or the Owners to share or participate in such other investments or activities or to the income or proceeds derived therefrom.

Moreover, the Trust and the Properties will not have independent management, as the Trust will rely on the Manager and the Properties are managed by the Master Lessee, both of which are wholly owned by the same entity, ExchangeRight. See “Organization and Management.” Other investment projects in which ExchangeRight and its Affiliates participate may compete with the Trust, the Manager and the Master Lessee for the time and resources of ExchangeRight and its Affiliates. The Manager, the Master Lessee and their Affiliates will very likely have conflicts of interest in allocating management time, services and functions among the Trust and the Properties and other existing companies and businesses, as well as any future companies or business entities. The Manager is not required to manage the Trust as its sole and exclusive function and will likely have other business interests and engage in activities in addition to those relating to the Trust. The Manager, the Master Lessee and their Affiliates presently believe that they currently have the capacity to discharge their responsibilities to the Trust and with respect to the Properties, notwithstanding their participation in other present and future investment programs and projects, but there can be no assurance of this and prospective Investors should consider these actual and potential conflicts of interest carefully prior to making any investment in the Interests.

Resolution of Conflicts of Interest

The Manager, Master Lessee and their Affiliates have not developed, and do not expect to develop, any formal process for resolving conflicts of interest. While the foregoing conflicts could materially and adversely affect the Owners, the Manager, the Master Lessee and their Affiliates, in their sole judgment and discretion, will decide if and how to try to mitigate such potential adversity by the exercise of their business judgment in an attempt to fulfill any fiduciary obligations. There can be no assurance that such an attempt will prevent adverse consequences resulting from the numerous potential conflicts of interest.

Receipt of Fees Prior to Owners’ Receipt of Distributions

The fees received by the Manager are based on a percentage of the rental income of the Properties whereas the distributions made to the Owners are based on the Trust’s net cash flow and paid after operating expenses, taxes and other costs are paid. The fee paid to the Trustee is a flat amount of \$750 per annum. Accordingly, the Manager and Trustee are guaranteed to receive significant compensation for their services and will receive such compensation prior to the Owners. See “Compensation of the Sponsor, the Manager and their Affiliates.”

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DESCRIPTION OF THE INTERESTS

General Description

The Interests are Class 1 beneficial ownership interests in the Trust and entitle the holder to receive distributions from the Trust if, as and when made as a result of the operations of the Trust or the Disposition of the Property Interests in the Properties. If you subscribe for Interests and the Trust accepts your subscription, you will become an Owner in the Trust upon payment in full of the purchase price. The Owners will have no voting rights, including no vote as to whether or not the Properties are sold. The sole right of the Owners will be to receive distributions from the Trust if, as and when made as provided under the Trust Agreement and permitted under the Loan Documents. See “The Trust and Summary of the Trust Agreement.”

Transfer Restrictions

The Interests offered under this Memorandum have not been registered under the Securities Act or the securities laws of any jurisdiction. Until such registration of the Interests, if any, the Interests may be transferred only in transactions that are exempt from registration under the Securities Act and the applicable securities laws of any jurisdiction. The Interests may not be sold, transferred, pledged or assigned without the prior written consent of the Manager if such sale, transfer, pledge or assignment may result in the assets of the Trust being deemed to be plan assets of any Benefit Plan Investor (as defined in “Certain Considerations Applicable to ERISA, Governmental and Other Plan Investors”). In addition, any transfer of the Interests under the Trust Agreement will also be subject to (i) the delivery to the Manager of assignee’s or transferee’s written acceptance and adoption of the Trust Agreement; (ii) the limit of the number of Owners to no more than 250 persons at any time; and (iii) any notice or other requirements in the Loan Documents. See “The Trust and Summary of the Trust Agreement.” Lastly, under the terms of the Loan, no transferee of an Interest may own more than 19.99% of the interest in the Trust, unless approved by the Lender. See “Acquisition Terms and Financing.” The transferring Owner will bear all expenses relating to any transfer.

PLAN OF DISTRIBUTION

Ownership of the Trust

The following tables set forth the ownership of the Trust on the basis of outstanding beneficial interests as of the date of this Memorandum and on fully diluted basis after the closing of this Offering assuming the full Maximum Offering Amount is received and accepted.

Outstanding Beneficial Interests as of the Loan Closing Date

Holders	Class 1	Class 2
Owners	0%	0%
ExchangeRight	0%	100%
Total	0%	100%

Outstanding Beneficial Interests on a Fully Diluted Basis after the Closing of this Offering

Holders	Class 1	Class 2
Owners	99.50%	0%
ExchangeRight	0.50%	0%
Total	100%	0%

Marketing of Interests

Offers and sales of Interests will be made on a “best efforts” basis by broker-dealers (“**Broker-Dealers**”) who are members of Financial Industry Regulatory Authority (“**FINRA**”). The following fees will be paid from the proceeds of the Offering (the “**Offering Proceeds**”) in connection with the marketing and syndication of the Interests: (i) Selling Commissions of up to \$570,000 (5%) of the Offering Proceeds (“**Selling Commissions**”) to the Broker-Dealers; (ii) a nonaccountable marketing and due diligence allowance of up to \$114,000 (1%) of the Offering Proceeds to the Broker-Dealers; and (iii) \$28,500 (0.25%) of the Offering Proceeds to ERS, which may be reallocated to the Broker-Dealers at the discretion of ERS (collectively, the “**Selling Commissions and Expenses**”). The aggregate amount of the Selling Commissions and Expenses will not exceed 6.25% of the Maximum Offering Amount; provided, however, the Sponsor may pay higher marketing and due diligence allowances for certain Broker-Dealers, which Broker-Dealers would accept reduced Selling Commission on a pro rata basis. The Sponsor will be responsible for any Selling Commissions and Expenses in excess of these sums and will be entitled to retain any unused funds on a nonaccountable basis. The Sponsor may pay reduced Selling Commissions and Expenses or waive such sums with respect to Interests purchased by Affiliates and other persons. In the event an Owner independently uses the services of an RIA and not a Broker-Dealer in connection with the purchase of Interests, no Selling Commissions will be payable with respect to its purchase of such Interests, which will have the effect of increasing the amount of Interests purchased by such Owner (but not including any amounts due to the Broker-Dealer of record and up to 0.25% that is reallocated to ERS). The payment of any fees or similar compensation to such RIA will be the sole responsibility of such Owner, and the Trust will have no liability for any such compensation. The proceeds to the Trust per Interest will not be affected by this waiver of Selling Commissions. See “Plan of Distribution” and “Estimated Use of Proceeds.”

Disclosures regarding Certain Broker-Dealers who are Offering and Selling the Interests

Effective September 23, 2013, the SEC adopted amendments to Rule 506 requiring certain disclosures to customers in connection with Regulation D private placement offerings, which includes this Offering. Specifically, the amendments require that the Trust notify potential investors if the Broker-Dealers selling the Interests in this Offering have experienced certain specified “disqualifying events,” including certain criminal convictions, certain court injunctions and restraining orders, final orders of certain state and federal regulators and certain SEC disciplinary orders and SEC cease-and-desist orders, among other events.

Concorde Investment Services, LLC (“**Concorde**”), one of the Broker-Dealers selling Interests in this Offering, has informed the Trust that it has determined that one of its registered representatives is subject to a final order of a state securities commission fulfilling the circumstances defined in Rule 506(d)(iii)(B), which is summarized as follows:

- On January 22, 2013, Thomas Fanning, a CR currently associated with Concorde was temporarily suspended or expelled from membership in or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for an act or omission to act constituting conduct inconsistent with just and equitable principles of trade until March 21, 2013. Without consenting or denying the findings, the CR was temporarily suspended for violating FINRA/NASD Rules 2010, 2110, and 2370 and actions contrary to the former broker dealer’s written procedures.

Newbridge Securities Corporation (“**Newbridge**”), one of the Broker-Dealers selling Interests in this Offering, has informed the Trust that on February 1, 2013, Newbridge entered into a consent order with the New Jersey Bureau of Securities related to alleged violations regarding the obligation to properly disclose transaction handling fees charged by Newbridge to its investors. Newbridge agreed to grant a 10% discount on all fees and/or commission charges to New Jersey residents for 6 months following the date of this consent order, as well as pay a civil penalty of \$15,000 to New Jersey. On August 23, 2010, Newbridge entered into an Acceptance, Waiver & Consent with FINRA (the “**Newbridge AWC**”). The Newbridge AWC set forth allegations that Newbridge violated Section 5 of the Securities Act, Section 10(B) of the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”), and Rule 10B-5 under the Exchange Act, as well as certain NASD rules. Generally, FINRA alleged that Newbridge facilitated the manipulative trading of the stock of a company created as the result of a reverse merger,

and that accounts at Newbridge were used by a group of control persons and promoters to execute prearranged in-house agency cross and wash transactions that were intended to generate volume and support or increase the price of the stock. The allegations continued that Newbridge permitted control persons of unregistered pink-sheet securities to sell unregistered shares of securities through firm accounts and the sales were not made in compliance with any applicable exemption from registration. FINRA alleged that Newbridge: failed to adequately supervise the registered representatives who participated in the sales of unregistered securities; failed to take adequate measures to ensure that the registered representatives assigned to the accounts did not engage in the sale of unregistered securities; failed to take steps to ensure that the registered representatives ascertained whether the securities being sold were registered, how and from who the customers had obtained their shares, whether and when the shares were paid for and whether the transactions were subject to any exemption from registration; and failed to adequately supervise the registered representatives who participated in the manipulative trading of a stock. FINRA alleged that Newbridge did not have adequate systems or controls in place to implement its policies, and the Newbridge failed to make certain required disclosures to FINRA. FINRA found that by facilitating manipulative trades, Newbridge willfully violated Section 10(B) of the Exchange Act and Rule 10B-5. Newbridge consented to the following sanctions: (i) censure; (ii) a fine of \$600,000; (iii) required training for its chief executive officer; (iv) a one-year prohibition from trading in penny stocks; and (v) a requirement to engage an independent consultant to review certain of its systems. The fine was paid in full on November 4, 2013.

Please contact Investor Relations at 855-379-8172 or your financial or legal advisor for additional information relating to any of the foregoing matters.

Qualifications of Prospective Investors

The Interests are being offered and sold in reliance on exemptions from registration under the Securities Act and applicable state securities laws. Accordingly, distribution of this Memorandum has been strictly limited to persons reasonably believed to be Accredited Investors who satisfy the prospective investor suitability requirements described under “Who May Invest,” and the Interests may only be purchased by prospective Investors who meet those requirements. This Memorandum is not an offer to sell or a solicitation of an offer to buy with respect to any persons not satisfying those requirements. See “Who May Invest.”

How to Subscribe for Interests

If, after carefully reading this entire Memorandum, you would like to purchase Interests, please complete and sign the enclosed Purchase Agreement and Subscription Agreement. The minimum purchase amount is a 0.87719% Interest (\$100,000 of equity and \$64,316 of debt), although the Manager may waive or lower the minimum purchase requirement for certain investors in its sole discretion. See “How to Subscribe.”

Acceptance of Subscriptions

Following receipt of your completed and signed Purchase Agreement and Subscription Agreement, verification of your investment qualifications and acceptance of your subscription by the Manager (in the Trust’s sole discretion), the Manager will notify you of the receipt and whether or not your subscription was accepted. The Manager may, in its sole discretion, accept or reject any subscription, in whole or in part, for a period of 30 days after receipt of the subscription. Any subscription not accepted within 30 days of receipt shall be deemed rejected. The Manager may terminate this Offering at any time.

If a prospective Investor’s subscription is accepted, such prospective Investor shall deposit with the Trust’s bank account an amount equal to the full amount of the Interests being subscribed for by such prospective Investor in immediately available funds on or before the Funding Date.

No Minimum Offering; Ownership by the Sponsor and/or One of the Owners of the Sponsor

There is no minimum amount of Offering Proceeds that must be raised or minimum number of Investors required in connection with this Offering. All proceeds from the sale of Interests will be delivered directly to the Trust’s operating account and be available for immediate use by the Trust at its discretion. ExchangeRight is required

by the Lender to purchase and retain at least a 0.50% Class 1 beneficial interest in the Trust as long as the Loan is outstanding and will become an Owner with the Investors on the same terms and conditions as are available to all Investors; provided that this 0.50% Interest will be purchased net of Selling Commissions and Expenses and certain other Sponsor related fees and expenses. The ownership of the Interests by the Sponsor involves certain risks that potential Investors should consider, including, but not limited to, the following:

(1) the Sponsor would retain rights as an Owner and may therefore have an effective veto right with respect to major decisions; and

(2) the full Maximum Offering Amount will not have been invested by disinterested investors after an assessment of the merits of the Offering.

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FEDERAL INCOME TAX CONSEQUENCES

The following discussion applies only if an Owner buys an Interest directly from the Trust pursuant to this Offering. You should not view the following analysis as a substitute for careful tax planning, particularly since the income tax consequences of an investment in an Interest are uncertain and complex. Also, the tax consequences will not be the same for all taxpayers. You should be aware that the following discussion necessarily condenses or eliminates many details that might adversely affect you significantly and does not address the tax issues that may be important to you if you are subject to special tax treatment, such as a foreigner or tax-exempt entity. Except where otherwise noted, this discussion does not discuss aspects of state and local taxation relating to an investment. Each prospective Investor should consult their own tax advisor about the specific tax consequences to them before investing in an Interest.

The following discussion of tax consequences is based on laws and regulations currently in effect and, except where noted, does not address state, local or foreign tax laws. You should be aware that new administrative, legislative or judicial action could significantly change the tax aspects associated with an Interest. In particular, the TCJA has recently revised certain provisions of the federal income tax law that affect the tax consequences of real estate investments. Many of these provisions are complex and their scope and interpretations are presently uncertain.

Accordingly, there is uncertainty concerning certain tax aspects discussed herein, and there can be no assurance that the IRS will not challenge some of the deductions you may claim or positions you may take. Specifically, as of the date of this Memorandum, there has been limited guidance issued to address the uncertainties under the TCJA. Should the IRS challenge the tax treatment of an investment in an Interest, even if the challenge is unsuccessful, you could be faced with substantial legal and accounting costs in resisting the challenge.

You should not buy an Interest solely for the purpose of obtaining a tax shelter for income from other sources. An Interest is unlikely to provide any such tax shelter.

Before buying an Interest, you must represent and warrant that you:

- (i) **have independently obtained advice from your legal counsel and/or accountant about any tax-deferred exchange under Code Section 1031 and applicable state laws, including, without limitation, whether the acquisition of an Interest may qualify as part of a tax-deferred exchange, and you are relying on such advice;**
- (ii) **understand that neither the Trust, the Sponsor nor any of their affiliates have obtained a ruling from the IRS that an Interest will be treated, for Code Section 1031 purposes, as an undivided interest in real property as opposed to an interest in a partnership or a security;**
- (iii) **understand that the tax consequences of an investment in an Interest, especially the treatment of the transaction under Code Section 1031 and the related “1031 Exchange” rules, are complex and vary with the facts and circumstances of each individual Owner, and**
- (iv) **understand the opinion of Tax Counsel is only Tax Counsel’s view of the anticipated tax treatment and there is no guarantee that the IRS will agree with such opinion.**

Nature of Interests

Classification of Trust. The Sponsor has attempted to structure the Offering of Interests so that Owners will be treated for Code Section 1031 purposes as acquiring undivided interests in real estate and not either interests in a partnership or securities. If the Interests were to be so treated by the IRS or a court as either interests in a partnership or securities, then no Owner would be able to use its acquisition of Interests as part of a transaction to defer gain under Code Section 1031.

In connection with the Offering, on the Loan Closing Date, we obtained an opinion from Tax Counsel that (i) the Trust should be treated as an investment trust described in Treasury Regulation Section 301.7701-4(c) that is classified as a “trust” under Treasury Regulation Section 301.7701-4(a); (ii) the Owners should be treated as “grantors” of the Trust; (iii) as “grantors,” the Owners should be treated as owning an undivided fractional interest in each of the Properties for federal income tax purposes; (iv) the Interests should not be treated as securities for purposes of Code Section 1031; (v) the Interests should not be treated as certificates of trust or beneficial interests for purposes of Code Section 1031; (vi) the Master Lease should be treated as a true lease and not a financing for federal income tax purposes; (vii) the Master Lease should be treated as a true lease and not a deemed partnership for federal income tax purposes; (viii) the discussions of the federal income tax consequences contained in the Memorandum are correct in all material respects; and (ix) certain judicially created doctrines should not apply to change the foregoing conclusions. An Owner who is acquiring an Interest pursuant to a Section 1031 Exchange involving the sale of an interest in real property must be aware that in order to qualify under Code Section 1031 the Interest must be treated as an interest in real property.

Tax Counsel’s opinion will be based upon existing cases and rulings, and in particular the analysis in Rev. Rul. 2004-86, 2004-33 IRB 191. Rev. Rul. 2004-86 sets forth the limited circumstances under which a Delaware statutory trust may be classified as an “investment trust” for federal income tax purposes rather than as a business entity taxable as a corporation or partnership. Rev. Rul. 2004-86 concludes that, because the beneficial owners of interests in an “investment trust” are “grantors” that are treated as directly owning an undivided fractional interest in the property held by the trust, the exchange of real property by such beneficial holders for an interest in the “investment trust” is treated as an exchange of real property for an interest in the investment trust’s real property rather than for an impermissible certificate of trust or beneficial interest under Code Section 1031.

Tax Counsel’s opinion that the Owners should be treated as grantors of the Trust would mean that an Owner is required to take into account, in computing his, her, or its income tax liability, his, her, or its proportionate share of all items of revenue and expenditure attributable to the Trust. In addition, all property owned by the Trust will be deemed for federal income tax purposes to be owned by the grantors in proportion to their ownership interests in the Trust based on the Tax Counsel’s opinion. Thus, an Owner should be treated as a grantor of the Trust because the Owner conveyed cash to the Trust in exchange for an Interest. In addition, each Owner will have a reversionary interest in the Trust corpus and will be automatically entitled to receive his proportionate share of the income of the Trust. Therefore, the Owners should be treated, for federal income tax purposes, as if they own the Properties held by the Trust, notwithstanding the fact that an Interest could be treated as intangible property or securities for securities law, state law, or local law purposes. The TCJA eliminated the specific exceptions under Code Section 1031 for securities and other intangible assets. Although the specific language providing for the exceptions has been eliminated, Tax Counsel believes that an analysis of these terms remains relevant and concluded that the Interests should not be treated as securities for purposes of Code Section 1031. However, due to the current lack of guidance regarding the scope of the TCJA’s amendment to Code Section 1031, it is possible that the IRS could take a contrary position on these issues.

The Sponsor has not received and will not request a private ruling from the IRS regarding the federal income tax classification of the Trust. After examining the relevant cases, Treasury Regulations, and rulings (including, in particular, Rev. Rul. 2004-86), however, Tax Counsel has concluded that the Trust should be treated as an “investment trust” for federal income tax purposes. Tax Counsel has also concluded that the Owners should be treated as “grantors” of the Trust under the grantor trust rules of the Code. Tax Counsel further believes that these conclusions are consistent with the underlying cases and rulings that govern whether a Delaware statutory trust is classified for federal income tax purposes as an “investment trust” or instead as a business entity taxable as a corporation or partnership.

There is always a risk that the IRS or a court may not agree with such opinions. The opinion of Tax Counsel will be predicated on all the facts and conditions set forth in the opinion and is not a guarantee of the current status of the law and should not be accepted as a guarantee that either the IRS or a court of law will concur in the opinion. If any of the facts or assumptions set forth in the opinion prove incorrect, it is possible that the tax consequences could change.

The Trust has been structured with a view to the trust addressed in Rev. Rul. 2004-86. However, distinctions exist between the Trust Agreement and other related arrangements and the trust and other related arrangements

described in Revenue Ruling 2004-86. Tax Counsel believes these distinctions are not material. These distinctions include, but are not limited to the following, which Tax Counsel views as those distinctions necessitating discussion and analysis: (i) the conversion of the Trust for tax purposes by the Sponsor from a “disregarded entity” for federal income tax purposes into an investment trust prior to admission of the Owners; (ii) the ongoing role of the Sponsor’s affiliate as Manager, but with powers limited to those permitted to be exercised by the Trustee; (iii) the potential conversion of the Trust into a Delaware limited liability company that would constitute a partnership for federal income tax purposes as a result of a LLC Conversion; (iv) the Trust’s acceptance of multiple contributions from purchasers of Class 1 Interests over time, rather than through a single contribution, (v) the fact that the Sponsor may retain a beneficial interest in the Trust during the period of the Offering, and the indirect owners of the Sponsor will purchase and own one Class 1 Interest in the Offering; (vi) the fact that the Trust Agreement empowers the Manager (and only the Manager) to determine in its sole discretion when a Disposition of the Property Interests in the Properties would be reasonable using its commercially reasonable business judgment and, thus, when the Properties shall be sold; (vii) the obligation of the Trust to pay the Capital Expenses (as defined in the Master Lease) of the Properties, which includes capital expenditures with a term that exceeds the term of the Master Lease, and the right of the Master Lessee to use reserves to pay such Capital Expenses; and (viii) the owners of ExchangeRight (which owns the Manager and the Master Lessee) have executed certain limited guaranties with respect to the Loan.

THE ABOVE IS A SUMMARY OF THE TAX OPINION FROM TAX COUNSEL. PROSPECTIVE INVESTORS AND PURCHASERS SHOULD CAREFULLY REVIEW THE TAX OPINION ATTACHED HERETO AS EXHIBIT F IN ITS ENTIRETY.

Potential Significant Tax Costs If Interests Were Classified as either Interests in a Partnership or Securities for Code Section 1031 purposes. If the Owners were to be treated for tax purposes as purchasing either interests in a partnership or securities for Code Section 1031 purposes, the Owners would not qualify for deferral of gain under Code Section 1031, and each Owner who had relied on deferral of his gain from disposition of other interests in real property would immediately recognize such gain and be subject to federal income tax thereon. Moreover, since such determination would of necessity come after such Owner had purchased his Interest, such Owner would have no cash from the disposition of his original interests in real estate with which to pay the tax. Given the illiquid and long-term nature of an investment in the Interests, there would be no practical means of generating cash from an investment in the Interests to pay the tax. In such a case, an Owner will have to use funds from other sources to satisfy his federal income tax liability.

Treatment of the Master Lease as a Lease Rather Than a Financing

Transactions structured as leases may be recharacterized for federal income tax purposes to reflect their economic substance. For example, in appropriate circumstances a purported lease may be recharacterized as a conditional sales contract. Recharacterization of the Master Lease as a financing or other arrangement for federal income tax purposes would have significant tax consequences. For example, if the Master Lease were recharacterized as a financing, the Master Lessee would be treated as the owner of the Properties for federal income tax purposes. As a result, an Owner attempting to participate in a Section 1031 Exchange would not be treated as having received qualified replacement property when he, she or it acquired his, her or its Interest because the Owner would be treated as having made a loan to the Master Lessee. As the owner of the Properties for federal income tax purposes, the Master Lessee would be entitled to claim any depreciation deductions. To the extent that payments of “rent” were recharacterized as payments of interest and principal, the payment of principal would not be treated as the receipt of taxable income by the Owners and would not be deductible by the Master Lessee. All of these consequences could have a significant impact on the tax consequences of an investment in the Properties.

Revenue Procedure 2001-28 sets forth advance ruling guidelines for “true lease” status. These ruling guidelines provide certain criteria that the IRS will require to be satisfied in order to issue a private letter ruling that a lease is a “true lease” for federal income tax purposes. The Sponsor has not sought, and does not expect to request, a ruling from the IRS under Rev. Proc. 2001-28. In the event of an examination by the IRS, the IRS and, ultimately, the courts of applicable jurisdiction, would consider these ruling guidelines, together with existing cases and rulings, for purposes of determining whether a lease qualifies as a true lease for federal income tax purposes. However, Tax Counsel does not believe that strict compliance with Rev. Proc. 2001-28 is required to conclude that the Master Lease should be characterized as a true lease for federal income tax purposes. Rather, Tax Counsel believes that satisfying

most of the material ruling guidelines should be sufficient for purposes of determining the characterization of the Master Lease at issue for federal income tax purposes. Tax Counsel, therefore, opined that it believes the Master Lease at issue satisfies the pertinent material conditions set forth in Rev. Proc. 2001-28 that Tax Counsel believed are necessary for characterization as a true lease and that the Lease should be treated as a true lease rather than a financing for federal income tax purposes. Although the Master Lease varies from the guidelines provided in Rev. Proc. 2001-28, Tax Counsel believed that this will not affect the status of the Master Lease.

Code Section 467 Rent Allocation.

Although the issue is not completely settled under existing law, under Code Section 467 of the Code, if the Master Lessee were to defer payment of rent the Owners may still be required to report and pay tax on rent in accordance with the respective Annual Base Rent schedules set forth on the Master Lease. As a result, Owners may be required to recognize rental income even though all of the rent may not be currently paid and, in such circumstances, may have to use funds from other sources to pay tax on such income. In addition, Owners may have to recognize imputed interest income on such deferred amounts.

Changes to the Section 1031 Exchange Rules Could Negatively Impact an Owner's Exit Strategy

The U.S. Congress periodically evaluates various proposed modifications to the Section 1031 Exchange rules that could, if enacted, prospectively repeal or restrict the ability to utilize a Section 1031 Exchange to achieve tax deferral on gain in connection with the disposition of real property or beneficial interests in a fixed investment trust. It is possible that repeal or amendment of Code Section 1031 or the Treasury Regulations promulgated thereunder could negatively impact the use of a Section 1031 Exchange in connection with an Owner's exit strategy.

Section 1031 Non-Recognition Treatment

Identification of Replacement Properties. Treasury Regulation Section 1.1031(k)-1(c)(4) permits taxpayers to identify alternative and multiple Replacement Properties under Code Section 1031. In general, a taxpayer must identify all potential Replacement Properties by midnight on the 45th day after the taxpayer's transfer of the Relinquished Property (the "**identification period**"). Any "like kind" property received by the taxpayer before the end of the identification period is deemed to have been identified before the end of the identification period. In addition, taxpayers are permitted to identify three properties without regard to the fair market value of the properties (the so-called "**three property rule**") or multiple properties with a total fair market value not in excess of 200% of the value of the Relinquished Property (the "**200% rule**"). In the event that the IRS successfully challenges the valuation of a Replacement Property under the 200% rule, and as a result the Replacement Properties identified by the taxpayer exceed 200% of the value of the taxpayer's Relinquished Property, the taxpayer's identification may be treated as invalid, which may invalidate the taxpayer's like-kind exchange under Section 1031. A taxpayer will also be treated as satisfying the Code Section 1031 identification rules with respect to any Replacement Property otherwise properly identified before the end of the identification period and received before the end of the period (the "**exchange period**") beginning on the date the taxpayer transfers the Relinquished Property and ending at midnight on the earlier of the 180th day thereafter or the due date (including extensions) for the taxpayer's return of the income tax imposed by the Code for the taxable year in which the transfer of the Relinquished Property occurs), but only if the taxpayer receives before the end of the exchange period identified Replacement Property the fair market value of which is at least 95 percent of the aggregate fair market value of all identified Replacement Properties (the "**95% rule**").

For purposes of both the 200% rule and 95% rule, "fair market value" means the fair market value of the applicable property without regard to any liabilities secured by the property. Thus, a taxpayer identifying under the 200% rule for an unencumbered Relinquished Property having a value of \$20 million could only identify Replacement Property(ies) having an aggregate gross fair market value (without regard to any liabilities which may encumber such property(ies)) of \$40 million, in which case the identification of a single Replacement Property having a \$30 million equity value but which is secured by a \$20 million liability (and, thus, having a \$50 million gross value) would violate the 200% rule.

The Trust holds a total of eight properties. The Properties will not constitute a single property for purposes of the three property rule and the Owners will not be able to rely on the three property rule for this Offering. The

identification rules of Code Section 1031 are strictly construed, and an Owner's exchange will not qualify for deferral of gain under Code Section 1031 if too many properties, or properties having too much value (including by reason of not excluding the effect of the Loan for "fair market value" purposes) are identified, if the properties are not correctly identified, or if the deadlines for identification are not met. Owners will have to rely on the 200% rule or 95% rule with respect to the Offering and should seek the advice of their tax advisors prior to subscribing for the Interests or making an identification.

Other Requirements of Code Section 1031. Code Section 1031 provides for non-recognition of gain or loss only if real property held for use in a trade or business or for investment is exchanged for other real property of like-kind held for use in a trade or business or for investment. There are numerous requirements contained in the applicable provisions of the Code and Treasury Regulations concerning qualification for non-recognition under Code Section 1031. For instance, prospective Investors seeking to engage in a "deferred" exchange (within the meaning of Treasury Regulations Section 1.1031(k)-1) must properly identify one or more potential replacement properties within the 45-day identification period and complete the exchange within the 180-day exchange period. Such prospective Investors also should consider whether their arrangement falls within the "qualified intermediary" and/or "qualified escrow account" safe harbors of Treasury Regulations Section 1.1031(k)-1(g). Prospective Investors wishing to engage in a "reverse" or "parking" exchange should consult Rev. Proc. 2000-37, 2002-2 C.B. 308, which establishes a safe harbor for such exchanges. Each prospective Investor will have to determine with his, her, or its own tax advisors whether an exchange engaged in by the prospective Investor satisfies the requirements of Code Section 1031.

Receipt of Identified Property within the Exchange Period. In addition to satisfying the identification rules, a taxpayer seeking to complete a Section 1031 Exchange must actually receive the identified Replacement Property before the end of the exchange period (as defined above in "Section 1031 Non-Recognition Treatment" - "Identification of Replacement Properties" above).

Because there can be no assurance that an Owner's offer to acquire an Interest will be accepted, an Owner pursuing a Code Section 1031 Exchange is strongly encouraged to (if and to the extent he is otherwise permitted to do so under the particular identification rules applicable to him) "identify" the maximum number of alternative Replacement Properties and not to identify only his prospective interest in each of the Properties purchased in this Offering.

Treatment as an Interest in a Partnership or Security. Code Section 1031 excludes an interest in a partnership or security from the categories of property that may qualify for nonrecognition. Thus, if the IRS were to classify the Interests as such for Code Section 1031 purposes, the Interests would not qualify as Replacement Property for a Section 1031 Exchange. Based on an analysis of relevant authorities, however, Tax Counsel has concluded that, in all material respects, an Interest should not be considered an interest in a partnership or a security for purposes of Code Section 1031.

Tax Rates. Under current law, and subject to certain exceptions, long-term capital gains of individuals are generally subject to tax at a maximum federal income tax rate of 20% (25% for any long-term capital gains that constitute "unrecaptured Section 1250 gain") and ordinary income of individuals is generally subject to a maximum federal income tax rate of 37% (reduced by the TCJA from 39.6%). In addition, the Code generally imposes on certain individuals, trusts, and estates an additional Medicare tax of 3.8% on the lesser of (i) "net investment income", or (ii) the excess of modified adjusted gross income over a threshold amount. Prospective Investors should consult with their own tax advisors regarding the possible implications of the Medicare tax in light of their individual circumstances.

20% Passthrough Deduction. The TCJA also provides a 20% deduction on a taxpayer's "qualified business income" which sunsets for the taxable year ending December 31, 2025. This deduction, under Code Section 199A, reduces the highest marginal effective tax rate for ordinary income from 37% to 29.6% for income arising from a "qualified trade or business" conducted by a partnership, S corporation, or sole proprietorship. In the case of a partnership or S corporation, Code Section 199A applies at both the entity and individual partner or shareholder level. For taxpayers above certain income thresholds, the "qualified trade or business," as defined in Code Section 162, must have sufficient amounts of W-2 wages paid or a combined sufficient amount of wages plus the unadjusted basis of certain property. On January 18, 2019, the IRS announced the release of final regulations providing guidance

regarding many of the open issues and technical questions posed with respect to Section 199A following passage of the TCJA, including final rules relating to aggregation of certain real estate activities engaged in through multiple partnerships or S corporations, as well as enumerating certain factors relevant for determining real estate trade or business status. In the final regulations, the IRS elected not to apply the grouping rules of Section 469; however, the final regulations allow for aggregation of directly and indirectly held real estate businesses provided certain requirements set out in the final regulations are satisfied. Additionally, on January 18, 2019, the IRS announced the release of a related notice, Notice 2019-07, regarding a rental real estate trade or business safe harbor. In the notice, the IRS provided that certain taxpayers who meet the requirements of the notice will be allowed trade or business income treatment from certain “rental real estate enterprises.” However, the rental real estate trade or business safe harbor is not available where the property used by the taxpayer is subject to a triple net lease. The definition of a triple net lease for the purpose of Notice 2019-07 may overlap significantly with common lease provisions of Master Lease utilized in many DST structures, potentially including the Master Lease encumbering the Properties. Prospective Investors should consult with their own tax advisors regarding the possible application of Code Section 199A to their own particular circumstances.

Other Tax Consequences

Taxation of the Trust. Tax Counsel opined that the Trust should be treated as an “investment trust” described in Treasury Regulation Section 301.7701-4(c) that is classified as a “trust” under Treasury Regulation Section 301.7701-4(a) and, further, that the Owners should be treated as “grantors” of the Trust under the grantor trust rules of the Code. Accordingly, the Trust should not be subject to federal income tax and each Owner should be subject to federal income taxation as if it owned directly the portion of each of the Properties proportionate to the Interests owned by the Owner and as if it paid directly its share of expenses paid by the Trust.

The following discussion assumes that the Trust is, and the Interests represent interests in, an “investment trust” that is treated as a trust for federal income tax purposes.

Depreciation and Cost Recovery. Current federal income tax law allows an owner of improved real property to take depreciation deductions based on the entire cost of the depreciable improvements, even though such improvements are financed in part with borrowed funds. If, however, the purchase price of an Interest and the non-recourse liabilities to which a Property is subject are in excess of the fair market value of the Property, an Owner will not be entitled to take depreciation deductions to the extent deductions are derived from such excess.

The Code provides separate cost recovery rules for certain “qualified improvement property.” Qualified improvement property is any improvement to an interior portion of a building that is non-residential real property if the improvement is placed in service after the date the building itself was first placed in service. Prior to the TCJA, there were three categories of qualified improvement property (qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property) and each was subject to a 15-year recovery period. The TCJA, as revised by the CARES Act, eliminated these categories and instead established a single 15-year recovery period for all qualified improvement property. Due to the limitations on expenditures for improvements imposed on the Trust, the Manager does not anticipate that the Trust will make significant expenditures for “qualified improvement property.”

Under the TCJA, up to \$1,000,000 of certain improvements made to non-residential real property after the property is first placed in service may be expensed and currently deducted for tax purposes during the taxable years beginning after December 31, 2017 and ending before January 1, 2026 (subject to certain limitations). Due to the limitations on expenditures for improvements imposed on the Trust, the Manager does not anticipate that the Trust will incur a significant amount of any such expenses. The amount of depreciation an Owner will be entitled to claim with respect to the Properties will depend on the Owner’s adjusted basis in depreciable assets that are part of the Properties. An Owner who acquires an Interest as part of a Section 1031 Exchange generally will have a “carryover” basis equal to such Owner’s basis in its Relinquished Property, decreased by the amount of money (if any) received in the Section 1031 Exchange and not reinvested in like-kind property in accordance with Code Section 1031, and increased by the amount of gain and decreased by the amount of loss the Owner recognized on such Section 1031 Exchange. In addition, the Owner’s basis must generally be allocated to each of the Properties and then among the depreciable and nondepreciable assets that comprise each Property and special rules apply to the determination of the

period and method that must be used to calculate depreciation with respect to property received in a Section 1031 Exchange. Each Owner will have to compute his or her own depreciation, which may be different for different Owners.

Allocation of Liabilities (including for Code Section 1031 purposes). Any liabilities incurred by the Trust will be allocated, for federal income tax purposes, to the Owners pro rata in proportion to their Interests. For purposes of determining the purchase price of Replacement Property, and the amount of taxable “liability” boot that an Owner may have, in a Section 1031 Exchange, each Owner should be able to include their proportionate share of the liabilities that encumber the Properties at the time of the acquisition of an Interest. However, it is possible the IRS may take the view that the amount by which the price of an undivided interest in each of the Properties (including an Owner’s pro rata share of the liabilities that encumber the Properties) exceeds the pro rata share of the price paid by the Trust for each of the Properties, a portion of an Owner’s proportionate share of the Trust’s liabilities should not be treated as an “assumption of liabilities” in the Section 1031 Exchange, in which case the Owner could have taxable “liability” boot in his Section 1031 Exchange to the extent such amount of the liabilities not able to be so treated was being used by Owner to offset Owner’s liabilities either satisfied with the proceeds of the sale of his Relinquished Property or assumed by the purchaser of his Relinquished Property.

Payments to Sponsor and its Affiliates. Sponsor and its affiliates will receive various fees described elsewhere in this Memorandum. The tax treatment of some of these fees is set forth below.

Although each Owner should be treated for federal income tax purposes as buying an undivided interest in each of the Properties, it is possible the IRS may take the view that the amount by which the price of an undivided interest in each of the Properties exceeds the pro rata share of the price paid by the Trust for each of the Properties is not to be treated as a sale of real estate, but instead as a nondeductible capitalized item.

Real estate brokerage commissions (whether or not paid to affiliates of ExchangeRight) will be treated as capitalized expenditures and added to the basis of the Properties. Real estate brokerage commissions (whether or not paid to affiliates of the Sponsor) paid upon the sale, exchange, or disposition of the Properties will be treated as an adjustment to sales price.

Possible Adverse Tax Treatment for Closing Costs, Reserves and other costs of the Offering. A portion of the proceeds of the Offering will be used to pay each Owner’s pro rata share of closing costs, expenses, and other costs of the Offering. In addition, a portion of the proceeds of the Offering may be treated as having been used to purchase an interest in reserves established by the Sponsor rather than for real estate. Because the tax treatment of certain expenses of the Offering, closing costs, financing costs or reserves is unclear and may vary depending upon the circumstances, no advice or opinion of Tax Counsel will be given regarding the tax treatment of such costs and the treatment of proceeds attributable to the reserves, which may be taxable to those Owners who purchase their Interests as part of a Section 1031 Exchange. Therefore, each prospective Investor should seek the advice of a qualified tax advisor as to the proper treatment of such items.

Deductibility of Trust’s Fees and Expenses. In computing his or her federal income tax liability, an Owner will be entitled to deduct, consistent with his or her method of accounting, the Owner’s share of reasonable administrative fees, trustee fees and other fees, if any, paid or incurred by the Trust as provided in Section 162 or 212 of the Code, which may be subject to the limitations applicable to miscellaneous itemized deductions. The TCJA suspended all miscellaneous itemized deductions for taxable years between 2018 and 2025. As such, an Owner will not be able to deduct his or her share of such fees paid by the Trust during this period. However, if an Owner owns its Interests in connection with a trade or business, Trust fees and expenses may be deductible under Code Section 162. Owners should seek the advice of a qualified tax advisor as to the proper treatment of such items.

Conversion to the LLC. If an LLC Conversion occurs, the Properties will become owned by the LLC and the interests in the LLC will be held by the Owners. Under current law, such a deemed transfer or exchange would not be subject to federal income tax pursuant to Section 721 of the Code. The conversion could be subject, however, to state or local income, transfer or other taxes. In addition, there can be no assurance that such conversion will not be taxable under the federal income or other tax laws at the time the conversion occurs. Because an LLC Conversion could occur in several situations, and at any time, it is not possible to determine all of the tax consequences to the

Owners in the event of an LLC Conversion. **PROSPECTIVE INVESTORS SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE TAX CONSEQUENCES OF An LLC CONVERSION AND THE EFFECT OF THE PROPERTIES BEING HELD BY THE PARTNERSHIP RATHER THAN THE TRUST.**

Impaired Ability to Defer Tax upon an LLC Conversion. Unlike interests in the Trust, membership interests in the LLC will not be treated as interests in real property for Code Section 1031 purposes, which means that such membership interests in the LLC may not be used for subsequent Section 1031 Exchanges.

THUS, IF THE TRUST CONVERTS TO THE LLC IN AN LLC CONVERSION, IT IS UNLIKELY THAT ANY OF THE OWNERS WHO RECEIVE INTERESTS IN THE LLC WILL THEREAFTER BE ABLE TO DEFER THE RECOGNITION OF GAIN UNDER CODE SECTION 1031 ON A SUBSEQUENT DISPOSITION OF THEIR MEMBERSHIP INTERESTS IN THE LLC.

Limitations on Losses and Credits from Passive Activities. Losses from passive trade or business activities generally may not be used to offset “portfolio income,” i.e., interest, dividends and royalties, or salary or other active business income. Deductions from passive activities may generally be used only to offset income from passive activities. Interest deductions attributable to passive activities are treated as passive activity deductions, and not as investment interest. Thus, such interest deductions are subject to limitation under the passive activity loss rules and not under the investment interest limitation. Credits from passive activities generally are limited to the tax attributable to the income from passive activities. Passive activities include: trade or business activities in which the taxpayer does not materially participate, and also generally include rental activities. Thus, an Owner’s share of the Properties’ income and loss will, in all likelihood, constitute income and loss from passive activities and will be subject to such limitations.

Losses (or credits that exceed the regular tax allocable to passive activities) from passive activities that exceed passive activity income are disallowed and can be carried forward and treated as deductions and credits from passive activities in subsequent taxable years. Disallowed losses from a passive activity, except for certain dispositions to related parties, are allowed in full when the taxpayer disposes of his or her entire interest in such passive activity in a taxable transaction.

In the case of rental real estate activities in which an individual actively participates, up to \$25,000 of losses (and credits in a deduction-equivalent sense) from all such activities are allowed each year against portfolio income and salary and active business income of the taxpayer. Except as discussed below with respect to “real estate professionals,” Owners will not, in all likelihood, be actively participating in the Properties’ rental real estate activities, and therefore will not be able to deduct any loss against their portfolio or active business income. Moreover, even if an Owner actively participates in rental real estate activities, there is a phase out of the \$25,000 allowable loss equal to 50% of the amount by which an Owner’s adjusted gross income exceeds \$100,000. Therefore, if an Owner’s adjusted gross income is \$150,000 or more for any given year, they cannot use any of the \$25,000 passive losses to offset non-passive income under this rule.

Certain taxpayers can, in limited circumstances, deduct losses and credits from rental real estate activities against other income, such as salaries, interest, dividends, etc. A taxpayer qualifies for this exception to the passive loss rules described above if: (i) more than half of the personal services performed by the taxpayer in trades or businesses during a year are performed in real property trades or businesses in which the taxpayer materially participates, and (ii) the taxpayer performs more than 750 hours of services during the year in real property trades or businesses in which the taxpayer materially participates. Code Section 469(c) provides that a qualifying real estate professional must establish material participation in each separate rental activity. However, an exception allows a qualifying real estate professional to elect to aggregate all interests in rental real estate for purposes of measuring material participation. In the case of a joint return, one spouse must satisfy both requirements. A real property trade or business is any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing or brokerage trade or business. In determining whether a taxpayer performs more than half of his or her personal services in real property trades or businesses, services performed as an employee are disregarded unless the employee owns more than 5% of the employer. Prospective Investors should consult with their own tax advisor to determine if this rule applies to them.

Net Income and Loss of Each Owner. Each Owner will be required to determine his or her own net income or loss from the Properties and the Trust for income tax purposes. The Manager will keep records and provide information about expenses and income of the Properties and the Trust for each Owner. An Owner, however, will be required to keep separate records to separately report his income.

Any gain or loss realized on the sale or exchange of an Interest will generally be treated as capital gain or loss, provided the seller is not deemed a “dealer” in real property. In general, a “dealer” of real property is someone that holds the real property primarily for sale to customers in the ordinary course of his trade or business. In addition, courts have held that a taxpayer can be considered a dealer with respect to one real property interest. The question of “dealer” status is a question of fact, will depend on all of the facts and circumstances and will be determined at the time of a sale. If an Owner is deemed a “dealer” and his Interest is not considered either a capital asset or real property held by the Owner for more than one year and used by the Owner in a trade or business under Code Section 1231 (“**Section 1231 Asset**”) any gain or loss on the sale or other disposition of the Interest would be treated as ordinary income or loss. However, regardless of whether the selling Owner is a “dealer,” any portion of the gain that is attributable to unrealized receivables, depreciation recapture or inventory items will generally be treated as ordinary income. In general, if an Interest is considered a capital asset, any profit or loss realized on its sale or exchange (or the Disposition of the Property Interests in the Properties) (except to the extent that such profit represents gain attributable to unrealized receivables or depreciation recapture taxable as ordinary income or “unrecaptured Section 1250 gain” subject to a maximum 25% federal tax rate) will be treated as capital gain or loss under the Code. Any such capital gains attributable to an asset held more than 12 months will generally be taxed to individuals at the highest applicable long-term capital gain tax rate. Finally, if an Owner that desired to use his Interest as Replacement Property in a Section 1031 Exchange were to be considered a “dealer” in respect of said Interest, then the Interest would not qualify as valid Replacement Property and, thus, would not enable the Owner to defer the recognition of any of his gain from the sale of his Relinquished Property under Code Section 1031.

In determining the amount realized on the sale or exchange of an Interest or one or more of the Properties, an Owner must include, among other things and as applicable, the Owner’s share of, respectively, the Trust’s indebtedness (including the indebtedness on and/or secured by any one or more of the Properties) or the indebtedness attributable to the sold Property(ies). Therefore, it is possible that the gain realized upon the sale of an Interest or of any one or more of the Properties may exceed the cash proceeds of the sale, and, in some cases, the income taxes payable with respect to the gain realized on the sale may exceed such cash proceeds. If assets sold or involuntarily converted constitute Section 1231 Assets, gain or loss attributable to such assets would be combined with any other Code Section 1231 gains or losses realized by the Owner in that year, and the resulting net Code Section 1231 gains or losses would be taxed as capital gains or constitute ordinary losses, as the case may be. This treatment may be altered depending on the disposition of Code Section 1231 property over several years. In general, net Code Section 1231 gains are recaptured as ordinary income to the extent of net Code Section 1231 losses in the five preceding taxable years.

Treatment of Gifts of Interests. Generally, no gain or loss is recognized for federal income tax purposes as a result of a gift of property. However, if a gift (including one made to an organization exempt under Code Section 501(c)(3)) of an Interest is made at a time when the Owner’s share of the Properties’ non-recourse indebtedness exceeds the adjusted basis of the Owner in its Interest, the Owner may recognize gain for federal income tax purposes upon the transfer. Such gain, if any, will generally be treated as capital gain. Gifts of Interests may also be subject to a gift tax imposed under the rules generally applicable to all gifts of property.

Foreclosure. In the event of a foreclosure of a mortgage or deed of trust on any of the Properties, an Owner would realize gain, if any, in an amount equal to the excess of the Owner’s share of the outstanding mortgage attributable to the Property foreclosed upon over its adjusted tax basis in such Property, even though the Owner might realize an economic loss upon such a foreclosure. In addition, the Owner could be required to pay income taxes with respect to such gain even though the Owner may receive no cash distributions as a result of such foreclosure.

If the Trust’s indebtedness (or a portion thereof) were to be cancelled without an accompanying foreclosure of a Property, then an Owner could have to recognize cancellation of debt income (subject to the applicability of one or more of the cancellation of debt exclusions, in which event such exclusion(s) might constitute only a “deferral” of such income effectuated by the Owner’s reduction of tax attributes – including tax basis), which would be taxed as

ordinary income, for federal income tax purposes. Also, the Owner would not be able to offset any such cancellation of debt income with any loss recognized by an Owner that would constitute a capital loss for federal income tax purposes.

Tax Elections. ExchangeRight will attempt to structure the Interests so that they will be treated as undivided interests in real property and not as interests in a partnership for Code Section 1031 purposes. As a result, any otherwise available or applicable election in respect of an Owner's Interest and/or interest in the Properties would (or would not) be made by the Owner. However, if the Owners were to be treated as partners in a partnership for federal income tax purposes, any such available or applicable election would have to be made by the partnership. No mechanism is provided for the Trust to make any such elections.

Method of Accounting. An Owner will be required to report income under the Owner's applicable accounting method.

Alternative Minimum Tax. Certain taxpayers may be subject to the alternative minimum tax in lieu of the regular income tax. The alternative minimum tax applies with respect to certain taxpayers to taxable income increased by designated tax preferences. Each Owner should consult with his or her tax advisor concerning the impact, if any, of the alternative minimum tax on the Owner.

The Medicare Tax. Section 1411 of the Code generally imposes on certain individuals, trusts, and estates an additional tax of 3.8% on the lesser of (i) "net investment income", or (ii) the excess of modified adjusted gross income over a threshold amount. This tax applies in addition to normal income tax on such income. Prospective Investors should consult with their own tax advisors regarding the possible implications of the Medicare tax in light of their individual circumstances.

Activities Not Engaged in for Profit. Under Code Section 183, certain losses from activities not engaged in for profit are not allowed as deductions from other income. The determination of whether an activity is engaged in for profit is based on all of the facts and circumstances, and no one factor is determinative, although the Treasury Regulations indicate that an expectation of profit from the disposition of property will qualify as a profit motive. Code Section 183 has a presumption that an activity is engaged in for profit if income exceeds deductions in at least three out of five consecutive years. Although it is reasonable for an Owner to conclude that the Owner can realize a profit from an investment in an Interest as a result of cash flow and appreciation of the Properties, there can be no assurance that an Owner will be found to be engaged in an activity for profit because the applicable test is based on the facts and circumstances existing from time to time.

Limitation on Losses under the At-Risk Rules. An Owner that is an individual or closely held corporation will be unable to deduct losses from the Properties, if any, to the extent such losses exceed the amount such Owner is "at risk." An Owner's initial amount at risk will generally equal the sum of (1) the amount of cash paid for the Interest, (2) the amount, if any, of recourse financing obtained by the Owner to acquire its Interest, and (3) the amount of any qualified non-recourse indebtedness encumbering the Properties. An Owner's amount at risk will be reduced by the amount of any cash flow to such Owner and the amount of the Owner's loss and will be increased by the amount of the Owner's income from the activity. Losses not allowed under the at-risk provisions may be carried forward to subsequent taxable years and used when the amount at risk increases. Tax Counsel will issue no opinion concerning the application of the at-risk rules to owners of Interests.

Additional General Limitations on the Deductibility of Interest. In addition to the limitations on the deductibility of interest incurred in connection with passive activities, and the "at-risk" rules, the following are additional restrictions on the deduction of interest:

Capitalized Interest. Interest on debt incurred to finance construction of real property is not currently deductible and must be capitalized as part of the cost of the real property.

Interest Incurred to Carry Tax-Exempt Securities. Code Section 265(a)(2) disallows any deductions for interest paid by a taxpayer on indebtedness incurred or continued for the purpose of buying or carrying tax-exempt obligations. The application of Code Section 265(a)(2) turns on each Owner's purpose for acquiring an Interest. Thus,

Code Section 265(a)(2) might be applied to an Owner whose purpose for investing in an Interest rather than in a nonleveraged investment is to enable such Owner to continue to carry tax-exempt obligations. It should be noted that Code Section 7701(f) directs the IRS to prescribe regulations as may be necessary or appropriate to prevent the avoidance of provisions of the Code that deal with the linking of borrowings to investments through the use of related persons, pass-through entities or other intermediaries. Therefore, the provisions of Code Section 265(a)(2) may be applied to an Owner if the Owner does not himself or herself own tax-exempt obligations or stock of a regulated investment company that distributes exempt interest dividends but rather such obligations or stock are owned by a person, entity or other intermediary related to the Owner.

Prepaid Interest. Interest prepayments (including “points”) must be capitalized and amortized over the life of the loan with respect to which they are paid.

Limitation on Excess Business Loss Deduction. Under the TCJA, as revised by the CARES Act, excess business losses of a taxpayer other than a corporation are not allowed for taxable years beginning after December 31, 2020. Such losses are carried forward and treated as part of the taxpayer’s net operating loss carryforward in subsequent taxable years. An excess business loss for the taxable year is the excess of aggregate deductions of the taxpayer attributable to trades or businesses of the taxpayer over the sum of aggregate gross income or gain of the taxpayer plus a threshold amount. The threshold amount, which is indexed for inflation, was \$250,000 (or twice the applicable threshold amount in the case of a joint return) for 2018. The provision applies after the application of the passive loss rules and applies at the partner or shareholder level in the case of a partnership or S corporation.

Limitation on Business Interest Deduction. The TCJA, as revised by the CARES Act, provides a new limitation on the deduction of business interest (i.e., interest paid or accrued on indebtedness allocable to a trade or business) for U.S. federal income tax purposes. In general, and subject to certain exceptions, including for a real estate trade or business if an election is made, business interest expense (i.e., business interest in excess of a taxpayer’s business interest income for the taxable year) is not deductible to the extent such interest exceeds 50%, for a taxpayer’s 2019 and 2020 taxable years, and 30%, for tax years beginning in 2021, of a taxpayer’s adjusted taxable income (as defined in Section 163(j) of the Code, as revised by the TCJA and the CARES Act); provided, that (i) a taxpayer that is a partnership is only entitled to deduct up to 30% of its adjusted taxable income with respect to its 2019 taxable year and (ii) a taxpayer may elect to use its 2019 adjusted taxable income to determine its 2020 business interest limitation. Note that the limitation on the deductibility of business interest does not apply to investment interest.

Adjusted taxable income means the taxable income of the taxpayer computed without regard to (i) any item of income, gain, deduction, or loss which is not properly allocable to a trade or business; (ii) any business interest deductions or business interest income; and (iii) the amount of any net operating loss deduction. For taxable years beginning before January 1, 2022, adjusted taxable income is computed without regard to deductions allowable for depreciation, amortization, or depletion, but after January 1, 2022, depreciation and amortization are taken into account to reduce adjusted taxable income for purposes of computing the limitation. Any net business interest expense of a taxpayer in excess of the limitation is not currently deductible by the taxpayer and is carried forward to future years. Taxpayers that conduct certain real estate businesses may elect not to have this interest expense limitation apply to them, provided that they use an alternative depreciation system to depreciate certain property.

Potential Tax Liability in Excess of Cash Distributions. It is possible that an Owner’s federal income tax liability resulting from its Interest will exceed its share of cash distributions from the Trust. This may occur because (among other reasons) (i) cash flow from the Properties may be used to fund nondeductible expenses of the Properties; (ii) all cash from operations of the Properties must be deposited in the Deposit Account (as defined in the Loan Documents) pursuant to the requirements in the Loan Documents; or (iii) in an extremely rare circumstance, a substitution of the Properties may result in taxable gain without cash proceeds. Thus, there may be years in which an Owner’s federal income tax liability exceeds its share of cash distributions from the Trust. The same consequences may result from a sale or transfer of an Interest, whether voluntary or involuntary. If any of these circumstances occur, an Owner would have to use funds from other sources to satisfy its tax liability.

Accuracy-Related Penalties and Penalties for the Failure to Disclose. The Code provides that penalties are applied to any portion of any understatement that was attributable to: (i) negligence or disregard of rules or regulations; (ii) any substantial understatement of income tax; or (iii) any substantial valuation misstatement. A 20% accuracy-related penalty is imposed on (i) listed or (ii) reportable transactions having a significant tax avoidance purpose. This

penalty is increased to 30% if the transaction is not properly disclosed on the taxpayer's federal income tax return. Failure to disclose such a transaction can also prevent the applicable statute of limitations from running in certain circumstances and can subject the taxpayer to additional disclosure penalties ranging from \$10,000 to \$200,000, depending on the facts of the transaction. Similarly, any interest attributable to unpaid taxes associated with a non-disclosed reportable transaction may not be deductible for federal income tax purposes.

Negligence is generally any failure to make a reasonable attempt to comply with the provisions of the Code and the term "disregard" includes careless, reckless, or intentional disregard.

A substantial understatement of income tax generally occurs if the amount of the understatement for the taxable year exceeds the greater of (i) 10% of the tax required to be shown on the return for the taxable year, or (ii) \$5,000 (\$10,000 in the case of a C corporation). Under the TCJA, the 10% threshold is reduced to 5% for taxpayers claiming the deduction for "qualified business income" under Code Section 199A.

A substantial valuation misstatement occurs if the value of any property (or the adjusted basis) is 150% or more of the amount determined to be the correct valuation or adjusted basis. The penalty generally doubles if the valuation is overstated by 200% or more. No penalty will be imposed unless the underpayment attributable to the substantial valuation misstatement exceeds \$5,000 (\$10,000 in the case of a C corporation).

The term reportable transaction means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed under Code Section 6011, such transaction is of a type which the IRS determines as having a potential for tax avoidance or evasion.

The term listed transaction means a reportable transaction which is the same as, or substantially similar to, a transaction specifically identified by the IRS as a tax avoidance transaction for purposes of Code Section 6011.

Except with respect to "tax shelters," an accuracy-related penalty will not be imposed on an underpayment attributable to negligence, a substantial understatement of income tax, or a substantial valuation misstatement if it is shown that there was a reasonable cause for the underpayment and the taxpayer acted in good faith. A "tax shelter" includes a partnership if a significant purpose of the partnership is the avoidance or evasion of tax. In addition, an accuracy-related penalty will not be imposed on a reportable transaction or a listed transaction if it is shown that: (i) there is reasonable cause for the position; (ii) the taxpayer acted in good faith; (iii) the relevant facts of the transaction are adequately disclosed in accordance with the regulations prescribed under Code Section 6011; (iv) there is or was substantial authority for such treatment; and (v) the taxpayer reasonably believed that such treatment was more likely than not correct.

Reportable Transaction Disclosure and List Maintenance. A taxpayer's ability to claim privilege on any communication with a federally authorized tax preparer involving a tax shelter is limited. In addition, taxpayers and material advisors must comply with disclosure and list maintenance requirements for reportable transactions. The Sponsor and Tax Counsel have concluded that the sale of an Interest should not constitute a reportable transaction.

Accordingly, the Sponsor and Tax Counsel do not intend to make any filings pursuant to these disclosure or list maintenance requirements. There can be no assurances that the IRS will agree with this determination by the Sponsor and Tax Counsel. Significant penalties could apply if a party fails to comply with these rules, and such rules are ultimately determined to be applicable.

Unrelated Business Taxable Income

Qualified pension, profit sharing, and stock bonus plans ("**Qualified Plans**") and IRAs generally have no federal income tax liability unless their UBTI from all sources is greater than \$1,000 during any of their taxable years. Generally, UBTI does not include income that is: (i) interest income; (ii) dividends; (iii) rents from real property; (iv) rents from personal property leased with real property, if the rents attributable to the personal property are an incidental amount (i.e., 10% or less) of the total rents received or accrued under the lease; and (v) gain from the sale of property, other than inventory and property held primarily for sale to customers in the ordinary course of business. However, income from "debt-financed" property generally is included in UBTI. "Debt-financed" property generally means any

property that is held to produce income and with respect to which there is an acquisition indebtedness. Under Code Section 514(c), the term “acquisition indebtedness” generally means, subject to certain exceptions, the unpaid amount of debt incurred in acquiring or improving a property, and any other debt, such as borrowings for working capital, if the debt would not have been incurred but for the acquisition or improvement of the property.

The Trust will incur debt financing in connection with its acquisition of the Property Interests in the Properties. Thus, most of a tax-exempt Investor’s share of the Trust’s net income or gain from the Properties will be UBTI that is subject to federal income taxes if the income exceeds \$1,000 per taxable year exclusion discussed above. Also, when the Properties are sold or otherwise disposed of in a taxable transaction by the Trust, a tax-exempt Investor may be required to recognize an allocable portion of any gain as UBTI.

Tax-exempt Investors that are Qualified Plans (which do not include IRAs) generally are not subject to UBTI with respect to indebtedness incurred in acquiring or improving real property if certain conditions set forth in Code Section 514(c)(9) are met. The availability to Qualified Plans of this exception to UBTI would require compliance with certain rules that are not generally applicable to the Trust (as an “investment trust” under Treasury Regulation Section 301.7701-4). In this regard, the Trust Agreement will not satisfy the requirements of Code Section 514(c)(9) to qualify for this exception to UBTI in any taxable year, so that even Qualified Plans may be subject to UBTI with respect to income and gain generated by the Trust from the operation and sale or other taxable disposition of the Property Interests in the Properties.

Any portion of the Trust’s income allocated to a Qualified Plan or IRA Investor that is not treated as UBTI generally will not be recharacterized as UBTI, even though another portion of the Trust’s income that is allocated to that tax-exempt Investor is treated as UBTI. In addition, receiving UBTI from the Trust generally will not cause a Qualified Plan’s or IRA’s income from sources other than the Trust to be treated as UBTI, nor will it affect their tax-exempt status. However, the receipt of any UBTI in a taxable year by some tax exempt entities, such as charitable remainder trusts or charitable remainder unitrusts, will result in a 100% excise tax on their UBTI.

In addition to UBTI, if a Qualified Plan or IRA intends to purchase Interests in the Trust it is urged to consider the limited liquidity of the Trust’s Interests as it relates to applicable minimum distribution requirements under the Code. At the time, mandatory distributions are required to begin, Code Sections 408(a)(6) and 401(a)(9) may require that the tax-exempt Investor’s Interests be distributed in-kind to the IRA beneficiary or Qualified Plan participant. These distributions, if any, would have to be included in the taxable income of the IRA beneficiary or Qualified Plan participant for the year in which the Interests are distributed at the fair market value of the Interests without any corresponding cash distributions from the Trust to pay any resulting federal income tax liability.

IRAs, Qualified Plans and other tax-exempt entities considering an investment in the Trust are urged to seek advice based on their particular circumstances from independent tax and legal advisors regarding the effect receiving UBTI from the Trust would have on them. Also, in evaluating an investment in the Trust, a fiduciary of a Qualified Plan or IRA is urged to consider the propriety of the investment in light of its fiduciary obligations and the limited liquidity of the Trust’s Interests. See – “Investment by Tax-Exempt Investors.”

Codification of Economic Substance Doctrine and Strict Liability Penalties. In addition, in 2010, Congress codified the existing “economic substance doctrine” creating a new penalty equal to 20% of the portion of any underpayment attributable to the fact that a transaction lacks economic substance. The penalty increases to 40% if the transaction is not adequately disclosed and is imposed on a strict liability basis (i.e., the taxpayer may not avoid the penalty by demonstrating that their position was supported by substantial authority or that the taxpayer reasonably relied on advice from a tax advisor). The economic substance doctrine applies only if it is relevant to a transaction. The determination of whether the economic substance doctrine is relevant to a transaction shall be made in the same manner as if the doctrine had never been codified. In the case of any transaction to which the economic substance doctrine is relevant, the transaction is treated as having economic substance if (1) the transaction changes in a meaningful way (apart from Federal income tax effects) the taxpayer’s economic position, and (2) the taxpayer has a substantial purpose (apart from Federal income tax effects) for entering into such transaction. In rendering its opinion, Tax Counsel concluded that the economic substance doctrine should not apply and should not alter the tax consequences described in their opinion. There can be no assurance, however, that the IRS would agree.

State and Local Taxes. In addition to the federal income tax consequences described above, each Owner should consider the state tax consequences of an investment in an Interest. An Owner's share of income or loss generally will be required to be included in determining its reportable income for state and local tax purposes. Under the TCJA, an individual or married filers cannot deduct more than \$10,000 of combined state and local income and property taxes annually for taxable years beginning after December 31, 2017 and ending before January 1, 2026. Taxes attributable to income earned from the Interests should count towards the \$10,000 limitation. An Owner must seek the advice of its own independent tax advisor as to state and local tax issues.

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CERTAIN CONSIDERATIONS APPLICABLE TO ERISA, GOVERNMENTAL AND OTHER PLAN INVESTORS

Section 1.01 Employee benefit plans that are subject to the fiduciary provisions of ERISA (including, without limitation, pension and profit-sharing plans) and plans that are subject to Section 4975 of the Code (including, without limitation, IRAs) (each, a “Benefit Plan Investor”), as well as governmental plans and other employee benefit plans, accounts or arrangements that are not subject to the fiduciary provisions of ERISA or Section 4975 of the Code, and entities deemed to hold “plan assets” of any of the foregoing (collectively, with Benefit Plan Investors, referred to as “Plans”), may generally invest in the Trust, subject to the following considerations.

General Fiduciary Considerations for Investment in the Trust by Plan Investors

The fiduciary provisions of ERISA, and the fiduciary provisions of pension codes applicable to governmental or other employee benefit plans or retirement arrangements that are not subject to ERISA may impose limitations on investment in the Trust. Fiduciaries of Plans, in consultation with their advisors, should consider, to the extent applicable, the impact of such fiduciary rules and regulations on an investment in the Trust. Among other considerations, the fiduciary of a Plan should take into account the composition of the Plan’s portfolio with respect to diversification; the cash flow needs of the Plan and the effects thereon of the illiquidity of the investment; the economic terms of the Plan’s investment in the Trust; the Plan’s funding objectives; the tax effects of the investment and the tax and other risks described in the sections of this Memorandum discussing tax considerations and risk factors; the fact that the investors in the Trust are expected to consist of a diverse group of investors (including, taxable and tax-exempt entities) and the fact that the management of the Trust will not take the particular objectives of any investors or class of investors into account.

Plan fiduciaries should also take into account the fact that, while the Manager will have certain general fiduciary duties to the Trust, the Manager will not have any direct fiduciary relationship with or duty to any investor, either with respect to its investment in Interests or with respect to the management and investment of the assets of the Trust. Similarly, it is intended that the assets of the Trust will not be considered plan assets of any Plan or be subject to any fiduciary or investment restrictions that may exist under pension codes specifically applicable to such Plans. Each Plan will be required to acknowledge and agree in connection with its investment in Interests to the foregoing status of the Trust and the Manager and that there is no rule, regulation or requirement applicable to such investor that is inconsistent with the foregoing description of the Trust and the Manager.

Plan fiduciaries may be required to determine and report annually the fair market value of the assets of the Plan. Since it is expected that there will not be any public market for the Interests, there may not be an independent basis for the Plan fiduciary to determine the fair market value of the Interests.

ERISA and Other Benefit Plan Investors. A fiduciary acting on behalf of a Benefit Plan Investor, in addition to the matters described above, should take into account the following considerations in connection with an investment in the Trust.

ERISA Restrictions if the Trust Holds Plan Assets. If the Trust is deemed to hold plan assets of the investors that are Benefit Plan Investors, the investment in the Trust by each such Benefit Plan Investor could constitute an improper delegation of investment authority by the fiduciary of such Benefit Plan Investor. In addition, any transaction the Trust enters into would be treated as a transaction with each such Benefit Plan Investor and any such transaction (such as a property lease, sale or financing) with certain “parties in interest” (as defined in ERISA) or “disqualified persons” (as defined in Section 4975 of the Code) with respect to a Benefit Plan Investor could be a “prohibited transaction” under ERISA or Section 4975 of the Code. If the Trust were subject to ERISA, certain aspects of the structure and terms of the Trust could also violate ERISA.

ERISA Plan Assets. Under ERISA and regulations issued thereunder by the Department of Labor (the “Regulation”), generally, a Benefit Plan Investor’s assets would be deemed to include an undivided interest in each of the underlying assets of the Trust unless investment in the Trust by Benefit Plan Investors is not “significant” or the Trust constitutes an “operating company” (each as defined below).

Significant Investment by Benefit Plan Investors. Investment by Benefit Plan Investors would not be “significant” if less than 25% of the value of each class of equity Interests (excluding the interests of the Manager and any other person who has discretionary authority or control or provides investment advice for a fee (direct or indirect) with respect to the assets of the Trust, and affiliates (other than a Benefit Plan Investor) of any of the foregoing persons) is held by Benefit Plan Investors. Commingled vehicles that are subject to ERISA are generally counted as Benefit Plan Investors for this purpose only to the extent of investment in such entity by Benefit Plan Investors.

The Manager reserves the right to reject subscriptions in whole or in part for any reason, including that the investor is a Benefit Plan Investor. The Manager will also have the authority to restrict transfers of Interests and may require a full or partial withdrawal of any Benefit Plan Investor to the extent it deems appropriate to avoid having the assets of the Trust be deemed to be plan assets of any Benefit Plan Investor – see the discussions in the sections in this Memorandum on transfers and withdrawals.

Operating Company Status of Trust. If participation by Benefit Plan Investors in the Trust is “significant” as defined above, the Manager intends to conduct the operations of the Trust so as to qualify as an “operating company,” including a “real estate operating company” or a “venture capital operating company,” so that the assets of the Trust will not be considered “plan assets” of any Benefit Plan Investor. In order to constitute a “venture capital operating company” under the Regulation, an entity such as the Trust must, on its initial valuation date and during each annual valuation period, have at least 50% of its assets (valued at cost, excluding short-term investments pending long-term commitment or distribution) invested in operating companies with respect to which the entity obtains direct contractual rights to participate significantly in management decisions, and must regularly exercise its rights in the ordinary course of its business. In order to constitute a “real estate operating company” under the Regulation, an entity such as the Trust must, on its initial valuation date and during each annual valuation period, have at least 50% of its assets (valued at cost, excluding short-term investments pending long-term commitment or distribution) invested in real estate which is managed or developed and with respect to which such entity has the right to substantially participate directly in the management or development activities, and must engage directly, in the ordinary course of its business, in real estate management or development activities.

There is very little authority regarding the application of ERISA and the Regulation to entities such as the Trust, and there can be no assurance that the U.S. Department of Labor or the courts would not take a position or promulgate additional rules or regulations that could significantly impact the “plan asset” status of the Trust.

Prohibited Transaction Considerations. Fiduciaries of Benefit Plan Investors should also consider whether an investment in the Trust could involve a direct or indirect transaction with a “party in interest” or “disqualified person” as defined in ERISA and Section 4975 of the Code, and if so, whether such prohibited transaction may be covered by an exemption. ERISA contains a statutory exemption that permits a Benefit Plan Investor to enter into a transaction with a person who is a party in interest or disqualified person solely by reason of being a service provider or affiliated with a service provider to the Benefit Plan Investor, provided that the transaction is for “adequate consideration”. There are also a number of administrative prohibited transaction exemptions that may be available to certain fiduciaries acting on behalf of a Benefit Plan Investor. Fiduciaries of Benefit Plan Investors should also consider whether investment in the Trust could involve a conflict of interest. In particular, a prohibited conflict of interest could arise if the fiduciary acting on behalf of the Benefit Plan Investor has any interest in or affiliation with the Trust or the Manager.

Governmental Plans. Government sponsored plans are not subject to the fiduciary provisions of ERISA and are also not subject to the prohibited transaction provisions under Section 4975 of the Code. However, federal, state or local laws or regulations governing the investment and management of the assets of such plans may contain fiduciary and prohibited transaction requirements similar to those under ERISA and the Code discussed above and may include other limitations on permissible investments. Accordingly, fiduciaries of governmental plans, in consultation with their advisors, should consider the requirements of their respective pension codes with respect to investments in the Trust, as well as the general fiduciary considerations discussed above.

The fiduciary of each prospective governmental plan investor will be required to represent and warrant that investment in the Trust is permissible, complies in all respects with applicable law and has been duly authorized.

Individuals Investing With IRA Assets. Interests sold by the Trust may be purchased or owned by investors who are investing assets of their IRAs. The Trust's acceptance of an investment by an IRA should not be considered to be a determination or representation by the Manager or any of its respective affiliates that such an investment is appropriate for an IRA. In consultation with its advisors, each prospective IRA investor should carefully consider whether an investment in the Trust is appropriate for, and permissible under, the terms of its IRA governing documents. IRA investors should consider in particular that the Interests will be illiquid and that it is not expected that a significant market will exist for the resale of the Interests, as well as the other general fiduciary considerations described above.

Although IRAs are not subject to ERISA, they are subject to the provisions of Section 4975 of the Code, prohibiting transactions with "disqualified persons" and investments and transactions involving fiduciary conflicts. A prohibited transaction or conflict of interest could arise if the fiduciary making the decision to invest has a personal interest in or affiliation with the Trust, the Manager or any of their respective affiliates. In the case of an IRA, a prohibited transaction or conflict of interest that involves the beneficiary of the IRA could result in disqualification of the IRA. A fiduciary for an IRA who has any personal interest in or affiliation with the Trust, the Manager or any of their respective affiliates, should consult with his or her tax and legal advisors regarding the impact such interest may have on an investment in Interests with assets of the IRA.

Investors that are IRAs should consult with their counsel and advisors as to the prohibited transaction, conflict of interest and other provisions of the Code applicable to an investment in the Trust.

The foregoing discussion is general in nature and is not intended to be all-inclusive. Each Plan fiduciary should consult with its legal advisor concerning the considerations discussed above before making an investment in the Trust. No assurance can be given that future regulations, changes in administrative regulations or rulings or court decisions will not significantly modify the requirements summarized herein. Any such changes may be retroactive and thereby apply to transactions entered into prior to the date of their enactment or release.

ACCEPTANCE OF SUBSCRIPTIONS OF ANY PLAN IS IN NO RESPECT A REPRESENTATION BY THE TRUST, THE MANAGER, OR ANY OF THEIR AFFILIATES OR ANY OTHER PARTY THAT SUCH INVESTMENT MEETS THE RELEVANT LEGAL REQUIREMENTS WITH RESPECT TO THAT PLAN OR THAT AN INVESTMENT IN THE TRUST OR ANY CONTINUED HOLDING OF TRUST INTERESTS IS AN APPROPRIATE OR PERMISSIBLE INVESTMENT FOR SUCH PLAN. EACH PLAN FIDUCIARY SHOULD CONSULT WITH HIS OR HER OWN LEGAL ADVISORS AS TO THE PROPRIETY OF AN INVESTMENT IN THE TRUST IN LIGHT OF THE SPECIFIC REQUIREMENTS APPLICABLE TO THAT PLAN.

Owners should note that a number of issues discussed in this Memorandum have not been definitively resolved by statutes, regulations, rulings or judicial opinions. Accordingly, no assurances can be given that the conclusions expressed herein will be accepted by the IRS or the Department of Labor, or, if contested, would be sustained by a court, or that legislative changes, administrative pronouncements or court decisions may not be forthcoming that would significantly alter or modify the conclusions expressed herein. Each prospective Investor must consult its own tax counsel about the tax consequences of an investment in an Interest.

The Tax Opinion attached hereto as Exhibit F, and the discussion of federal tax issues herein, shall be written to support the promotion or marketing of a particular transaction. Each prospective Investor must seek advice based on the prospective Investor's particular circumstances from an independent tax advisor.

Role of Venable LLP as Tax Counsel. Venable LLP has acted solely as U.S. federal income Tax Counsel with respect to the Offering and, in such capacity, has considered certain ERISA matters with respect to the Trust. Venable LLP has not acted as securities counsel, real estate counsel, finance counsel, or in any other capacity with respect to the Offering. As Tax Counsel, Venable LLP has not conducted any due diligence or reviewed any of the reports or other due diligence materials with respect to the Properties or the potential Investors or Owners, the financing of the Properties, or any financial Pro Forma or similar information with respect to the Properties or the Offering. Tax Counsel's opinion and advice to the Sponsor relates solely to U.S. federal income tax issues and certain ERISA matters, and does not include advice on state or local income tax issues, property taxes, transfer taxes, stamp duty, lease tax or other non-income taxes, or any other non-tax

issues. Venable LLP does not represent the Owners. Prospective Investors, including Benefit Plan Investors, seeking legal advice should retain their own counsel, consult their own advisors about an investment in the Interests and conduct any due diligence they deem appropriate to verify the accuracy of the representations or information in this Memorandum.

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LITIGATION

There are no legal actions pending, or to the knowledge of the Sponsor and the Manager, threatened against the Trust, the Sponsor, the Manager or the Master Lessee nor, to the knowledge of the Sponsor and the Manager, are any such actions contemplated which, if determined adversely, would have a material adverse effect on the Trust, the Sponsor, the Manager or the Master Lessee or their financial condition.

ADDITIONAL INFORMATION

The Sponsor will answer inquiries from prospective Investors concerning the Interests and other matters relating to the offer and sale of the Interests and will afford prospective Investors the opportunity to obtain any additional information to the extent they possess such information or can acquire such information without unreasonable effort or expense that is necessary to verify the information in this Memorandum. Prospective Investors are entitled to review copies of other material contracts relating to the Interests, the Trust, the Manager, the Master Lessee, the LLC, the Loan, or the Properties described in this Memorandum and copies of the various entities' organizational documents. Copies of all reports and financial statements prepared by third parties in connection with this Offering are available upon request to the Sponsor.

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EXHIBIT A
TRUST AGREEMENTS

TRUST AGREEMENT
OF
EXCHANGERIGHT VALUE-ADD PORTFOLIO 3 DST
DATED AS OF
APRIL 27, 2022
BY AND AMONG
EXCHANGERIGHT REAL ESTATE, LLC,
AS DEPOSITOR,
EXCHANGERIGHT ASSET MANAGEMENT, LLC,
AS MANAGER
AND
GREGORY HARRISON,
AS TRUSTEE

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**TRUST AGREEMENT
OF
EXCHANGERIGHT VALUE-ADD PORTFOLIO 3 DST,
A DELAWARE STATUTORY TRUST**

This Trust Agreement, dated as of April 27, 2022 (as the same may be amended or supplemented from time to time, this “**Trust Agreement**”), is made by and among ExchangeRight Real Estate, LLC, a California limited liability company (the “**Depositor**”), ExchangeRight Asset Management, LLC, a California limited liability company, as Manager (the “**Manager**”), and Gregory Harrison, as Trustee (the “**Trustee**”).

RECITALS

A. The Depositor and Trustee have agreed to form ExchangeRight Value-Add Portfolio 3 DST, a Delaware statutory trust (the “**Trust**”) formed by and in accordance with, and governed by, this Trust Agreement in accordance with Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. §§3801 *et seq.* (the “**Statutory Trust Act**”).

B. The Trust directly acquired certain fee and/or leasehold interests in properties as more particularly described on Exhibit A (collectively, the “**Real Estate**”) from various unaffiliated third party sellers.

C. The Trust desires to enter into a loan in the amount of \$7,332,000 (the “**Loan**”) with Barclays Capital Real Estate Inc. (the “**Lender**”) and secured by the Financing Documents and other documents evidencing or securing the Loan.

D. The Depositor intends to pay \$100 in cash to the Trust pursuant to this Trust Agreement in exchange for 100 newly-issued Class 2 Beneficial Interests (as hereinafter defined) in the Trust issued to Depositor.

E. It is anticipated that the Investors will acquire Class 1 Beneficial Interests (as hereinafter defined) in the Trust in exchange for payment of cash to the Trust and become Class 1 Beneficial Owners (as hereinafter defined) in accordance with the provisions of this Trust Agreement, which cash will be used by the Trust to (i) pay commissions, costs, fees and expenses of the offering of Class 1 Beneficial Interests to the Investors by the Trust, and (ii) redeem the Depositor’s Class 2 Beneficial Interests on a proportionate basis, in each case, pursuant to Section 6.5 hereof. Upon the sale of all of the Class 1 Beneficial Interests, the Depositor will no longer have any interest in the Trust and no Class 2 Beneficial Interests will remain outstanding, all in accordance with the provisions of this Trust Agreement; provided that the sole member of the Depositor will purchase a 0.50% Class 1 Beneficial Interests as required by the Lender pursuant to the terms of the Loan.

F. The Real Estate will be owned solely by the Trust and, along with the Master Lease Agreement (as hereinafter defined), will be the only non-cash assets of the Trust.

G. The Real Estate is intended to be subject to certain Financing Documents (as

hereinafter defined), the Master Lease Agreement and the underlying tenant leases.

H. The Trust will enter into a Master Lease Agreement with ExchangeRight Value-Add Portfolio 3 Master Lessee, LLC, a Delaware limited liability company (“**Master Lessee**”) an Affiliate of the Depositor, under which the Trust will assign to the Master Lessee all rights and obligations under the leases to which the Real Estate is currently subject and the Master Lessee will pay the Annual Base Rent and the Annual Bonus Rent (each as hereinafter defined) to the Trust.

I. The Trust has appointed the Manager to undertake certain actions and perform certain duties pursuant to this Trust Agreement.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. Capitalized terms used in this Trust Agreement shall have the following meanings:

“Affiliate” means, as to any Person, any other Person that (i) owns directly or indirectly ten percent (10%) or more of all equity interests in such Person, and/or (ii) is in Control of, is Controlled by or is under common Control with such Person, and/or (iii) is a director or officer of, or a general partner or managing member in, such Person or of an Affiliate of such Person.

“Annual Base Rent” means the amount of annual base rent payable each year by the Master Lessee to the Trust pursuant to the Master Lease Agreement.

“Annual Bonus Rent” means the amount of annual bonus rent payable each year by the Master Lessee to the Trust pursuant to the Master Lease Agreement.

“Beneficial Interest” means a beneficial interest in the Trust, as such term is used in the Statutory Trust Act, which interests shall be Class 1 Beneficial Interests and/or Class 2 Beneficial Interests.

“Beneficial Owner” means each Person who, at the time of determination, holds a Beneficial Interest as reflected on the most recent Ownership Records.

“Business Day” means any day other than a Saturday, Sunday or any other day on which national banks in New York, New York or the state where the Properties are located, or the place of business of the trustee under a Securitization (or, if no Securitization has occurred, Lender), or any servicer of the Loan or the financial institution that maintains any collection account for or on behalf of any servicer of the Loan or any Reserve Funds (as defined in the Loan Agreement) or the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business.

“Certificate of Trust” means the certificate of trust of the Trust in substantially the form of Exhibit B.

“Class 1 Beneficial Interests” means the Beneficial Interests held by the Investors.

“Class 2 Beneficial Interests” means the Beneficial Interests held by the Depositor.

“Class 1 Beneficial Owners” means the holders of Class 1 Beneficial Interests.

“Class 2 Beneficial Owner” means the holders of Class 2 Beneficial Interests.

“Closing Date” means that date of the first sale of Class 1 Beneficial Interests.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Conversion” has the meaning given to such term in Section 9.2(b).

“Conversion Notice” means the notice, in substantially the form of Exhibit E, issued by the Depositor to the Trustee and the Manager.

“Control” means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other beneficial interests, by contract or otherwise, and Control shall not be deemed absent solely because another Person shall have veto power with respect to major decisions. The terms “Controlled” and “Controlling” shall have correlative meanings.

“Depositor” has the meaning given to such term in the introductory paragraph hereof.

“Disposition” means any sale, disposition, transfer, merger or exchange roll-up transaction pursuant to Section 721 of the Code with respect to the Real Estate.

“Effective Date” means the date of this Trust Agreement as specified in the introductory paragraph hereof.

“Embargoed Person” has the meaning assigned to that term in the Loan Agreement.

“Event of Default” has the meaning assigned to that term in the Loan Agreement.

“Exhibit” means an exhibit attached to this Trust Agreement, unless otherwise specified.

“Financing Documents” means the “Loan Documents” as such term is defined in the Loan Agreement, as such Loan Documents may hereafter be amended, restated, extended, increased, supplemented, severed or otherwise modified from time to time,

“Independent Director” means a trustee of the Trust, who shall be an individual with at least three (3) years of employment experience serving as an independent director at the time of appointment who is provided by, and is in good standing with, CT Corporation, Corporation

Service Company, National Registered Agents, Inc., Wilmington Trust Company, Stewart Management Company, Lord Securities Corporation or, if none of those companies is then providing professional independent directors, trustees or managers or, after a Securitization is not acceptable to the Rating Agencies (as defined in the Loan Agreement), another nationally-recognized company reasonably approved by Lender and if required by Lender after a Securitization, the Rating Agencies, in each case that is not an Affiliate of the Trust and that provides professional independent directors, trustees or managers and other corporate services in the ordinary course of its business, and which individual is duly appointed as a trustee of the Trust and is not, and has never been, and will not while serving as independent director, trustee or manager be: (i) a member (other than an independent, non-economic “springing” member), partner, equityholder, beneficiary, manager, director, officer or employee of the Trust, or any of its respective equityholders, beneficiaries or Affiliates (other than as an independent director, trustee or manager of an Affiliate of the Trust that is not in the direct chain of ownership of the Trust and that is required by a creditor to be a single purpose bankruptcy remote entity, provided that such independent director, trustee or manager is employed by a company that routinely provides professional independent directors, trustees or managers in the ordinary course of business); (ii) a customer, creditor, supplier or service provider (including provider of professional services) to the Trust or any of its respective equityholders, beneficiaries or Affiliates (other than a nationally-recognized company that routinely provides professional independent directors, trustees or managers and other corporate services to the Trust or any of its respective equityholders, beneficiaries or Affiliates in the ordinary course of business); (iii) a family member of any such member, partner, equityholder, beneficiary, manager, director, officer, employee, creditor, supplier or service provider; or (iv) a Person that Controls or is under common Control with (whether directly, indirectly or otherwise) any of the Persons referred to in clauses (i), (ii) or (iii) above. A natural person who otherwise satisfies the foregoing definition other than subparagraph (i) by reason of being the independent director or trustee shall not be disqualified from serving as an independent director or trustee of the Trust, provided that the fees that such individual earns from serving as independent directors, trustees or managers of such Affiliates in any given year constitute in the aggregate less than five percent (5%) of such individual’s annual income for that year.

“Independent Director Event” means, with respect to an Independent Director, (i) any acts or omissions by such Independent Director that constitute willful disregard of such Independent Director’s duties under the applicable organizational documents, (ii) such Independent Director engaging in or being charged with, or being convicted of, fraud or other acts constituting a crime under any law applicable to such Independent Director, (iii) such Independent Director is unable to perform his or her duties as Independent Director due to death, disability or incapacity, or (iv) such Independent Director no longer meeting the definition of Independent Director in this Trust Agreement.

“Investors” means purchasers of Class 1 Beneficial Interests.

“Lender” has the meaning given to such term in Recital C.

“Lender Consent” means (i) with respect to any action taken at any time before the Loan or any portion thereof has been sold or assigned to a securitization trust, that the Lender has

consented in writing to such action, and (ii) with respect to any action taken at any time after the Loan or any portion thereof has been sold or assigned to a securitization trust, that the Lender has consented in writing and each Rating Agency shall have been given ten days prior notice thereof and that each of the Rating Agencies shall have notified the Manager in writing that such action will not result in a reduction or withdrawal of the then current rating by such Rating Agency of any of the securities issued by such securitization trust.

“Lender Conversion Notice” has the meaning set forth in Section 9.2(a)(6).

“LLC” means a newly formed Delaware limited liability company.

“LLC Agreement” has the meaning given to such term in Section 9.2(a).

“Loan” means that certain loan from Lender to the Trust as evidenced and secured by the Financing Documents.

“Loan Agreement” means that certain Loan Agreement to be entered into between Lender and the Trust, as borrower, in connection with the acquisition of the Real Estate, as the same may hereafter be amended, restated, extended, increased, supplemented, severed or otherwise modified from time to time.

“Loan Closing Date” means the date of the closing and funding of the Loan to the Trust.

“Manager” means ExchangeRight Asset Management, LLC, a California limited liability company or any successor manager appointed pursuant to the terms of this Trust Agreement.

“Master Lease Agreement” means that Master Lease Agreement between the Trust and the Master Lessee relating to the Real Estate, together with all amendments, supplements and modifications thereto.

“Master Lessee” has the meaning given to such term in Recital H.

“Material Action” means to file a petition for relief with respect to the Trust under Title 11, United States Code (or any successor statute), to institute proceedings to have the Trust declared bankrupt or insolvent, or consent to the institution of bankruptcy, insolvency or similar proceedings against the Trust, or file a petition seeking, or consent to, reorganization or relief with respect to the Trust under any applicable Federal or state law relating to bankruptcy or insolvency, or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Trust or any material part of the Trust Estate, or make any assignment for the benefit of creditors of the Trust, or admit in writing the Trust’s inability to pay its debts generally as they become due, or take action in furtherance of any such action, or dissolve or liquidate the Trust (other than following the conveyance of the Real Estate as provided in Section 9.2), or consolidate or merge the Trust with or into any Person, or sell (other than as provided in Section 9.3) or exchange all or substantially all of the Trust Estate.

“Maturity Date” has the meaning assigned to that term in the Loan Agreement.

“Memorandum” means the Trust’s Confidential Private Placement Memorandum dated June 5, 2023, as supplemented.

“Ownership Records” means the records maintained by the Manager, substantially in the form of Exhibit C, indicating from time to time the name, mailing address and Percentage Share of each Beneficial Owner, which records shall be revised by the Manager contemporaneously to reflect the issuance of Beneficial Interests in accordance with this Trust Agreement, changes in mailing addresses or other changes.

“Percentage Share” means, for each Beneficial Owner, the percentage of the aggregate Beneficial Interest in the Trust held by such Beneficial Owner as reflected on the most recent Ownership Records. For the avoidance of doubt, the sum of (a) the Percentage Share of the Class 1 Beneficial Interests and (b) the Percentage Share of the Class 2 Beneficial Interests at all times shall be 100%.

“Permitted Investment” has the meaning set forth in Section 7.1.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Purchase Agreement” means the agreement to be entered into by the Trust (through the Manager), the Depositor and each Investor with respect to the acquisition of Class 1 Beneficial Interests.

“Rating Agency” has the meaning assigned to that term in the Loan Agreement.

“Real Estate” has the meaning given to such term in Recital B hereof.

“Regulations” means U.S. Treasury Regulations promulgated under the Code.

“Reserve Funds” has the meaning assigned to that term in the Loan Agreement.

“Reserves” has the meaning given to such term in Section 7.1.

“Secretary of State” has the meaning given to such term in Section 2.1(b).

“Section” means a section of this Trust Agreement, unless otherwise specified.

“Securities Act” means the Securities Act of 1933, as amended.

“Securitization” has the meaning assigned to that term in the Loan Agreement.

“Statutory Trust Act” has the meaning given to such term in Recital A hereof.

“Transaction Documents” means the Trust Agreement, the Purchase Agreement, the Master Lease Agreement and the Financing Documents, together with any other documents to be

executed in furtherance of the investment activities of the Trust.

“Trust” means ExchangeRight Value-Add Portfolio 3 DST, a Delaware statutory trust formed by and in accordance with, and governed by, this Trust Agreement.

“Trust Agreement” has the meaning given to such term in the introductory paragraph hereof.

“Trust Estate” means all of the Trust’s right, title, and interest in and to (a) the fee and/or leasehold interests in real property, consisting of all the Real Estate and improvements thereon, (b) the rights and remedies under the Master Lease Agreement, (iii) the specified payments required to be made under the tenant leases with respect to the Real Estate, (iv) amounts in or to be deposited in the Reserves excluding the interest earned on the Trust Operations and Asset Management Reserve (defined below), which are available to the Master Lessee pursuant to this Agreement, and (v) any proceeds of the foregoing.

“Trustee” means Gregory Harrison or any successor trustee appointed pursuant to Section 2.1(a) of this Trust Agreement.

“Trustee Covered Expenses” has the meaning given to such term in Section 4.5.

“Trustee Indemnified Persons” has the meaning given to such term in Section 4.5.

ARTICLE 2 GENERAL MATTERS

Section 2.1 Organizational Matters.

(a) Gregory Harrison is hereby appointed as the Trustee, and Gregory Harrison hereby accepts such appointment.

(b) The Depositor hereby authorizes and directs the Trustee to execute and file the Certificate of Trust in the office of the Secretary of State of the State of Delaware (the “Secretary of State”), and authorizes the Trustee to execute and file in the office of the Secretary of State such certificates as may from time to time be required under the Statutory Trust Act or any other Delaware law.

(c) The name of the Trust is “ExchangeRight Value-Add Portfolio 3 DST.” Any reference to the Trust shall be a reference to the statutory trust formed pursuant to the Certificate of Trust and this Trust Agreement and not to the Trustee or the Manager individually or to the officers, agents or employees of the Trust, the Trustee or the Manager or any agents or representatives thereof.

(d) The principal office of the Trust, and such additional offices as the Manager may determine to establish, shall be located at such places inside or outside of the State of Delaware as the Manager shall designate from time to time. As of the Effective Date, the principal office of the Trust is located c/o the Manager at 1055 E. Colorado Blvd., Suite 310, Pasadena, CA

91106.

(e) Legal title to the Trust Estate shall be vested in the Trust as a separate legal entity.

Section 2.2 Declaration of Trust and Statement of Intent.

(a) The Trustee hereby declares that it shall hold the Trust Estate in trust for the benefit of the Beneficial Owners upon the terms set forth in this Trust Agreement.

(b) It is the intention of the parties that the Trust constitute a “statutory trust,” the Trustee is a “trustee,” the Manager is an “agent” of the Trust, the Beneficial Owners are “beneficial owners,” and this Trust Agreement is the “governing instrument” of the Trust, each within the respective meaning provided in the Statutory Trust Act.

Section 2.3 Purposes. The purposes of the Trust are, subject to this Trust Agreement, to: (a) acquire fee and/or leasehold interests in the Real Estate and enter into the Master Lease Agreement and the Financing Documents; (b) preserve the capital investment of the Investors; (c) make monthly distributions to the Investors from cash generated by ownership of the Real Estate; (d) execute a Disposition via an exchange roll-up transaction pursuant to Section 721 of the Code to a REIT managed and controlled by ExchangeRight (collectively, an “**ExchangeRight REIT**”) and thereby providing individual Investors with the following exit options: (i) complete an exchange pursuant to Section 721 of the Code into the acquiring ExchangeRight REIT; (ii) complete a Section 1031 Exchange; (iii) cash out (not tax-deferred); or (iv) any combination of the above exit options and (e) take only such other actions as the Manager deems necessary to carry out the foregoing.

ARTICLE 3
PROVISIONS RELATING TO THE LOAN AND TAX TREATMENT

Section 3.1 Article 3 Supersedes All Other Provisions of this Trust Agreement. This Article 3 contains certain provisions required by the Lender in connection with the Loan or intended to achieve the desired treatment of the Trust, the Beneficial Owners and Beneficial Interests for United States federal income tax purposes. To the extent of any inconsistency between this Article 3 and any other provision of this Trust Agreement, this Article 3 shall supersede and be controlling; provided, however, that nothing in this Article 3 shall limit or impair the Trust’s power and authority to execute and deliver, and to perform its obligations under, the Transaction Documents and further provided that the requirements of this Article 3 shall be enforceable to the maximum extent permissible under the Statutory Trust Act.

Section 3.2 Provisions Relating to Loan.

(a) This Section 3.2 is intended to qualify the Trust as a special purpose bankruptcy remote entity for purposes of the Loan and pursuant to the Loan Agreement. So long as any portion of the Loan is outstanding the provisions of this Section 3.2 shall be in full force

and effect; provided, however, that the provisions of this Section 3.2 shall cease to be of force or effect following the repayment or defeasance of the Loan in full, in each case in accordance with the terms and conditions of the Financing Documents. Without limiting the foregoing, all of the terms of this Trust Agreement are further limited by and subject to the provisions of the Financing Documents while the Loan or any portion thereof is outstanding, except with respect to any provisions that are inconsistent with Section 3.3 hereof.

(b) To the fullest extent permitted by applicable law, the Manager and the Trustee shall not be authorized or empowered, nor shall such Persons permit the Trust, to take any Material Action.

(c) The Manager shall cause the Trust to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights and franchises. In furtherance of the foregoing, and notwithstanding any provision hereof to the contrary, so long as any obligations secured by the Note (as defined in the Loan Agreement) remain outstanding and not discharged in full, the Manager covenants that the Trust has not and will not:

- (1) engage in any business or activity other than the ownership, operation and maintenance of the Real Estate, and activities incidental thereto;
- (2) acquire or own any assets other than such party's interest in (i) the Real Estate, and (ii) such incidental Personal Property (as defined in the Loan Agreement) as may be necessary for the ownership and operation of the Real Estate;
- (3) merge into or consolidate with any Person, or dissolve, terminate, liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;
- (4) (i) fail to observe all organizational formalities necessary to maintain its separate existence, or fail to preserve its existence as an entity duly organized, validly existing and in good standing (if applicable) under the applicable Legal Requirements (as defined in the Loan Agreement) of the jurisdiction of its organization or formation, or (ii) amend, modify, terminate or fail to comply with the provisions of its organizational documents, in each case without the prior written consent of Lender;
- (5) own any subsidiary, or make any investment in, any Person;
- (6) commingle its assets with the assets of any other Person, or permit any Affiliate or constituent party independent access to its bank accounts;
- (7) incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Debt (as defined in the

Loan Agreement) and the Permitted Debt (as defined in the Loan Agreement);

- (8) fail to maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person; except that Trust's financial position, assets, liabilities, net worth and operating results may be included in the consolidated financial statements of an Affiliate, provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separate identity of Trust from such Affiliate and that Trust's assets and credit are not available to satisfy the debts and other obligations of such Affiliate or any other Person, and (ii) Trust's assets, liabilities and net worth shall also be listed on Trust's own separate balance sheet;
- (9) except for capital contributions or capital distributions permitted under the terms and conditions of the Trust's organizational documents and properly reflected on its books and records, enter into any transaction, contract or agreement with any Beneficial Owner or guarantor of the obligations of Trust, or any Affiliate of the foregoing, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;
- (10) maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person;
- (11) assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets to secure the obligations of any other Person or hold out its credit or assets as being available to satisfy the obligations of any other Person;
- (12) make any loans or advances to any Person, or own any stock or securities of, any Person, or buy or hold evidence of indebtedness issued by any other Person;
- (13) fail to (i) file its own tax returns separate from those of any other Person, except to the extent that Trust is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under applicable Legal Requirements, and (ii) pay any taxes required to be paid under applicable Legal Requirements; provided, however, that the Trust shall not have any obligation to reimburse its equityholders

or their Affiliates for any taxes that such equityholders or their Affiliates may incur as a result of any profits or losses of the Trust;

- (14) fail to (i) hold itself out to the public as a legal entity separate and distinct from any other Person, (ii) conduct its business solely in its own name or (iii) correct any known misunderstanding regarding its separate identity;
- (15) fail to intend to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, that the foregoing shall not require the Beneficial Owners to make additional capital contributions to Trust;
- (16) without the unanimous written consent of all trustees, directors or managers of Trust or each SPE Component Entity (as defined in the Loan Agreement), as applicable, including, without limitation, each Independent Director, take any Material Action or action that might cause such entity to become insolvent;
- (17) fail to fairly and reasonably allocate shared expenses (including, without limitation, shared office space and services performed by an employee of an Affiliate) among the Persons sharing such expenses;
- (18) fail to intend to remain solvent or pay its own liabilities (including, without limitation, salaries of its own employees) only from its own funds; provided, however, that the foregoing shall not require Trust's Beneficial Owners to make additional capital contributions to Trust;
- (19) acquire obligations or securities of its Beneficial Owners or their affiliates, as applicable;
- (20) fail to maintain a sufficient number of employees in light of its contemplated business operations;
- (21) fail to maintain and use separate stationery, invoices and checks bearing its own name;
- (22) have any of its obligations guaranteed by an Affiliate, except as contemplated by the Loan Documents;
- (23) identify itself as a department or division of any other Person; or
- (24) violate or cause to be violated the assumptions made with respect to the Trust, Guarantor, Master Lessee or any SPE Component Entity in any Insolvency Opinion.

Failure of the Manager to comply with any of the foregoing covenants or any other covenants contained in this Trust Agreement shall not affect the status of the Trust as a separate legal entity or the limited liability of the Beneficial Owners.

(d) The Manager and the Trustee each covenants and agrees that prior to the date which is one year and one day after the date upon which all obligations under the Financing Documents have been paid in full, neither the Manager nor the Trustee will institute against, or join any other Person in instituting against, the Trust any bankruptcy, reorganization, arrangement, insolvency or liquidation proceeding or other proceedings under any applicable insolvency law. This Section 3.2(d) shall survive the termination of this Trust Agreement or the resignation, removal or replacement of the Trustee and/or Manager under this Trust Agreement.

(e) Without intending to limit the provisions of Section 3.3(b), no Material Action shall be taken, instituted or joined in by the Trust without the written consent of both the Trustee and the Manager (and if the Trustee has resigned or been removed, no Material Action may be taken until a new Trustee satisfying the requirements of this Trust Agreement has been appointed and has consented to such Material Action).

(f) For so long as the Loan or any portion thereof is outstanding, Lender is an intended third party beneficiary of this Trust Agreement.

(g) Notwithstanding anything to the contrary in this Trust Agreement, so long as the Loan or any portion thereof is outstanding, no payment from the Trust Estate (as distinct from other sources, such as insurance proceeds) of any indemnity under this Trust Agreement shall be payable from amounts allocable to any other Person pursuant to the Financing Documents.

Section 3.3 Provisions Relating to Tax Treatment.

(a) Prior to the issuance of the Conversion Notice, the sole Beneficial Owner of the Trust shall be the Depositor. The rights of the Depositor (as the Class 2 Beneficial Owner) with respect to the assets and property held by the Trust, as set forth in Section 6.11 hereof, are such that the Trust will be characterized at such time as a “business entity” within the meaning of Regulation Section 301.7701-3. Because the Depositor will be the sole Beneficial Owner, the Trust will be characterized as a disregarded entity, and all assets and property of the Trust shall be treated for and only for federal income tax purposes as assets and property of the Depositor.

(b) Upon the issuance of the Conversion Notice, the special rights of Depositor (as the Class 2 Beneficial Owner), as set forth in Section 6.2, will terminate, as set forth in Section 6.12, and the Depositor will have the same rights as a Class 1 Beneficial Owner. At that time, the Depositor will be deemed for federal income tax purposes to have transferred the Real Estate to a separate entity (the Trust) which will be classified for federal income tax purposes as specified in Section 3.3(c).

(c) It is the intention of the parties hereto that upon and at all times after the issuance of the Conversion Notice that the Trust shall constitute an investment trust pursuant to Regulation Section 301.7701-4(c) and each Beneficial Owner shall be treated as a “grantor” within the meaning of Code Section 671. As such, the parties further intend that each Beneficial Owner

shall be treated for federal income tax purposes (but not for any other purposes) as if it holds a direct ownership interest in the Real Estate and all other assets comprising the Trust Estate. Each Beneficial Owner agrees to report its interest in the Trust in a manner consistent with the foregoing and otherwise not to take any action that would be inconsistent with the foregoing. Upon and after issuance of the Conversion Notice, none of the Trustee, the Manager, the Beneficial Owners and/or the Trust shall have any power and authority, or shall be authorized, and each of them is hereby expressly prohibited from taking, and none of them shall be allowed to take, any of the following actions:

(1) sell, transfer, exchange or otherwise dispose of the Real Estate except as required under Article 9 or as required to conserve and protect the Trust Estate;

(2) invest any cash held by the Trust (including Reserves) in anything other than U.S. Treasury obligations, money market accounts that are backed by U.S. Treasury obligations or deposits in federally-insured institutions;

(3) reinvest any monies of the Trust, except to make minor non-structural modifications or repairs to the Real Estate permitted hereunder or in accordance with Section 7.1;

(4) upon the Disposition of the Real Estate pursuant to Article 9, re-invest the proceeds of such Disposition;

(5) renegotiate, alter or extend the terms of the Loan or enter into any new financing, except in the case of the Master Lessee's bankruptcy or insolvency;

(6) renegotiate, alter or extend the terms of the Master Lease Agreement or enter into new leases, except in the case of the Master Lessee's bankruptcy or insolvency;

(7) make any modifications to the Real Estate other than minor non-structural modifications or repairs as necessary to maintain the Real Estate in as good as a state as it is on the date hereof, subject to wear and tear, or unless required by law;

(8) accept any capital contributions from a Beneficial Owner or other Person (other than capital from an Investor that will be distributed to the Depositor and reduce the Depositor's Percentage Share pursuant to this Trust Agreement); or

(9) take any other action which would cause the Trust to be treated as a business entity for federal income tax purposes if the effect would be that such action or actions would constitute a power under the Trust Agreement to "vary the investment of the certificate holders" under Regulations Section 301.7701-4(c)(1) and Rev. Rul. 2004-86.

The Trust shall hold the Trust Estate for investment purposes and only lease the Real Estate to the Master Lessee. Except in the case of the Master Lessee's bankruptcy or insolvency, the activities of the Trust with respect to the Trust Estate shall be limited to the activities which are customary services in connection with the maintenance and repair of the Real Estate or necessary to cause the Trust and/or the Real Estate to comply with all applicable law, and none of the Trustee, Beneficial

Owners, the Manager and their agents shall provide non-customary services, as such term is defined in Code Sections 512 and 856 and Rev. Rul. 75-374, 1975-2 C.B. 261. The Trust shall conduct no business other than as specifically set forth in Section 2.3 and this Section 3.3. Without limiting the generality of the foregoing, upon and after issuance of the Conversion Notice, (1) none of the Trustee, the Manager, the Beneficial Owners and the Trust shall have any power or authority to undertake any actions that are not permitted to be undertaken by an entity that is treated as a “trust” within the meaning of Regulations Section 301.7701-4 and not treated as a “business entity” within the meaning of Regulations Section 301.7701-3, and (2) this Trust Agreement shall be interpreted and enforced so as to be in compliance with the requirements of Rev. Rul. 2004-86, 2004-33 I.R.B. 191.

For federal income tax purposes, after issuance of the Conversion Notice, the Trust is intended to be and shall constitute an investment trust pursuant to Regulations Section 301.7701-4(c) and shall not constitute a “business entity.”

ARTICLE 4 CONCERNING THE TRUSTEE

Section 4.1 Power and Authority. The Trustee shall have full power and authority, and is hereby authorized and empowered, to (a) accept legal process served on the Trust in the State of Delaware; and (b) execute any certificates that are required to be executed under the Statutory Trust Act and file such certificates in the office of the Secretary of State, and take such action or refrain from taking such action under this Trust Agreement as may be directed in a writing delivered to the Trustee by the Manager; provided, however, that the Trustee shall not be required to take or refrain from taking any such action if the Trustee shall believe, or shall have been advised by counsel, that such action or lack of action is (1) reasonably likely to involve the Trustee in personal liability, (2) contrary to the terms of this Trust Agreement, the Financing Documents or of any document contemplated hereby to which the Trust or the Trustee is or becomes a party, or (3) otherwise contrary to applicable law. The Manager agrees not to instruct the Trustee to do any of the foregoing actions or take any action that is contrary to the terms of this Trust Agreement, the Financing Documents, or of any document contemplated hereby to which the Trust or the Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided in this Trust Agreement, the Trustee shall have no duty to take any action for or on behalf of the Trust.

Section 4.2 Trustee May Request Direction. If at any time the Trustee determines that it requires or desires guidance regarding the application of any provision of this Trust Agreement or any other document, any action that must or may be taken in connection herewith or therewith, or compliance with any direction it received hereunder, then the Trustee may deliver a notice to a court of applicable jurisdiction requesting written instructions as to the desired course of action. Such instructions as received from the court shall constitute full and complete authorization and protection for actions taken and other performance by the Trustee in reliance thereon. After delivering such notice, and until it has received such instructions, the Trustee shall be fully protected in refraining from taking any action with respect to the matters described in such notice.

Section 4.3 Trustee’s Capacity. In accepting the trust hereby created, the Person acting

as Trustee hereunder acts solely in such capacity and not in its individual capacity, and all Persons having any claim against the Trustee by reason of the transactions contemplated by this Trust Agreement, the Transaction Documents or any other document shall look only to the Trust Estate for payment or satisfaction thereof. Notwithstanding any provision of this Trust Agreement or any other document to the contrary, under no circumstances shall the Trustee, in its individual capacity or in its capacity as Trustee, (a) have any duty to choose or supervise, nor shall it have any liability for the actions or inactions of, the Manager or any officer, manager, employee, or other Person (other than itself and its own employees), or (b) be liable or responsible for, or obligated to perform, any contract, representation, warranty, obligation or liability of the Trust, the Manager or any officer, manager, employee or other Person (other than itself and its own employees); provided, however, that this limitation shall not protect the Trustee against any liability to the Beneficial Owners to which it would otherwise be subject by reason of its willful misconduct, bad faith, fraud or gross negligence in the performance of its duties as Trustee under this Trust Agreement.

Section 4.4 Duties. The Trustee has primary responsibility for performing the actions set forth in Section 4.1. None of the Trustee or any successor trustee, in its individual capacity and as Trustee, shall have any duty or obligation under or in connection with this Trust Agreement, the Trust or any transaction or document contemplated hereby except as expressly provided by the terms of this Trust Agreement, and no implied duties or obligations shall be read into this Trust Agreement against the Trustee or any successor trustee. The right of the Trustee to perform any discretionary act enumerated herein shall not be construed as a duty. To the fullest extent permitted by applicable law, including without limitation Section 3806 of the Statutory Trust Act, the Trustee's or any successor trustee's duties (including fiduciary duties, if any) and liabilities relating thereto to the Trust and the Beneficial Owners shall be restricted to those duties (including fiduciary duties, if any) expressly set forth in this Trust Agreement and liabilities relating thereto.

Section 4.5 Indemnification. The Manager hereby agrees to (a) reimburse the Trustee or any successor trustee, in its individual capacity and as Trustee, for all reasonable expenses (including reasonable fees and expenses of counsel and other professionals) incurred in connection with the negotiation, execution, delivery, or performance of, or exercise of rights or powers under, this Trust Agreement, (b) indemnify, defend and hold harmless, to the fullest extent permitted by applicable law, the Trustee or any successor trustee, in its individual capacity and as Trustee, and the officers, directors, employees and agents of the Trustee or any successor trustee, in its individual capacity and as Trustee, (collectively, the "Trustee Indemnified Persons") from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including reasonable fees and expenses of counsel and other professionals), taxes and penalties of any kind and nature whatsoever arising out of or imposed upon or asserted at any time against such Trustee Indemnified Persons, including, without limitation, on the basis of ordinary negligence on the part of any such Trustee Indemnified Persons, with respect to or in connection with this Trust Agreement, the Trust, or any transaction or document contemplated hereby (collectively, "Trustee Covered Expenses"); provided, however, that the Manager shall not be required to indemnify a Trustee Indemnified Person for Trustee Covered Expenses to the extent such Trustee Covered Expenses result from the willful misconduct, bad faith, fraud or gross negligence of such Trustee Indemnified Person, and (c) advance to each such Trustee Indemnified Person, to the fullest extent permitted by applicable law, Trustee Covered Expenses incurred by

such Trustee Indemnified Person in defending any claim, demand, action, suit or proceeding in connection with this Trust Agreement, the Trust or any transaction or document contemplated hereby prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Manager of an undertaking, by or on behalf of such Trustee Indemnified Person, to repay such amount if a court of competent jurisdiction renders a final, nonappealable judgment that includes a specific finding of fact that such Trustee Indemnified Person is not entitled to be indemnified therefor under this Section 4.5. The obligations of the Manager under this Section 4.5 shall survive the resignation or removal of the Trustee, the dissolution and termination of the Trust, and the termination, amendment, supplement and/or restatement of this Trust Agreement. The obligations of the Manager under this Section 4.5 shall be obligations irrespective of the sufficiency or insufficiency of the Trust Estate to satisfy any such obligations (but the foregoing reference to the Trust Estate shall not be construed to create any obligation on the part of the Trust for the indemnification obligations of the Manager hereunder; it being agreed that, so long as the Loan or any portion thereof is outstanding, except for funds that are permitted to be distributed to the Manager or Beneficial Owners pursuant to the Financing Documents, the Trustee may not look to the Trust Estate for satisfaction of any indemnification obligations of the Manager hereunder).

Section 4.6 Removal; Resignation; Succession.

(a) The Trustee may resign at any time by giving at least 60 days' prior written notice to the Manager and the Lender.

(b) The Manager may at any time remove the Trustee for cause by written notice to the Trustee. For purposes of this Section 4.6, "cause" shall only result from the willful misconduct, bad faith, fraud or gross negligence of the Trustee.

(c) Such resignation or removal as set forth above shall be effective upon the acceptance of appointment by a successor trustee as hereinafter provided. In case of the removal or resignation of the Trustee, the Manager may appoint a successor trustee by written instrument, provided that, if the Loan or any portion thereof is outstanding, a Lender Consent has been obtained. In case of the resignation of the Trustee, if a successor trustee shall not have been appointed within 60 days after the Trustee gives notice of its resignation, the Trustee or any of the Beneficial Owners may apply to any court of competent jurisdiction in the United States to appoint an interim successor trustee to act until such time, if any, as a successor trustee shall have been appointed as provided above and provided a Lender Consent is obtained if the Loan or any portion thereof is outstanding. Any successor trustee so appointed by such court shall immediately and without further act be superseded by any successor trustee appointed as provided above within one year from the date of the appointment by such court. Any successor trustee, however appointed, shall execute and deliver to its predecessor trustee an instrument accepting such appointment, and thereupon such successor trustee, without further act, shall become vested with all the estates, interests in properties, rights, powers, duties and trusts of the predecessor trustee in the trusts under this Trust Agreement with like effect as if originally named the Trustee herein. Notwithstanding the foregoing, upon the written request of such successor trustee, such predecessor shall execute and deliver an instrument transferring to such successor trustee, upon the trusts herein expressed, all the estates, interests in properties, rights, powers, duties and trusts of such predecessor trustee, and such predecessor trustee shall duly assign, transfer, deliver and pay over to such successor

trustee all monies or other property then held by such predecessor trustee upon the trusts herein expressed. Any rights of the Beneficial Owners against a predecessor trustee in its individual capacity shall survive the resignation or removal of such predecessor trustee, shall survive the dissolution and termination of the Trust and shall survive the termination, amendment, supplement and/or restatement of this Trust Agreement.

(d) Any successor trustee, however appointed, shall be a bank or trust company satisfying the requirements of Section 3807(a) of the Statutory Trust Act. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Trustee may be transferred, shall, subject to the preceding sentence, be the Trustee under this Trust Agreement without further act.

Section 4.7 Fees and Expenses. The Trustee shall receive as compensation for its services hereunder (i) an annual fee of \$750 payable upon the execution of this Trust Agreement, and (ii) an annual fee of \$750 payable on each anniversary of the Effective Date. The Trustee shall not have any obligation by virtue of this Trust Agreement to spend any of its own funds or to take any action that could result in its incurring any cost or expense.

Section 4.8 Independent Director Provisions. During the term of this Trust Agreement (i) at all times there shall be, and the Trust shall cause there to be, at least one Independent Director, and the Trustee shall be an Independent Director; (ii) the Trustee shall not take any Material Action which, under the terms of the Certificate of Trust or Trust Agreement requires unanimous vote of the trustees or managers of the Trust, unless at the time of such action there shall be at least one trustee who is an Independent Director; (iii) the Trust shall not, without the unanimous written consent of its Trustee or Manager, including the Independent Director, on behalf of itself, take any Material Action or any action that might cause the Trust to become insolvent, and when voting with respect to such matters, the Trustee shall, to the fullest extent permitted by law, including Section 18-1101(c) of Chapter 18 of Title 6 of the Delaware Code, as amended from time to time (the “Act”), and notwithstanding any duty otherwise existing at law or in equity, consider only the interests of the Trust (including its respective creditors), and except for its duties to the Trust with respect to voting on matters as set forth immediately above (which duties shall extend to the constituent equity owners and/or beneficiaries of the Trust solely to the extent of their respective economic interests in the Trust, but shall exclude (A) all other interests of such constituent equity owners and/or beneficiaries, (B) the interests of other Affiliates of the Trust, and (C) the interests of any group of Affiliates of which the Trust is a part), the Trustee shall not have any fiduciary duties to such constituent equity owners or beneficiaries, any officer or any other Person; provided, however, the foregoing shall not eliminate the implied contractual covenant of good faith and fair dealing; and (iv) no Trustee of the Trust may be removed or replaced other than as a result of an Independent Director Event, and any such removal or replacement shall not occur unless the Trust provides Lender with not less than five (5) Business Days’ prior written notice of (a) any proposed removal of Trustee, together with a statement as to the reasons for such removal, and (b) the identity of the proposed replacement Trustee, together with a certification that such replacement satisfies the requirements set forth in the organizational documents (including, without limitation, this Trust Agreement) for a Trustee; provided, however, no resignation or removal of the Trustee shall be effective until a successor Trustee is appointed and has accepted his or her appointment.

ARTICLE 5 CONCERNING THE MANAGER

Section 5.1 Power and Authority. The activities and affairs of the Trust shall be managed exclusively by or under the direction of the Manager. Except where this Trust Agreement requires the joint action of the Manager and the Trustee, the Manager shall have full power and authority, and is hereby authorized and empowered, to manage the Trust Estate and the activities and affairs of the Trust, execute and deliver all documents (including, without limitation, the Transaction Documents) for or on behalf of the Trust, and cause the Trust to sue or be sued under its name, subject to and in accordance with the terms and provisions of this Trust Agreement; provided, however, that the Manager shall have no power to engage on behalf of the Trust in any activities that the Trust could not engage in directly; further provided, however, that the Manager shall at all times be subject to the control and authority of the Trust. The Manager shall have the power and authority, and is hereby authorized, empowered and directed by the Trust, to enter into, execute and deliver, and to cause the Trust to perform its obligations under, each of the Transaction Documents to which the Trust is or becomes a party or signatory and, in furtherance thereof, the Class 2 Beneficial Owner, at any time prior to the issuance of the Conversion Notice, may confirm such authorization, empowerment and direction and otherwise direct the Manager in connection

with the management of the activities and affairs of the Trust. The Manager may, in its sole discretion, employ such Persons (on its own behalf, or on behalf of the Trust, as the case may be), including Affiliates of the Manager, as it deems necessary for the efficient operation of the Trust.

Section 5.2 Manager's Capacity. The Manager acts solely as an agent of the Trust and not in its individual capacity, and all Persons having any claim against the Manager by reason of the transactions contemplated by this Trust Agreement, the Transaction Documents or any other document shall look only to the Trust Estate for payment or satisfaction thereof. Notwithstanding any provision of this Trust Agreement to the contrary, the Manager shall not have any liability to any Person except for (i) its own willful misconduct, bad faith, fraud or gross negligence in the performance of its duties as Manager under this Trust Agreement and (ii) the obligations set forth in Section 4.5.

Section 5.3 Duties.

(a) The Manager has primary responsibility for performing the administrative actions set forth in this Section 5.3. In addition, the Manager shall have the obligations with respect to a Conversion and a potential Disposition of the Trust Estate as set forth in Article 9. The Manager shall not have any duty or obligation under or in connection with this Trust Agreement, the Trust or any transaction or document contemplated hereby, except as expressly provided by the terms of this Trust Agreement, and no implied duties or obligations shall be read into this Trust Agreement against the Manager. The right of the Manager to perform any discretionary act enumerated herein shall not be construed as a duty. To the fullest extent permitted by applicable law, including without limitation Section 3806 of the Statutory Trust Act, the Manager's duties (including fiduciary duties, if any) and liabilities relating thereto to the Trust and the Beneficial Owners shall be restricted to those duties (including fiduciary duties, if any) expressly set forth in this Trust Agreement and liabilities relating thereto. The Manager expressly reserves the right to invest in, pursue, develop, own, manage, operate or otherwise participate in (including, without limitation, as an investor in, lender to or consultant or advisor to, or director, officer or manager of, any other entity) all business opportunities of any nature for its own account, including opportunities that may directly or indirectly compete with the Trust or the Real Estate. The Manager shall not have any obligation to first present such business opportunities to the Trust or allow the Trust or any Beneficial Owners to share or participate in such other investments or activities or to the income or proceeds derived therefrom.

(b) Without limiting the generality of Section 5.3(a), upon and after the issuance of the Conversion Notice, the Manager is hereby authorized and directed, as agent of the Trust, to take each of the following actions necessary to conserve and protect the Trust Estate:

- (1) acquire title to the Real Estate subject to the tenant leases;
- (2) enter into and comply with the terms of the Financing Documents;
- (3) enter into the Master Lease Agreement with the Master Lessee;
- (4) collect rents and make distributions in accordance with Article 7;

(5) enter into any agreement for purposes of enabling one or more of the Beneficial Owners to complete exchanges of real property with a Qualified Intermediary as defined in Code Section 1031 (provided that in no event shall the Trust acquire title to any real property other than the Real Estate);

(6) notify the relevant parties of any default by them under the Transaction Documents; and

(7) solely to the extent necessitated by the bankruptcy or insolvency of the Master Lessee, if the Trust has not terminated under Section 9.2, enter into a new Master Lease Agreement or other arrangement with respect to the Real Estate or renegotiate or refinance any debt secured by the Real Estate (including, without limitation, the Loan).

(c) The Manager shall keep customary and appropriate books and records relating to the Trust and the Trust Estate and shall certify reports regarding same to the Lender (if required by the Financing Documents). The Manager will keep customary and appropriate books and records of account for the Trust at the Manager's principal place of business. The Owners (or their duly authorized representatives) may inspect, examine and copy the Trust's books and records at any time during normal business hours. The Manager shall maintain appropriate books and records in order to provide reports of income and expenses to each Beneficial Owner as necessary for such Beneficial Owner to prepare their income tax returns.

(d) The Manager shall promptly furnish (1) to the Beneficial Owners copies of all reports, notices, requests, demands, certificates, financial statements and any other writings required to be distributed to them pursuant to the Transaction Documents (unless the Manager reasonably believes the same to have been sent directly to the Beneficial Owners) and (2) to the Lender all documents required by the Financing Documents.

(e) The Manager shall not be required to act or refrain from acting under this Trust Agreement or the Financing Documents if the Manager reasonably determines, or has been advised by counsel, that such actions or lack of action may result in personal liability, unless the Manager is indemnified by the Trust and the Beneficial Owners against any liability and costs (including reasonable legal fees and expenses) in a manner and form reasonably satisfactory to the Manager.

(f) The Manager shall not, on its own behalf (as opposed to actions that the Manager is required to perform on behalf of the Trust), have any duty to (1) (i) file, record or deposit any document, (ii) maintain any such filing, recording or deposit or (iii) refile, rerecord or redeposit any such document, (2) obtain or maintain any insurance on the Real Estate, (3) maintain the Real Estate, (4) pay or discharge any tax levied against any part of the Trust Estate, (5) confirm, verify, investigate or inquire into the failure to receive any reports or financial statements from any party obligated under the Financing Documents to provide such reports or financial statements, (6) inspect the Real Estate at any time, or (7) ascertain or inquire as to the performance or observance of any of the covenants of any Person under the Financing Documents.

(g) The Manager shall manage, control, dispose of or otherwise deal with the

Trust Estate consistent with its duties to conserve and protect the Trust Estate, subject to any restrictions required by the Financing Documents, the Master Lease Agreement or otherwise as provided in this Trust Agreement.

(h) The Manager shall provide to each Person who becomes a Beneficial Owner a copy of this Trust Agreement at or before the time, in the sole discretion of the Manager, such Person becomes a Beneficial Owner.

(i) The Manager shall provide to the Trustee a copy of the Ownership Records contemporaneously with each revision thereto.

(j) All payments to be made by the Manager under this Trust Agreement shall be made from the Trust Estate.

Section 5.4 Fees and Expenses. Subject to the availability of excess cash flow after the payment of all amounts then due and payable under the Financing Documents and expenses of owning and operating the Real Estate, the Manager will receive an annual asset management fee of 0.50% of the Purchase Price (as defined in the Memorandum) during the hold period, as well as the fee set forth in Section 9.5. Notwithstanding anything to the contrary contained herein, so long as any portion of the Loan is outstanding: (A) payment of any fee under this Section 5.4 shall be fully subordinate to the Loan and shall not constitute a claim against the Trust in the event its cash flow is insufficient to pay its obligations, nor shall it constitute a claim against any beneficial owner of an interest in the Trust, and (B) no payment of any fee under this Section 5.4 shall be payable from amounts allocable to the Lender pursuant to the Financing Documents.

Section 5.5 Disposition of Trust Estate by Manager Is Binding. Subject to the terms of the Master Lease Agreement, any Disposition or other conveyance of the Trust Estate or any part thereof by the Manager pursuant to the terms of this Trust Agreement shall bind the Trust and the Beneficial Owners and be effective to transfer or convey all rights, title and interest of the Trust and the Beneficial Owners in and to that portion of the Trust Estate sold or otherwise conveyed.

Section 5.6 Removal/ Resignation; Succession.

(a) The Manager may resign at any time by giving at least 60 days' prior written notice to the Trustee and the Lender.

(b) The Trustee may at any time remove the Manager for cause by written notice to the Manager. For purposes of this Section 5.7, "cause" shall only result from the willful misconduct, bad faith, fraud or gross negligence of the Manager.

(c) Such resignation or removal as set forth above shall be effective upon the acceptance of appointment by a successor manager as hereinafter provided. In case of the removal or resignation of the Manager, with the prior written consent of the Lender while the Loan is outstanding, the Trustee may appoint a successor manager by written instrument provided that if the Loan or any portion thereof is outstanding a Lender Consent has been obtained. In case of the resignation of the Manager, if a successor Manager shall not have been appointed within 60 days after the Manager gives notice of its resignation, the Trustee or any of the Beneficial Owners may

apply to any court of competent jurisdiction in the United States to appoint an interim successor manager to act until such time, if any, as a successor manager shall have been appointed as provided above and provided that a Lender Consent to such appointment has been obtained if the Loan or any portion thereof is outstanding. Any successor manager so appointed by such court shall immediately and without further act be superseded by a successor manager appointed as provided above within one year from the date of the appointment by such court. Any successor manager, however appointed, shall execute and deliver to its predecessor Manager an instrument accepting such appointment, and thereupon such successor, without further act, shall become vested with all the rights, powers and duties of the predecessor Manager in the trusts hereunder with like effect as if originally named the Manager herein. Notwithstanding the foregoing, upon the written request of such successor manager, such predecessor manager shall execute and deliver an instrument transferring to such successor, upon the trusts herein expressed, all the rights, powers and duties of such predecessor manager and such predecessor manager shall duly assign, transfer, deliver and pay over to such successor manager all monies or other property then held by such predecessor trustee upon the trusts herein expressed. Any right of the Beneficial Owners against a predecessor manager in its individual capacity shall survive the resignation or removal of such predecessor manager, the dissolution and termination of the Trust and the termination, amendment, supplement and/or restatement of this Trust Agreement. Notwithstanding anything to the contrary contained in this Trust Agreement, so long as the Loan or any portion thereof is outstanding, the initial Manager and any successor Manager shall, at all times be a special purpose bankruptcy remote entity.

ARTICLE 6

BENEFICIAL INTERESTS

Section 6.1 Issuance of Class 1 and Class 2 Beneficial Ownership Certificates.

(a) The Trust shall not be required to issue certificates to represent the Class 1 and Class 2 Beneficial Interests. The Percentage Share of the Class 2 Beneficial Owner prior to the issuance of any Class 1 Beneficial Interests (pursuant to Sections 6.1(b)) shall be 100%.

(b) Promptly after the issuance of the Conversion Notice pursuant to Section 6.3, the Ownership Records shall be updated with respect to each Investor who has executed a Purchase Agreement and contributed all cash required by it to be contributed to the Trust. No portion of the cash contributed by the Investors to the Trust will be placed into any Reserves with respect to the Real Estate. The amount of cash contributed by, and the Percentage Share of, each Investor shall be determined by the Manager and shall be set forth in the Purchase Agreement for each Investor. Notwithstanding the foregoing, no Class 1 Beneficial Owner (together with its Affiliates), and no assignee or transferee of a Class 1 Beneficial Interest (together with its Affiliates), may own more than a 19.99% Percentage Share of the aggregate Class 1 Beneficial Interests so long as the Loan is outstanding unless consented to in writing by the Lender, and any purported issuance of a Class 1 Beneficial Interest in violation of the foregoing, to the fullest extent permitted by applicable law, shall be null, void and of no effect whatsoever.

Section 6.2 Certain Rights and Powers of Class 2 Beneficial Owner Prior to Conversion Notice. Prior to the issuance of the Conversion Notice, the Class 2 Beneficial Owner shall have

the right and power, at its sole discretion (but subject to the restrictions in Article 3), to:

- (a) Contribute additional assets to the Trust;
- (b) Cause the Trust to negotiate or re-negotiate loans or leases; and
- (c) Cause the Trust to sell all or any portion of its assets and re-invest the proceeds of such sale or sales.

It is expressly understood by the Class 2 Beneficial Owner that these powers are inconsistent with the ability to classify the Trust as an “investment trust” under Regulations Section 301.7701-4(c), and the Trust shall not be so classified prior to the issuance of the Conversion Notice.

Section 6.3 Issuance of Conversion Notice. The Class 2 Beneficial Owner may, at any time in its sole discretion as long as any Class 2 Beneficial Interests are outstanding, issue the Conversion Notice to the Manager, with a copy to the Trustee; provided, however, that the Conversion Notice must be issued no later than three days before the Closing Date. Upon issuance of the Conversion Notice, the Class 2 Beneficial Owner shall no longer have any of the rights or powers set forth in Section 6.2. Instead, the Class 2 Beneficial Owner shall have the same rights and powers as apply to a Class 1 Beneficial Owner (as set forth in Section 6.4). In no event may any Class 1 Beneficial Interests be issued to Investors until at least three days after the issuance of the Conversion Notice.

Section 6.4 Rights and Powers of Class 1 Beneficial Owners. The sole right of the Class 1 Beneficial Owners shall be to receive distributions from the Trust if, as and when made as a result of the Trust’s ownership or Disposition of the Real Estate. The Class 1 Beneficial Owners shall not have the right or power to direct in any manner the actions of the Trust, the Master Lessee, the Depositor or the Manager in connection with the management or operation of the Trust or the Real Estate. The Class 1 Beneficial Owners shall have no voting rights, including as to whether or not the Real Estate is sold pursuant to this Trust Agreement. In addition, the Class 1 Beneficial Owners shall not have the right or power to:

- (a) Contribute additional assets to the Trust;
- (b) Cause the Trust to negotiate or re-negotiate loans or leases; or
- (c) Cause the Trust to sell all or any portion of its assets and re-invest the proceeds of such sale or sales.

Section 6.5 Cash Contributed by Investors. The cash contributed by the Investors in exchange for Class 1 Beneficial Interests shall be used by the Trust to (a) acquire the Real Estate and pay all such costs, fees and expenses associated therewith (including any of those incurred by the Depositor and the Manager in the discretion of the Manager and any closing costs incurred in connection with the Loan), (b) pay commissions, costs and other expenses of the Trust’s offering of Class 1 Beneficial Interest (as the Manager deems appropriate in its sole discretion) and (c) redeem the Depositor’s Class 2 Beneficial Interests on a proportionate basis to such contributions, with each Class 2 Beneficial Interest being redeemed for (i) approximately \$1,000 to be paid

directly to the Depositor, or such other amounts as determined by the Manager in its sole discretion. Upon the sale of all 100 of the Class 1 Beneficial Interests, the Depositor will no longer have any Beneficial Interest in the Trust and no Class 2 Beneficial Interests will remain outstanding.

In the event not all Class 2 Beneficial Interests are redeemed pursuant to this Section 6.5 by 12 months after the Closing Date, the Class 2 Beneficial Owner shall surrender to the Trust for no additional consideration its remaining Class 2 Beneficial Interests.

Section 6.6 Agreement to be Bound. Any Beneficial Owner shall be deemed, by virtue of execution of the Purchase Agreement and the acceptance of such Beneficial Ownership Interest to have agreed, accepted and become bound by, and subject to, the provisions of this Trust Agreement.

Section 6.7 Ownership Records. The Manager shall at all times be the Person at whose office a Beneficial Interest may be presented or surrendered for registration of transfer or for exchange and where notices and demands to or upon the Trust in respect of a Beneficial Interest may be served. The Manager shall keep Ownership Records, which shall include records of the transfer and exchange of Beneficial Interests. Notwithstanding any provision of this Trust Agreement to the contrary, transfer of a Beneficial Interest in the Trust, or of any right, title or interest therein, shall occur only upon and by virtue of the entry of such transfer in the Ownership Records. In the event of any transfer permitted under the terms of this Trust Agreement, (a) the Manager shall issue new Ownership Records setting forth the current Percentage Share in the Trust held by such new Beneficial Owner, (b) the transferring Beneficial Owner shall surrender its Beneficial Interest for cancellation and (c) if applicable, the Manager shall issue new Ownership Records setting forth the Beneficial Interest retained by any transferring Beneficial Owner. Beneficial Interests shall be non-transferable and may not be negotiated, endorsed or otherwise transferred.

Section 6.8 Intentionally Omitted.

Section 6.9 Restrictions on Transfer. Subject to compliance with applicable federal and state securities laws, Section 6.10 and Section 6.11 of this Trust Agreement and any notice requirements in the Financing Documents, all or any portion of the Beneficial Interest of any Beneficial Owner may be assigned or transferred without the prior consent of any of the Trust, the Trustee, the Depositor, the Manager or the other Beneficial Owners. All expenses of any such transfer shall be paid by the assigning or transferring Beneficial Owner. Notwithstanding the foregoing, no Class 1 Beneficial Owner (together with its Affiliates), and no assignee or transferee of a Class 1 Beneficial Interest (together with its Affiliates), may own more than a 19.99% Percentage Share of the aggregate Class 1 Beneficial Interests so long as the Loan is outstanding unless consented to in writing by the Lender, and any purported issuance of a Class 1 Beneficial Interest in violation of the foregoing shall be null, void and of no effect whatsoever.

Section 6.10 Conditions to Admission of New Beneficial Owners. Any assignee or transferee of the Beneficial Interest of a Beneficial Owner shall only become a Beneficial Owner upon such assignee's or transferee's written acceptance and/or adoption of this Trust Agreement, as manifested by its execution and delivery to the Manager of this Trust Agreement or any subscription agreement for Interests provided by the Manager.

Section 6.11 Limit on Number of Beneficial Owners. Notwithstanding anything to the contrary in this Trust Agreement, at no time shall the number of Beneficial Owners exceed 99 Persons. Any transfer that results in a violation of this Section 6.11 shall, to the fullest extent permitted by applicable law, be null, void and of no effect whatsoever.

Section 6.12 Representations, Warranties, Acknowledgements and Agreements of Beneficial Owners.

(a) Each Beneficial Owner hereby represents and warrants that (1) it is an "accredited investor" as such term is defined in Rule 501 of Regulation D promulgated under the Securities Act, (2) it is not acquiring its Beneficial Interest with a view to any distribution thereof in a transaction that would violate the Securities Act or the securities laws of any state of the United States, (3) it is aware (i) of the restrictions on transfer that are applicable to the Beneficial Interests, (ii) that no Beneficial Interest has been or is expected to be registered under the Securities Act, and accordingly, all Beneficial Interests are subject to restrictions on transfer, and (iii) that no Beneficial Interest may be offered, sold, pledged, hypothecated or otherwise transferred or disposed of unless it is registered under the Securities Act and all other applicable laws of any applicable jurisdiction or an exemption therefrom is available in accordance with such laws, (4) it is aware that an investment in Beneficial Interests involves a high degree of risk of loss by the Beneficial Owner of its entire investment, and it has full cognizance of and understands all of the risk related to a purchase of Beneficial Interests, (5) it is able to bear the economic and financial risk of an investment in the Trust for an indefinite period of time, as well as the complete loss of the entire investment, (6) to the extent applicable, the execution, delivery and performance of this Trust Agreement has been duly authorized by such Beneficial Owner and do not require such Beneficial Owner to obtain any consent or approval that has not been obtained and do not contravene or result in a default under any provision of any law or regulation applicable to such Beneficial Owner or other governing documents or any agreement or instrument to which such Beneficial Owner is a party or by which such Beneficial Owner is bound, (7) this Trust Agreement is valid, binding and enforceable against such Beneficial Owner in accordance with its terms, and (8) it is (i) a citizen or resident of the U.S. (including certain former citizens and former long-term residents), (ii) a corporation (or other entity taxable as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the U.S. or of any political subdivision thereof, (iii) an estate, the income of which is subject to U.S. federal income taxation regardless of the source of such income, or (iv) a trust, if (A) the administration of the trust is subject to the primary supervision of a U.S. court and the trust has one or more U.S. persons with authority to control all substantial decisions or (B) the trust has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

(b) Each Class 1 Beneficial Owner hereby represents and warrants that it (1) understands and is aware that there are uncertainties regarding the treatment of its Class 1

Beneficial Interest as real estate for federal income tax purposes, (2) fully understands that there is risk that its Class 1 Beneficial Interest will not be treated as real estate for federal income tax purposes, (3) has independently obtained advice from its legal counsel and/or accountant regarding any like-kind exchange under Code Section 1031, including, without limitation, whether the acquisition of its Class 1 Beneficial Interest may qualify as part of a like-kind exchange, and is relying on such advice regarding the tax treatment of the Class 1 Beneficial Interests and any like-kind exchange, (4) is aware that the Internal Revenue Service (“IRS”) has issued Rev. Rul. 2004-86 (the “Revenue Ruling”) specifically addressing Delaware Statutory Trusts, the Revenue Ruling is merely guidance and is not a “safe-harbor” for taxpayers or sponsors, and, without the issuance of a private letter ruling on a specific offering, there is no assurance that its Class 1 Beneficial Interest will not be treated as a partnership interest for federal income tax purposes, (5) understands that Trust has not obtained a private letter ruling from the IRS that its Class 1 Beneficial Interest will be treated as an undivided interest in real estate as opposed to an interest in a partnership, (6) understands that the tax consequences of an investment in its Class 1 Beneficial Interest, especially the treatment of the transaction described herein under Code Section 1031 and the related “Section 1031 Exchange” rules, are complex and vary with the facts and circumstances of each individual purchaser; (7) shall, for federal income tax purposes, report the purchase of its Class 1 Beneficial Interest as a purchase by it of a direct ownership interest in the Real Estate, and (8) shall not make any claim against the Trust, the Lender or any of their Affiliates regarding (A) the determination or potential determination that the Beneficial Interests are not eligible replacement property for a tax deferred exchange of property under Section 1031 of the Code pursuant to the Revenue Ruling or (B) the tax consequences resulting from the dissolution or conversion of the Trust.

(c) The Manager may, in its sole discretion, determine to issue certificates to the Beneficial Owners representing the Beneficial Interests held by each Beneficial Owner. In the event that certificates representing Beneficial Interests are issued, such certificates will bear the following legends:

THE SECURITIES REPRESENTED BY THIS BENEFICIAL OWNERSHIP CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. WITHOUT SUCH REGISTRATION, SUCH SECURITIES MAY NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED OR DISPOSED OF AT ANY TIME WHATSOEVER, EXCEPT UPON DELIVERY TO THE MANAGER OF THE TRUST OF AN OPINION OF COUNSEL SATISFACTORY TO THE MANAGER OF THE TRUST THAT REGISTRATION IS NOT REQUIRED FOR SUCH TRANSFER AND/OR THE SUBMISSION TO THE MANAGER OF THE TRUST OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO THE MANAGER OF THE TRUST TO THE EFFECT THAT ANY SUCH TRANSFER SHALL NOT BE IN VIOLATION OF THE SECURITIES ACT AND/OR APPLICABLE STATE SECURITIES LAWS AND/OR ANY RULE OR REGULATION PROMULGATED THEREUNDER. THE SECURITIES REPRESENTED BY THIS BENEFICIAL OWNERSHIP CERTIFICATE ARE SUBJECT TO THE TERMS OF THE TRUST AGREEMENT. ANY TRANSFER OF A BENEFICIAL INTEREST IN THE TRUST, OR OF ANY RIGHT, TITLE OR INTEREST THEREIN, SHALL OCCUR IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE TRUST AGREEMENT AND ONLY UPON AND BY VIRTUE OF THE ENTRY OF SUCH TRANSFER IN THE OWNERSHIP RECORDS OF THE TRUST. THIS BENEFICIAL OWNERSHIP CERTIFICATE IS NON-TRANSFERABLE AND MAY NOT BE NEGOTIATED, ENDORSED OR OTHERWISE TRANSFERRED.

(d) Each Beneficial Owner hereby acknowledges and agrees that, in its capacity as a Beneficial Owner, it has no ability to (1) seek partition of the Trust Estate or petition for a portion of the assets of the Trust, (2) file a petition in bankruptcy on behalf of the Trust, or (3) take any action that consents to, aids, supports, solicits or otherwise cooperates in the filing of an involuntary bankruptcy proceeding involving the Trust.

(e) Each Beneficial Owner hereby acknowledges and agrees that it or any Person who Controls such Beneficial Owner is not currently identified by the Office of Foreign Assets Control, Department of the Treasury (“OFAC”) nor otherwise qualifies as an Embargoed Person.

Section 6.13 Status of Relationship. This Trust Agreement shall not be interpreted to impose a partnership or joint venture relationship on the Beneficial Owners either at law or in equity. Accordingly, no Beneficial Owner shall have any liability for the debts or obligations incurred by any other Beneficial Owner with respect to the Trust Estate or otherwise, and no Beneficial Owner shall have any authority, other than as specifically provided herein, to act on behalf of any other Beneficial Owner or to impose any obligation with respect to the Trust Estate. Neither the power to provide direction to the Trustee, the Manager or any other Person nor the exercise thereof by any Beneficial Owner shall cause such Beneficial Owner to have duties (including fiduciary duties) or liabilities relating thereto to the Trust or to any Beneficial Owner.

Section 6.14 Beneficial Owners and the Trust. The Beneficial Owners shall not have legal title to the Trust Estate. The death, incapacity, dissolution, termination or bankruptcy of any Beneficial Owner shall not result in the termination or dissolution of the Trust. Except as expressly provided herein, no Beneficial Owner has (a) an interest in specific Trust property, or (b) any right to demand and receive from the Trust an in-kind distribution of the Trust Estate or any portion thereof. In addition, each Beneficial Owner expressly waives any right, if any, under the Statutory Trust Act to seek a judicial dissolution of the Trust, to terminate the Trust or, to the fullest extent permit by applicable law, to partition the Trust Estate.

ARTICLE 7 DISTRIBUTIONS AND REPORTS

Section 7.1 Distributions in General. The Manager shall distribute the Trust’s net cash flow to the Beneficial Owners in accordance with their Percentage Share on a monthly basis (beginning with the second month after acquiring the Real Estate), after (a) paying or reimbursing the Manager for any fees or expenses incurred by the Manager on behalf of the Trust (including fees of the Trustee and the Manager), (b) retaining such additional amounts as the Manager determines are necessary to pay anticipated ordinary current and future Trust expenses and taxes (“Reserves”) and (c) to satisfy debt service and related expenses on the Loan and any other requirements imposed under the Financing Documents or the Master Lease Agreement. It is anticipated that the cash generated from the operations of the Trust shall generally consist of the rent paid under the Master Lease Agreement. Reserves and any other cash retained pursuant to this Section 7.1 shall be invested by the Manager only in short-term obligations of (or guaranteed by) the United States or any agency or instrumentality thereof and in certificates of deposit or interest-bearing bank accounts of any bank or trust companies having a minimum stated capital

and surplus of \$100,000,000.00 (collectively, a “Permitted Investment”). All such obligations must mature prior to the next distribution date, and be held to maturity. All amounts distributable to the Beneficial Owners pursuant to this Trust Agreement shall be paid by check or in immediately available funds by transfer to a banking institution with bank wire transfer facilities for the account of such Beneficial Owner, as instructed from time to time by such Beneficial Owner on the last Business Day of each calendar month.

Section 7.2 Distributions upon Dissolution. In the event of the Trust’s dissolution in accordance with Article 9, all of the Trust Estate as may then exist after the winding up of its affairs in accordance with the Statutory Trust Act (including, without limitation, subsections (d) and (e) of Section 3808 of the Statutory Trust Act and providing for all costs and expenses, including any income or transfer taxes which may be assessed against the Trust, whether or not by reason of the dissolution of the Trust) shall, subject to Section 9.2, be distributed to those Persons who are then Beneficial Owners in their respective Percentage Shares.

Section 7.3 Cash and other Accounts; Reports by the Manager. Subject to the Financing Documents, the Manager shall be responsible for receiving all cash from the Master Lessee and placing such cash into one or more accounts as required under the distribution and investment obligations of the Trust under Section 7.1. The Manager shall furnish annual reports to each of the Beneficial Owners as to the amounts of cash received from the Master Lessee, the expenses incurred by the Trust with respect to the Real Estate (if any), the amount of any Reserves and other amount applied to meet requirements under the Financing Documents, and the amount of the cash distributed by the Trust to the Beneficial Owners. In addition, the Loan Documents required the Trust to make certain reserve payments in connection with the Real Estate, which included an operations and asset management reserve that was withheld from Loan proceeds by Lender in the amount of \$1,500,000 on the Loan closing date (the “Trust Operations and Asset Management Reserve”).

ARTICLE 8 RELiance; REPRESENTATIONS; COVENANTS

Section 8.1 Good Faith Reliance. Neither the Trustee nor the Manager shall incur any liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper reasonably and in good faith believed by such the Trustee or the Manager, as applicable, to be genuine and signed by the proper party or parties thereto. As to any fact or matter, the manner of ascertainment of which is not specifically described herein, the Trustee and the Manager may for all purposes hereof rely on a certificate, signed by or on behalf of the Person executing such certificate, as to such fact or matter and such certificate shall constitute full protection of the Trustee and/or the Manager for any action taken or omitted to be taken by them in good faith in reliance thereon. The Trustee and the Manager may conclusively rely upon any certificate furnished to such Person that on its face conforms to the requirements of this Trust Agreement. Each of the Trustee and the Manager may (a) exercise its powers and perform its duties by or through such attorneys and agents as it shall appoint with due care, and it shall not be liable for the acts or omissions of such attorneys and agents; and (b) consult with counsel, accountants and other experts, and shall be entitled to rely upon the advice of counsel, accountants and other experts, selected by it in good faith and shall be

protected by the advice of such counsel, accountants and other experts in anything done or omitted to be done by it in accordance with such advice. In particular, no provision of this Trust Agreement shall be deemed to impose any duty on the Trustee or the Manager to take any action if such Person shall have been advised by counsel, accountants or other experts that such action may involve it in personal liability or is contrary to the terms hereof or to applicable law. For all purposes of this Trust Agreement, the Trustee shall be fully protected in relying upon the most recent Ownership Records delivered to it by the Manager.

Section 8.2 No Representations or Warranties as to Certain Matters.

(a) NEITHER THE TRUSTEE NOR THE MANAGER, EITHER WHEN ACTING HEREUNDER IN ITS CAPACITY AS TRUSTEE OR MANAGER OR IN ITS INDIVIDUAL CAPACITY, MAKES OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION, WARRANTY OR COVENANT, EXPRESS OR IMPLIED, WITH REGARD TO THE TRUST ESTATE OR ANY PART THEREOF, AS TO (1) TITLE, LOCATION, VALUE, CONDITION, WORKMANSHIP, DESIGN, COMPLIANCE WITH SPECIFICATIONS, CONSTRUCTION, OPERATION, MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE, (2) ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, (3) ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, (4) ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT, OR (5) ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.

(b) NEITHER THE TRUSTEE NOR THE MANAGER, EITHER WHEN ACTING HEREUNDER AS TRUSTEE OR MANAGER OR IN ITS INDIVIDUAL CAPACITY, MAKES ANY REPRESENTATION, WARRANTY OR COVENANT AS TO THE VALIDITY OR ENFORCEABILITY OF TRANSACTION DOCUMENTS OR AS TO THE CORRECTNESS OF ANY STATEMENT CONTAINED IN ANY THEREOF, EXCEPT AS EXPRESSLY MADE BY THE TRUSTEE OR THE MANAGER IN ITS INDIVIDUAL CAPACITY. EACH OF THE TRUSTEE AND THE MANAGER REPRESENTS AND WARRANTS TO THE BENEFICIAL OWNERS THAT IT HAS AUTHORIZED, EXECUTED AND DELIVERED THIS TRUST AGREEMENT.

**ARTICLE 9
TERMINATION**

Section 9.1 Termination in General. The Trust shall not have perpetual existence and instead shall be dissolved and wound up in accordance with Section 3808 of the Statutory Trust Act, after the issuance of the Conversion Notice, upon the first to occur of (a) the expiration of 15 calendar years following the Closing Date; (b) a Conversion pursuant to Section 9.2; or (c) the Disposition of the Real Estate pursuant to Section 9.3, at which time each Beneficial Owner's Percentage Share of the Trust Estate shall be distributed to such Beneficial Owner in accordance with Section 7.2 in full and complete satisfaction and redemption of its Beneficial Interests; provided, however, that in connection with clauses (a) and (c) above, the Loan shall have been fully defeased or repaid, in each case in accordance with the terms of the Financing Documents.

Section 9.2 Conversion to LLC.

(a) Subject to the terms and conditions of the Financing Documents, the Manager shall be authorized, and shall take all actions necessary, to convert the Trust into a LLC in compliance with the Statutory Trust Act that has a limited liability company agreement substantially the same as that set forth in Exhibit D with such modifications thereto as may be approved by Lender in writing or required to comply with the terms and conditions of the Financing Documents (the “LLC Agreement”) and, if the Loan or any portion thereof is then outstanding, is a special purpose bankruptcy remote entity (that satisfies the conditions of Section 3.2(c)) upon the first to occur of the following:

(1) the Manager determines, in its sole discretion, that (A) the Master Lessee has failed to timely pay rent due under the Master Lease Agreement and any applicable notice and cure provisions in the Master Lease Agreement, if any, have expired, (B) the Trust Estate is in jeopardy of being lost due to a default or imminent default on the Loan (and in the case of either foregoing clause (A) and/or (B), the Manager is prohibited pursuant to Section 3.3 hereof from taking action that it believes necessary or appropriate to address such situation), (C) the Master Lessee files for bankruptcy, seeks appointment of a receiver, makes an assignment for the benefit of its creditors or there occurs any similar event, (D) the Loan will commence hyper-amortization within 90 days under which all cash flow from the Real Estate will need to be utilized to pay down the principal and interest on the Loan, or (E) the Trust is otherwise in violation of Section 3.2(c), and the Manager determines, in its sole discretion, that dissolution of the Trust is necessary and appropriate to preserve and protect the Trust Estate for the benefit of the Beneficial Owners;

(2) if the Manager determines, in its sole discretion, that the Loan, including all interest, principal and other amounts payable to the Lender in connection with the Loan, if any, has been paid in full and the Trust Estate has not been sold pursuant to Section 9.3 within a reasonable period as determined by the Manager in its sole discretion;

(3) upon termination of the Trust under Section 9.1(a);

(4) upon an Event of Default;

(5) if an executed commitment from an institutional lender to refinance the Loan (which commitment shall have a loan amount at closing at least equal to the outstanding principal balance of the Loan) is not delivered to Lender within ninety (90) days prior to the Maturity Date;

(6) so long as the Loan remains outstanding, any event occurs that causes the Manager to cease to be the manager of the Trust unless a replacement manager acceptable to the Lender has been appointed; or

(7) if Lender determines, in good faith, that an Event of Default is imminent, Lender shall have the right, upon written notice (a “Lender Conversion Notice”) to direct the Trustee to cause a Conversion.

(b) In connection with the conversion contemplated under Section 9.2(a), the Manager shall (i) cause the Beneficial Interests of the Beneficial Owners to be exchanged or converted to Class A Units in the LLC (as defined in the LLC Agreement) in proportion to their Percentage Shares (such exchange or conversion, the “Conversion”); (ii) be designated as the manager of the LLC formed as referenced herein and shall execute all necessary documents, including, without limitation, the LLC Agreement on behalf of the new members of the LLC; (iii) cause the LLC to acquire, by operation of law, contract or otherwise, the Trust Estate subject to the then outstanding obligations of the Trust under the Financing Documents and the Master Lease Agreement; (iv) cause the LLC to assume, by operation of law, contract or otherwise, the Trust’s obligations under the Financing Documents and Master Lease Agreement, which assumption shall be evidenced by documents approved in writing by Lender; and (v) take all other actions necessary to complete the termination and winding up of the Trust, the formation of the LLC and the Conversion in accordance with applicable Delaware laws relating to the Trust and the Delaware Limited Liability Company Act.

(c) If any portion of the Loan remains outstanding and the Manager fails to dissolve the Trust when required to do so pursuant to this Section 9.2 (or if, pursuant to the Financing Documents, the Trustee is required to terminate the Trust Agreement), the duties of the Manager described in this Section 9.2 shall become solely the duties of the Trustee upon written notice from Lender, and the Trustee shall dissolve the Trust and distribute the Trust Property to the Beneficial Owners in the manner provided in Section 9.3 below. At no time shall the Trustee be responsible to fulfill the obligations set forth in this Section 9.2 unless it shall have received proper written notice.

It is the express intent of this Trust Agreement that no Conversion be made under this Section 9.2 except in the circumstances enumerated above in Section 9.2(a) which the parties hereto agree constitute rare and unexpected situations in which such conversion and distribution is necessary to prevent the loss of the Trust Estate due to such circumstances. In addition, simultaneously with any Conversion, the Manager, on behalf of the Trust, shall cause such LLC to satisfy all requirements for such transaction as set forth in the Financing Documents (including without limitation an assumption of the Financing Documents by such LLC).

Section 9.3 Disposition of the Real Estate. Subject to the terms of the Master Lease Agreement, the Leases and the Financing Documents, the Trust shall sell, transfer, merge or exchange pursuant to an exchange roll-up transaction pursuant to Section 721 of the Code or a Section 1031 of the Code with respect to the Real Estate at any time after the Manager determines, in its sole discretion, that any such sale, disposition, transfer, merger or exchange roll-up transaction pursuant to Section 721 of the Code or Section 1031 of the Code with respect to the Real Estate (collectively, a “**Disposition**”) would be reasonable using its commercially reasonable business judgment. Any such Disposition of the Real Estate shall occur as soon as practicable after the Manager has made such determination. In connection with any Disposition of the Real Estate under this Section 9.3, the Manager shall be responsible for (a) determining the fair market value of the Real Estate (provided that the Manager will obtain a third party valuation of the Real Estate if such Disposition is being made through an Affiliated aggregation or acquisition and any such Disposition would result in less than a 100% return of the Beneficial Owners’ original capital contributions), (b) conducting the Disposition of the Real Estate, (c) providing services to facilitate

the marketing and Disposition of the Real Estate in connection with the Disposition of the Real Estate, and (d) distributing the balance of the Trust Estate (net of any fee due to the Manager) to the Beneficial Owners after payment of all amounts necessary to pay or defease, as applicable, the Loan in full in accordance with the Financing Documents and any other expenses or obligations of the Trust. The Manager intends to take reasonable actions to provide the Beneficial Owners with the option to (a) complete a tax-deferred 721 exchange into the acquiring ExchangeRight REIT; (b) complete another tax-deferred 1031 exchange; (c) cash out (not tax-deferred); or (d) any combination of the above exit options. There is no guarantee that these options will be available to the Beneficial Owners upon Disposition. Any Disposition of the Real Estate shall be on an “as is, where is” basis and subject to customary seller representations or warranties by the Trust, the Trustee or the Manager.

Section 9.4 Liability of Manager. To the fullest extent permitted by applicable law, the Manager shall be fully protected in any such determination made in good faith pursuant to Sections 9.2 and 9.3 and shall have no liability to any Person, including without limitation the Beneficial Owners, Trust or the Trustee, with respect thereto.

Section 9.5 Manager’s Fee on Disposition. If the Manager provides services in connection with any Disposition of the Real Estate under Section 9.3 and if upon such Disposition of the Real Estate the gross proceeds including any reserves are in excess of \$18,732,000 (in cash or in kind) and subject in all respects to the repayment of the Loan in full, the Manager will be entitled to receive a fee equal to 2.0% of the gross proceeds of any such Disposition of the Real Estate pursuant to the Trust Agreement, with such amount to be in addition to any payments to unrelated third-party real estate brokers that the Trust hires to sell the Real Estate and any payments to buyer’s brokers.

Section 9.6 Certificate of Cancellation. Upon the completion of the dissolution and winding up of the Trust, the Trustee shall cancel the Certificate of Trust by executing and causing a certificate of cancellation to be filed in the office of the Secretary of State (as well as undertaking any other means then required under applicable law).

ARTICLE 10 MISCELLANEOUS

Section 10.1 Limitations on Rights of Other Persons. Nothing in this Trust Agreement, whether express or implied, shall provide to any Person, other than the Depositor, the Trustee, the Manager, the Beneficial Owners and the Trust, any legal or equitable right, remedy or claim hereunder.

Section 10.2 Successors and Assigns. All covenants and agreements contained herein shall be binding upon and inure to the benefit of the Depositor, the Trustee, in its individual capacity and as Trustee, the Manager, the Beneficial Owners, the Trust and their successors and assigns, all as herein provided. Any request, notice, direction, consent, waiver or other writing or action by any such Person shall bind its successors and assigns.

Section 10.3 Usage of Terms. With respect to all terms in this Trust Agreement: (a) the

singular includes the plural and the plural includes the singular; (b) words importing any gender include the other gender; references to “writing” include printing, typing, lithography and other means of reproducing words in a visible form; (c) references to agreements and other contractual instruments include all subsequent amendments thereto or changes therein entered into in accordance with their respective terms and not prohibited by this Trust Agreement; (d) references to Persons include their successors and permitted assigns; and (e) the term “including” means “including without limitation.”

Section 10.4 Headings. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 10.5 Side Letters. The Manager reserves the right, in its sole and absolute discretion, to agree with a Beneficial Owner to waive or modify the application of any provision of this Trust Agreement or fee or expense in connection with the offering with respect to such Beneficial Owner without obtaining the consent of any other Beneficial Owner. Accordingly, the Trust and the Manager may enter into side letters or other writings with one or more Beneficial Owners that have the effect of establishing rights under, or altering or supplementing the terms of, this Trust Agreement or any subscription agreement or purchase agreement for Interests (including with any of its Affiliates that may invest in the Trust). Notwithstanding the foregoing, in no event shall (i) any waiver or modification of any provision of the Trust Agreement, or (ii) any side letter or other writings, be permitted to the extent the tax treatment of the Trust or the Investors would be impacted.

Section 10.6 Amendments. To the fullest extent permitted by applicable law, this Trust Agreement may not be supplemented or amended, and no term or provision hereof may be waived, discharged or terminated orally, but only by a signed writing executed by and among the Manager and the parties adversely affected, if any. In addition, so long as the Loan or any portion thereof is outstanding, no supplement, amendment, waiver, discharge or termination of this Trust Agreement or any provision hereof shall be effective unless a Lender Consent has been obtained with respect thereto. Notwithstanding anything to the contrary contained in the foregoing or elsewhere in this Trust Agreement, Manager shall have the right, acting alone, to amend this Trust Agreement pursuant to a request of Lender, if Lender has determined that such amendment is necessary in order to satisfy the requirements of any Rating Agencies, provided that no such amendment shall increase Trustee’s obligations or decrease Trustee’s rights under this Trust Agreement.

Section 10.7 Notices. All notices, consents, directions, approvals, instructions, requests and other communications required or permitted by the terms hereof shall be in writing, and given by (i) overnight courier, or (ii) hand delivery and shall be deemed to have been duly given when received. Notices shall be provided to the parties at the addresses specified below.

If to the Depositor:	ExchangeRight Real Estate, LLC 1055 E. Colorado Blvd., Suite 310 Pasadena, CA 91106 Attention: Investor Relations
If to the Manager:	ExchangeRight Asset Management, LLC 1055 E. Colorado Blvd., Suite 310 Pasadena, CA 91106 Attention: Investor Relations
If to the Trust:	ExchangeRight Value-Add Portfolio 3 DST Care of ExchangeRight Asset Management, LLC 1055 E. Colorado Blvd., Suite 310 Pasadena, CA 91106 Attention: Investor Relations
If to the Trustee:	Gregory Harrison c/o Stewart Management Company Farmers Bank Building, Suite 1410 301 North Market Street Wilmington, Delaware 19801

If to a Beneficial Owner, at such Person's address as specified in the most recent Ownership Records.

From time to time the Depositor, the Trustee, the Trust or the Manager may designate a new address for purposes of notice hereunder by notice to the others and any Beneficial Owner may designate a new address for purposes of notice hereunder by notice to the Manager.

Section 10.8 Governing Law. This Trust Agreement shall be governed by and construed and enforced in accordance with the laws of the state of Delaware (without regard to conflict of law principles). The laws of the state of Delaware pertaining to trusts (other than the Statutory Trust Act) shall not apply to this Trust Agreement.

Section 10.9 Counterparts. This Trust Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

Section 10.10 Severability. Any provision of this Trust Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction only, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, each of the parties hereby waives any provision of applicable law that renders any such provision prohibited or unenforceable in any respect.

Section 10.11 Signature of Class 1 Beneficial Owners. Each Investor will accept and/or adopt this Trust Agreement, as manifested by its execution and delivery to the Manager of this Trust Agreement or any subscription agreement for Interests provided by the Manager. By executing a signature page to such agreement, each Investor thereby acknowledges and agrees to be bound by the terms of this Trust Agreement and the LLC Agreement when and if the LLC is formed and pursuant to Section 19.19 of the LLC Agreement. In addition, in light of their agreement to be bound by the LLC Agreement pursuant to this Section 10.10, each Investor thereby acknowledges and agrees that as of the Conversion Date (as defined in the LLC Agreement) (i) each Investor shall be deemed to have executed the LLC Agreement and (ii) the LLC Agreement shall be fully enforceable against each Investor, notwithstanding the lack of such Investor's actual signature thereon.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the parties has caused this Trust Agreement to be duly executed as of the day and year first above written.

THE DEPOSITOR:

ExchangeRight Real Estate, LLC

By: [Signature]
Warren Thomas, Manager

THE MANAGER:

ExchangeRight Asset Management, LLC

By: ExchangeRight Real Estate, LLC; its sole member

By: [Signature]
Warren Thomas, Manager

THE TRUSTEE:

[Signature]
Gregory Harrison, Trustee

State of Delaware)
County of New Castle) ss.

On this 21st day of February, 2023 before me Elizabeth Beachell the undersigned trustee, personally appeared Gregory Harrison known personally to me to be the Trustee of the above named Trust and acknowledged that he, as a trustee being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Trust by himself as trustee.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

[Signature]
Notary Public/Commissioner of Oath

My Commission Expires April 20, 2024

(SEAL)

ELIZABETH ANN BEACHELL
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires April 20, 2024

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles)

On February 27th, 2023 before me, Zaklin Phat, Notary Public
(insert name and title of the officer)

personally appeared Warren Thomas,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in
his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature *Zaklin Phat* (Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

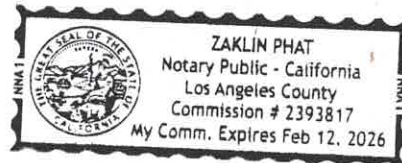
State of California
County of Los Angeles)

On February 27th, 2023 before me, Zaklin Phat, Notary Public
(insert name and title of the officer)

personally appeared Warren Thomas,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in
his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.



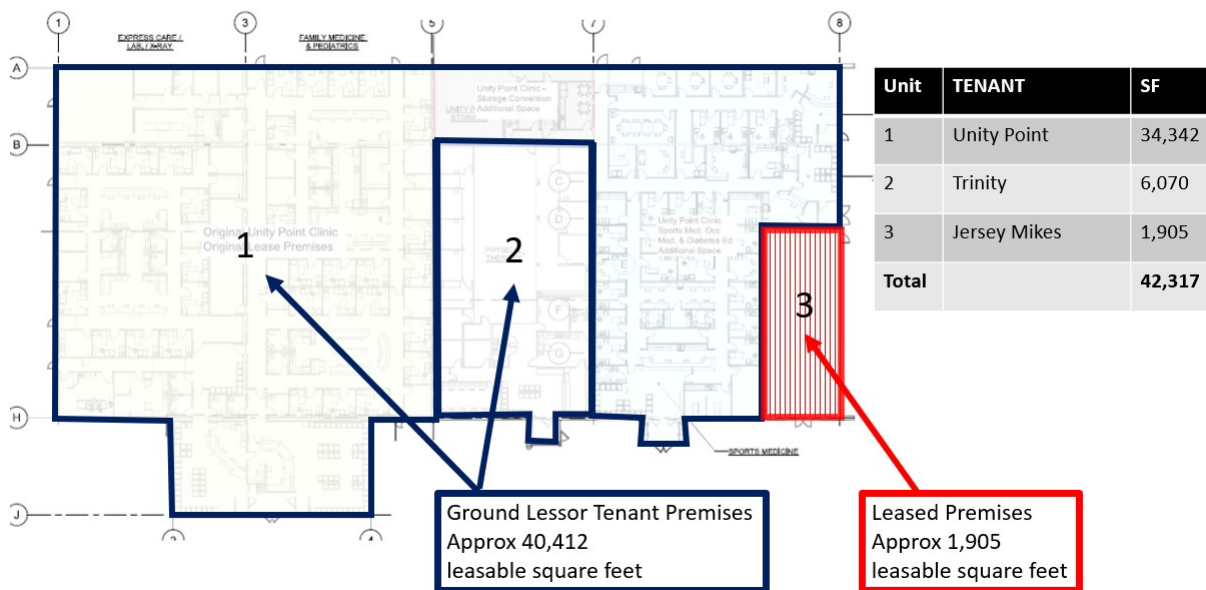
Signature *Zaklin Phat* (Seal)

EXHIBIT A

LEGAL DESCRIPTION

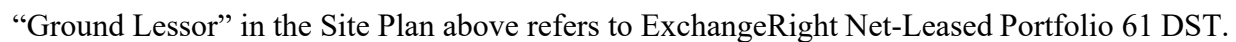
UnityPoint Center - Moline (16th) Illinois Property

THAT CERTAIN Demised Premises containing approximately 1,905 leasable square feet of floor area as generally depicted as the “Leased Premises” on the Site Plan below and more particularly described in that certain Ground Lease dated January 20, 2023, by and between ExchangeRight Net-Leased Portfolio 61 DST, a Delaware limited liability company and ExchangeRight Value-Add Portfolio 3 DST, a Delaware limited liability company (“**Landlord**” or “**Ground Lessee**”).



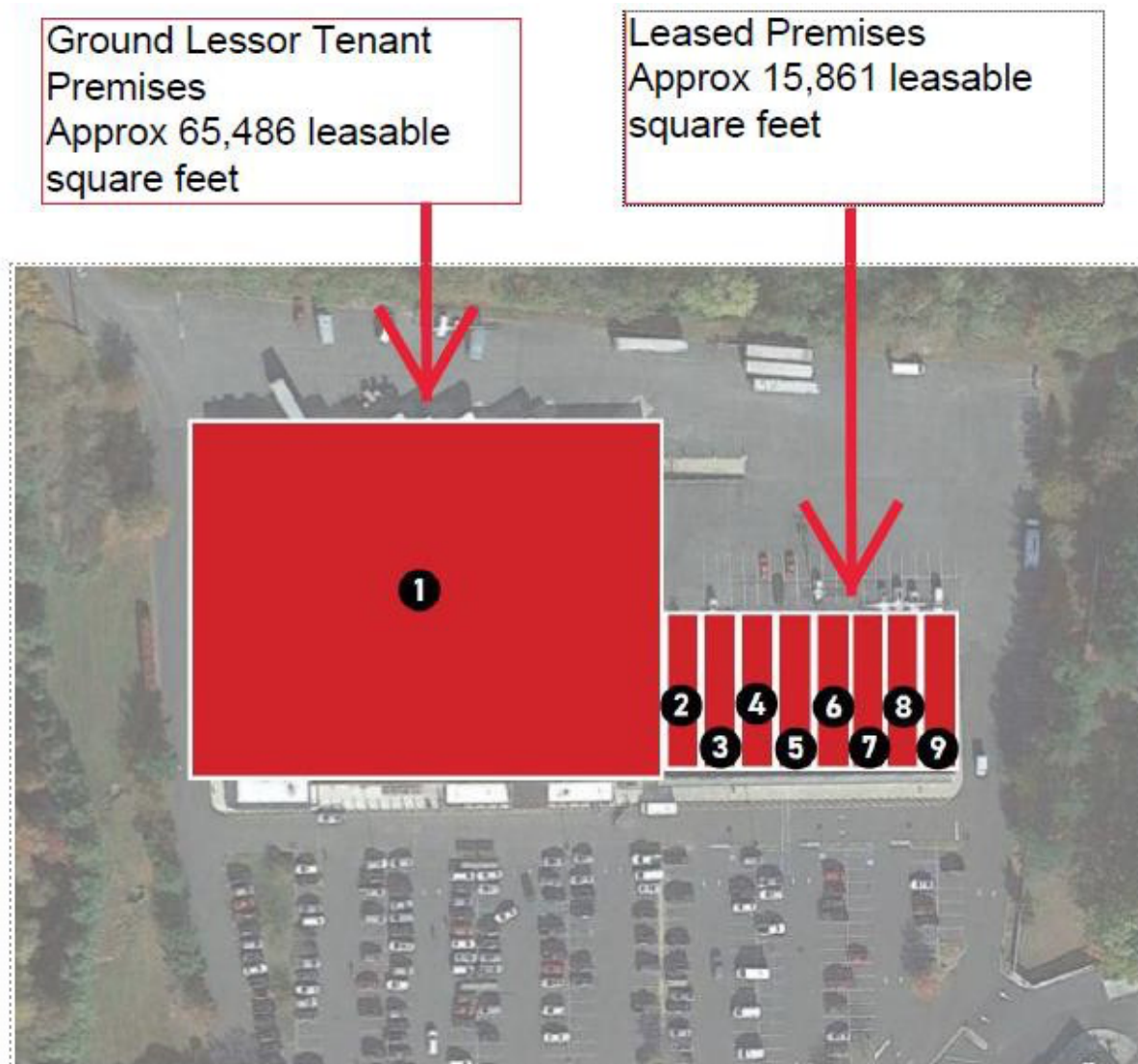
“Ground Lessor” in the Site Plan above refers to ExchangeRight Net-Leased Portfolio 61 DST.

THAT CERTAIN Demised Premises containing approximately 4,399 square feet of floor area and the approximately 2,644 square feet of floor area, each as generally depicted as the outlined area identified as the “In-Line Portion” on the Site Plan below and more particularly described in that certain Ground Lease dated January 19, 2023, by and between ExchangeRight Net-Leased Portfolio 61 DST, a Delaware limited liability company and Landlord.



Upper Deerfield Shopping Center - Upper Deerfield (Pearl), New Jersey Property

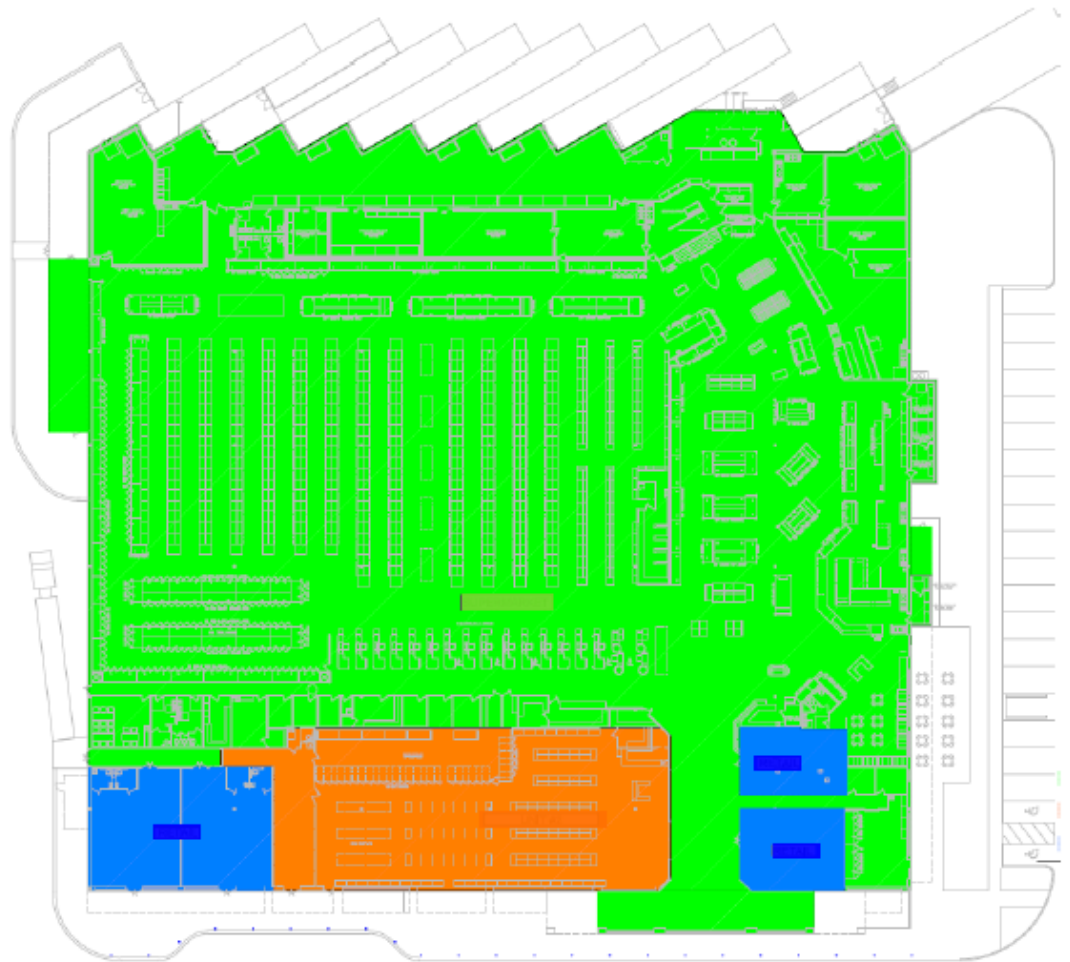
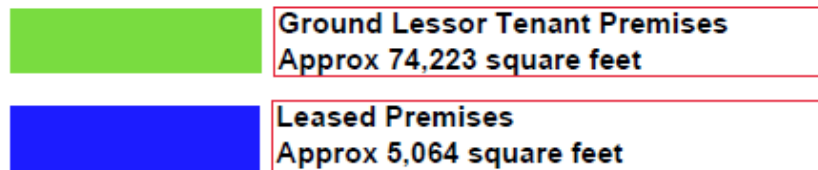
THAT CERTAIN Demised Premises containing approximately 15,861 square feet of floor area as generally depicted as the shaded area on the Site Plan below and more particularly described in that certain Ground Lease dated December 7, 2022, by and between Patriot ExchangeRight Upper Deerfield DST, a Delaware limited liability company and Landlord.



“Ground Lessor” in the Site Plan above refers to Patriot ExchangeRight Upper Deerfield DST.

Vineland Shopping Center - Vineland (Landis), New Jersey Property

THAT CERTAIN Demised Premises containing approximately 5,064 square feet of floor area as generally depicted as the shaded area on the Site Plan below and more particularly described in that certain Ground Lease dated December 7, 2022 by and between Patriot ExchangeRight Vineland DST, a Delaware limited liability company and Landlord.



“Ground Lessor” in the Site Plan above refers to Patriot ExchangeRight Vineland DST.

Walnut Creek Plaza - Columbus (Hamilton), Ohio Property

***Please note that a partial fee interest was acquired in a gas station parcel at this Property as described below**

THAT CERTAIN Demised Premises containing approximately 29,169 square feet of floor area as generally depicted as the shaded area depicted on the Site Plan below and more particularly described in that certain Ground Lease dated January 20, 2023, as amended by that certain First Amendment to Ground Lease dated January 20, 2023. by and between ExchangeRight Net-Leased Portfolio 61 DST, a Delaware limited liability company and Landlord.

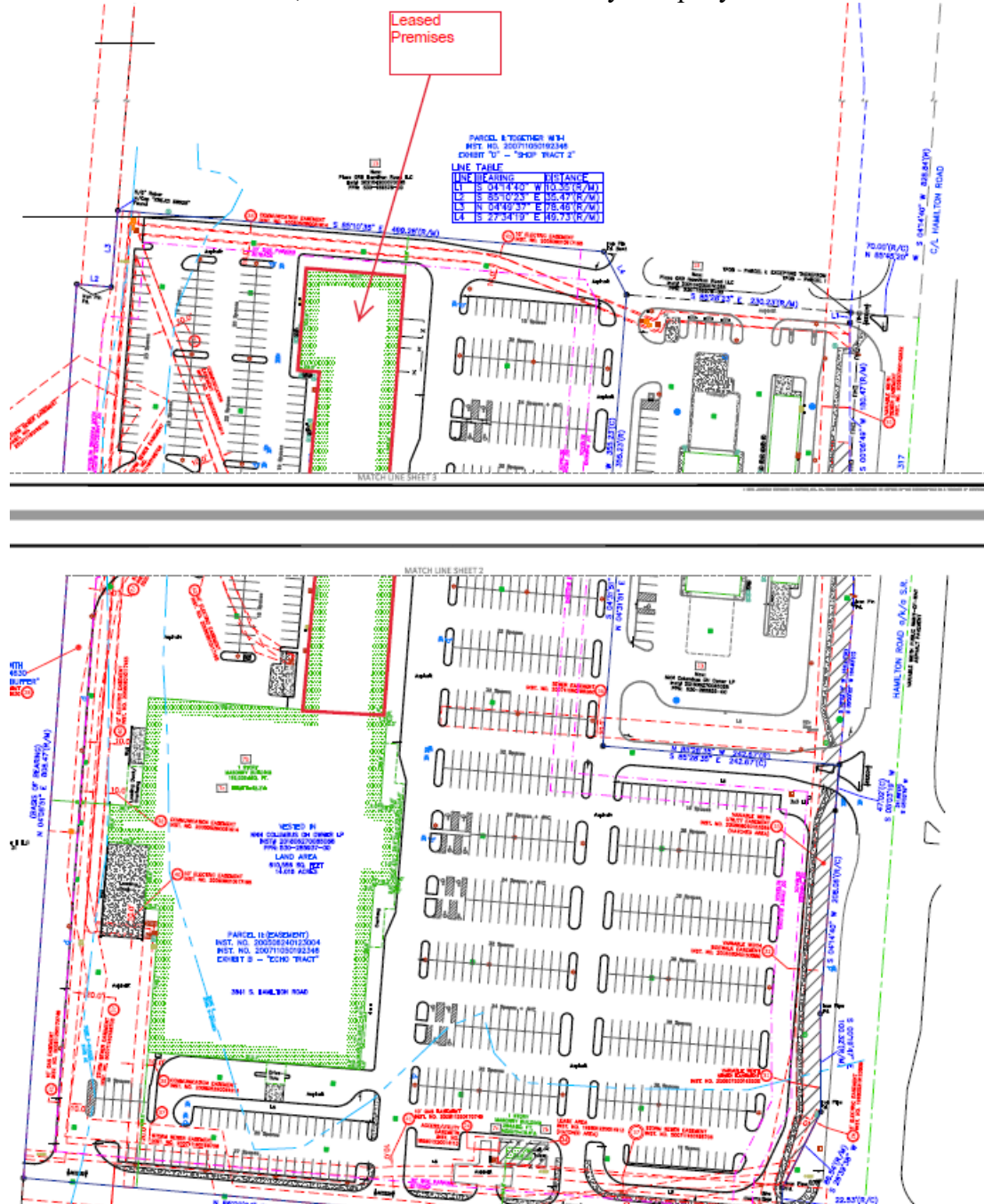


Exhibit A-5

“Ground Lessor” in the Site Plan above refers to ExchangeRight Net-Leased Portfolio 61 DST.

***Fee interest in Gas Station legal description:**

Parcel I:

Situated in the State of Ohio, County of Franklin, City of Columbus, located in Section 9, Township 11, Range 21, Congress Lands being out of that original 78.5 acre tract as conveyed to Plaza GRB Hamilton Road, LLC by deed of record in Instrument Number 200401210014610 (all references refer to the records of the Recorder's Office, Franklin County, Ohio unless otherwise noted) and being more particularly bounded and described as follows:

Beginning, for reference, at a magnetic nail set marking the intersection of the old centerline of State Route 33 as shown on plat S.H.49-SEC F, E1, D1, D2 on file at the Ohio Department of Transportation, with the centerline for Hamilton Road as shown on plat FRA-317-0.19 (B) on file at the Ohio Department of Transportation, being station 38+39.19 in the centerline of said Hamilton Road, said intersection being the northeasterly corner of that 14.464 acre tract conveyed to the City of Columbus, Ohio by deed of record in Instrument Number 200503290057673;

Thence South 04 deg. 14' 40" West, with the centerline of said Hamilton Road, the easterly line of said 14.464 acre tract, a distance of 828.84 feet;

Thence North 85 deg. 45' 20" West, leaving said centerline, a distance of 70.00 feet to an iron pin set in the westerly line of said 14.464 acre tract, being the TRUE POINT OF BEGINNING;

Thence with said westerly right-of-way line, and said westerly line, the following courses and distances:

South 04 deg. 14' 40" West, a distance of 10.35 feet to an iron pin set;

South 00 deg. 06' 49" West, a distance of 180.47 feet to an iron pin set;

South 05 deg. 03' 19" West, a distance of 164.94 feet to an iron pin set;

Thence across said 78.5 acre tract, the following courses and distances:

North 85 deg. 28' 35" West, a distance of 242.67 feet to an iron pin set;

North 04 deg. 31' 51" East, a distance of 355.23 feet to an iron pin set;

South 85 deg. 28' 23" East, a distance of 230.23 feet to the TRUE POINT OF BEGINNING, and containing 1.956 acres of land, more or less, and being out of Auditor's Parcel Number 530-156578.

This description was prepared through the use of existing records and an actual field survey.

Iron pins set, where indicated, are iron pipes, thirteen-sixteenth (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMH & T, INC.

Bearings are based on North 57 deg. 12' 05" West, between monuments FRANK 132 and 32 per Ohio State Plane Coordinate System NAD83 (1986 adjustment) South Zone.

Parcel II

Together with all beneficial easements set forth in that certain Amended and Restated Declaration of Reciprocal Easements and Restrictive Covenants of record in Instrument number 200711050192346; supplemented in Instrument Number 200809260144996; and as affected by Memorandum of REA

Supplemental Agreement recorded January 12, 2012 in Instrument No. 201201120005460 and by Memorandum of REA Supplemental Agreement recorded February 8, 2022 in Instrument No. 202202080021656; as amended by First Amendment to Amended and Restated Declaration Of Reciprocal Easements and Restrictive Covenants (Walnut Creek, dated August 25, 2022 and recorded September 30, 2022 in Instrument No. 202209300138968; as re-recorded November 29, 2022 in Instrument No. 202211290162038, Recorder's Office, Franklin County, Ohio).

Parcel III

Together with all beneficial easements set forth in that certain easement agreement of record in Instrument No. 200401210014624; as amended pursuant to that certain first amendment to easement agreement of record in Instrument No. 200711050192352, Recorder's Office, Franklin County, Ohio.

Parcel IV

Together with all beneficial easements set forth in that certain Reciprocal Access Easement Agreement of record in Instrument number 200401210014625; as amended pursuant to that certain first amendment to Reciprocal Access Easement Agreement of record in Instrument number 200711050192348, Recorder's office, Franklin County, Ohio.

Parcel V

Together with all beneficial easements set forth in that certain Reciprocal Landscape Buffer Easement Agreement of record in Instrument number 200401210014630; as amended pursuant to that certain first amendment to reciprocal landscape buffer easement agreement of record in Instrument number 200711050192351, Recorder's office, Franklin County, Ohio.

Parcel VI

Together with all beneficial easements set forth in that certain Storm Sewer Easement of record in Instrument number 200401210014636, Recorder's office, Franklin County, Ohio.

FOR INFORMATIONAL PURPOSES ONLY:

PPN: 530-285959-00

For informational purposes only:
3765 South Hamilton Road
Columbus, OH 43232

Weeksville Crossing - Elizabeth City (Weeksville) North Carolina Property

THAT CERTAIN Demised Premises containing approximately 6,225 square feet of floor area as generally depicted as the “In-Line Portion” on the Site Plan below and more particularly described in that certain Ground Lease dated March 14, 2023, by and between ExchangeRight Net-Leased Portfolio 62 DST, a Delaware limited liability company and Landlord.



“Ground Lessor” in the Site Plan above refers to ExchangeRight Net-Leased Portfolio 62 DST.

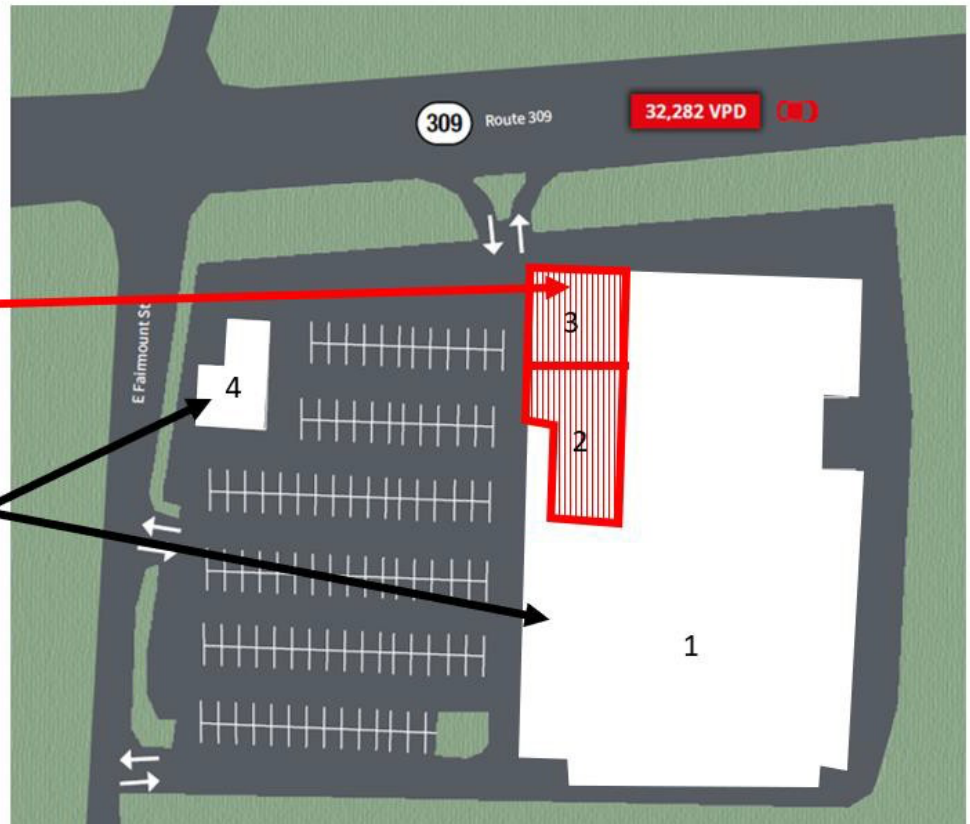
Coopersburg Commons Shopping Center - Coopersburg (Fairmount), Pennsylvania Property

THAT CERTAIN Demised Premises containing approximately 4,020 square feet of floor area as generally depicted as the shaded area on the Site Plan below and more particularly described in that certain Ground Lease dated December 7, 2022, by and between ExchangeRight Net-Leased Portfolio 60 DST, a Delaware limited liability company and Landlord.

SUITE	TENANT	SF
1 & 4	GIANT and GIANT Fuel	87,529
2	Ecco Domani	1,920
3	Subway	2,100
Total		91,549

Leased Premises
Approx 4,020
leasable square feet

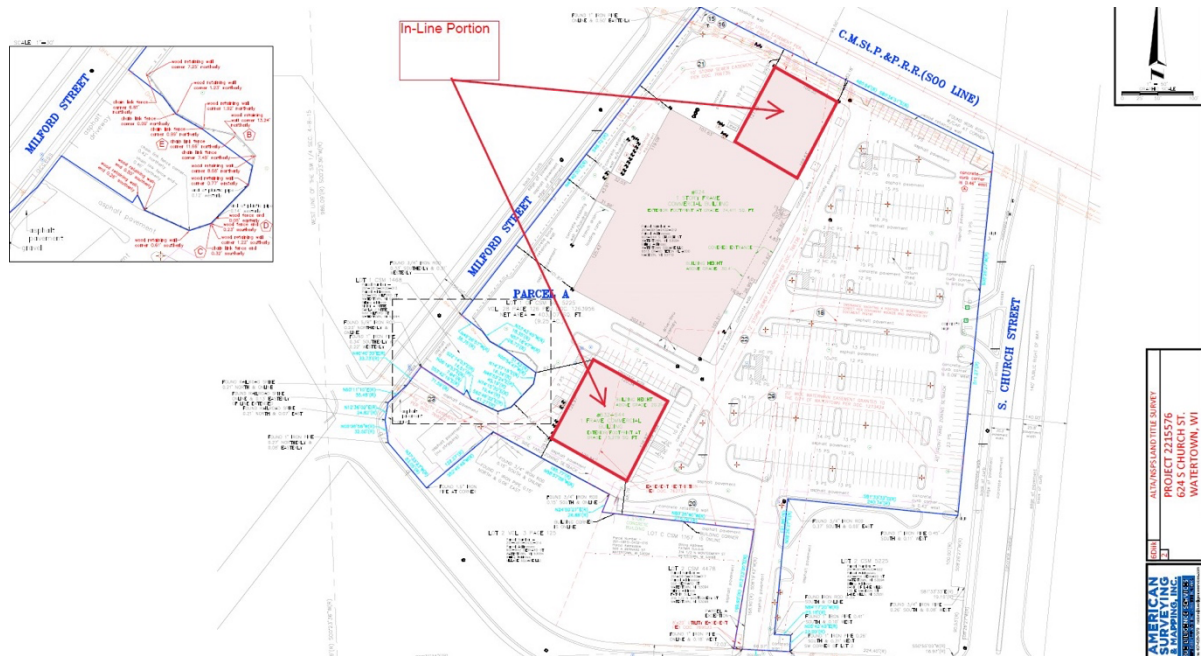
Ground Lessor
Tenant Premises
Approx 87,529
leasable square feet



“Ground Lessor” in the Site Plan above refers to ExchangeRight Net-Leased Portfolio 60 DST.

Pick 'n Save Center - Watertown (Church), Wisconsin Property

THAT CERTAIN Demised Premises containing approximately 11,900 square feet of floor area and the approximately 14,743 square feet of floor area, each as generally depicted as the outlined area identified as the “In-Line Portion” on the Site Plan below and more particularly described in that certain Ground Lease dated March 14, 2023, by and between ExchangeRight Net-Leased Portfolio 62 DST, a Delaware limited liability company and Landlord.



“Ground Lessor” in the Site Plan above refers to ExchangeRight Net-Leased Portfolio 62 DST.

EXHIBIT B

**CERTIFICATE OF TRUST
OF
EXCHANGERIGHT VALUE-ADD PORTFOLIO 3 DST**

STATE *of* DELAWARE CERTIFICATE *of* TRUST

This Certificate of Trust is filed in accordance with the provisions of the Delaware Statutory Trust Act (Title 12 of the Delaware Code, Section 3801 et seq.) and sets forth the following:

• **First:** The name of the trust is _____
ExchangeRight Value-Add Portfolio 3 DST

• **Second:** The name and address of the Delaware trustee is

Gregory Harrison, Farmers Bank Bldg., Suite 1410, 301 N.
Market Street, Wilmington, Delaware 19801

• **Third:** (Insert any other information the trustees determine to include therein.)

By: Gregory S. Harrison
Trustee(s)

Name: Gregory Harrison
Typed or Printed

EXHIBIT C
OWNERSHIP RECORDS
FOR
EXCHANGERIGHT VALUE-ADD PORTFOLIO 3 DST

Last Revised _____, 20__.

<u>Name</u>	<u>Mailing Address</u>	<u>Class of Beneficial Interests</u>	<u>Percentage (%) Share of Beneficial Interests</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

The undersigned hereby certifies that the foregoing Ownership Records are complete and accurate as of the date set forth above.

ExchangeRight Asset Management, LLC,
not in its individual capacity, but solely as Manager

By: _____
Name: _____
Title: _____

EXHIBIT D

FORM OF LIMITED LIABILITY COMPANY AGREEMENT

[Refer to Exhibit E of the Memorandum]

EXHIBIT E

FORM OF CONVERSION NOTICE

ExchangeRight Real Estate, LLC (the “Depositor”), as the sole Class 2 Beneficial Owner and the sole holder of Class 2 Beneficial Interests in ExchangeRight Value-Add Portfolio 3 DST, hereby provides a Conversion Notice pursuant to Section 6.3 of the Trust Agreement dated as of April 27, 2022 by and among the Depositor, ExchangeRight Asset Management, LLC, a California limited liability company, as Manager, and Gregory Harrison, as Trustee (or any of their successors). The requirements of Section 3.3(c) of the Trust Agreement shall become effective upon receipt of this notice by the Trustee.

Date: _____

By: _____

Name: _____

Title: _____

EXHIBIT B
PURCHASE AGREEMENT

STRICTLY CONFIDENTIAL

Purchase Agreement

**ExchangeRight
Value-Add Portfolio 3 DST**



ExchangeRight Real Estate
1055 E. Colorado Blvd, Suite 310
Pasadena, CA 91106

(855) 317-4448

investors@exchangeright.com

This PURCHASE AGREEMENT (this “**Agreement**”) is made and effective as of the Effective Date by and between ExchangeRight Value-Add Portfolio 3 DST, a Delaware statutory trust (the “**Trust**”) and the Person executing this Agreement on the signature page hereto (“**Buyer**”), with reference to the facts set forth below. All terms with initial capital letters not otherwise defined herein shall have the meanings set forth in Exhibit “A” herein.

RECITALS

A. Sponsor, Manager and Gregory Harrison (“**Trustee**”) have entered into the Trust Agreement of the Trust, dated April 27, 2022 (the “**Trust Agreement**”).

B. Sponsor owns one hundred percent (100%) of the Class 2 Beneficial Interests in the Trust.

C. Manager has been appointed pursuant to the Trust Agreement to manage the activities and affairs of the Trust.

D. The Trust acquired diversified portfolio of fee and/or 99-year ground leasehold interests (collectively, the “**Property Interests**”) in certain in-line retail space properties and outparcel retail spaces (collectively the “**In-Line Space**”) shadow-anchored by national grocery and retail tenants (not included in this Offering (as defined below)) diversified across eight shopping center properties across the United States. The Trust’s portfolio is focused on properties that exhibit in-place cash flow with the potential to preserve capital and provide stable income via strategic leasing initiatives and tenant improvements. The Trust’s portfolio consists of the following Property Interests in eight In-Line Space properties, as follows: (i) 216 E Fairmount Street, Coopersburg, Pennsylvania 18036-1634; (ii) 5720-5728 Crain Highway, Upper Marlboro, Maryland 20772; (iii) 604-648 S Church Street, Watertown, Wisconsin 53094-6229; (iv) 1000-1020 N Pearl Street, Upper Deerfield Township, New Jersey 08302; (v) 1255 W Landis Avenue, Vineland, New Jersey 08360; (vi) 3918 16th Street, Moline, Illinois 61265; (vii) 3773-3841 South Hamilton Road, Columbus, Ohio 43125; and (viii) 1805 Weeksville Road, Elizabeth City, North Carolina 27909 (collectively, the “**Properties**” and each a “**Property**”), as more particularly described in the Confidential Private Placement Memorandum dated June 5, 2023, as supplemented (the “**Memorandum**”).

E. The Properties are subject to the Loan Documents and are subject to the Leases.

F. The Trust desires to sell and Buyer desires to buy Class 1 Beneficial Interests in the Trust (“**Interests**”) on the terms and conditions set forth in this Agreement, which number of Interests to be purchased by Buyer is set forth as follows:

Number of Interests being purchased: _____. In order to acquire the Interests, the purchase price paid by Buyer is \$ _____ (“Purchase Price”).

Buyer understands that the Purchase Price received by the Trust will be applied towards (i) the acquisition of the Properties by the Trust and the payment of such costs, fees and expenses associated therewith, (ii) the payment of commissions, costs, fees and expenses of the Trust’s offering of Class 1 Beneficial Interests in the Trust, and (iii) the redemption of the Class 2 Beneficial Interests in the Trust owned by the Sponsor. This sale is made pursuant to the Memorandum.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

1. Agreement of Purchase and Sale

1.1. Purchase, Sale and Purchase Price. Subject to the approval of Manager as provided in Section 1.2, in consideration of the covenants herein contained, the Trust hereby agrees to sell, and Buyer hereby agrees to purchase, the number of Interest(s) set forth on the signature page hereto (whether one or more, collectively, “**Buyer’s Interest**”) in the Trust at a purchase price as set forth on the signature page hereto (“**Purchase Price**”). The minimum purchase amount is One Hundred Thousand Dollars (\$100,000.00), although the Manager may waive or lower the minimum purchase requirement for certain investors in its sole discretion.

1.2. Acceptance of Subscription. Within thirty (30) days of receipt of a completed and signed Agreement, Purchaser Questionnaire and verification of Buyer’s investment qualifications, the Manager may, on behalf of the Trust and in its sole discretion, accept or reject any subscription for the Interests, in whole or in part.

1.3. Payment. Buyer shall pay the Purchase Price as follows:

1.3.1. Buyer’s Delivery of this Agreement. Buyer shall deliver this completed and signed Agreement, the Purchaser Questionnaire (including its financial statement as required by the Purchaser Questionnaire) to the Manager at:

Investor Relations
ExchangeRight Asset Management, LLC
c/o ExchangeRight Value-Add Portfolio 3 DST
1055 E. Colorado Blvd., Suite 310
Pasadena, CA 91106

Buyer shall deliver an amount equal to the full amount of their purchase price for their Interests to the Trust either by (i) a check payable to “**ExchangeRight Value-Add Portfolio 3 DST**” or (ii) a wire transfer to ExchangeRight Value-Add Portfolio 3 DST.

For increased security, we will provide wiring instructions to all investors separately. Please call in advance of initiating any wire to verify account information. **No investor or their representatives should initiate a wire until such wiring instructions have been verified by phone with ExchangeRight’s Investor Relations department at 855-317-4448.**

1.3.2. Purchase Price and Funding Date. If Buyer’s subscription is accepted, Buyer shall send the entire Purchase Price to the Trust via check or wire transfer on or before five (5) Business Days before the Closing Date or on such funding date as directed by the Manager in the Manager’s sole discretion (the “**Funding Date**”) to the bank account set forth in Section 1.3.1. Manager shall provide Buyer written notice of the Funding Date at least two Business Days prior to the Funding Date.

1.4. Buyer’s Deliveries. In addition to, and concurrently with, the deliveries contemplated in Sections 1.3.1 and 1.3.2, Buyer shall execute such other documents as may be required by the Trust, Manager or the Lender.

1.5. Buyer’s Intent to Exchange. If Buyer’s acquisition of Buyer’s Interest is part of a like-kind exchange pursuant to Code Section 1031, it is a condition precedent to the closing that Buyer is able to complete an exchange for all or a portion of its relinquished property pursuant to an Exchange Agreement between Buyer and its Qualified Intermediary. The Trust agrees to execute such documents or instruments as may be necessary or appropriate to evidence such exchange, provided that the Trust’s cooperation in such regard shall be at no additional cost, expense or liability whatsoever to the Trust, and that no delays in the scheduled Closing Date are incurred unless mutually agreed upon by Buyer and the Trust. Buyer may assign its rights under this Agreement to Qualified Intermediary pursuant

to an exchange agreement between Buyer and Qualified Intermediary to effect such exchange.

2. Closing; Failure to Close without Default.

2.1. Closing Date. The closing date shall occur on that certain date selected by the Manager in its sole discretion (the “**Closing Date**”).

2.2. Failure to Close without Default. If the remaining Purchase Price as required under Section 1.3.2 is not received by Manager by 5:00 p.m. pacific time on the Funding Date for any reason other than the Default of either Buyer, Manager or the Trust under this Agreement, either Buyer or Manager, or the Trust may terminate the closing and this Agreement by written notice to the other party. If this Agreement is so terminated, (i) Buyer and Manager shall promptly execute and deliver any cancellation instructions reasonably requested, (ii) Buyer’s Deposit, if applicable, shall be returned directly to Buyer or its Qualified Intermediary (as instructed by the Buyer), and (iii) Buyer, Manager and the Trust shall be released from their obligations under this Agreement, other than any obligations of Buyer that survive the termination of this Agreement.

3. Fees and Costs.

3.1. Buyer’s Fees and Costs. Buyer acknowledges that the Trust makes no representation or warranty whatsoever that the portion of the Purchase Price applicable to buyer’s fees shall constitute valid replacement property for purposes of complying with Code Section 1031 and Buyer has consulted its own advisor regarding the treatment of such portion of the Purchase Price with respect to such Code Section 1031 rules.

4. Distribution of Funds.

4.1. Deposit of Funds. Subject to Section 1.3, and 2.4, all Cash, if any, received hereunder by the escrow shall be held until the Real Estate Closing and kept on deposit with other escrow funds in the general escrow account(s), in any state or national bank, and may be transferred to any other such general escrow account(s).

4.2. Disbursements. At the Real Estate Closing, the escrow agent, if any, will deliver or wire transfer to the Trust, or order, the Purchase Price, plus any proration or other credits to which the Trust will be entitled, less any appropriate proration or other charges. All other disbursements by the escrow agent shall be made by checks of the escrow agent.

5. Buyer Representations and Warranties.

5.1. No Concern of the Escrow Agent. Any escrow agent shall have no concern with, or liability or responsibility for, this Section.

5.2. Purchase As-Is. AS FURTHER PROVIDED IN THE MEMORANDUM, BUYER REPRESENTS AND WARRANTS THAT IT IS RELYING SOLELY ON ITS OWN INSPECTIONS, INVESTIGATIONS AND ANALYSES OF THE PROPERTIES IN ENTERING INTO THIS AGREEMENT AND BUYER IS NOT RELYING IN ANY WAY ON ANY REPRESENTATIONS, STATEMENTS, AGREEMENTS, WARRANTIES, STUDIES, REPORTS, DESCRIPTIONS, GUIDELINES OR OTHER INFORMATION OR MATERIAL FURNISHED BY THE TRUST, SPONSOR OR MANAGER OR ANY OF THEIR REPRESENTATIVES OR AFFILIATES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER REGARDING ANY SUCH MATTERS AND IS BUYING, THROUGH BUYER'S INTEREST IN THE TRUST, AN INTEREST IN THE PROPERTIES IN AN "AS-IS," "WHERE-IS" CONDITION. BUYER IS A SOPHISTICATED, EXPERIENCED INVESTOR AND WILL RELY ENTIRELY ON ITS REVIEW OF THE PROPERTIES. BUYER ACKNOWLEDGES THAT THE TRUST ONLY RECENTLY ENTERED INTO THE PURCHASE AND SALE AGREEMENT TO ACQUIRE THE PROPERTIES AND THE TRUST AND MANAGER HAVE LIMITED KNOWLEDGE REGARDING THE CONDITION OF THE PROPERTIES.

5.3. No Tax Representations. As further provided in the Memorandum, Buyer represents and warrants that: (i) Buyer understands and is aware that there are uncertainties regarding the treatment of Buyer's Interest as real estate for federal income tax purposes, (ii) Buyer has read the entire Memorandum and fully understands that there is risk that Buyer's Interest will not be treated as real estate for federal income tax purposes, (iii) Buyer has independently obtained advice from its legal counsel and/or accountant regarding any like-kind exchange under Code Section 1031, including, without limitation, whether the acquisition of Buyer's Interest pursuant to this Agreement may qualify as part of a like-kind exchange and Buyer is relying on such advice regarding the tax treatment of Buyer's Interest, (iv) Buyer is aware that the IRS has issued Rev. Rul. 2004-86 (the "**Revenue Ruling**") specifically addressing Delaware Statutory Trusts, the Revenue Ruling is merely guidance and is not a "safe-harbor" for taxpayers or sponsors, and, without the issuance of a private letter ruling on a specific offering, there is no assurance that the Buyer's Interest will not be treated as a partnership interest for federal income tax purposes, (v) Buyer understands that neither the Trust, the Manager nor the Sponsor

has obtained a private letter ruling from the IRS that Buyer's Interest will be treated as an undivided interest in real estate rather than an interest in a partnership, (vi) Buyer understands that the tax consequences of an investment in Buyer's Interest, especially the treatment of the transaction described herein under Code Section 1031 and the related rules, are complex and vary with the facts and circumstances of each individual Buyer, (vii) Buyer shall, for federal income tax purposes, report the purchase of Buyer's Interest by Buyer pursuant to this Agreement as a purchase by Buyer of a direct ownership interest in the Properties, and (viii) Buyer understands that the opinion of Venable LLP is only their view of the anticipated tax treatment and there is no guarantee that the IRS will agree with such opinion.

5.4. Additional Buyer Representations and Warranties. Buyer hereby represents and warrants to the Trust and Manager that the following are true and correct on the date of this Agreement.

5.4.1. Buyer acknowledges that it has received, read, reviewed and fully understands the Memorandum, and all attachments and exhibits thereto. Buyer acknowledges that it is basing its decision to invest on the Memorandum and any exhibits and attachments thereto. Buyer further acknowledges that it has relied only on the information contained in such materials and has not relied upon any other representations or representations made by any other person. Buyer recognizes that an investment is highly speculative and involves substantial risk and Buyer is fully cognizant of and understands all of the risk factors related to the purchase of Buyer's Interest, including, but not limited to, those risks set forth in the section of the Memorandum entitled "Risk Factors." Buyer acknowledges and understands that its offer to purchase Buyer's Interests hereunder is and shall be irrevocable.

5.4.2. Buyer's overall commitment to investments that are not readily marketable is not disproportionate to its individual net worth, and its investment in Buyer's Interest will not cause such overall commitment to become excessive. Buyer has adequate means of providing for its financial requirements, both current and anticipated, and has no need for liquidity in this investment. Buyer can bear and is willing to accept the economic risk of losing its entire investment in Buyer's Interest.

5.4.3. Buyer acknowledges that the sale of Buyer's Interest has not been preceded or accompanied by the publication of any advertisement or by any general solicitation.

5.4.4. All information that Buyer has provided to the Trust or Manager concerning Buyer's suitability to invest in Buyer's Interest (including, but not limited

to, all the information contained in the Purchaser Questionnaire delivered concurrently with this Agreement) is complete, accurate and true in all respects and is complete, accurate and true as of the date of its signature on the last page of this Agreement and shall be complete, accurate and true in all respects on the Closing Date. Buyer hereby agrees to notify the Trust immediately of any material change in any such information occurring prior to the Closing Date, including any information about changes concerning its net worth and financial position.

5.4.5. Buyer has had the opportunity to ask questions of, and receive answers from, Manager (and its officers, directors, managers and employees) concerning Buyer's Interest and the Properties and the terms and conditions of the offering of Buyer's Interest, and to obtain any additional information deemed necessary to verify the accuracy of the information contained in the Memorandum. Buyer has been provided with all materials and information requested by either Buyer or others representing Buyer, including any information requested to verify any information furnished to Buyer.

5.4.6. Buyer is purchasing Buyer's Interest for Buyer's own account and for investment purposes only and has no present intention, agreement or arrangement for the distribution, transfer, assignment, resale or subdivision of Buyer's Interest. Buyer understands that, due to the restrictions referred to in Section 5.4.7, and the lack of any market existing or to exist for Buyer's Interest, Buyer's investment in Buyer's Interest will be highly illiquid and may have to be held indefinitely.

5.4.7. Buyer is fully aware that Buyer's Interest has not been and will not be registered with the Securities and Exchange Commission and Buyer's Interest will be sold in reliance on the exemption from registration promulgated under Rule 506 of Regulation D of the Securities Act, which reliance is based in part upon Buyer's representations set forth herein and in the Purchaser Questionnaire. Buyer understands that Buyer's Interest has not been and will not be registered under applicable state securities laws and is being offered and sold in reliance on exemptions specified in such laws, which reliance is based in part upon Buyer's representations set forth herein and in the Purchaser Questionnaire. Unless Buyer's Interest is registered, it may not be re-offered for sale or resold except pursuant to an exemption under those laws. Buyer further understands that the specific approval of such resales by the state securities administrator may be required in some states. Buyer understands that a legend will be placed on any certificates issued by the Trust, if any, with respect to restrictions on distribution, transfer, resale, assignment or subdivision of Buyer's Interest imposed by applicable federal and state securities laws in substantially the following form:

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**SECURITIES ACT**”), OR ANY STATE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. SUCH SECURITIES MAY NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED OR DISPOSED OF AT ANY TIME WHATSOEVER, EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND SUCH STATE SECURITIES LAWS AND ANY RULE OR REGULATION PROMULGATED THEREUNDER PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

5.4.8. Buyer understands that none of the Trust, Sponsor or Manager or their respective officers, directors, employees, managers or members, affiliates, legal counsel or advisors represents Buyer in any way in connection with the purchase of Buyer’s Interest and the entering into any of the related agreements associated with the purchase, including, but not limited to, the Transaction Documents, as applicable. Buyer also understands that legal counsel to the Trust, Sponsor or Manager or their respective affiliates does not represent and shall not be deemed under the applicable codes of professional responsibility to have represented or to be representing Buyer. Buyer has been afforded the opportunity to retain the services of an independent investment advisor, attorney or accountant to read all of the documents furnished or made available by the Trust, Sponsor or Manager both to Buyer and all other prospective investors and to evaluate the merits and risks of such an investment on Buyer’s behalf

5.4.9. Buyer is an “accredited investor” as such term is defined in Rule 501 of Regulation D promulgated under the Securities Act.

5.4.10. Buyer is (i) a citizen or resident of the U.S. (including certain former citizens and former long-term residents), (ii) a corporation (or other entity taxable as a corporation for U.S. federal income tax purposes) or a partnership (or other entity treated as a partnership for U.S. federal income tax purposes) created or organized in or under the laws of the U.S. or of any political subdivision thereof, (iii) an estate, the income of which is subject to U.S. federal income taxation regardless of the source of such income, (iv) an individual retirement account or other tax-exempt entity, or (v) a trust, if (A) the administration of the trust is subject to the primary supervision of a U.S. court and the trust has one or more U.S. persons with authority to control all substantial decisions or (B) the trust has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

5.4.11. Buyer (i) has such knowledge and experience in financial and business matters that Buyer is personally capable of evaluating the Properties and the merits and risks of an investment in Buyer's Interest and the Properties and has not relied on an investment advisor in evaluating such risks and merits, or (ii) has employed the services of an independent investment advisor, attorney or accountant to read all of the documents furnished or made available by the Trust or Manager both to Buyer and all other prospective investors and to evaluate the merits and risks of such an investment on Buyer's behalf.

5.4.12. Buyer's address set forth on the signature page hereto is Buyer's true and correct residence (if Buyer is an individual) or principal place of business (if Buyer is an entity) and Buyer has no present intention of becoming a resident of any other state or jurisdiction or moving his principal place of business, as applicable.

5.4.13. Buyer hereby agrees to indemnify, defend and hold harmless the Trust, Sponsor, Manager, Trustee, and all of their respective limited partners, general partners, members, managers, officers, directors, affiliates and advisors from any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) that they may incur by reason of Buyer's failure to fulfill all of the terms and conditions of this Agreement or by reason of the untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents Buyer has furnished to any of the foregoing in connection with the transactions described herein. This indemnification includes, but is not limited to, any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) incurred by the Trust, Sponsor, Manager, Trustee, or any of their respective general partners, limited partners, members, managers, officers, directors, affiliates or advisors defending against any alleged violation of federal or state securities laws which is based upon or related to any untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents that Buyer has furnished to any of the foregoing in connection with this transaction.

5.4.14. Within five (5) days after receipt of a written request from the Trust, Buyer agrees to provide such information and to execute and deliver such documents as may be reasonably necessary to comply with any and all laws and regulations to which the Trust or the Manager is subject.

5.4.15. It has never been guaranteed or warranted to Buyer by the Trust, Sponsor or Manager or their management, officers or directors or by any other person, expressly or by implication that (i) Buyer will receive any exact or

approximate amount of return or other type of consideration, profit, loss, or distributions as a result of an investment in Buyer's Interests, or (ii) the past performance or experience of the Trust, Sponsor or Manager or any manager, director, officer or affiliate of the Trust, Sponsor or Manager will in any way indicate or predict the results of investment in Buyer's Interests or the overall success of the Properties, and Buyer acknowledges and understand that there can be no certainty with respect to such matters.

5.4.16. Buyer hereby acknowledge and understand that the principals of the Manager may also be acting as my registered representative or registered supervisor (or both). Buyer acknowledges that this presents a conflict of interest that may affect their judgment in making an investment recommendation to me. Buyer acknowledges this conflict of interest and is choosing to make an investment based on its independent review of the merits and risks of this Offering.

5.4.17. If Buyer is a "Benefit Plan Investor" as defined in Section 3(42) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), which includes an "employee benefit plan" as defined in Section 3(3) of ERISA, that is subject to Part 4 of Title I of ERISA, a "plan" covered by Section 4975 of the Internal Revenue Code of 1986, as amended (the "**Code**"), or an entity whose underlying assets include plan assets of either of the foregoing, the Investor has completed this Purchase Agreement. If the Investor is a Benefit Plan Investor, a governmental plan, or other employee benefit plan, account or arrangement that is not subject to the fiduciary provisions of ERISA or Section 4975 of the Code (collectively, with Benefit Plan Investors, referred to as "**Plans**"), the Investor makes the following representations, warranties and covenants:

(a) The decision to commit assets of the Plan for investment in the Trust was made by fiduciaries independent of the Trust, the Sponsor, the Manager and any of their respective agents, representatives or affiliates, which fiduciaries (a) are duly authorized to make such investment decision and have not relied on any advice or recommendations of the Trust, the Sponsor, the Manager or any of their respective agents, representatives or affiliates and (b) in consultation with their advisers, have carefully considered the impact of ERISA, the Code and the regulations, rules, procedures and judicial decisions thereunder, to the extent applicable, or any applicable state or local law similar to ERISA or Section 4975 of the Code, on an investment in the Trust;

(b) None of the Trust, the Sponsor, the Manager or any of their respective agents, representatives or affiliates has exercised any discretionary authority or control with respect to the Plan's investment in the Trust, nor has the

Trust, the Sponsor, the Manager or any of their respective agents, representatives or affiliates rendered individualized investment advice to the Plan based upon the Plan's investment policies or strategies, overall portfolio composition or diversification with respect to its commitment to invest in the Trust and the investment program thereunder;

(c) It acknowledges and agrees that it is intended that neither the Trust, the Sponsor, the Manager nor any of their respective agents, representatives or affiliates will be acting as a fiduciary to the Plan under applicable state or local law governing the Plan, with respect to either (a) the Plan's purchase or retention of its investment in the Trust or (b) the management or operation of the business or assets of the Trust. It also confirms that there is no rule, regulation, or requirement applicable to such Buyer that is inconsistent with the foregoing representations and covenants regarding the Trust, the Sponsor and the Manager;

(d) It acknowledges (a) it has been informed of and understands the investment objectives and policies of, and the investment strategies that may be pursued by, the Trust, (b) it is aware of the provisions of Section 404 of ERISA or similar applicable law relating to fiduciary duties, (c) it has given appropriate consideration to the facts and circumstances relevant to the investment by such Buyer in the Trust and has determined that such investment is reasonably designed, as part of such Buyer's portfolio of investments, to further the purposes of the relevant plan(s), (d) it understands that current income will not be a primary objective of the Trust, and (e) its acquisition, and subsequent holding of an Interest in the Trust is not a non-exempt "prohibited transaction" within the meaning of Section 406 of ERISA or Section 4975 of the Code or other similar applicable law;

(e) The execution and delivery by the Plan, and compliance by the Plan with the Purchase Agreement (including all appendices, attachments or exhibits hereto) and each other document required to be executed and delivered by the Plan in connection with this purchase of Interests, and the contemplated investment program and operations of the Trust, do not conflict with, or constitute a default under, any instruments or applicable guidelines governing the Plan, any applicable law, regulation or order, or any agreement to which the Plan is a party or by which the Plan is bound. Buyer shall promptly advise the Trust in writing of any changes of which it becomes aware in any governing law or any regulations thereunder or interpretations thereof affecting the duties, responsibilities, liabilities or obligations of the Trust, the Sponsor, the Manager, or any of their respective agents, representatives or affiliates with respect to the Plan. The Purchase Agreement has been duly executed by the Plan and constitutes, and when the Plan is

admitted as a Buyer, will constitute, a valid and legally binding agreement of the Plan;

(f) It (a) represents and warrants that the information provided in this Agreement is true and accurate as of the date hereof, (b) covenants that such information will remain true and accurate for so long as Buyer holds Interests in the Trust and (c) agrees to immediately notify the Trust if it has any reason to believe that it is or may be in breach of the foregoing representation and covenant; and

(g) It agrees that it will provide additional information reasonably requested by the Trust, the Sponsor, or the Manager for purposes of compliance with applicable law.

The undersigned will, at the request of the Trust, the Sponsor, or the Manager, furnish the Trust, the Sponsor or the Manager with such information as the Trust, the Sponsor or the Manager may reasonably require to establish that the purchase, retention and disposition of the Interest by the Plan does not violate any provision of ERISA, the Code or other applicable law, including without limitation, those provisions relating to “prohibited transactions” by “parties in interest” or “disqualified persons” as defined therein.

5.5. The representations and warranties of Buyer set forth herein above shall survive the Closing Date or termination of this Agreement.

6. Trust’s and Manager’s Representations and Warranties

6.1. Buyer’s Interest has been duly authorized for issuance and sale (or will have been so authorized prior to the issuance thereof) pursuant to this Agreement and the Trust Agreement. When issued, authenticated and delivered by the Trust and paid for by Buyer pursuant to the provisions of this Agreement and of the Trust Agreement, Buyer’s Interest will be duly and validly issued and outstanding and entitled to the benefits provided by the Trust Agreement, except as such enforceability may be limited by the effect of (i) bankruptcy, insolvency, reorganization, receivership, moratorium or other similar laws affecting the enforcement of the rights of creditors generally, and (ii) general principles of equity, whether enforcement is sought in a proceeding in equity or at law.

6.2. This Agreement and the Trust Agreement have been duly authorized, executed and delivered by the Trust, the Sponsor, the Manager and the Trustee, as the case may be. This Agreement and the Trust Agreement constitute, legal, valid and binding agreements enforceable against the Trust, the Manager and the Sponsor in accordance with their respective terms, except as such enforceability may be

limited by the effect of (i) bankruptcy, insolvency, reorganization, receivership, moratorium or other similar laws affecting the enforcement of the rights of creditors generally, (ii) general principles of equity, whether enforcement is sought in a proceeding in equity or at law, and (iii) public policy considerations underlying the securities laws, to the extent that such public policy considerations limit the enforceability of the provisions of this Agreement that purport or are construed to provide indemnification from securities law liabilities.

6.3. The Manager has been duly organized and is a validly existing limited liability company in good standing under the laws of the State of California with the requisite power and authority to enter into and perform its obligations under this Agreement and the Trust Agreement. The Trust is a validly formed and existing statutory trust under the laws of the State of Delaware with the requisite power and authority to enter into and perform its obligations under this Agreement and the Trust Agreement.

6.4. The execution, delivery and performance of this Agreement and the Trust Agreement by the Trust and Manager and the consummation of the transactions contemplated herein and therein by the Trust and Manager and compliance by the Trust and Manager with their respective obligations hereunder and thereunder have been duly authorized by all necessary corporate and trust action and will not (i) contravene any provision of the limited liability agreement of the Manager, the Trust Agreement or applicable law, or (ii) conflict with or constitute a breach of or default under, or result in the creation or imposition of any lien, charge or encumbrance upon any property or assets of the Trust or Manager pursuant to, any contract, indenture, mortgage, loan agreement, note, lease or other instrument to which the Trust or Manager is a party or by which it may be bound or to which any of the property or assets of the Trust or Manager is subject, which conflict, breach, default, lien, charge or encumbrance is reasonably likely to materially and adversely affect the Trust's or Manager's ability to perform its obligations under this Agreement or the Trust Agreement.

6.5. On and after the date the Conversion Notice is issued pursuant to the terms of the Trust Agreement, Manager, Sponsor and the Trust shall, for federal income tax purposes, treat the Trust as an investment trust within the meaning of Regulation Section 301.7701-4(c) and each Owner as a "grantor" within the meaning of Code Section 671. Manager, Sponsor and the Trust agree to report Sponsor's and Buyer's interest in the Trust in a manner consistent with the foregoing and otherwise not to take any action that would be inconsistent with the foregoing. The Manager, Sponsor and the Trust shall, for federal income tax purposes, report the sale of

Buyer's Interest to Buyer pursuant to this Agreement as a sale by Sponsor to Buyer of a direct ownership interest in the Properties.

7. General Provisions.

7.1. Interpretation. The use herein of (i) any gender includes the masculine, the feminine and the neuter, whenever the context so requires, and (ii) the singular number includes the plural, whenever the context so requires. Captions in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of the terms hereof. All exhibits referred to herein and attached hereto are incorporated by reference. This Agreement, together with the other Transaction Documents, contain the entire agreement between the parties relating to the transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein.

7.2. Modification. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement thereof is or may be sought.

7.3. Cooperation. Buyer and the Trust acknowledge that it may be necessary to execute documents other than those specifically referred to herein to complete the acquisition of Buyer's Interest as provided herein. Buyer and the Trust agree to cooperate with each other by executing such other documents or taking such other action as may be reasonably necessary to complete this transaction in accordance with the parties' intent evidenced in this Agreement.

7.4. Side Letters. The Manager reserves the right, in its sole and absolute discretion, to agree with an Owner to waive or modify the application of any provision of the Trust Agreement or fee or expense in connection with the offering with respect to such Owner without obtaining the consent of any other Owner. Accordingly, the Trust and the Manager may enter into side letters or other writings with one or more Owners that have the effect of establishing rights under, or altering or supplementing the terms of, the Trust Agreement or any subscription agreement for Interests (including with any of its Affiliates that may invest in the Trust). Notwithstanding the foregoing, in no event shall (i) any waiver or modification of any provision of the Trust Agreement, or (ii) any side letter or other writings, be permitted to the extent the tax treatment of the Trust or the investors would be impacted.

7.5. Assignment. Buyer may not assign its rights under this Agreement, except to its Qualified Intermediary, without first obtaining the Trust's written

consent, which consent may be withheld in the Trust's sole and absolute discretion. No such assignment shall operate to release the assignor from the obligation to perform all obligations of Buyer hereunder. Each of the Trust and Manager shall have the absolute right to assign its rights and obligations under this Agreement.

7.6. Notices. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be addressed as follows:

If to Manager or
the Trust, to:

ExchangeRight Asset Management, LLC
1055 E. Colorado Blvd., Suite 310
Pasadena, CA 91106
Attn: Investor Relations

If to Buyer, to the address listed under Buyer's name on the signature page to this Agreement.

Any party may change such address by written notice to the escrow agent and the other parties. Unless otherwise specifically provided for herein, all notices, payments, demands or other communications given hereunder shall be deemed to have been duly given and received (i) upon personal delivery, or (ii) as of the third Business Day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth above, or (iii) as of the immediately succeeding Business Day after deposit with a nationally recognized overnight courier service (costs prepaid).

7.7. Eminent Domain. If, prior to the Closing Date, the Properties are taken or appropriated by any public or quasi-public authority under the power of eminent domain or the Trust, Sponsor or Manager receives actual notice of any pending or threatened condemnation proceedings affecting the Properties, then Buyer may terminate this Agreement without further liability hereunder in accordance with Section 2.3. In the event of a partial taking of the Properties or the threatened partial taking of the Properties with respect to which the Trust, Sponsor or Manager has received actual notice that materially and adversely affects the ability to operate the Properties for the purposes they are currently operated, then Buyer can elect to either (a) terminate this Agreement in accordance with Section 2.3, or (b) purchase the Buyer's Interest with a reduction in the Purchase Price in an amount equal to the condemnation award received from the condemning authority with respect to Buyer's Interest. In the event of a threatened taking or a lack of finality of any

proceedings to determine the award in an actual taking, this purchase transaction shall close and the Trust shall assign to Buyer (subject to any restrictions under the Loan Documents) its interest in any condemnation award with respect to Buyer's Interest made by the governmental entity.

7.8. Loss or Damage. Buyer shall have no right to terminate this Agreement in the event of any loss or damage to the Properties, provided that Buyer shall have the right to receive an assignment of any insurance proceeds received by the Manager, Trust or Sponsor with respect to such loss upon the close (subject to any restrictions under the Loan Documents). The parties acknowledge and agree in no event shall the close be extended due to any such loss or damage. Notwithstanding the foregoing, the assignment of any insurance proceeds as provided herein shall not include any proceeds received for items not related to the physical condition of the Properties, if any.

7.9. Periods of Time. All time periods referred to in this Agreement include all Saturdays, Sundays and state or United States holidays, unless Business Days are specified, provided that if the date or last date to perform any act or give any notice with respect to this Agreement falls on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding Business Day.

7.10. Counterparts. This Agreement may be executed in counterparts, all of which when taken together shall be deemed fully executed originals.

7.11. Joint and Several Liability. If any party consists of more than one person or entity, the liability of each such person or entity signing this Agreement shall be joint and several.

7.12. Choice of Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of California, without regard to conflict of laws principles, except as to the type of registration of ownership of Buyer's Interest, which shall be construed in accordance with the state of principal residence of Buyer.

7.13. Time. Time is of the essence to this Agreement.

7.14. Third Party Beneficiaries. Except as expressly contemplated herein, no party hereto intends to benefit any party (including any other Owner) that is not a party to this Agreement and no such party shall be deemed to be a third party beneficiary of this Agreement or any provision hereof.

7.15. Severability. If any term, covenant, condition, provision or agreement herein contained is held to be invalid, void or otherwise unenforceable by any court of competent jurisdiction, such fact shall in no way affect the validity or enforceability of the other portions of this Agreement.

7.16. Binding Agreement. Subject to any limitation on assignment set forth herein, all terms of this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective legal representatives, successors and assigns.

7.17. ARBITRATION OF DISPUTES.

7.17.1. ALL CLAIMS SUBJECT TO ARBITRATION. ANY DISPUTE, CONTROVERSY OR OTHER CLAIM ARISING UNDER, OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR ANY AMENDMENT THEREOF OR THE BREACH OR INTERPRETATION HEREOF OR THEREOF, SHALL BE DETERMINED AND SETTLED BY BINDING ARBITRATION IN LOS ANGELES COUNTY, STATE OF CALIFORNIA, IN ACCORDANCE WITH TITLE 9 OF THE CALIFORNIA CIVIL CODE AND THE CODE OF CIVIL PROCEDURE, INCLUDING SPECIFICALLY CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 1283.05 AND 1283.1 AND THE RULES AND PROCEDURES OF THE AMERICAN ARBITRATION ASSOCIATION. THE PREVAILING PARTY SHALL BE ENTITLED TO AN AWARD OF ITS REASONABLE COSTS AND EXPENSES INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES. ANY AWARD RENDERED THEREIN SHALL BE FINAL AND BINDING ON EACH AND ALL OF THE PARTIES THERETO AND THEIR PERSONAL REPRESENTATIVES AND JUDGMENT MAY BE ENTERED THEREON IN ANY COURT OF COMPETENT JURISDICTION.

7.17.2. WAIVER OF LEGAL RIGHTS. THE PARTIES ACKNOWLEDGE AND AGREE TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THIS ARTICLE DECIDED BY NEUTRAL ARBITRATION AS PROVIDED UNDER CALIFORNIA LAW AND THAT THEY ARE WAIVING ANY RIGHTS THEY MAY POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR BY JURY TRIAL. THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT THEY ARE WAIVING THEIR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF EITHER PARTY REFUSES TO SUBMIT TO ARBITRATION AFTER EXECUTION OF THIS AGREEMENT, SUCH PARTY MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL

PROCEDURE. EACH PARTY'S AGREEMENT TO THIS SECTION 7.17.2 IS VOLUNTARY. THE PARTIES HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THIS ARTICLE TO NEUTRAL ARBITRATION.

7.18. ACCEPTANCE OR REJECTION OF BUYER'S OFFER. THE DELIVERY OF THIS AGREEMENT TO BUYER DOES NOT CONSTITUTE AN OFFER OF ANY KIND BY THE TRUST, SPONSOR OR MANAGER AND SHALL NOT BIND THE TRUST UNLESS DULY EXECUTED AND DELIVERED BY THE TRUST AND MANAGER. TO SUBMIT AN OFFER TO PURCHASE BUYER'S INTEREST, BUYER SHALL DELIVER TO THE MANAGER THE ITEMS DESCRIBED IN SECTION 1.3. THE MANAGER, ON BEHALF OF THE TRUST, SHALL HAVE THIRTY (30) DAYS TO EITHER ACCEPT OR REJECT BUYER'S OFFER. IF THE MANAGER DOES NOT ACCEPT BUYER'S OFFER WITHIN SUCH 30-DAY PERIOD, THE OFFER SHALL BE DEEMED REJECTED. IN THE EVENT THE OFFER IS REJECTED, BUYER'S DEPOSIT, IF APPLICABLE, SHALL BE RETURNED TO BUYER WITHOUT INTEREST AND THIS AGREEMENT SHALL NOT BECOME EFFECTIVE.

7.19. Consent to Contact Qualified Intermediary. Buyer hereby provides the Trust with consent to contact their Qualified Intermediary or qualified intermediary in order to set up the necessary documentation to effect the close of the exchange for the Purchase Price. The undersigned acknowledges that the Trust does not give tax advice and that Buyer must consult their own CPA or tax counsel in order to ensure compliance with IRS § 1031.

[SIGNATURES FOLLOW ON NEXT PAGE.]

IN WITNESS WHEREOF, this Agreement has been executed and shall be effective as of the Effective Date.

THE TRUST:

ExchangeRight Value-Add Portfolio 3 DST, a Delaware Statutory Trust

By: ExchangeRight Asset Management, LLC; its manager

By: ExchangeRight Real Estate, LLC; its sole member

By: _____
Warren Thomas, Managing Member

BUYER:

Investor or Investing Entity

Name of Investor or Authorized Representative (and Title if applicable)

Signature of Investor or Authorized Representative

Date

Name of 2nd Investor or 2nd Authorized Representative (and Title if applicable)

Signature of 2nd Investor or 2nd Authorized Representative

Date

CONSENT OF SPOUSE TO BE BOUND BY PURCHASE AGREEMENT

I, _____ the spouse of _____, a party to the foregoing Purchase Agreement, acknowledge that I have reviewed the Purchase Agreement and that I hereby agree to be bound by each and every term and condition of the Purchase Agreement. I consent to such purchase, approve the provisions of the Purchase Agreement relating thereto, and agree to be bound by the terms and provisions thereof.

Dated: _____, 20__

By: _____
Printed Name: _____

ACKNOWLEDGED AND AGREED TO BY SPONSOR:

ExchangeRight Real Estate, LLC, a California limited liability company

By: _____
Warren Thomas, Managing Member

Date: _____

EXHIBIT A

DEFINITIONS

“Business Day” means any day other than a Saturday or Sunday or legal holiday in the State of California.

“Buyer” shall have the meaning set forth on the signature page to this Agreement.

“Buyer’s Interest” shall have the meaning set forth in Section 1.1.

“Cash” shall mean (i) currency of the United States of America, (ii) cashier’s check(s) currently dated and payable to the escrow agent or the Trust, as required under this Agreement, drawn and paid through a California banking or savings and loan institution, tendered to the escrow agent or the Trust, as required under this Agreement at least one (1) additional Business Day before funds are otherwise required to be delivered under this Agreement, or (iii) an amount credited by wire transfer to the escrow agent’s or the Trust’s bank account, as required under this Agreement.

“Closing Date” shall have the meaning set forth in Section 2.1.

“Code” means the Internal Revenue Code of 1986, as amended.

“Conversion Notice” shall have the meaning provided in the Trust Agreement.

“Default” means, with respect to Buyer or the Trust, an act or failure to act by either such party which breaches or is in violation of a covenant, representation or warranty made or given by it in the Agreement.

“Effective Date” means the date of execution hereof by the Trust.

“Funding Date” shall have the meaning set forth in Section 1.3.2.

“Interests” shall have the meaning set forth in Recital F.

“IRS” means the Internal Revenue Service.

“Leases” means those certain lease agreements entered into by the Tenants (as defined in the Memorandum) with respect to the Properties.

“Lender” means Barclays Capital Real Estate Inc. or one of its affiliates.

“Loan” means the loan from Lender in the amount of \$7,332,000.

“Loan Documents” means the Note, the Mortgage and the other documents evidencing or securing the Loan.

“Manager” means ExchangeRight Asset Management, LLC, a California limited liability company and the manager of the Trust in accordance with the Trust

Agreement. Except as expressly provided otherwise, Manager is acting solely in its capacity as Manager of the Trust and not on its own behalf.

“Memorandum” shall have the meaning set forth in Recital F.

“Mortgage” means that mortgage and security agreement or deed of trust and security agreement, as the case may be, encumbering the Properties as security for the Loan.

“Note” means that certain promissory note in the original principal amount of \$7,332,000 executed in favor of the Lender.

“Owner” means any holder of Interests.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Properties” shall have the meaning set forth in Recital D.

“Purchase Price” shall have the meaning set forth on the signature page to this Agreement.

“Purchaser Questionnaire” means the Purchaser Questionnaire in the form attached to the Memorandum.

“Real Estate Closing” means the closing to be held for the acquisition of the Properties by the Trust.

“Qualified Intermediary (also known as “1031 Qualified Intermediary”)

Means_____.

“Securities Act” means the Securities Act of 1933, as amended.

“Sponsor” means ExchangeRight Real Estate, LLC, a California limited liability company.

“Transaction Documents” means, as applicable, this Agreement, the Purchaser Questionnaire, the Trust Agreement, the Master Lease, and the Loan Documents.

“Trust” shall have the meaning set forth in the preamble to this Agreement.

“Trustee” shall have the meaning set forth in Recital A.

“Trust Agreement” shall have the meaning set forth in Recital A.

* * *

EXHIBIT C
SUBSCRIPTION AGREEMENT

**ExchangeRight
Value-Add Portfolio 3 DST
Subscription Agreement**



ExchangeRight Real Estate
1055 E Colorado Blvd, Suite 310
Pasadena, CA 91106

855-379-8172
investors@exchangeright.com

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1. Instructions

Any person or entity desiring to subscribe (“**Subscriber**”) for beneficial ownership interests (the “**Interests**”) in ExchangeRight Value-Add Portfolio 3 DST, a Delaware statutory trust (the “**Trust**”) should carefully read and review the confidential private placement memorandum relating to the offering of the Interests dated June 5, 2023 (the “**Memorandum**”), as supplemented to date. If Subscriber desires to subscribe for Interests, complete the Purchaser Questionnaire that follows these instructions. Please follow the appropriate instructions listed below for the items indicated. If not submitting electronically, please use ballpoint pen to fill out. Please respond to each question for each applicable Section, even if the response is “None” or “Not Applicable,” unless directed otherwise. Capitalized terms not defined herein shall have the meaning set forth in the Memorandum. All information is confidential and only for investment purposes.

Minimum Investment Requirements: Interests will be sold only to prospective investors who: (i) have read the Private Placement Memorandum including all supplements and exhibits, (ii) buy a minimum initial subscription of \$100,000 (0.87719% Interest), subject to certain exceptions in the discretion of the Trust, and (iii) meet the requirements and make the representations set forth in the Memorandum and the Purchaser Agreement, including that each investor is an “Accredited Investor” as defined in Section 501(a) of Regulation D of the Securities Act of 1933, as amended.

1031 Exchange Qualified Intermediary Information: If a Subscriber is purchasing Interests as a part of a 1031 exchange by way of a Qualified Intermediary (also known as a “QI” or “1031 Accommodator”), please provide their contact information and the amounts they are expected to wire (less any fees they may charge) in Section 3.

All Subscribers will need to complete Section 2 (pages 4-6); Sections 6, 7, and 8 (pages 21-25); review Section 9 (pages 26-35); sign (page 36 or 37), and provide requisite documents electronically via DocuSign, email to investors@exchangeright.com, or FedEx/USPS.

1031 exchange investors will also need to complete Section 3 (page 7).

Individual investors will also need to complete Section 4 (page 8) (but not Section 5).

Entity investors will also need to complete Section 5 (page 10) (but not Section 4).

Please proceed to the next page to begin the application process for an investment in this Offering.

2. General Questionnaire

All Subscribers or authorized representatives of the investing entity must fill out this section.

Who or what entity will hold the Interests?

Full name of the Person(s) or investing entity ("Subscriber"):

Primary SSN or EIN of investing person or entity for tax purposes:

What amount will be invested?

Amount of proposed investment in U.S. dollars: _____

(Includes 1031 proceeds from QI plus any added cash plus any other adjustments)

How will the Interests be held?

☐ individual

☐ partnership

☐ joint tenants

☐ corporation

☐ sole and separate property

☐ single member LLC

☐ community property

☐ multi-member LLC

☐ tenants-in-common

☐ benefit plan investor

☐ revocable trust

☐ irrevocable trust

☐ other (e.g. custodian, trustee, etc.): _____

Individual Investor(s) or Authorized Representative(s)

Please complete the information on the following page(s) for each individual investor or, if investor is an entity, for each authorized representative of the investing entity. We have provided room for two investors or authorized representatives on the following two pages. If there are more than two investors or authorized representatives, please provide a separate page with the same information requested of the other investors or authorized representatives below.

Person A

Prefix: _____ First: _____ Middle: _____

Last: _____ Suffix: _____

Street address (residence): _____

City: _____ State: _____ Zip: _____

Citizenship: _____ SSN: _____

Personal phone number: _____

Primary email address for correspondence and quarterly statements:

Additional email address(es) to receive copies of quarterly statements (if desired):

Occupation (former if retired): _____

Employer (If retired, enter “Retired”):

If you do not desire that necessary correspondence (if any) be sent to your residential address provided above, please provide an alternative address below:

Street address: _____

City: _____ State: _____ Zip: _____

If there is more than one investor or authorized representative, please complete the next page also.

Person B *(if more than one individual investor or authorized representative)*

Prefix: _____ First: _____ Middle: _____

Last: _____ Suffix: _____

Street address (residence): _____

City: _____ State: _____ Zip: _____

Citizenship: _____ SSN: _____

Personal phone number: _____

Primary email address for correspondence and quarterly statements:

Additional email address(es) to receive copies of quarterly statements (if desired):

Occupation (former if retired): _____

Employer (if retired, enter “Retired”):

If you do not desire correspondence and quarterly statements to be sent to your residential address provided above, please provide an alternative address below:

Street address: _____

City: _____ State: _____ Zip: _____

1031 exchange investors continue to Section 3 on the next page. **Individual non-1031 investors** proceed to Section 4 (page 8). **Entity non-1031 investors** proceed to Section 5 (page 10).

3. 1031 Exchange Questionnaire

*This section must be completed by all **1031 exchange investors**. If the investor is not completing an exchange, proceed either to Section 4 (individuals) or Section 5 (entities).*

Trust hereby acknowledges it may be the intent of the Subscriber to effect an IRS §1031 tax-deferred exchange, which will not delay the closing or cause additional expense to the Trust. The Subscriber's rights under this Agreement may be assigned to the Qualified Intermediary identified below for the purpose of completing such an exchange. Trust agrees to cooperate with the undersigned and Qualified Intermediary in a manner necessary to complete the exchange.

Qualified Intermediary Information:

Company name: _____

Primary contact: _____

Phone number: _____

Email address: _____

Subscriber will instruct Qualified Intermediary to wire \$ _____

Subscriber will wire or write a check for an additional \$ _____

Total cash investment (1031 proceeds + added cash) \$ _____

Date of closing of relinquished property: _____

The Subscriber provides the Trust with consent to contact the Qualified Intermediary to set up the necessary documentation to effect the closing of the exchange for the amount agreed upon. The Subscriber acknowledges that the Trust does not give tax advice and that the undersigned must consult their own CPA or tax counsel to ensure compliance with IRS section § 1031.

Individual investors continue to Section 4 (page 8). **Entity investors** proceed to Section 5 (page 10).

4. Individual Subscribers

*This Section is for **individual investors**. If subscribing as an entity, please disregard this section and proceed to Section 5 (page 10) for Entity Subscribers.*

Net Worth

Is your net worth, together with the net worth of your or spousal equivalent (defined as a cohabitant occupying a relationship generally equivalent to that of a spouse) if applicable, in excess of \$1,000,000, which amount does not include the value of your primary residence? “Net worth” means the excess of total assets at fair market value (including personal and real property, but excluding the estimated fair market value of your primary home) over total liabilities. Total liabilities exclude any mortgage on the primary home in an amount up to the home’s estimated fair market value as long as the mortgage was incurred more than 60 days in advance of the purchase of the Interests. Liabilities include (i) any mortgage amount in excess of the home’s fair market value and (ii) any mortgage amount that was borrowed during the 60-day period before the closing date for the sale of Interests for the purpose of investing in the Interests.

☐ yes

☐ no

Approx. net worth in U.S. dollars: \$_____

Income

Was *either* your yearly income from all sources during the current year and each of the last two years in excess of \$200,000 (for individuals) *or* the joint income of you and your or spousal equivalent (defined as a cohabitant occupying a relationship generally equivalent to that of a spouse) from all sources over the same period of time in excess of \$300,000?

☐ yes

☐ no

Approx. annual income in U.S. dollars: \$_____

Securities License

If you hold any of the following licenses, please check the appropriate box:

- ☐ Licensed General Securities Representative (Series 7)
- ☐ Licensed Investment Adviser Representative (Series 65)
- ☐ Licensed Private Securities Offerings Representative (Series 82)

Knowledgeable Employee

Are you a “knowledgeable employee” of a private fund, such as, but not necessarily, a trustee or advisory board member of a private fund or an affiliated person of a private fund that oversees the private fund’s investments, an employee of a private fund or affiliated person of a private fund who, in connection with an employee’s regular functions or duties, has participated in the investment activities of such private fund for at least 12 months?

- ☐ yes
- ☐ no

Professional Certification

Do you hold a professional certification, designation or credential from an accredited educational institution that the SEC designates as qualifying for Accredited Investor status?

- ☐ yes
- ☐ no

After this section is complete, please skip Section 5 and complete Sections 6, 7, and 8 (pages 21-25) to provide the financial information required to make an investment in this Offering. After providing the required financial information, please review the Agreement in Section 9 (pages 26-35) and sign (page 36 or 37) to complete your application.

5. Entity Subscribers

*This section is for **entity investors**. Please complete this section only if the interests would be acquired by a trust, partnership, limited liability company, corporation, or other entity. If the investment will be made by more than one entity, please complete a copy of this questionnaire for each entity.*

Please note that the personal information portion of Section 2 (“Person A” and “Person B”) must also be completed by each authorized representative of the investing entity. If there are more than two authorized representatives, please provide the same information for each additional authorized representative requested for Person A and Person B on a separate page.

Identification

Name of entity: _____

Domicile: _____ Effective date: _____

Tax ID: _____

Entity address: _____

City: _____ State: _____ Zip: _____

Mailing address (if different): _____

City: _____ State: _____ Zip: _____

Main phone number: _____

Description of business activity: _____

Section 5 for entities continues on the next page. Please proceed to the next page.

Accreditation

Are all the entity's shareholders, partners, members, or other equity owners Accredited Investors?

- ☐ yes
☐ no

Entity's gross assets at the time of Interests purchased: _____

If the entity does not hold at least \$5,000,000 in gross assets, please have each equity owner, shareholder, partner, member, or other equity owner; or each self-directed benefit plan investor complete Section 4 (page 8).

Was the entity formed for the purpose of this investment?

- ☐ yes
☐ no

If the answer to the above question is "yes," each additional shareholder, partner, member, or other equity owner must be an Accredited Investor and must also complete Section 4 (page 8) of this Subscription Agreement.

Entity Type

Please check the appropriate box to indicate which of the following accurately describes the entity:

- ☐ a trust that may be amended or revoked at any time by the grantors and all of whose grantors are Accredited Investors as defined by Rule 501 of Regulation D of the Securities Act (if this item is checked, all grantors must complete Section 4 hereof);
- ☐ an entity in which all of the equity owners are Accredited Investors and meet the criteria listed in Section 4 hereof (if this item is checked, all equity owners must complete Section 4 hereof).
- ☐ a trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of acquiring the Interests offered, whose purchase is directed by a sophisticated person as described in Rule 506(b)(2)(ii) of the Securities Act;

Additional entity types are included on the following page. Please proceed to the next page to complete Section 5 for entities.

- ☐ a self-directed employee benefit plan, a plan whose investment decisions are made solely by persons who are Accredited Investors (if this item is checked, all such persons must complete Section 4 and the individual information required in Section 2 hereof);
- ☐ a corporation, Massachusetts or similar business trust, or partnership, or an organization described in Section 501(c)(3) of the Code that was not formed for the specific purpose of acquiring the Interests, and that has total assets in excess of \$5,000,000;
- ☐ a private business development company as defined in Section (a)(22) of the Investment Advisers Act of 1940, as amended;
- ☐ a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958, as amended;
- ☐ an investment company registered under the Investment Trust Act of 1940, as amended, or a business development company as defined in Section 2(a)(48) of that Act;
- ☐ any entity that owns investments in excess of \$5,000,000 and that was not formed for the specific purpose of investing in the securities offered;
- ☐ any investment adviser registered under federal or state law (and Exempt Reporting Advisers relying on Section 203(m) or 203(l) of the Investment Advisers Act of 1940, as amended);
- ☐ any rural business investment company (defined as entities who are approved by the U.S. Secretary of Agriculture and have entered into a participation agreement with the U.S. Secretary of Agriculture);
- ☐ any family office with at least \$5,000,000 in assets under management and that was not formed for the specific purpose of acquiring the securities offered, and whose investment is directed by a person capable of evaluating the merits and risks of the prospective investment;
- ☐ a bank as defined in Section 3(a)(2) of the Securities Act, or a savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act, whether acting in either an individual or fiduciary capacity;
- ☐ a broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended;
- ☐ an insurance company as defined in Section 2(13) of the Securities Act;

- ☐ an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974, as amended, where the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such act, which is either a bank, savings and loan association, insurance company, or registered investment advisor, or an employee benefit plan whose total assets exceed \$5,000,000 (each a “Plan”) (if this item is checked, Subscriber must complete Section 4 hereof); or
- ☐ a plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, where such plan has total assets in excess of \$5,000,000;

Please proceed to the next page to complete Section 5 for entities.

Entities will need to provide copies of the following documents, as applicable, to investors@exchangeright.com or via FedEx/USPS to complete the application:

Trusts (*other than a trust that is a Benefit Plan Investor as described below*)

- ☐ Trust Agreement
- ☐ amendments (if applicable)

If a Subscriber is purchasing Interests through *a trust that is a taxpaying entity*, then *all trustees required by the trust documents* must execute this Subscription Agreement on behalf of the trust and all questions concerning income, assets, and accreditation will pertain to the trust.

If, on the other hand, *the trust is not the taxpaying entity* with respect to this investment (e.g. a grantor trust), then *the person paying the tax* on the trust's income (the "Taxpayer") must complete and execute this Subscription Agreement and all questions concerning income, and assets will pertain to the Taxpayer.

Corporations, Partnerships, and Limited Liability Companies

- ☐ proof of authority to transact business

All entity investors investing through an RIA must complete the Certification of Beneficial Owners segment on pages 15-17 to complete Section 5.

Benefit Plan Investors that are NOT investing through an RIA may skip the Certification of Beneficial segment below and proceed directly to complete the Benefit Plan Investors segment that begins on the bottom half of page 17 and runs through page 20.

Entity investors that are NOT investing through an RIA and are NOT Benefit Plan Investors may skip the remainder of this section and proceed directly to Section 6 (page 21).

The remainder of this page is intentionally blank. Please proceed to the next page or the relevant section based on the instructions above to complete the application process.

Certification of Beneficial Owners

*The below Certification must be completed and signed by all **entity investors investing through an RIA**. This information is sought pursuant to Section 1010.230 of Title 31 of the United States Code of Federal Regulations (31 CFR 1010.230).*

For Benefit Plan Investors NOT investing through an RIA, please proceed to page 17 to complete the Benefit Plan Investor segment. For entity investors that are NOT Benefit Plan Investors and that are not investing through an RIA, please proceed to Section 6 on page 21 to complete your application.

Natural person authorized to sign on behalf of investing entity:

Name: _____

Title: _____

Entity name: _____

Address: _____

City: _____ State: _____ Zip: _____

***If no individual owns 25% or more** of the entity listed above directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, please explain below.*

***If any individual owns 25% or more** of the entity listed above directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, please provide the information below. We have provided room for two individuals owning 25% or more of the investing entity. If there are more than two such individuals, please provide a separate page with the same information requested of the other individuals below.*

Person 1 Ownership % _____

Name: _____

The Certification of Beneficial Owners segment of Section 5 for entities continues on the next page. Please proceed to the next page to complete this segment of Section 5.

Street address: _____

City: _____ State: _____ Zip: _____

Date of birth: _____ SSN (U.S. citizens): _____

Passport number (non-U.S. citizens): _____

Passport country of issuance (non-U.S. citizens): _____

Person 2 Ownership % _____

Name: _____

Street address: _____

City: _____ State: _____ Zip: _____

Date of birth: _____ SSN (U.S. citizens): _____

Passport number (non-U.S. citizens): _____

Passport country of issuance (non-U.S. citizens): _____

Beneficial Owner Detail: As applicable, please explain any layers of Beneficial Ownership (e.g., ABC Co. is 50% owned by 123 Corp. 123 Corp. is 50% owned by Jane Doe; therefore, Jane Doe is a 25% Beneficial Owner of ABC Co.).

The Certification of Beneficial Owners segment of Section 5 for entities continues on the next page. Please proceed to the next page to complete this segment of Section 5.

Please enter the following information for **one** individual with significant responsibility for managing the entity listed above (e.g. Chief Executive Officer, Chief Financial Officer, Managing Member, General Partner, President, etc.) or any other individual who regularly performs similar functions.

Name: _____

Street address: _____

City: _____ State: _____ Zip: _____

Date of birth: _____ SSN (U.S. citizens): _____

Passport number (non-U.S. citizens): _____

Passport country of issuance (non-U.S. citizens): _____

I, _____ (name of person authorized to sign on behalf of investing entity), hereby certify, to the best of my knowledge, that the information provided above is complete and correct.

Signature: _____ Date: _____

Legal Entity Identifier _____ (optional)

*Investors that are **NOT** Benefit Plan Investors may skip the remainder of this section and proceed directly to Section 6 (page 21). **Benefit Plan Investors** must complete the remainder of Section 5 which continues directly below and proceeds through page 20 of this section.*

Benefit Plan Investors *(must be completed by all Benefit Plan Investors)*

If purchasing as a “Benefit Plan Investor” as defined in Section 3(42) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), which includes, for example, a tax-qualified pension, stock bonus or profit-sharing plan, an employee benefit plan described in Section 3(3) and subject to Title I of ERISA, an annuity described in Section 403(a) or (b) of the Internal Revenue Code of 1986, as amended (the “Code”), a Keogh Plan, an individual retirement account or annuity described in Sections 408 or 408A of the Code, an Archer MSA described in Section 220(d) of the Code, a health savings account described in Section 223(d) of the Code, a Coverdell education savings account described in Section 530 of the Code, or another entity deemed to hold “plan

assets” of any “employee benefit plan” as defined in Section 3(3) of ERISA, that is subject to Part 4 of Title I of ERISA, a “plan” covered by Section 4975 of the Code, or an entity whose underlying assets include plan assets of either of the foregoing, the Subscriber must complete the following section.

If investing as a **Benefit Plan Investor** as defined above, is the Subscriber...

1. a plan or trust that is subject to the fiduciary provisions under Part 4 of Title I of ERISA?

☐ yes ☐ no

2. a plan, trust or account that is subject to Section 4975 of the Internal Revenue Code of 1986, as amended (the “Code”), including an individual retirement account (an “IRA”), a Keogh plan, a plan that is exempt from tax under Section 501(a) of the Code because it meets the requirements described in Section 401(a) of the Code, or any other plan, trust, account or annuity that is subject to Section 4975 of the Code?

☐ yes ☐ no

3. a church plan within the meaning of Section 3(33) of ERISA?

☐ yes ☐ no

- a. If the Subscriber answered “Yes” to question 3, has such church plan elected to be subject to ERISA?

☐ yes ☐ no

4. a governmental plan within the meaning of Section 3(32) of ERISA?

☐ yes ☐ no

5. a plan which is established and maintained outside of the United States primarily for the benefit of individuals substantially all of whom are nonresident aliens?

☐ yes ☐ no

*Additional selections for **Benefit Plan Investors** are available on the following page. Please continue to the following page to complete Section 5 for **Benefit Plan Investors**.*

6. an investment vehicle (e.g., a partnership, limited liability company, corporation, a group trust, bank collective trust, insurance company separate account, or other investment vehicle)?

☐ yes

☐ no

- a. If the Subscriber answered “Yes” to question 6 above, are the assets of the Investor deemed to include the assets of one or more Benefit Plan Investors (as defined below)?

☐ yes

☐ no

- b. If the Subscriber answered “Yes” to question 6(a) above, throughout the period the Investor holds Interests, the maximum percentage of equity interests in the Investor that may at any time be held by Benefit Plan Investors is: _____%.

7. an insurance company that is purchasing Interests with assets of its general account?

☐ yes

☐ no

- a. If the Subscriber answered “Yes” to question 7 above, throughout the period the Investor holds Interests, the maximum percentage of the general account as a whole that may at any time constitute plan assets of Benefit Plan Investors is: _____%.

Benefit Plan Investor Fiduciary Questionnaire: In connection with the Benefit Plan Investor’s decision to commit assets of the Benefit Plan for investment in the Trust and the Benefit Plan Investor’s holding or disposition of its Interests, the Investor was and will be represented by a fiduciary that is (check as applicable):

- ☐ a bank as defined in Section 202 of the Investment Advisers Act of 1940, as amended (the “Advisers Act”) or similar institution that is regulated and supervised and subject to periodic examination by any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States (each, a “State”) or U.S. federal agency which is independent of the Trust, the Trustee, their respective affiliates and their respective partners, members, directors, officers, employees, agents and representatives (each, a “Covered Person”).

*Additional fiduciary selections for **Benefit Plan Investors** are available on the following page. Please continue to the following page to complete Section 5.*

- ☐ an insurance carrier which is qualified under the laws of more than one U.S. state to perform the services of managing, acquiring or disposing of assets of an “employee benefit plan” as defined in Section 3(3) of ERISA or “plan” described in Section 4975(e)(1)(A) of the Code which is independent of any Covered Person.
- ☐ an investment adviser registered under the Advisers Act or, if not registered as an investment adviser under the Advisers Act by reason of paragraph (1) of Section 203A of the Advisers Act, is registered as an investment adviser under the laws of the State in which it maintains its principal office and place of business which is independent of any Covered Person.
- ☐ a broker-dealer registered under the U.S. Securities Exchange Act of 1934 which is independent of any Covered Person.
- ☐ a fiduciary (excluding an individual directing his or her own individual retirement account or plan account or relative of such individual) that holds, or has under management or control, total assets of at least \$50 million which is independent of any Covered Person.

If the Subscriber selected any of the options above, please provide the name of the fiduciary so qualified: _____

If the Subscriber did not select any of the options above, the Subscriber confirms that the Covered Persons (1) have not provided any investment advice or recommendations with respect to the Subscriber’s decision to commit assets of the Plan for investment in the Trust and (2) did not otherwise act as a fiduciary on behalf of the Plan in connection with an investment in the Trust.

*After this segment for **Benefit Plan Investors** is complete, please complete Sections 6, 7, and 8 (pages 21-25) to provide the financial information required to make an investment in this Offering. After providing the required financial information, please review the Agreement in Section 9 (pages 26-35) and sign (page 36 or 37) to complete your application for an investment in this Offering.*

Please be sure to provide all requisite copies of applicable entity documents (see the top half of page 14) via email to investors@exchangeright.com or via FedEx/USPS.

Please proceed to the following page to continue the application process.

6. Financial Statement/Accreditation Verification

Please fill out and sign the financial statement OR include a signed copy of your own financial statement if you have one already prepared OR, in lieu of a financial statement, you may provide a third-party accreditation letter included on the next page.

Assets	
Current Assets	
Cash & Cash Equivalents	
Checking/Savings	
Money Market	
CDs	
Marketable Securities Stocks, Bonds, Mutual Funds	
Notes / Accounts Receivable (within 12 months)	
Other Retirement Assets IRA, 401k, Pension, PSPs	
Short-term Receivables	
Total Current Assets	\$
Market: Value of Primary Residence	
Market Value of Investments and Real Estate Owned	
Net Worth of Business Interest	
Personal Property	
Vehicles	
Furniture, Fixtures & Equipment	
Notes/ Accounts Receivable	
Total Long-Term or Illiquid Assets	\$
TOTAL ASSETS	\$

Liabilities	
Current Liabilities (due within 12 months)	
Credit Card Debt	
Notes / Accounts Payable (within 12 months)	
Total Current Liabilities	\$
Mortgage Payable on Primary Residence	
Mortgage Payable on Investments Real Estate Owned	
Debt Secured by Business Interest	
Debt Secured by Personal Property	
Debt Secured by Vehicles	
Total Long-Term Liabilities	\$
TOTAL LIABILITIES	\$
NET WORTH	\$

Name and Title if applicable (please print)

Signature

Date

Name and Title (if applicable) (please print)

Signature

Date

Third-Party Accreditation Verification Letter

If you have provided a financial statement for the person(s) or entity that is investing (see page 21 of this Agreement), you do not need to also provide a third-party accreditation verification letter.

However, if you do not wish to provide a financial statement, please have your attorney, accountant, representative, or advisor fill out and sign the form below to provide a third-party verification of the Subscriber's accreditation to complete an investment in this Offering.

Name of investor or investing entity: _____

I hereby confirm that the Investor set forth above is an "Accredited Investor" as defined in Rule 501 of Regulation D of the Securities Act of 1933. In conducting the analysis, I reviewed information provided by the Investor including, but not limited to, financial statements or certifications of certain information and supporting documentation that the Investor provided to me. I have taken "reasonable steps" as outlined by the Securities and Exchange Commission in conducting this analysis.

I am confirming that the Investor has been verified as an "Accredited Investor" as defined in Rule 501 of Regulation D of the Securities Act of 1933.

I am a(n) (please check one):

- ☐ Attorney
- ☐ Accountant
- ☐ Broker-Dealer
- ☐ Investment Advisor

My License/CRD # is _____ and it is currently in good standing in the state of _____.

Sincerely,

Signature

Date

Name

7. Form W-9

All Subscribers must fill out and sign a Form W-9 for the entity or person(s) who will be receiving distributions. We have attached a copy of a Form W-9 for your convenience on the following page. If you already have a signed copy of a Form W-9 prepared, you may include that instead.

Please proceed to the next page to complete the Form W-9.

The balance of this page is intentionally blank.

Request for Taxpayer Identification Number and Certification

Give Form to the
requester. Do not
send to the IRS.

► Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type. See Specific Instructions on page 3.	1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
	2 Business name/disregarded entity name, if different from above	
	3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. ☐ Individual/sole proprietor or single-member LLC ☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner. ☐ Other (see instructions) ► _____	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <i>(Applies to accounts maintained outside the U.S.)</i>
	5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
	6 City, state, and ZIP code	
	7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number									
				-				-	
or									
Employer identification number									
				-					

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ►	Date ►

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

8. ACH Authorization

For increased account security, we only process distributions via ACH. Please complete this form and attach a voided check or bank letter to receive distributions.

Account information (for investing entity/person(s) listed in Section 2)

Please choose one: ☐ checking account ☐ savings account ☐ brokerage account

Account #: _____ Routing #: _____

Bank name/Custodial entity: _____

Bank address: _____

City: _____ State: _____ Zip: _____

Account owner(s) (If more than two account owners, please include separately)

Name/Title: _____

Signature: _____ Date: _____

Name/Title: _____

Signature: _____ Date: _____

Trustee/Custodian (for Benefit Plan Investors only)

Name: _____

Title: _____

Signature: _____ Date: _____

Please attach a voided check or bank letter to this page or email a copy to investors@exchangeright.com.

9. Agreement

A. Subscription

1. Subject to the terms and conditions of this Subscription Agreement (“Subscription Agreement”), the Subscriber hereby subscribes for Interests in the Trust having an aggregate purchase price in the amount indicated by the Subscriber in Section 2 hereof.
2. The Trust shall have the sole right, at its complete discretion, to accept or reject this application for a subscription, in whole or in part, for any reason and that the same shall be deemed to be accepted by the Trust only when it is signed by a duly authorized officer of the Trust. Notwithstanding anything in this Subscription Agreement to the contrary, the Trust shall have no obligation to issue any of the Interests to any person who is a resident of a jurisdiction in which the issuance of the Interests to such person would constitute a violation of the securities, “blue sky”, Patriot Act, or other similar laws of such jurisdiction.

B. Privacy Policy

1. In accordance with securities law requirements and Patriot Act compliance, the Trust and its affiliates collect nonpublic personal information about investors from information received on subscription documents and other forms and information required in connection with a subscription for Interests and information concerning Subscriber’s transaction with the Trust.
2. The Trust and its affiliates will not disclose any nonpublic personal information relating to current or former investors except in connection with:
 - the administration, processing, and servicing of Interests;
 - services provided to the Trust, such as those provided by auditors, tax advisers, legal advisers, or other Trust service providers;
 - banks and other financial institutions, lenders or providers of financing; or
 - government agencies, regulatory authorities, courts and the like.

In each such case, the Trust and its affiliates’ disclosure of any nonpublic personal information will be subject to customary undertakings and requirements of confidentiality.

3. The Trust and its affiliates restrict access to nonpublic personal information relating to investors to personnel of the Trust and its affiliates, and other personnel covered by

appropriate confidentiality requirements who need to know that information in connection with the operation of the Trust, including for purposes of complying with anti-money-laundering laws, the Patriot Act, and Know Your Customer regulations.

4. The Trust and its affiliates maintain physical, electronic, and procedural controls in keeping with U.S. federal standards to reasonably safeguard the Trust's nonpublic personal information relating to investors.

C. Representations, Warranties and Covenants of the Subscriber

As an inducement to the Trust to approve the sale to the Subscriber the Interests for which it has subscribed, the Subscriber represents and warrants to the Trust as follows:

1. The Subscriber has received a copy of the Trust's Memorandum, and has subscribed for and will hold all Interests subject to the terms of the Memorandum, Purchase Agreement, and Trust Agreement. The Subscriber has read and understands the Memorandum. In making this subscription, the Subscriber has not relied on any information (whether oral or written) that is inconsistent with the information contained in the Memorandum, the Purchase Agreement, or the Trust Agreement.
2. The Subscriber has reviewed and meets the applicable investor suitability and eligibility requirements set forth in the Memorandum under "Suitability Standards". Subscriber is an "Accredited Investor" as defined by Rule 501 of Regulation D under the Securities Act of 1933, as amended (the "Securities Act").
3. The Subscriber represents that all the information set forth herein regarding the Subscriber (including, but not limited to its financial position), is correct and complete as of the date of this Subscription Agreement, and if there should be any material change in such information prior to the Subscriber becoming a shareholder of the Trust, the Subscriber will immediately furnish such revised or corrected information to the Trust.
4. The Subscriber is acquiring Interests for its own account for investment and not with a view to the resale or distribution thereof.
5. Investment in the Trust is speculative and includes the risks summarized under "Risk Factors" in the Memorandum. The Subscriber is able to afford the risks of an investment in the Trust, which include illiquidity and the potential disruption or loss of income, or principal, or both.

6. The Subscriber understands that restrictions on the transfer, sale, hypothecation, or encumbrance of the Interests are required by various provisions of law, including the federal securities laws, tax requirements and ERISA, among others, and the provisions of the Trust. Subscriber represents that the acquisition of the Interests will not, and Subscriber agrees that Subscriber will not transfer, or attempt to transfer, any Interests, and that the Trust may refuse to permit such transfer, if the transfer could, result in any violation of the restrictions on ownership and transfer of Interests set forth in the Trust Agreement. An authorized transferee will be required to complete, execute and deliver a subscription agreement and agree to be bound by its terms. Any attempted transfer of Interests in violation of this Section shall be null and void.
7. The Subscriber agrees to furnish the Trust with any information, representations and forms as shall reasonably be requested by the Trust or its affiliates from time to time to assist it in complying with any applicable law or tax requirements or determining the extent of, and in fulfilling, its withholding obligations. The Subscriber agrees to furnish the Trust with any representations and forms as shall reasonably be requested by the Trust to assist it in obtaining any exemption, reduction or refund of any withholding or other taxes imposed by any taxing authority or other governmental agency upon the Trust or amounts paid to the Trust. The Subscriber represents that it has provided the Trust with a completed and executed Form W-9.
8. The Subscriber has sufficient knowledge and experience in financial matters so as to be capable of evaluating the merits and risks of purchasing Interests and is able to bear the economic risk of such investment, including a complete loss. In this regard, the Subscriber acknowledges that an investment for Interests will be illiquid and that there is no guarantee that the Trust or its affiliates will be successful in executing its strategic business plan or exit plan to achieve liquidity. The Subscriber has determined that the Interests subscribed for are a suitable investment. The Subscriber understands that it must bear the economic risk of an investment in the Trust for an indefinite period of time and represents and warrants that it can bear the economic risk of losing its entire investment in the Trust. The Subscriber understands that an investment in the Trust is illiquid and there is presently no public market for Interests (nor is it anticipated that any public market for such Interests will develop). The Subscriber's overall commitment to the Trust and other investments that are not readily marketable is not disproportionate to the Subscriber's net worth and the Subscriber has no need for immediate liquidity in the Subscriber's investment in Interests.

9. If the Subscriber is not a natural person, the Subscriber is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization and has the power and authority to enter into this Subscription Agreement and each other document required to be or otherwise executed and delivered by the Subscriber in connection with this subscription for Interests, and to perform its obligations hereunder and thereunder and consummate the transactions contemplated hereby and thereby, and the person(s) signing this Subscription Agreement on behalf of the Subscriber has been duly authorized to execute and deliver this Subscription Agreement and each other document required to be or otherwise executed and delivered by the Subscriber in connection with this subscription for Interests. If the Subscriber is an individual, the Subscriber has all requisite legal capacity to acquire and hold the Interests and to execute, deliver and comply with the terms of each of the documents required to be executed and delivered by the Subscriber in connection with this subscription for Interests.
10. The execution and delivery by the Subscriber, and compliance by the Subscriber with this Subscription Agreement and each other document required to be executed and delivered by the Subscriber in connection with this subscription for Interests does not conflict with, or constitute a default under, any instruments governing the Subscriber, any law, regulation or order, or any agreement to which the Subscriber is a party or by which the Subscriber is bound. This Subscription Agreement is valid and binding on and enforceable against the Subscriber in accordance with its terms.
11. If the Subscriber's subscription for Interests is accepted, the Subscriber will execute and/or supply any additional documentation or information that the Trustee, a placement agent or the Trustee determines is reasonably required to determine suitability and/or eligibility to acquire and hold Interests.
12. The Subscriber has read and agrees to the terms of the Privacy Notice included herein as Section 9 Subsection B ("Privacy Policy"). The Subscriber understands that all information provided in connection with the Trust is confidential and proprietary and may include trade secrets and other commercially sensitive information. The Subscriber agrees that it will not disclose or use any of the information provided in connection with the Trust or the subscription of Interests, or permit any of its representatives or advisors to disclose or use such information, unless it has received the prior written consent of the Trust.

13. The Subscriber has not ever filed (or had filed against Subscriber) a petition under the federal bankruptcy laws or any state insolvency law or had a receiver, fiscal agent or similar officer appointed by a court for your business or property; has not filed any litigation or had any litigation filed against Subscriber at any time during the last five years; is not a party to any pending litigation; and is not in the process of being charged and/or has not been convicted or had any partner in a management or principal ownership role been convicted of or charged with a criminal act or been the subject of a pending criminal proceeding (excluding traffic violations and other minor offenses). If any of the prior statements are not true of Subscriber, Subscriber must notify Trust and provide details PRIOR to proceeding with an investment in the Offering.
14. The Subscriber understands that the Interests have not been registered under the laws of any jurisdiction (including the Securities Act, the laws of any state of the United States of America or the laws of any foreign jurisdiction), nor is such registration contemplated. The Subscriber understands and agrees further that the Interests may not be offered, resold, pledged or otherwise transferred unless they have been registered under the Securities Act and any applicable state or other securities laws or unless an exemption from such registration is available. Even if such an exemption is available, the assignability and transferability of the Interests will be governed by the Memorandum, Trust Agreement, and this Subscription Agreement, which imposes other substantial restrictions on transfer. The Subscriber understands that legends stating that the Interests have not been registered under the Securities Act and any applicable state or other laws and setting out or referring to the restrictions on the transferability and resale of the Interests will be placed on documents evidencing the Interests, if any.
15. If the Subscriber is a “Benefit Plan Investor” as defined in Section 5 of this Agreement, the Subscriber has so indicated in Section 5 hereof. If Subscriber is a Benefit Plan Investor, Subscriber (i) acknowledges that (a) the person causing the Subscriber to purchase Interests (a “Plan Fiduciary”) has exercised independent judgment in evaluating for itself the merits of such investment, and (b) the Plan Fiduciary has not solicited and has not received from the Trust, the Trustee or any of their respective affiliates any evaluation or other impartial investment advice on any basis in respect of the advisability of this or any other investment in light of the plan's assets, cash needs, investment policies or strategy, overall portfolio composition or plan for diversification of assets, and it is not relying and has not relied on any such persons for any such advice

and (ii) represents that neither the execution and delivery of this Subscription Agreement nor the purchase or holding of the Interests constitutes a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code. The Plan Fiduciary (i) is a “fiduciary” within the meaning of Section 3(21) of ERISA or Section 4975 of the Code; (ii) is responsible for the Subscriber’s decision to purchase Interests; (iii) is capable of evaluating investment risks independently, both in general and with regard to the Subscriber’s purchase of Interests; (iv) is independent of the Trust, the Trustee and any of their respective affiliates; (v) is qualified to make such investment decision; and (vi) if the Subscriber is an “individual retirement account” or “individual retirement annuity” within the meaning of Section 408 of the Code, is not the owner of such “individual retirement account” or “individual retirement annuity” or a relative thereof.

16. Subscriber has received and reviewed, with assistance from such legal, tax, investment, and other advisors and skilled persons as the undersigned has deemed appropriate, the Trust Agreement of the Trust and hereby covenants and agrees to be bound by and adopts the Trust Agreement as a Beneficial Owner (as defined in the Trust Agreement).

D. Indemnification for Subscriber’s Misrepresentations or Failures to Perform

1. Subscriber shall indemnify, defend and hold harmless the Trust, ExchangeRight Real Estate, LLC (the “Sponsor”), and all of their respective affiliates, limited partners, general partners, members, managers, officers, directors, affiliates, representatives and advisors from any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys’ fees and costs) that they may incur by reason of Subscriber’s failure to fulfill all of the terms and conditions of this Subscription Agreement or by reason of the untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents Subscriber has furnished to any of the foregoing in connection with the transactions described herein. This indemnification includes, but is not limited to, any damages, losses, liabilities, costs and expenses (including reasonable attorneys’ fees and costs) incurred by the Trust, the Sponsor or any of their affiliates, respective general partners, limited partners, members, managers, officers, directors, affiliates, representatives or advisors defending against any alleged violation of federal or state securities laws which is based upon or related to any untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents that Subscriber has furnished to any of the foregoing in connection with this transaction.

2. The Subscriber certifies that: (i) the Subscriber's name, taxpayer identification or social security number and address provided in this Subscription Agreement are correct; and (ii) the Investor will complete and return with this Subscription Agreement an Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification.
3. All representations, warranties and covenants of the Subscriber contained herein shall survive the acceptance of this subscription.

E. Patriot Act Compliance

As a material condition of investing in the Trust, and without limiting the other provisions of this Subscription Agreement, each Subscriber represents, warrants, covenants and agrees with, and certifies to, the Trust as follows (collectively, the "Patriot Act Compliance Provisions"):

1. Subscriber, and any direct or indirect beneficial owner of Subscriber, has not committed any Patriot Act Offense. "Patriot Act Offense" means any violation of any of the following (collectively, "Applicable Laws") (a) the Patriot Act¹; or (b) the federal criminal laws of the United States of America or the state criminal laws of any state or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of such states, relating to terrorism or the laundering of monetary instruments; or (c) the requirements of any Executive Order² or OFAC (Office of Foreign Assets Control) Laws and Regulations;³ or (d) crimes of conspiracy to commit, or aiding and abetting another to commit, any Patriot Act Offense.
2. **Legal Source of Funds:** The funds invested by Subscriber in the Trust, and all funds received, directly or indirectly, by Subscriber from any direct or indirect beneficial

¹ "Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, Public Law 107-56 (October 26, 2001), as the same may be amended from time to time, and corresponding provisions of future laws.

² "Executive Order" means any Presidential Executive Orders, including, without limitation, Presidential Executive Order No. 13224 (September 24, 2001).

³ "OFAC Laws and Regulations" means any lists, laws, rules, sanctions and regulations maintained by OFAC pursuant to any authorizing statute, Executive Order or regulation, including the Trading with the Enemy Act, 50 App. U.S.C. § 1 *et seq.*, as amended from time to time, the International Emergency Economic Powers Act, 50 U.S.C. § 1 *Working Interest* *et seq.*, as amended from time to time, the un-repealed provisions of the Iraqi Sanctions Act, Publ. L. No. 101-513, United Nations Participation Act, 22 U.S.C. § 287c *et seq.*, as amended from time to time, the International Security and Development Cooperation Act, 22 U.S.C. § 2349aa-9 *et seq.*, as amended from time to time, The Cuban Democracy Act, 22 U.S.C. § 6001 *et seq.*, as amended from time to time, The Cuban Liberty and Democratic Solidarity Act, 22 U.S.C. § 6021 *et seq.*, as amended from time to time, The Antiterrorism and Effective Death Penalty Act, 8 U.S.C. § 1189 *et seq.*, and The Foreign Narcotics Kingpin Designation Act, 21 U.S.C. § 1901 *et seq.*, as amended from time to time.

owner of Subscriber, are derived from legal sources and without violation of Applicable Laws.

3. **Identity of Subscriber:** Subscriber, and any direct or indirect beneficial owner of Subscriber, (i) is not listed on any Governmental Lists,⁴ or a person who acts for or on behalf of, any person, group or entity on the Governmental Lists; or (ii) is not a person who has been determined by competent authority to be subject to the prohibitions contained in any Executive Orders, including without limitation being a person designated under Section 1(b), (c) or (d) of Executive Order 13224; or (iii) is not and has not in the past been under investigation by any governmental authority for, or has been charged with or convicted of, any Patriot Act Offense, or assessed civil penalties under Applicable Laws or related laws, or subject to seizure or forfeiture of its funds in any action under Applicable Laws or related laws.
4. **Prohibited Activities:** Subscriber, and any direct or indirect beneficial owner of Subscriber, has not been, and will not in the future be (i) a person who is located in a country with which dealings are prohibited or restricted by the United States federal government; (ii) dealing in a prohibited manner with a country or person or entity in a country with which dealings are prohibited or restricted by the United States government; or (iii) a person who commits a Patriot Act Offense.
5. **Consent to Disclosure of Information:** Subscriber consents to the Trust performing a search of applicable Governmental Lists prior to acceptance of any subscription for Shares, which search may be performed by a third party. Subscriber shall provide to the Trust prior to acceptance of its subscription, and from time to time thereafter as requested by the Trust, all information reasonably required by the Trust to establish compliance with these Patriot Act Compliance Provisions.
6. **Notice of Violation:** Subscriber shall immediately notify the Trust in writing of the relevant facts and circumstances if any representation or warranty set forth in these Patriot Act Compliance Provisions is no longer true or accurate in any respect, including becoming a person who is listed on any of the Governmental Lists, or who

⁴ "Governmental Lists" means (1) the SDN List (Specially Designated Nationals and Blocked Persons Lists maintained by OFAC, as such list is amended from time to time), (2) the Denied Persons List and the Entity List maintained by the United States Department of Commerce, (3) the List of Terrorists and List of Disbarred Parties maintained by the United States Department of State, (4) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the OFAC Laws and Regulations, (5) any other similar list maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America, and (6) any list or qualification of "Designated Nationals" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, as all such Governmental Lists may be updated from time to time.

has become a designated person pursuant to any of the Executive Orders, or who is under investigation by any governmental entity for or has been charged with or convicted of, any Patriot Act Offense.

7. **Further Restriction on Transfers:** Without limiting any provisions in the Declaration of Trust or the Bylaws of the Trust, it is further agreed that no transfer of any direct or indirect interest in the Trust, or of the equity or other beneficial ownership interests in any Subscriber that is an entity, shall be effective until the transferee has provided a written certification by the transferee to the Trust that the transferee shall be bound by, subject to and shall comply with all of the Patriot Act Compliance Provisions set forth in this Section 9 Subsection E.
8. **Indemnification and Consequences of Breach:** Subscriber acknowledges that Subscriber understands the meaning and legal consequences of the representations, warranties and covenants of these Patriot Act Compliance Provisions set forth in this Section 9 Subsection E, and understands that the Trust has relied upon such representations, warranties and covenants, in connection with any sale of Shares pursuant thereto and Subscriber hereby agrees to indemnify and hold harmless the Trust, the Trustee and their affiliates and their officers, managers, controlling persons, agents and employees, from and against any and all losses, damages or liabilities due to or arising out of a breach of any representation, warranty or covenant made by Subscriber herein (including losses, damages or liabilities under agreements with lenders or mezzanine financiers to and/or equity partners). Without limiting the foregoing, in the event of a breach by Subscriber (or its successors and assigns) of any of the representations, warranties, covenants and agreements set forth in these Patriot Act Compliance Provisions, the Trust shall have, in addition to and without limiting all of the rights and remedies otherwise available at law or in equity, the right to purchase Subscriber's Shares for cash at a purchase price equal to the lesser of (a) 70% of the purchase price of the Share and (b) 70% of the NAV of such Shares (as determined in accordance with the Memorandum), regardless of the current fair value of the Shares or the Trust's assets.
9. **Acknowledgement of Terms:** Subscriber understands and acknowledges that these Patriot Act Compliance Provisions are fair and reasonable in light of the Trust's business and operation, and that they (i) are a material condition precedent of the Trust's acceptance of Subscriber's subscription; (ii) are in addition to the other representations, warranties, covenants and agreements set forth in this Subscription

Agreement (and to the extent of a conflict, the terms of these Patriot Act Compliance Provisions shall control); (iii) shall survive the Trust's acceptance of Subscriber's subscription; and (iv) shall be binding upon Subscriber's successors and assigns.

1031 Exchange Investors: *1031 exchange investors must complete Section 3 (page 7) in addition to the other Sections listed below.*

Individual Investors: *Individual Investors must also complete Section 2 (pages 4-6); Section 4 (page 8); Sections 6, 7, and 8 (pages 21-25); review Section 9 (pages 26-35); and sign (page 36) in order to complete the application for investment in this Offering.*

Entity Investors: *Investors investing with an entity or who are otherwise not investing as an individual must also complete Section 2 (pages 4-6); the applicable segments of Section 5 (detailed below); Sections 6, 7, and 8 (pages 21-25); review Section 9 (pages 26-35), and sign (page 37) in order to complete the application for investment in this Offering.*

Section 5 Applicability for Entity Investors:

- entities that are NOT investing through an RIA and are NOT Benefit Plan Investors, please complete pages 10-14 to complete Section 5
- entities that ARE investing through an RIA that are NOT Benefit Plan Investors, please complete pages 10-17 to complete Section 5
- entities that ARE investing through an RIA and that ARE Benefit Plan Investors, please complete pages 10-20 to complete Section 5
- entities NOT investing through and RIA that ARE Benefit Plan Investors, please complete pages 10-14 and 17-20 to complete Section 5

After reviewing all the terms of this Agreement listed in Section 9, please signify Subscriber's agreement to these terms by signing this Agreement on the following page.

10. Signatures

The Subscriber has read and understood the full Agreement terms in Section 9 as well as the Private Placement Memorandum, including particularly the “Risk Section,” prior to proceeding with an investment in this Offering. Subscriber hereby subscribes for the Interests on the terms and conditions set forth herein in this agreement. The Subscriber recognizes that the Trust and its counsel are relying on the truth and accuracy of the foregoing information in reliance on the exemption contained in Subsection 4(2) of the Securities Act and Regulation D promulgated thereunder. To the best of the undersigned’s knowledge, information and belief, the foregoing information supplied by the undersigned is true and correct in all respects and the undersigned represents that the undersigned will notify the Trust promptly of any changes in the foregoing information that may occur prior to the investment.

All signers must email a copy of their Driver’s License to investors@exchangeright.com or send via FedEx/USPS with the rest of the documents requested.

Individuals

Name: _____

Signature: _____ Date: _____

Name: _____

Signature: _____ Date: _____

CONSENT OF SPOUSE TO BE BOUND BY SUBSCRIPTION AGREEMENT

I, _____ the spouse of _____, a party to the foregoing Subscription Agreement, acknowledge that I have reviewed the Subscription Agreement and that I hereby agree to be bound by each and every term and condition of the Subscription Agreement. I consent to such purchase, approve the provisions of the Subscription Agreement relating thereto, and agree to be bound by the terms and provisions thereof.

Dated: _____

By: _____

Printed Name: _____

Entities

Entity Name: _____

Signer Name/Title: _____

Signature: _____ Date: _____

Signer Name/Title: _____

Signature: _____ Date: _____

*If more than two signers are required for the entity, please print and sign a copy of this page.
Requisite Broker-Dealer/RIA Signatures follow on the next page.*

Broker-Dealer / RIA

The Broker-Dealer, Registered Representative, Registered Investment Advisor, and/or Advisor representing and/or advising the Subscriber(s) making an investment in this Offering acknowledge and agree to the following:

Standards of suitability have been established by the Trust and fully disclosed in the Memorandum under “Suitability Standards” and in this Subscription Agreement. Before recommending purchase of a share, we have reasonable grounds to believe, on the basis of information supplied by the prospective investor concerning its investment objectives, other investments, financial situation and needs, and other pertinent information that: (a) the prospective investor is an “Accredited Investor” as defined in Section 501(a) of Regulation D of the Securities Act and meets the purchaser suitability requirements set forth in the Memorandum and this Subscription Agreement; (b) the prospective investor has a net worth and income sufficient to sustain the risks inherent in the Interests, including loss of investment and lack of liquidity; and (c) the Interests are otherwise a suitable purchase for the prospective investor. We will maintain in our files documents disclosing the basis upon which the suitability of this Subscriber was determined.

We verify that the above subscription either does not involve a discretionary account or, if so, that the prospective investor’s prior written approval was obtained relating to the liquidity and marketability of the Interests during the term of the purchase.

Registered Representative or Investment Advisor

Broker-Dealer or RIA Firm Name: _____

Name: _____

Signature: _____ Date: _____

Email Address: _____

Phone: _____

Principal/Officer of Broker-Dealer

Broker-Dealer Name: _____

Principal/Officer Name: _____

Signature: _____ Date: _____

ExchangeRight Value-Add Portfolio 3 DST Approval Section

The Trust hereby accepts the above application for subscription for Interests and the Subscriber is admitted to the Trust as an Owner as of the effective date of closing provided on the fully executed closing statement (the “Effective Date of Closing”).

Entity Name: ExchangeRight Value-Add Portfolio 3 DST, a Delaware statutory trust

Signer Name: _____

Title: _____

Signature: _____ Date: _____

EXHIBIT D
MASTER LEASE AGREEMENTS

MASTER LEASE AGREEMENT

Between

EXCHANGERIGHT VALUE-ADD PORTFOLIO 3 DST
a Delaware statutory trust

Landlord,

and

EXCHANGERIGHT VALUE-ADD PORTFOLIO 3 MASTER LESSEE, LLC
a Delaware limited liability company

Tenant

Dated as of June 5, 2023

MASTER LEASE

THIS MASTER LEASE AGREEMENT (this “Lease”) is made and entered into as of June 5, 2023 by and between ExchangeRight Value-Add Portfolio 3 DST, a Delaware statutory trust (hereinafter referred to as “Landlord”), and ExchangeRight Value-Add Portfolio 3 Master Lessee, LLC, a Delaware limited liability company (hereinafter referred to as “Tenant”) in anticipation of Landlord’s ownership of the Premises (hereinafter defined).

ARTICLE 1 BASIC PROVISIONS AND CERTAIN DEFINED TERMS

1.1	<u>Premises Information:</u>	The real properties as more particularly described on <u>Exhibit A</u> .
1.2	<u>Landlord and address:</u>	ExchangeRight Value-Add Portfolio 3 DST, a Delaware statutory trust 1055 E. Colorado Blvd., Suite 310 Pasadena, CA 91106 Attn: Warren Thomas
1.3	<u>Tenant and address:</u>	ExchangeRight Value-Add Portfolio 3 Master Lessee, LLC, a Delaware limited liability company 1055 E. Colorado Blvd., Suite 310 Pasadena, CA 91106 Attn: Warren Thomas
1.4	<u>Annual Base Rent:</u>	As specified in Article 4 and on <u>Exhibit C</u> .
1.5	<u>Annual Bonus Rent:</u>	As specified in Article 4 and on <u>Exhibit C</u> .
1.6	<u>Commencement Date:</u>	Such date that Landlord takes title to the Premises.
1.7	<u>Expiration Date:</u>	Concurrently with Landlord’s termination.
1.8	<u>Lender:</u>	Barclays Capital Real Estate Inc.
1.9	<u>Loan:</u>	The loan from Lender to Landlord financing the purchase of the Premises in the amount of \$7,332,000.
1.10	<u>Master Lease Revenue Target:</u>	As specified in Article 4 and on <u>Exhibit C</u> .
1.11	<u>Memorandum:</u>	The Confidential Private Placement Memorandum of ExchangeRight Value-Add Portfolio 3 DST dated as of the date of this Lease, as may be supplemented thereafter.

1.12 Monthly Base Rent: One-twelfth of the Annual Base Rent in effect from time to time.

1.13 Permitted Use: All lawful purposes incidental to the properties comprising the Premises (as hereinafter defined).

1.14 Certain Other Definitions. “Mortgage” means a leasehold mortgage, trust deed or similar security instrument in which all or part of the Premises constitute the mortgaged property. “Note” means any and all promissory notes secured in whole or in part by the Mortgage. Note and Mortgage and the related loan agreement and other documents in connection with the Loan, as the same may from time to time be amended, are herein referred to collectively as the “Loan Documents.” “Trust Agreement” means the Trust Agreement of Landlord dated April 27, 2022.

ARTICLE 2 DEMISE OF LEASEHOLD

2.1 Demise of Leasehold. Landlord hereby leases to Tenant as of the Commencement Date, and Tenant hereby leases from Landlord as of the Commencement Date, the Landlord’s fee and/or leasehold interest in the properties identified in Section 1.1, which comprises the property and real estate legally described in Exhibit A, together with (i) all improvements now located thereon or to be located thereon during the Term (as hereinafter defined), (ii) all appurtenances belonging to or in any way pertaining to the said premises, and (iii) together with the right of ingress to and egress from the properties (such property, real estate, improvements, and appurtenances hereinafter referred to as the “Premises”).

2.2 Assignment of Existing Leases; Subleases, Contracts.

2.2.1 Landlord hereby assigns, transfers and quit claims without warranty to Tenant, and Tenant hereby accepts, all of Landlord’s right, title, and interest in and to any and all leases currently affecting the Premises set forth on Exhibit B attached hereto. In addition, Landlord hereby grants Tenant the right to enter into new subleases with respect to the Premises subject to compliance with all applicable provisions of the Loan Documents. For purposes of this Lease, each such assigned lease and all subleases hereinafter entered into by Tenant as sublandlord shall become a sublease (each a “Sublease” and collectively, the “Subleases” and the tenant under each Sublease is herein referred to as “Subtenant”). Tenant shall assume all obligations and liabilities of the Landlord with respect to the Subleases on or after the Commencement Date. All rent due under the Subleases for periods after the date hereof shall be payable to Tenant. If this Lease is being entered into concurrently with Landlord’s acquisition of the Premises, then to the extent Landlord is required by the purchase contract for the Premises to remit any rents collected to the Seller, then Tenant shall remit such rents to the Seller.

2.2.2 Landlord hereby assigns, transfers and quit claims without warranty to Tenant, and Tenant hereby accepts, all of Landlord’s right, title, and interest in and to any and all contracts in connection with the operation, leasing and/or management of the Premises.

2.2.3 Upon the termination or expiration of this Lease, all Subleases, and contracts shall be deemed to have been automatically assigned or reassigned to Landlord, and Landlord shall be deemed to have automatically assumed all duties and obligations of Tenant under all Subleases and contracts without any further action on the part of Tenant. In the event of such reassignment, Tenant agrees to execute such documentation as may be required to confirm the automatic assignment/reassignment contained herein. In accordance with the terms of this Section and provided a reassignment has occurred, Landlord agrees not to disturb possession of the Subtenants under the Subleases existing as of the date hereof or hereafter entered into in accordance with this Agreement, unless any such Subtenant is in default under any of the terms, covenants, or conditions of its Sublease or as otherwise provided in any subordination agreement entered into by Lender and such tenant. Landlord and Tenant intend that all Subtenants may rely upon, and that all Subtenants be third party beneficiaries of this Agreement with respect to, the provisions of this Section 2.2.

2.3 No Merger of Title.

There shall be no merger of the Tenant's estate ("Leasehold Estate") with the Landlord's estate ("Fee Estate") by reason of the fact that the same person may own or hold (i) the Leasehold Estate or any interest therein, and (ii) the Fee Estate or any interest therein. No merger of the Leasehold Estate and the Fee Estate shall occur unless and until all persons, including any Lender, having any interest in either (i) the Leasehold Estate, or (ii) the Fee Estate, shall join in a written instrument effecting such merger and shall duly record the same.

ARTICLE 3 TERM

3.1 Term. The initial term of this Lease shall commence as of the Commencement Date and shall end on the Expiration Date, unless sooner terminated or extended as provided herein (the "Initial Term"). Notwithstanding the foregoing or anything else herein to the contrary, for so long as any obligation remains outstanding under any of the Loan Documents, the term of this Lease shall automatically extend beyond the Initial Term or renewal term, as applicable, and shall continue in full force and effect thereafter until all such obligations have been fully performed and satisfied.

3.2 Renewal Option. Tenant shall have no renewal options. The "Term" as used herein shall mean the Initial Term.

3.3 Delivery of Possession. Landlord shall deliver possession of the Premises to Tenant as of the Commencement Date.

3.4 Lease Year Defined. The Lease shall be operated on a fiscal year basis. "Lease Year" shall mean (i) if the Commencement Date is the first day of a calendar month, the twelve (12) month period commencing on the Commencement Date, or (ii) if the Commencement Date is not the first day of a calendar month, the period commencing on the Commencement Date and ending on the last day of May 2024 and each succeeding twelve (12) month period.

ARTICLE 4 RENT

4.1 Rent Commencement Date. Tenant shall commence payment of Annual Base Rent as of the Commencement Date and Annual Bonus Rent shall be reconciled and paid following the end of each Lease Year. If Landlord has acquired the Premises on the Commencement Date, then on July 6, 2023 (but not thereafter) Tenant shall be entitled to offset against Annual Base Rent the amount of rent proration credit given to Landlord in connection with such acquisition, if any, provided such credit does not exceed one month's Monthly Base Rent.

4.2 Annual Base Rent. Tenant shall pay an Annual Base Rent (as set forth on Exhibit C) to Landlord for the Premises, payable in equal monthly installments of Monthly Base Rent, in arrears on the first day of each calendar month of the Term, provided that the last payment of Annual Base Rent shall be on the Expiration Date. Such Annual Base Rent includes amounts that are anticipated to be sufficient for the Trust to fund Owner Annual Base Rent Distributions, TI/LC Reserve Contributions, CapEx Reserve Contributions, the Manager's annual asset management fee, and Lender's debt service as more specifically outlined in the Pro Forma to the Memorandum as Exhibit G. Notwithstanding the foregoing, any interest earned on the funds held by the Landlord in reserves shall be included in the amounts available for distribution from the Tenant and as such will be available to offset the respective Annual Base Rent amount payable by the Tenant to the Landlord in the respective calendar year.

4.3 Annual Bonus Rent. In addition to the Annual Base Rent described in Section 4.2, Tenant shall pay a bonus rent in the amount and at the times provided in this Section 4.3. To the extent that the Effective Gross Revenue (as defined below) collected by Tenant exceeds the "Master Lease Revenue Target" (as set forth on Exhibit C) for such Lease Year, Tenant agrees to pay Landlord twenty percent (20%) of the effective annual revenues from the Premises over the Master Lease Revenue Target (collectively, the "Annual Bonus Rent"); provided that Annual Bonus Rent can never be a negative amount. The Master Lease Revenue Target shall be prorated for any partial Lease Year. The Annual Bonus Rent shall be paid on an annual basis in arrears. Such payment shall be made within approximately seventy-five (75) days following the end of each applicable Lease Year after Tenant has calculated the Annual Bonus Rent based on the actual Effective Gross Revenue (as defined below) for the preceding Lease Year, with any necessary adjustment to be made within ten (10) days following Tenant's delivery to Landlord of such final calculation of Annual Bonus Rent. For purposes of this Lease, "Effective Gross Revenue" shall be calculated on a basis consistent with the "Effective Gross Revenue" line item set forth in Exhibit G of the Memorandum.

4.4 Direction to Pay. Landlord hereby directs Tenant to make on Landlord's behalf, any and all payments of any kind required pursuant to the Loan Documents. Tenant shall promptly furnish to Landlord any notice of a default under the Mortgage or the Note received by Tenant.

4.5 Rent under this Lease and Payment under the Loan Documents. Lender requires that all rent received from Subtenants and all Annual Base Rent and Annual Bonus Rent under this Lease and payments under the Loan Documents be made in accordance with a "lock-box" agreement, Tenant shall make such payments in accordance therewith. Any payment of debt

service deducted from the funds deposited pursuant to such “lock-box” agreement shall constitute payments made by Tenant pursuant to this Section 4.5. Payments made under the Loan Documents by the Tenant to Lender from funds deposited into the “lock-box” shall be set off against the Annual Base Rent and Annual Bonus Rent due and payable hereunder. Notwithstanding the foregoing, payments of tax and insurance deposits, if any, by the Tenant to Lender, pursuant to Section 4.4, shall not be set off against the Annual Base Rent or Annual Bonus Rent so long as such deposits are made available or otherwise applied to pay taxes and insurance premiums when due.

4.5.1 Manner of Payment.

Annual Base Rent, Annual Bonus Rent and Impositions (as hereinafter defined) and all other amounts becoming due from Tenant to Landlord hereunder (hereinafter collectively referred to as “Rent”) shall be paid in lawful money of the United States to Landlord at the office of Landlord, or as otherwise designated from time to time by written notice from Landlord to Tenant. As of the Commencement Date, Landlord has directed Tenant to make all payments under this Lease in accordance the terms of the cash management provisions of the Loan Documents.

ARTICLE 5 IMPOSITIONS

5.1 Obligation to Pay Impositions. In addition to paying the Annual Base Rent and Annual Bonus Rent specified in ARTICLE 4, Tenant shall also pay as additional rent the amounts determined in accordance with this ARTICLE 5.

5.2 Payment by Tenant. Tenant shall pay as additional rent for the Premises, all taxes and assessments, general and special, water rates and all other impositions, ordinary and extraordinary, foreseen or unforeseen, of every kind and nature whatsoever, which may be levied, assessed, charged or imposed during the Term upon the Premises, or any part thereof, or upon any improvements at any time situated thereon, (collectively, the “Impositions”); provided, however, that Impositions levied against the Premises shall be prorated between Landlord and Tenant as of the Commencement Date for the first year of the Term and as of the expiration date of the Term for the last year of the Term (on the basis of Landlord’s reasonable estimate thereof). Impositions shall also include fees and costs incurred by Landlord during or prior to the Term for the purpose of contesting or protesting tax assessments or rates, to the extent such fees and costs relate to savings realized during the Term and any extension thereof. Tenant may take the benefit of the provisions of any statute or ordinance permitting any assessment to be paid over a period of years, and Tenant shall be obligated to pay only those installments falling due during the Term. Tenant shall be entitled to set off against its obligation to pay Impositions for any specified period the amount of any deposits previously made by Tenant to the Lender for the Payment of such Impositions.

5.3 Alternative Taxes. If at any time during the Term the method of taxation prevailing at the commencement of the Term hereof shall be altered so that any new tax, assessment, levy, imposition or charge, or any part thereof, shall be measured by or be based in whole or in part upon this Lease or the Premises or the Annual Base Rent or the Annual Bonus Rent or additional rent or other income therefrom, and shall be imposed upon the Landlord, then

all such taxes, assessments, levies, impositions or charges, or the part thereof, to the extent that they are so measured or based, shall be deemed to be included within the definition of Impositions for the purposes hereof to the extent that such Impositions would be payable if the Premises were the only property of Landlord subject to such Impositions, and Tenant shall pay and discharge the same as herein provided in respect of the payment of Impositions.

5.4 Representations and Warranties. Tenant agrees and acknowledges that Landlord has made no representation, warranty or guaranty relating to the amount of the Impositions. Tenant has had an opportunity to consult with Landlord with respect to the Impositions projected for the operation of the Premises but has not relied upon any statements or representations of Landlord or any agent or affiliate of Landlord in regard thereto in executing this Lease and agreeing to perform the terms and covenants hereof and shall make no claims against Landlord based thereon.

ARTICLE 6

PERMITTED USE, POSSESSION, AND COMPLIANCE WITH LAWS

6.1 Permitted Use. Tenant shall limit the use and occupancy of the Premises (by the Subtenants or otherwise) to the Permitted Use, and such other incidental uses that are ancillary to the Permitted Use. Tenant covenants and agrees to use and occupy the Premises in conformity with all Legal Requirements (as such term is defined in Section 6.3) and in conformity with all applicable provisions of the Loan Documents.

6.2 Possession. Tenant's taking possession of the Premises or any portion thereof shall be conclusive evidence against Tenant that the portion of the Premises taken possession of was then in good order and satisfactory condition. No promises of Landlord to alter, remodel, improve, repair, decorate or clean the Premises or any part thereof have been made and no representation respecting the condition of the Premises has been made to Tenant by or on behalf of Landlord.

6.3 Compliance with Legal Requirements. Tenant shall at its sole cost and expense comply with the following (collectively, "Legal Requirements"): (i) all federal, state, county, municipal and other governmental and quasi-governmental statutes, laws, rules, orders, regulations and ordinances affecting the Premises or any part thereof, or the use thereof, including those which require the making of any structural, unforeseen or extraordinary changes, whether or not any such statutes, laws, rules, orders, regulations or ordinances which may be hereafter enacted involve a change of policy on the part of the governmental body enacting the same; and (ii) all rules, orders and regulations of the National Board of Fire Underwriters or other bodies exercising similar functions in connection with the prevention of fire or the correction of hazardous conditions, which apply to the Premises. Tenant shall comply with the requirement of all policies of public liability, fire and other insurance which at any time may be in force with respect to the Premises.

6.4 Americans With Disabilities Act. The parties acknowledge that the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and regulations and guidelines promulgated thereunder, as all of the same may be amended and supplemented from time to time (collectively referred to herein as the "ADA") establish requirements under Title III of the ADA ("Title III") pertaining to business operations, accessibility and barrier removal, and that such

requirements may be unclear and may or may not apply to the Premises depending on, among other things: (i) whether Tenant's business operations are deemed a "place of public accommodation" or a "commercial facility;" (ii) whether compliance with such requirements is "readily achievable" or "technically infeasible;" and (iii) whether a given alteration affects a "primary function area" or triggers so-called "path of travel" requirements. The parties acknowledge and agree that Tenant has been provided an opportunity to inspect the Premises sufficient to determine whether or not the Premises in their condition current as of the date hereof deviate in any manner from the ADA Accessibility Guidelines ("ADAAG") or any other requirements under the ADA pertaining to the accessibility of the Premises. Tenant further acknowledges and agrees that except as may otherwise be specifically provided herein, Tenant accepts the Premises in "as-is" condition and agrees that Landlord makes no representation or warranty as to whether the Premises conforms to the requirements of the ADAAG or any other requirements under the ADA pertaining to the accessibility of the Premises. Tenant has prepared or reviewed the plans and specifications for the Tenant's Work and has independently determined that such plans and specifications are in conformance with the ADAAG and any other requirements of the ADA. Tenant further acknowledges and agrees that to the extent that Landlord prepared, reviewed or approved any of those plans and specifications, such action shall in no event be deemed any representation or warranty that the same comply with any requirements of the ADA. Notwithstanding anything to the contrary in this Lease, the parties hereby agree that Tenant shall be responsible for all Title III compliance and costs in connection with the Premises, including structural work, if any, and including any leasehold improvements or other work to be performed in the Premises under or in connection with this Lease; and any so-called Title III "path of travel" requirements triggered by any construction activities or alterations in the Premises, and for all other requirements under the ADA relating the Premises or to the Tenant or any affiliates or persons or entities related to the Tenant (collectively, "Affiliates"), operations of the Tenant or Affiliates, or the Premises, or Subleases including, without limitation, requirements under Title I of the ADA pertaining to Tenant's or any Subtenant's employees.

ARTICLE 7 UTILITIES AND SERVICES

7.1 Utilities and Services. Landlord shall be required to provide no services to Tenant or for the benefit of the Premises, it being understood and agreed that Tenant shall purchase all utility and building services, including, but not limited to, fuel, water, electricity, natural gas, sewerage, waste hauling and disposal, janitorial, and security, from the utility or service provider, and shall pay for such services when such payments are due.

ARTICLE 8 MAINTENANCE, REPAIRS AND ALTERATIONS

8.1 Tenant's Maintenance Obligations. Tenant shall be responsible for all expenses incurred in the maintenance and repair of the Premises, except for "Capital Expenses" (as defined below). Tenant shall take good care (or cause good care to be taken) of the Premises, alleyways and passageways and the sidewalks, curbs and vaults adjoining the Premises, and keep the same (or cause the same to be kept) in good order and condition, ordinary wear and tear and obsolescence excepted, and make necessary nonstructural repairs thereto, interior and exterior. Tenant also shall be responsible for all expenses of all personal property replacements and

repairs, common area improvements and labor costs associated with such improvements and replacements. Tenant also shall make (or cause to be made) all repairs necessary to avoid any structural damage or injury to the Premises. All repairs and replacements shall be substantially equal in quality and class to the original work.

8.2 Landlord's Maintenance Obligations. Landlord shall be responsible for all "Capital Expenses," which shall mean any and all costs and expenses incurred in connection with major repairs, replacements, and improvements relating to the Premises, which would normally be capitalized (as determined under generally accepted accounting principles), including, but not limited to, (i) the repair or replacement of roofs, gutters, downspouts, underground plumbing, paving, curbs, ramps, driveways, parking lots (including covered parking structures), structural repairs, foundations, exterior walls and all load bearing walls, exterior doors and doorways, windows, elevators, fences and gates, and exterior painting and (ii) all tenant improvement and leasing commission costs related to the Premises. Other than as set forth in this Section and as otherwise provided in this Lease, Landlord shall not be required to furnish any services or facilities or make any repairs, replacements or alterations in or to the Premises, Tenant hereby assuming the full and sole responsibility for the operation, repair, replacement, maintenance and management of the Premises. Notwithstanding the foregoing or anything to the contrary herein, Landlord shall not be responsible for any Capital Expenses or, otherwise, for making or performing (or incurring any cost, expense or expenditure for the making or performing of) any repairs, replacements or improvements to, for and/or in respect of any of the Premises that Landlord determines (in its sole discretion) that it is not permitted to be responsible for, make, perform and/or incur pursuant to the terms of the Trust Agreement.

8.3 Use of Reserve Accounts Funds. The Reserve Accounts shall be available to Tenant and Landlord as further described in this Section below. Upon the expiration or earlier termination of this Lease, any funds remaining in the Reserve Accounts shall be disbursed to Landlord or its designee. Subject to any required approvals of the Lender, so long as the Reserve Accounts have not been totally depleted, the funds in the Reserve Accounts shall be available to and may be withdrawn by Tenant to pay for: (i) with the consent of Landlord, those repairs described in Section 8.2, (ii) with the consent of Landlord, any Casualty Restoration, (iii) with the consent of Landlord, any Condemnation Restoration; and (iv) those repairs described in Section 8.1. If the Reserve Accounts are not available for any reason and funds of Tenant are used to pay for expenses for which Landlord is responsible hereunder, such amount shall be treated as a loan from Tenant to Landlord, which Tenant may recover, including a reasonable rate of interest, out of the Reserve Accounts, from sale, financing, disposition, transfer, merger or exchange proceeds of the Premises or by set off against Annual Base Rent or Annual Bonus Rent. Accountable reserves funded at loan closing for the benefit of Landlord shall also be available to Tenant to fund repairs and replacements at the Premises not otherwise funded by the Reserve Accounts. In addition, these accountable reserves shall be available to Tenant for certain operational and asset management costs incurred in the course of managing the Premises, including unreimbursed tax and insurance payments, and bank, accounting, tax, and filing fees incurred by Tenant on behalf of the Landlord.

8.4 Standard of Care. The necessity for and adequacy of replacements, maintenance and repairs to the Premises pursuant to this Article 8 shall be measured by the standard which is

appropriate for properties of similar construction, class and use in the area in which the Premises are situated.

8.5 Alterations.

(a) Tenant may not make any alterations, additions or improvements unless expressly permitted under this Section 8.5.

(b) Tenant may, without the prior written consent of Landlord, but subject to compliance with the Loan Documents, make: (i) minor, non-structural alterations, additions or improvements to the Premises or otherwise required to maintain the Premises in the same condition they are in on the date hereof subject to ordinary wear and tear or as a result of new leases signed with subtenants, (ii) any alterations, additions or improvements required by law, and (iii) any alterations, additions or improvements to the Premises permitted under the Subleases that are either existing or entered into after the Commencement Date.

(c) All alterations, additions and improvements permitted by this Section 8.5 shall be installed in a good, workmanlike manner, and only new, high-grade materials shall be used. Tenant further agrees to hold Landlord harmless from any and all liabilities of every kind and description, which may arise out of or be connected in any way with said alterations, additions, or improvements. Tenant shall pay the cost of all such alterations, additions and improvements and also the cost of decorating the Premises occasioned by such alterations, additions and improvements, including the cost of labor and materials, contractors' profit, overhead and general conditions and may utilize the funds in the Reserve Accounts set forth in Section 19.21 of this Lease for all such costs. Upon completing any alterations, additions or improvements, Tenant shall furnish Landlord with contractors' affidavits, in form required by law, and full and final waivers of lien and receipted bills covering all labor and materials expended and used. All alterations, additions and improvements shall comply with all insurance requirements and with all ordinances and regulations and with all Legal Requirements.

ARTICLE 9

WAIVER OF CERTAIN CLAIMS; INDEMNITY BY TENANT

9.1 Waiver of Certain Claims; Indemnity by Tenant. To the extent not expressly prohibited by law, Tenant releases Landlord and its beneficiaries, if any, and their agents, servants and employees, from and waives all claims for damages to person or property sustained by Tenant, or by any other person, resulting directly or indirectly from fire or other casualty, cause or any existing or future condition, defect, matter or thing in or about the Premises, or from any equipment or appurtenance therein, or from any accident in or about the Premises, or from any act or neglect of any other person, including Landlord's agents and servants. This Section 9.1 shall apply especially, but not exclusively, to damage caused by water, snow, frost, steam, excessive heat or cold, sewerage, gas, odors or noise, or the bursting or leaking of pipes or plumbing fixtures, broken glass, sprinkling or air conditioning devices or equipment, or flooding, and shall apply without distinction as to the person whose act or neglect was responsible for the damage and whether the damage was due to any of the acts specifically enumerated above or from any other thing or circumstance, whether of a like nature or of a wholly different nature.

9.2 Damage Caused by Tenant's Neglect. If any damage to the Premises, or any equipment or appurtenance thereon, results from any act or neglect of Tenant, its employees, agents, contractors, licensees or invitees, Tenant shall be liable therefor, and Landlord may at its option repair such damage, and Tenant shall upon demand by Landlord reimburse Landlord for all costs of repairing such damage in excess of amounts, if any, paid to Landlord under insurance covering such damage.

9.3 Tenant Responsible for Personal Property. All personal property belonging to Tenant shall be there at the risk of Tenant, and Landlord shall not be liable for damage thereto or theft or misappropriation thereof.

9.4 Indemnification. To the extent not expressly prohibited by law, Tenant agrees to hold Landlord and its members, if any, and Lender and their respective agents, servants and employees (collectively, "Landlord Indemnified Parties"), harmless and to indemnify each of them against claims and liabilities, including reasonable attorneys' fees, for injuries to all persons and damage to or theft or misappropriation or loss of property occurring in or about the Premises arising from Tenant's occupancy of the Premises or the conduct of its business or from any activity, work or thing done, permitted or suffered by Tenant in or about the Premises or from any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of Tenant to be performed pursuant to the terms of this Lease, or due to any other act or omission of Tenant, its agents, contractors, invitees, licensees or employees, but only to the extent of Landlord's liability, if any, in excess of amounts, if any, paid to Landlord under insurance covering such claims or liabilities. Tenant's obligation to indemnify Landlord hereunder shall include the duty to defend against any claims asserted by reason of any such claims or liabilities and to pay any judgments, settlements, costs, fees and expenses, including attorneys' fees, incurred in connection therewith.

ARTICLE 10 SUBROGATION AND INSURANCE

10.1 Waiver of Subrogation. Landlord and Tenant agree to have all fire and extended coverage and other property damage insurance which may be carried by either of them endorsed with a clause providing that any release from liability of, or waiver of claim for, recovery from the other party entered into in writing by the insured thereunder prior to any loss or damage shall not affect the validity of said policy or the right of the insured to recover thereunder and providing further that the insurer waives all rights of subrogation which such insurer might have against the other party. Without limiting any release or waiver of liability or recovery set forth elsewhere in this Lease, and notwithstanding anything in this Lease which may appear to be to the contrary, each of the parties hereto waives all claims for recovery from the other party for any loss or damage to any of its property insured under valid and collectible insurance policies to the extent of any recovery collectible under such insurance policies. Notwithstanding the foregoing or anything contained in this Lease to the contrary, any release or any waiver of claims shall not be operative, nor shall the foregoing endorsements be required, in any case where the effect of such release or waiver is to invalidate insurance coverage or invalidate the right of the insured to recover thereunder or to increase the cost thereof (provided that in the case of increased cost the other party shall have the right, within ten (10) days following written notice, to pay such increased cost keeping such release or waiver in full force and effect).

10.2 Tenant's Insurance. Tenant shall procure and maintain policies of insurance, at its sole cost and expense, during the entire Term with the following coverages insuring:

10.2.1 all improvements at any time situated upon the Premises and owned by Landlord against loss or damage by fire, lightning, windstorm, hailstorm, aircraft, vehicles, smoke, explosion, riot or civil commotion; provided, however, Tenant shall not procure insurance for flood or earthquake loss or damage. The insurance coverage shall be for not less than one hundred percent (100%) of the full replacement cost of such improvements (without deduction for depreciation) with agreed amount endorsement. Landlord shall be named as the insured and all proceeds of insurance shall be payable to Lender. The full replacement cost of improvements shall be designated annually by Tenant in the good faith exercise of Tenant's judgment.

10.2.2 Tenant and Landlord from all claims, demands or actions made by, or on behalf of, any person or persons, firm or corporation and arising from, related to or connected with the Premises, for injury to or death of any person in an amount of not less than One Million Dollars (\$1,000,000), for injury to or death of more than one person in any one occurrence in an amount of not less than One Million Dollars (\$1,000,000), and for damage to property in an amount of not less than One Million Dollars (\$1,000,000), with an overall aggregate of Two Million Dollars (\$2,000,000).

10.2.3 Insurance against loss or damage from explosion or breakdown of boilers, air conditioning equipment and miscellaneous electrical apparatus, if any, in the Premises, in an amount not less than One Hundred Thousand Dollars (\$100,000), with loss or damage payable to Landlord and Tenant as their interests may appear.

10.2.4 Insurance against all worker's compensation claims with respect to Tenant's employees, if any.

10.2.5 All contents, and Tenant's trade fixtures, machinery, equipment, furniture and furnishings, in the Premises to the extent of at least ninety percent (90%) of their replacement cost under standard fire and extended coverage insurance, including, without limitation, vandalism and malicious mischief and sprinkler leakage endorsements.

10.2.6 Insurance in Landlord's name against abatement or loss of rent in case of fire or other casualty in an amount at least equal to the Rent to be paid by Tenant during the one (1) year next ensuing as reasonably determined by Landlord.

10.2.7 The aforesaid insurance shall be issued by companies and be in form and substance satisfactory to Landlord and Lender, and shall name Landlord and Landlord Indemnified Parties as an additional insureds on the policies described above in subsections 10.2.2, 10.2.4, and 10.2.5. Policies in subsection 10.2.1 shall be payable to Lender and policies in subsections 10.2.3 and 10.2.6 to Landlord and Tenant as their interest may appear, and policies in subsections 10.2.1, 10.2.3 and 10.2.6 may also be payable to any Lender, as the interest of the Lender may appear, pursuant to a standard mortgagee clause or a loss payable clause. If there is a mortgage loan encumbering the Premises the insurance shall comply with all requirements of the Lender in connection therewith. Tenant may substitute lower limits for any policy listed above, provided that Tenant maintains umbrella or excess liability policy or policies

which provide at total minimum limit of \$2,000,000 for automobile liability and commercial general liability and that all other requirements of this Section are satisfied by such umbrella or excess policy or policies. Any deductibles or self-insured retentions must be declared to and approved by Landlord. If the commercial general liability insurance is written on a "claims made" basis, the policy and all certificates of insurance as required hereunder shall show the retroactive coverage date. If the retroactive coverage date is after the Commencement Date and if Tenant was previously insured under a claims made policy, then Tenant shall also be required to furnish a certificate of insurance indicating that Tenant has purchased an extended reporting period or "supplemental tail" endorsement under the previous policy to extend the period during which a claim may first be made. If subsequent "claims-made" policies contain a "retroactive date" after the termination of this Lease, or if Tenant shall replace a "claims made" policy with an "occurrence" policy, Tenant shall purchase the "extended reporting period" or "supplemental tail" endorsement under the last "claims-made" policy covering the Term. Each insurance policy required under this Lease shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, return receipt requested has been given to Landlord. The original insurance policies (or certificates thereof satisfactory to Landlord), together with evidence of payment of the premium thereon, shall be deposited with Landlord prior to the Commencement Date. The certificates are to be signed by a person authorized by the insurer to bind coverage on its behalf. Such policies shall stipulate that the insurance afforded Landlord and Landlord's Indemnified Parties shall be primary insurance and that any other insurance carried by these parties shall be excess only and will not contribute with Tenant's insurance. These policies shall contain the usual cross liability language indicating that, except for limits of liability, the policies shall operate as though separate policies were issued to each insured.

10.3 Compliance. Tenant shall not, directly or indirectly, make any use of the Premises which may thereby be prohibited or be dangerous to person or property or which may jeopardize any insurance coverage, increase the cost of such insurance or require additional insurance coverage.

10.4 Conflicts with Loan Documents. To the extent the insurance requirements set forth in this Section 10 are inconsistent to the terms of the Loan Documents, all of the insurance requirements set forth in the Loan Documents shall be deemed incorporated herein by reference, shall supersede Section 10.1 and Tenant shall comply with all such requirements.

ARTICLE 11 RETURN OF PREMISES; SURRENDER

11.1 Surrender of Possession. At the termination of this Lease by lapse of time or otherwise or upon termination of Tenant's right of possession without termination of this Lease, Tenant shall surrender possession of the Premises to Landlord and deliver all keys to the Premises to Landlord and make known to Landlord the combination of all locks of vaults then remaining in the Premises, and shall, subject to the following Section, return the Premises and all equipment and fixtures of Landlord therein to Landlord in as good condition as when Tenant originally took possession or, if a workletter is attached to this Lease, when the work provided for in the workletter is completed, ordinary wear, loss or damage by fire or other insured casualty, condemnation and damage resulting from the act of Landlord or its employees and

agents excepted, failing which Landlord may restore the Premises and such equipment and fixtures to such condition and Tenant shall pay the cost thereof to Landlord on demand.

11.2 Installations and Additions. All installations, additions, partitions, hardware, light fixtures, nontrade fixtures and improvements, (which shall only be made or installed in accordance with Section 8.3), temporary or permanent, except movable furniture, trade fixtures and equipment belonging to Tenant or Subtenant, in or upon the Premises, whether placed there by Tenant or Subtenant, shall be Landlord's property and shall remain upon the Premises, all without compensation, allowance or credit to Tenant or Subtenant, except as may be otherwise provided under any Sublease entered into and existing as of the Commencement Date.

11.3 Trade Fixtures and Personal Property. Tenant shall remove Tenant's furniture, machinery, safes, trade fixtures and other items of movable personal property of every kind and description from the Premises and restore any damage to the Premises caused thereby, such removal and restoration to be performed prior to the end of the Term or ten (10) days following termination of this Lease or Tenant's right of possession, whichever might be earlier. If Tenant fails to remove such items, Landlord may do so and thereupon the provisions of Section 11.5 shall apply, and Tenant shall pay to Landlord upon demand the cost of removal and of restoring the Premises.

11.4 Survival. All obligations of Tenant under this Article shall survive the expiration of the Term or sooner termination of this Lease.

11.5 Holdover. Tenant shall pay Landlord for each day Tenant retains possession of the Premises or any part thereof after termination of this Lease, by lapse of time or otherwise, or of Tenant's right to possession of the Premises, an amount which is the same amount of Rent for a day based on the annual rate of Rent provided for in Article 4 for the period in which such possession occurs, calculated as though such period were within the Term, and Tenant shall also pay all damages, consequential as well as direct, sustained by Landlord by reason of such retention. In the alternative, if Landlord gives written notice to Tenant of Landlord's election thereof, such holding over shall constitute a renewal of this Lease for one year at the annual rate which would have held in effect for such additional year if the Term had included such additional year. Acceptance by Landlord of Rent after such termination shall not of itself constitute a renewal.

ARTICLE 12 ASSIGNMENT AND SUBLETTING

12.1 Assignment. Tenant shall not, (i) assign or transfer this Lease or any interest under it; or (ii) permit the use or occupancy of the Premises or any part thereof for any purpose not provided for under Sections 6.1 or 12.2 of this Lease or by anyone other than Tenant and Tenant's employees.

12.2 Permitted Subleases and Encumbrance of Tenant's Interest. Notwithstanding anything to the contrary contained herein, without Landlord's consent, Tenant may from time to time subject to the terms, conditions and requirements contained in any applicable Loan Documents (i) encumber its interest in this Lease in connection with the financing of the Premises (and the foreclosure of any such encumbrance shall be a permitted transfer hereunder),

and (ii) sublease all or any portion of the Premises without Landlord's consent, provided each sublease conforms to the specifications set forth herein, including but not limited to an express limitation of the tenant's ability to make alterations, additions and improvements, except for those described in clauses (i) and (ii) of Section 8.3.

12.3 Rentals Based on Net Income. Without thereby limiting the generality of the foregoing provisions of this Article, Tenant expressly covenants and agrees not to enter into any lease, sublease or license, concession or other agreement for use, occupancy or utilization of the Premises which provides for rental or other payment for such use, occupancy or utilization based in whole or in part on the net income or profits derived by any person from the property leased, used, occupied or utilized (other than an amount based on a fixed percentage or percentages of receipts or sales), and that any such purported lease, sublease or license, concession or other agreement shall be absolutely void and ineffective as a conveyance of any right to or interest in the possession, use, occupancy or utilization of any part of the Premises.

12.4 Tenant to Remain Obligated. Any assignment or transfer by Tenant shall not operate to relieve Tenant from any covenant or obligation hereunder. Tenant shall pay all of Landlord's costs, charges and expenses, including attorneys' fees, incurred in connection with any assignment or transfer made or requested by Tenant.

ARTICLE 13 DAMAGE OR DESTRUCTION BY CASUALTY

13.1 Notice. If during the Term all or any part of the Premises shall be damaged or destroyed by fire or other casualty, Tenant shall promptly give notice thereof to Landlord.

13.2 Casualty Restoration Process.

13.2.1 If during the Term all or any part of the Premises shall be damaged or destroyed by any fire or other casualty, this Lease shall continue in full force and effect. Subject in all respects to the terms of the documents evidencing and/or securing a first mortgage loan secured by the Premises, any insurance proceeds received by Landlord on account of such damage or destruction, less the actual cost, fees and expenses, if any, incurred in connection with adjustment of the loss, shall, provided no default by Tenant or Event of Default shall have occurred and be continuing hereunder, be used by Landlord to cause the repair, restoration or replacement of any portion of the Premises so damaged or destroyed as nearly as possible to its value, condition and character immediately prior to such damage or destruction and to pay contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for said repairs, restorations or replacements (hereinafter collectively, the "Casualty Restoration"), and shall be paid out from time to time as the Casualty Restoration progresses. If the rental income from the tenants at the Premises is reduced or abated during such period, then Annual Base Rent and Annual Bonus Rent under this Lease shall also be reduced or abated in a corresponding manner.

13.2.2 If the insurance proceeds received by Landlord are applied to the cost of the Casualty Restoration and the insurance proceeds shall, at any time, be insufficient to pay the cost of the Casualty Restoration, Landlord shall use the Reserve Accounts (as defined below) to make up the deficiency, subject to any required approvals of the Lender. In the event the Reserve

Accounts are insufficient to make up the deficiency, Landlord shall be required to make up any remaining deficiency. If such net insurance proceeds shall exceed the cost of the Casualty Restoration, then, in such event, Landlord, shall retain the excess.

13.3 Failure to Restore. If Landlord fails to diligently pursue to completion the Casualty Restoration of any portion of the Premises damaged or destroyed by fire or other casualty as provided in Section 13.2 above, then, in such event, Tenant shall have the right, but not the obligation, to perform such Casualty Restoration on behalf of Landlord and at Landlord's expense. Subject to any required approval of the Lender, Tenant shall have the right to use the Reserve Accounts in connection with any such Casualty Restoration performed by Tenant on behalf of Landlord.

13.4 Termination of Lease. Notwithstanding the foregoing provisions of this Section, in the event all or a material portion of the Premises is damaged or destroyed by fire or other casualty, following which (i) Lender elects not to make the insurance proceeds available to Landlord for restoration, and (ii) Landlord then elects not to reconstruct the Premises, then this Lease automatically shall terminate and neither party shall have any further obligations hereunder.

13.5 Continuation of Lease and Adjustment of Annual Base Rent. Notwithstanding the foregoing provisions of this Section, in the event that not all or a non-material portion of the Premises are damaged or destroyed by fire or other casualty and it is economically feasible to continue to operate the Premises, then this Lease shall continue in full force and effect, however, Landlord and Tenant shall adjust the Annual Base Rent in an equitable fashion to reflect the economic effect of any such loss of a portion of the Premises.

ARTICLE 14 EMINENT DOMAIN

14.1 Partial Taking. If during the Term all or any part of the Premises shall be subject to a "Taking," which shall mean any taking of the Premises or a part thereof, in or by condemnation or other eminent domain proceeding, this Lease shall continue in full force and effect. Tenant hereby assigns to Landlord any award, payment or compensation to which it may be or become entitled during the Term by reason of a Taking whether the same shall be paid or payable in respect of Tenant's leasehold interest hereunder or otherwise. Subject in all respects to the terms of the Loan Documents secured by the Premises, and provided no default by Tenant or Event of Default shall have occurred and be continuing hereunder, Landlord shall be obligated to cause the repair, restoration or rebuilding of any part of the Premises remaining after such Taking, including payment of all contractors, subcontractors, materialmen, engineers, architects or other persons who render services or furnish materials for said repairs, restorations or rebuilding (hereinafter collectively, the "Condemnation Restoration"). The Condemnation Restoration shall be performed by Landlord so as to restore the Premises, as nearly as possible, to its value, condition and character immediately prior to such Taking. Any award, payment or compensation paid or assigned to Landlord on account of said Taking, less the actual costs, fees and expenses, if any, incurred in connection with obtaining the award, shall be used by Landlord to perform the Condemnation Restoration.

14.1.2 If the award, payment or compensation received by Landlord as the result of a Taking are applied to the cost of the Condemnation Restoration and said award, payment or compensation shall, at any time, be insufficient to pay the cost of the Condemnation Restoration, Landlord shall use the Reserve Accounts to make up the deficiency, subject to any required approvals of the Lender. Should the award, payment or compensation, together with the Reserve Accounts, be insufficient to pay the cost of the Condemnation Restoration, then Landlord shall be required to make up any remaining deficiency. If such award, payment or compensation shall exceed the cost of the Condemnation Restoration, then, in such event, Landlord shall retain the excess.

14.1.3 If Landlord fails to diligently pursue to completion the Condemnation Restoration of any portion of the Premises affected by any Taking as provided in this Section, then, in such event, Tenant shall have the right, but not the obligation, to perform such Condemnation Restoration on behalf of Landlord and at Landlord's expense. Subject to any required approval of the Lender, Tenant shall have the right to use the Reserve Accounts in connection with any such Condemnation Restoration performed by Tenant on behalf of Landlord.

14.1.4 Landlord shall be entitled to participate in any Taking proceeding at Landlord's cost and expense.

14.2 Permanent Taking.

14.2.1 If during the Term (i) there is a permanent Taking of all of the Premises, or (ii) there is a permanent taking of less than all of the Premises but it is impractical to rebuild the Premises and/or continue to operate the Premises as in-line retail buildings substantially similar to the Premises as it exists upon the date of this Lease, then this Lease automatically shall terminate, and neither party shall have any further obligations hereunder.

14.2.2 If during the Term (i) there is a permanent Taking of less than all of the Premises and it is economically feasible to rebuild the Premises and/or continue to operate the Premises as in-line retail buildings substantially similar to the Premises as it exists upon the date of this Lease, or (ii) the use or occupancy of any part, or all, of the Premises shall be temporarily requisitioned by any federal government, or any state or other political subdivision thereof, or any agency, court or body of the federal government, any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions (hereinafter collectively called "Governmental Authority"), then this Lease shall continue in full force and effect, however, (A) Landlord shall proceed to perform any necessary repairs, restoration or replacement, and (B) Landlord and Tenant shall adjust the Annual Base Rent and Annual Bonus Rent in an equitable fashion to reflect the economic effect of any such Taking or temporary requisition.

ARTICLE 15 SUBORDINATION, MORTGAGEE PROTECTION; ESTOPPEL

15.1 Subordination. Landlord has executed and delivered, or may hereafter from time to time execute and deliver, a Mortgage against the Premises, any part thereof or any interest therein. This Lease, and all of the terms of this Lease, and Tenant's interest in this Lease shall be

subject to and subordinate to the lien and terms of the Mortgage and all loan documents executed in connection therewith, and to any and all advances made thereunder and to the interest thereon, and to all renewals, replacements, supplements, amendments, modifications and extensions thereof unless Lender elects in writing to make certain of Tenant's rights and interest in this Lease superior thereto, and to the extent that there are any inconsistencies between this Lease and the terms of the Loan Documents, the terms of the Loan Documents shall prevail. The subordination contained herein shall be self-operative without the need for any further documentation, but Tenant will promptly execute and deliver such agreement or agreements as may be reasonably required by the Lender, including but not limited to the guarantee required under Section 4.8. Tenant covenants it will not subordinate this Lease to any mortgage or trust deed other than the Mortgage without the prior written consent of the Lender.

15.2 Liability of Lender; Attornment. It is further agreed that (a) if any Mortgage shall be foreclosed or the Premises shall be conveyed by deed-in-lieu of foreclosure, (i) the Lender (or its grantees) or purchaser at any foreclosure sale (or grantee in a deed in lieu of foreclosure), as the case may be, shall not be (x) liable for any act or omission of any prior landlord (including Landlord), (y) subject to any offsets or counterclaims which Tenant may have against a prior landlord (including Landlord), or (z) bound by any prepayment of Rent which Tenant may have made in excess of the amounts then due for the next succeeding month; (ii) the liability of the Lender or the purchaser at such foreclosure sale or the liability of a subsequent owner designated as Landlord under this Lease shall exist only so long as the Lender, purchaser or owner is the owner of the Premises, and such liability shall not continue or survive after further transfer of ownership; (iii) upon request of the Lender, if the Mortgage shall be foreclosed, Tenant will attorn, as Tenant under this Lease, to the purchaser at any foreclosure sale under any Mortgage or the grantee under any deed-in-lieu thereof, and Tenant will execute such instruments as may be necessary or appropriate to evidence such attornment; and (b) this Lease may not be modified or amended so as to reduce the Rent or shorten the Term provided hereunder, so as to change or eliminate any provision of this Article 15 or so as to otherwise adversely affect any rights of Lender under this Lease or with respect hereto, or so as to adversely affect in any other respect to any material extent the rights of Landlord or Tenant, nor shall this Lease be cancelled or surrendered, without the prior written consent, in each instance, of the Lender. Nothing in this Section 15.2 shall be construed to limit the termination of this Lease upon a foreclosure of the Mortgage absent an attornment pursuant to Section 15.2(a)(iii).

15.3 Modification Required by Lender. Should Lender require a modification or modifications of this Lease, which modification or modifications will not cause an increased cost or expense to Tenant or in any other way materially change the rights and obligations of Tenant hereunder, Tenant agrees that this Lease may be so modified and agrees to execute whatever documents are required therefor and deliver the same to Landlord within ten (10) days following the request therefor.

15.4 Short Form Lease. Should Lender require execution of a short form of lease for recording (containing the names of the parties, a description of the Premises and the Term) or a certification from Tenant concerning this Lease in such form as may be required by a Lender, Tenant agrees to promptly execute such short form of lease or certificate and deliver the same to Landlord within ten (10) days following the request therefor.

15.5 Lender Protection. Tenant agrees to give Lender, by registered or certified mail, a copy of any notice or claim of a breach of this Lease served upon Landlord by Tenant, provided that prior to such notice Tenant has been notified in writing (by way of service on Tenant of a copy of an assignment of Landlord's interests in leases, or otherwise) of the address of the Lender. Tenant further agrees that if Landlord shall have failed to cure such breach within twenty (20) days after such notice to Landlord (or if such breach cannot be cured or corrected within that time, then such additional time as may be necessary if Landlord has commenced within such twenty (20) days and is diligently pursuing the remedies or steps necessary to cure or correct such breach), then the Lender shall have an additional thirty (30) days within which to cure or correct such breach (or if such breach cannot be cured or corrected within that time, then such additional time as may be necessary if the Lender has commenced within such thirty (30) days and is diligently pursuing the remedies or steps necessary to cure or correct such breach, including the time necessary to obtain possession if possession is necessary to cure or correct such breach).

15.6 Estoppel Certificate. Tenant agrees that, from time to time upon not less than ten (10) days' prior request by Landlord or the Lender, Tenant (or any permitted assignee, subtenant, licensee, concessionaire or other occupant of the Premises claiming by, through or under Tenant) will deliver to Landlord, or to the Lender, a statement in writing signed by Tenant certifying (i) that this Lease is unmodified and in full force and effect (or if there have been modifications, that this Lease as modified is in full force and effect and identifying the modifications); (ii) the date upon which Tenant began paying Rent and the dates to which the Rent and other charges have been paid; (iii) that Landlord has not breached any provision of this Lease, or, if breach exists, the nature thereof in detail; (iv) that the Premises have been completed in accordance with the terms hereof and Tenant is in occupancy and paying Rent on a current basis with no rental offsets or claims; (v) that there has been no prepayment of Rent other than that provided for in this Lease; (vi) that there are no actions, whether voluntary or otherwise, pending against Tenant under the bankruptcy laws of the United States or any state thereof; and (vii) such other matters as may be required by Landlord or the Lender.

ARTICLE 16 ENVIRONMENTAL LAWS AND HAZARDOUS MATERIALS

16.1 Defined Terms.

16.1.1 "Claim" shall mean and include any demand, cause of action, proceeding, or suit for any one or more of the following: (i) actual or punitive damages, losses, injuries to person or property, damages to natural resources, fines, penalties, interest, contribution or settlement; (ii) the costs and expenses of site investigations, feasibility studies, information requests, health or risk assessments, or Response (as hereinafter defined) actions; and (iii) the costs and expenses of enforcing insurance, contribution or indemnification agreements.

16.1.2 "Environmental Laws" shall mean and include all federal, state and local statutes, ordinances, regulations and rules in effect and as amended from time to time relating to environmental quality, health, safety, contamination and cleanup, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Clean Water Act, 33 U.S.C. Section 1251 et seq., and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. Section 136 et seq.; the Marine Protection, Research, and Sanctuaries

Act, 33 U.S.C. Section 1401 et seq.; the National Environmental Policy Act, 42 U.S.C. Section 4321 et seq.; the Noise Control Act, 42 U.S.C. Section 4901 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901 et seq., as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq.; the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act, and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act ("TSCA"), 15 U.S.C. Section 2601 et seq.; the Atomic Energy Act, 42 U.S.C. Section 2011 et seq., and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 et seq., and state and local superlien and environmental statutes and ordinances, with implementing regulations, rules and guidelines, as any of the foregoing may be amended from time to time. Environmental Laws shall also include all state, regional, county, municipal, and other local laws, regulations, and ordinances insofar as they are equivalent or similar to the federal laws recited above or purport to regulate Hazardous Materials (as hereinafter defined).

16.1.3 "Hazardous Materials" shall mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under CERCLA; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under FIFRA; asbestos and asbestos-containing materials, PCBs, and other substances regulated under TSCA; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. § 1910.1200 et seq.; and industrial process and pollution control wastes whether or not hazardous within the meaning of RCRA, and any other hazardous substance, pollutant or contaminant regulated under any other Environmental Law.

16.1.4 "Manage" or "Management" means to generate, manufacture, process, treat, store, use, re-use, refine, recycle, reclaim, blend or burn for energy recovery, incinerate, accumulate speculatively, transport, transfer, dispose of or abandon Hazardous Materials.

16.1.5 "Release" or "Released" shall mean any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Hazardous Materials into the environment, as "environment" is defined in CERCLA.

16.1.6 "Response" or "Respond" shall mean action taken to correct, remove, remediate, clean up, prevent, mitigate, monitor, evaluate, investigate, assess or abate the Release of a Hazardous Material.

16.2 Tenant's Obligations with Respect to Environmental Matters. During the Term, without limiting Tenant's obligation to comply with Legal Requirements, (i) Tenant shall comply at its sole cost and expense with all Environmental Laws; (ii) Tenant shall not Manage, or authorize the Management of, any Hazardous Materials on the Premises, including installation of any underground storage tanks, without prior written disclosure to and prior written approval by Landlord, except, however, that Tenant may Manage Hazardous Materials on the Premises to

the extent incidental to or generated by Tenant's business operations at the Premises as permitted in ARTICLE 6 ("Permitted Hazardous Materials"), as long as Tenant does not store or use any of the Permitted Hazardous Materials in a manner that would cause the Premises to become subject to regulation as a hazardous waste treatment, storage, or disposal facility under RCRA (or the regulations promulgated thereunder); (iii) Tenant shall not take any action that would subject the Premises to the permit requirements under RCRA for storage, treatment or disposal of Hazardous Materials; (iv) Tenant shall not dispose of Hazardous Materials in dumpsters provided by Landlord for tenant use; (v) Tenant shall not discharge Hazardous Materials into drains or sewers serving the Premises; (vi) Tenant shall not cause or allow the Release of any Hazardous Materials on, to or from the Premises or surrounding land and (vii) Tenant shall arrange at its sole cost and expense for the lawful transportation and off-site disposal at permitted landfills or other permitted disposal facilities and otherwise in accordance with all applicable Environmental Laws, of all Hazardous Materials that it generates.

16.3 Copies of Notices. During the Term, Tenant shall provide Landlord and Lender promptly with copies of all summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, Claims, complaints, investigations, judgments, letters, notices of environmental liens or Response actions in progress, and other communications, written or oral, actual or threatened, from the United States Environmental Protection Agency, Occupational Safety and Health Administration, Illinois Environmental Protection Agency, or other federal, state, or local agency or authority, or any other entity or individual, concerning (i) any actual or alleged Release of a Hazardous Material on, to or from the Premises; (ii) the imposition of any lien on the Premises; (iii) any actual or alleged violation of, or responsibility under, any Environmental Laws; or (iv) any actual or alleged liability under any theory of common law tort or toxic tort, including without limitation, negligence, trespass, nuisance, strict liability, or ultrahazardous activity.

16.4 Tenant's Obligation to Respond. If Tenant's management of Hazardous Materials at the Premises (i) gives rise to liability or to a Claim under any Environmental Law, or any common law theory of tort or otherwise; (ii) causes a threat to, or endangers, the public health; or (iii) creates a nuisance or trespass, Tenant shall, at its sole cost and expense, promptly take all applicable action in response so as to comply with all applicable Environmental Laws and eliminate or avoid any liability claim with respect thereto.

16.5 Landlord's Right to Act. In the event that Tenant shall fail to comply with any of its obligations under this ARTICLE 16 as and when required hereunder, Landlord shall have the right (but not the obligation) to take such action as is required to be taken by Tenant hereunder and in such event, Tenant shall be liable and responsible to Landlord for all costs, expenses, liabilities, claims and other obligations paid, suffered, or incurred by landlord in connection with such matters. Tenant shall reimburse Landlord immediately upon demand for all such amounts for which Tenant is liable.

16.6 Indemnification. Notwithstanding anything contained in this Lease to the contrary, Tenant shall reimburse, defend, indemnify and hold Landlord and its beneficiaries, and lender and their respective officers, directors, shareholders, employees, and agents, free and harmless from and against any and all Claims, Response costs, losses, liabilities, damages, costs, and expenses, including, without limitation, loss of rental income, loss due to business

interruption, and reasonable attorneys' fees and costs, arising out of or in any way connected with any or all of the following:

16.6.1 any Hazardous Materials which, at any time during the Term, are or were actually or allegedly Managed, generated, stored, treated, released, disposed of or otherwise located on or at the Premises (regardless of the location at which such Hazardous Material are now or may in the future be located or disposed of), including but not limited to, any and all (1) liabilities under any common law theory of tort, nuisance, strict liability, ultrahazardous activity, negligence or otherwise based upon, resulting from or in connection with any Hazardous Material; (2) obligations to take Response, cleanup or corrective action pursuant to any investigation or remediation in connection with the decontamination, removal, transportation, incineration, or disposal of any of the foregoing; and

16.6.2 any actual or alleged illness, disability, injury, or death of any person; in any manner arising out of or allegedly arisen out of exposure to Hazardous Materials or other substances or conditions present at the Premises, regardless of when any such illness, disability, injury, or death shall have occurred or been incurred or manifested itself;

16.6.3 any actual or alleged failure of tenant or the Premises at any time and from time to time to comply with all applicable Environmental Laws, whether before or after the effective date of this Lease; and

16.6.4 any failure by tenant to comply with its obligations under this Article.

In the event any Claims or other assertion of liability shall be made against Landlord for which Landlord is entitled to indemnity hereunder, Landlord shall notify Tenant of such Claim or assertion of liability and thereupon Tenant shall, at its sole cost and expense, assume the defense of such Claim or assertion of liability and continue such defense at all times thereafter until completion. The obligations of Tenant under this Article shall survive any termination or expiration of this Lease.

ARTICLE 17 DEFAULT

17.1 Events of Default. The occurrence of any one or more of the following matters constitutes a default ("Default") by Tenant under this Lease:

17.1.1 failure by Tenant to pay any Rent on the due date thereof;

17.1.2 failure by Tenant to pay, within 10 days after notice of failure to pay on the due date from Landlord to Tenant, any other moneys required to be paid by Tenant under this Lease;

17.1.3 failure by Tenant to observe or perform any of the covenants in respect of assignment and subletting set forth in ARTICLE 12;

17.1.4 failure by Tenant to comply with Tenant's warranties, representations and covenants set forth in ARTICLE 16;

17.1.5 failure by Tenant to cure forthwith, immediately after receipt of notice from Landlord, any hazardous condition which Tenant has created in violation of law or of this Lease;

17.1.6 failure by Tenant to observe or perform any other covenant, agreement, condition or provision of this Lease, if such failure shall continue for thirty (30) days after notice thereof from Landlord to Tenant;

17.1.7 the levy upon under writ of execution or the attachment by legal process of the leasehold interest of Tenant, or the filing or creation of a lien in respect of such leasehold interest, which lien shall not be released or discharged within ten (10) days from the date of such filing;

17.1.8 Tenant vacates or abandons the Premises or fails to take possession of the Premises when available for occupancy (the transfer of a substantial part of the operations, business and personnel of Tenant to some other location being deemed, without limiting the meaning of the phrase "vacates or abandons," to be a vacation or abandonment within the meaning of this clause), whether or not Tenant thereafter continues to pay the Rent due under this Lease;

17.1.9 Tenant becomes insolvent or bankrupt, or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors, or applies for or consents to the appointment of a trustee or receiver for Tenant or for the major part of its property;

17.1.10 a trustee or receiver is appointed for Tenant or for the major part of its property and is not discharged within sixty (60) days after such appointment; or

17.1.11 bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings, or other proceedings for relief under any bankruptcy law or similar law for the relief of debtors, are instituted (i) by Tenant or (ii) against Tenant and are allowed against it or are consented to by it or are not dismissed within sixty (60) days after such institution.

17.2 Rights and Remedies of Landlord. If a Default occurs, Landlord shall have the rights and remedies hereinafter set forth, which shall be distinct, separate and cumulative and shall not operate to exclude or deprive Landlord of any other right or remedy allowed it by law:

17.2.1 Landlord may terminate this Lease by giving to Tenant notice of Landlord's election to do so, in which event the Term shall end, and all right, title and interest of Tenant hereunder shall expire on the date stated in such notice;

17.2.2 Landlord may terminate the right of Tenant to possession of the Premises without terminating this Lease by giving notice to Tenant that Tenant's right of possession shall end on the date stated in such notice, whereupon the right of Tenant to possession of the Premises or any part thereof shall cease on the date stated in such notice; and

17.2.3 Landlord may enforce the provisions of this Lease and may enforce and protect the rights of Landlord hereunder by a suit or suits in equity or at law for the specific

performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, including recovery of all moneys due or to become due from Tenant under any of the provisions of this Lease.

17.3 Right to Re-Enter. If Landlord exercises any of the remedies provided for in Section 17.2, Tenant shall surrender possession and vacate the Premises and immediately deliver possession thereof to Landlord, and Landlord may re-enter and take complete and peaceful possession of the Premises, with or without process of law, full and complete license so to do being hereby granted to Landlord, and Landlord may remove all occupants and property therefrom, using such force as may be necessary, without being deemed in any manner guilty of trespass, eviction or forcible entry and detainer and without relinquishing Landlord's right to Rent or any other right given to Landlord hereunder or by operation of law.

17.4 Current Damages. If Landlord terminates the right of Tenant to possession of the Premises without terminating this Lease, Landlord shall have the right to immediate recovery of all amounts then due hereunder. Such termination of possession shall not release Tenant, in whole or in part, from Tenant's obligation to pay the Rent hereunder for the full Term, and Landlord shall have the right, from time to time, to recover from Tenant, and Tenant shall remain liable for, all Rent and any other sums accruing as they become due under this Lease during the period from the date of such notice of termination of possession to the stated end of the Term. In any such case Landlord may relet the Premises or any part thereof for the account of Tenant for such rent, for such time (which may be for a term extending beyond the Term) and upon such terms as Landlord shall determine and collect the rents from such reletting. Landlord shall not be required to accept any tenant offered by Tenant or to observe any instructions given by Tenant relative to such reletting. Also, in any such case, Landlord may make repairs, alterations and additions in or to the Premises and redecorate the same to the extent deemed by Landlord necessary or desirable and, in connection therewith, change the locks to the Premises, and Tenant shall upon demand pay the cost of all the foregoing together with Landlord's expenses of reletting. The rents from any such reletting shall be applied first to the payment of the expenses of reentry, redecoration, repair and alterations and the expenses of reletting (including brokers' commissions and attorneys' fees), and second to the payment of Rent herein provided to be paid by Tenant. Any excess or residue shall operate only as an offsetting credit against the amount of Rent due and owing as the same thereafter becomes due and payable hereunder, and the use of such offsetting credit to reduce the amount of Rent due Landlord, if any, shall not be deemed to give Tenant any right, title or interest in or to such excess or residue, and any such excess or residue shall belong to Landlord solely, and in no event shall Tenant be entitled to a credit on its indebtedness to Landlord in excess of the aggregate sum (including Rent) which would have been paid by Tenant for the period for which the credit to Tenant is being determined, had no Default occurred. No such reentry or repossession, repairs, alterations and additions, or reletting shall be construed as an eviction or ouster of Tenant or as an election on Landlord's part to terminate this Lease, unless a written notice of such intention shall be given to Tenant, or shall operate to release Tenant in whole or in part from any of Tenant's obligations hereunder, and Landlord may, at any time and from time to time, sue and recover judgment for any deficiencies from time to time remaining after the application from time to time of the proceeds of any such reletting.

17.5 Final Damages. If this Lease is terminated by Landlord, Landlord shall be entitled to recover from Tenant all Rent accrued and unpaid for the period up to and including such termination date, as well as all other additional sums payable by Tenant or for which Tenant is liable or in respect of which Tenant has agreed to indemnify Landlord under any of the provisions of this Lease, which may be then owing and unpaid, and all costs and expenses, including court costs and attorneys' fees, incurred by Landlord in the enforcement of its rights and remedies hereunder, and, in addition, Landlord shall be entitled to recover as damages for loss of the bargain and not as a penalty: (a) the unamortized portion of Landlord's contribution to the cost of tenant improvements and alterations, if any, installed by either Landlord or Tenant pursuant to this Lease or any workletter; (b) the aggregate sum which at the time of such termination represents the excess, if any, of the present value of the aggregate rents which would have been payable after the termination date had this Lease not been terminated, including, without limitation, Rent at the annual rate or respective annual rates for the remainder of the Term provided for in ARTICLE 4 of this Lease or elsewhere herein, the amount projected by Landlord to represent Consumer Price Index ("CPI") Adjustments (pursuant to a CPI index selected by Landlord) for the remainder of the Term pursuant to ARTICLE 4 of this Lease over the then-present value of the then-aggregate fair rental value of the Premises for the balance of the Term, such present worth to be computed in each case on the basis of a five percent (5%) per annum discount from the respective dates upon which such rentals would have been payable hereunder had this Lease not been terminated; and (c) any damages in addition thereto, including reasonable attorneys' fees and court costs, which Landlord shall have sustained by reason of the breach of any of the covenants of this Lease other than for the payment of Rent.

17.6 Removal of Personal Property. All property of Tenant removed from the Premises by Landlord pursuant to any provisions of this Lease or of law may be handled, removed or stored by Landlord at the cost and expense of Tenant, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. Tenant shall pay Landlord for all expenses incurred by Landlord in such removal and storage charges against such property so long as the same shall be in Landlord's possession or under Landlord's control. All such property not removed from the Premises or retaken from storage by Tenant within thirty (30) days after the end of the Term, however terminated be conclusively deemed to have been conveyed by Tenant to Landlord as by bill of sale without further payment or credit by Landlord to Tenant.

17.7 Attorneys' Fees. Tenant shall pay all of Landlord's costs, charges and expenses, including court costs and attorneys' fees, incurred in enforcing Tenant's obligations under this Lease, incurred by Landlord in any action brought by Tenant in which Landlord is the prevailing party, or incurred by Landlord in any litigation, negotiation or transaction in which Tenant causes Landlord, without Landlord's fault, to become involved or concerned.

17.8 Assumption or Rejection in Bankruptcy. If Tenant shall be adjudged bankrupt or if a trustee-in-bankruptcy shall be appointed for Tenant, Landlord and Tenant agree, to the extent permitted by law, to request that the trustee in bankruptcy shall determine within sixty (60) days thereafter whether to assume or reject this Lease.

17.9 Subordinate to Loan Documents. Any actions or remedies as described under this Article 17 are subject to and subordinate to the Loan Documents.

ARTICLE 18
RIGHTS PROVIDED TO TENANT WITH RESPECT TO
TRANSACTIONS AFFECTING THE PREMISES

18.1 Right to Execute Documents on Behalf of Landlord. Landlord hereby irrevocably appoints and constitutes Tenant as Landlord's agent and attorney-in-fact during the term of this Lease for purposes (and only the purposes) of executing any and all documents required to enter into and complete a transaction that has been approved by Landlord (to the extent required hereunder) and to take any other actions with respect to the Premises that Tenant is authorized to take on behalf of Landlord hereunder; provided, however, that this Section 18.1 shall not apply to any transaction involving a substitution or disposition of one or more of the underlying property comprising the Premises pursuant to the terms of the applicable Sublease and the Landlord's organizational documents. If requested by Tenant, Landlord will execute any and all documents necessary or required in connection with such transaction, including any documentation required to confirm the power of attorney granted to Tenant hereunder. Without limiting the generality of the foregoing, Tenant shall have the authority to request the release of reserve accounts held by a Lender and to provide any certification or other information required or requested by such Lender in connection therewith, and Tenant agrees to cause such funds to be used for their stated purpose.

18.2 Notices and Service of Process. Landlord hereby irrevocably designates Tenant as the agent to receive all notices including those notices required or permitted to be given to Landlord under the Loan Documents (including but not limited to service of any and all process in any suit, action or proceeding arising out of the Loan Documents) on behalf of Landlord pursuant to any documentation entered into with respect to the Premises in accordance with this Lease, including all notices from the Lender pursuant to the terms of the Loan Documents.

ARTICLE 19
MISCELLANEOUS

19.1 Successors and Assigns. Each provision of this Lease shall extend to and shall bind and inure to the benefit not only of Landlord and Tenant, but also their respective heirs, legal representatives, successors and assigns, but this provision shall not operate to permit any transfer, assignment, mortgage, encumbrance, lien, charge or subletting contrary to the provisions of this Lease.

19.2 Brokers. Tenant represents that Tenant has dealt with no broker, finder, leasing agent or other person in connection with this Lease, and Tenant agrees to indemnify and hold Landlord harmless from all damages, liability and expense (including reasonable attorneys' fees) arising from any claims or demands of any other broker or brokers or finders for any commission alleged to be due such broker or brokers or finders in connection with its having introduced Tenant to the Premises or participating in the negotiation with Tenant of this Lease.

19.3 Modifications in Writing. No modification, waiver or amendment of this Lease or of any of its conditions or provisions shall be binding unless in writing signed by or on behalf of Landlord and Tenant, and consented to in writing by Lender.

19.4 Definition of Tenant; Delegation by Tenant to Subtenants. The word “Tenant” whenever used herein shall be construed to mean Tenants or any one or more of them in all cases where there is more than one Tenant; and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other organizations, partnerships or other entities, or individuals, shall in all cases be assumed as though in each case fully expressed herein. In all cases where there is more than one Tenant, the liability of each shall be joint and several. In addition, the parties hereto acknowledge and agree that Tenant may assign its rights and obligations under this Master Lease Agreement to the Subtenants.

19.5 Definition of Landlord. The term “Landlord” as used in this Lease means only the owner or owners at the time being of the Premises so that in the event of any assignment, conveyance or sale, once or successively, of said Premises, or any assignment of this Lease by Landlord, said Landlord making such sale, conveyance or assignment shall be and hereby is entirely freed and relieved of all covenants and obligations of Landlord hereunder accruing after such sale, conveyance or assignment, and Tenant agrees to look solely to such purchaser, grantee or assignee with respect thereto. This Lease shall not be affected by any such assignment, conveyance or sale, and Tenant agrees to attorn to the purchaser, grantee or assignee.

19.6 Headings. The headings of Articles and Sections are for convenience only and do not limit, expand or construe the contents of the Sections.

19.7 Time of Essence. Time is of the essence of this Lease and of all provisions hereof.

19.8 Default Rate of Interest. All amounts (including, without limitation, Rent) owed by Tenant to Landlord pursuant to any provision of this Lease shall bear interest from the date due until paid at the annual rate of three percent (3%) in excess of the rate of interest announced from time to time by Wells Fargo, or its successors, as its prime, reference or corporate base rate, changing as and when said prime rate changes, unless a lesser rate shall then be the maximum rate permissible by law with respect thereto, in which event said lesser rate shall be charged.

19.9 Severability. The invalidity of any provision of this Lease shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Lease.

19.10 Entire Agreement. All understandings and agreements, oral or written, heretofore made between the parties hereto are merged in this Lease, which alone fully and completely expresses the agreement between Landlord (and its beneficiary, if any, and their agents) and Tenant.

19.11 Force Majeure. If Landlord fails to timely perform any of the terms, covenants and conditions of this Lease on Landlord’s part to be performed and such failure is due in whole or in part to any strike, lockout, labor trouble, civil disorder, inability to procure materials, failure of power, restrictive governmental laws and regulations, riots, insurrections, war, fuel shortages, accidents, casualties, acts of God, acts caused directly or indirectly by Tenant (or Tenant’s agents, employees, contractors, licensees or invitees) or any other cause beyond the reasonable control of Landlord, then Landlord shall not be deemed in default under this Lease as a result of such failure and any time for performance by Landlord provided for herein shall be extended by the period of delay resulting from such cause.

19.12 Waiver of Trial by Jury. It is mutually agreed by and between Landlord and Tenant that the respective parties hereto shall, and they hereby do, waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use of or occupancy of the Premises or any claim of injury or damage and any emergency statutory or any other statutory remedy. If Landlord commences any summary proceeding for nonpayment of Rent, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding, but may pursue a separate action therefor.

19.13 Nonwaiver. No waiver of any condition expressed in this Lease shall be implied by any neglect of Landlord to enforce any remedy on account of the violation of such condition whether or not such violation be continued or repeated subsequently, and no express waiver shall affect any condition other than the one specified in such waiver and that one only for the time and in the manner specifically stated. Without limiting Landlord's rights under ARTICLE 11, it is agreed that no receipt of moneys by Landlord from Tenant after the termination in any way of the Term or of Tenant's right of possession hereunder or after the giving of any notice shall reinstate, continue or extend the Term or affect any notice given to Tenant prior to the receipt of such moneys. It is also agreed that after the service of notice or the commencement of a suit or after final judgment for possession of the Premises, Landlord may receive and collect any moneys due, and the payment of said moneys shall not waive or affect said notice, suit or judgment.

19.14 Notices. All notices and demands required or desired to be given by either party to the other with respect to this Lease or the Premises shall be in writing and shall be delivered personally, sent by overnight courier service, prepaid, or sent by United States registered or certified mail, return receipt requested, postage prepaid, and addressed as herein provided. Notices to or demands upon Tenant shall be addressed to Tenant at the address specified in Section 1.1 prior to its occupancy of the Premises and at the Premises following its occupancy of the Premises. Notices to or demands upon Landlord shall be addressed to Landlord at the address specified in Section 1.1. Notices and demands shall be deemed given and served (i) upon receipt or refusal, if delivered personally, (ii) one (1) business day after deposit with an overnight courier service, or (iii) upon receipt or refusal, if deposited in the United States mails. Facsimile transmission shall not be deemed effective service of notice under this Lease. Either party may change its address for receipt of notices by giving notice of such change to the other party in accordance herewith. Notices and demands from Landlord to Tenant may be signed by Landlord, its beneficiary, the managing agent for the Premises or the agent of any of them.

19.15 Title and Covenant Against Liens. Landlord's title is and always shall be paramount to the title of Tenant. Nothing in this Lease contained shall empower Tenant to do any act which can, shall or may encumber the title of Landlord. Tenant covenants and agrees not to suffer or permit any lien of mechanics or materialmen to be placed upon or against the Premises or against Tenant's leasehold interest in the Premises and, in case of any such lien attaching, to immediately pay and remove same. Except as provided in Section 12.2, Tenant has no authority or power to cause or permit any lien or encumbrance of any kind whatsoever, whether created by act of Tenant, operation of law or otherwise, to attach to or be placed upon the Premises and any and all liens and encumbrances created by Tenant shall attach only to Tenant's interest in the Premises. If any such liens so attach and Tenant fails to pay and remove

same within ten (10) days, Landlord, at its election, may pay and satisfy the same, and in such event the sums so paid by Landlord shall accrue with interest from the date of payment at the rate set forth in Section 19.8 for amounts owed Landlord by Tenant. Such sums shall be deemed to be additional rent due and payable by Tenant at once without notice or demand.

19.16 Exculpatory Provisions. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of Landlord while in form purporting to be the representations, warranties, covenants, undertakings and agreements of Landlord are nevertheless each and every one of them made and intended, not as personal representations, warranties, covenants, undertakings and agreements by Landlord or for the purpose or with the intention of binding Landlord personally, but are made and intended for the purpose only of subjecting Landlord's interest in the Premises to the terms of this Lease and for no other purpose whatsoever, and in case of default hereunder by Landlord (or default through, under or by any of its beneficiaries, or agents or representatives of said beneficiaries) and that Tenant shall look solely to the interests of Landlord in the Premises.

19.17 Third Party Beneficiary. Lender is hereby expressly intended to be a third party beneficiary of the provisions contained herein.

19.18 Disposition of Premises. In the event that the entire Premises is sold, transferred, merged or exchanged pursuant to Section 721 of the Code by Landlord to a third party, this Lease shall terminate, provided however if at the time the Premises is sold there is any Mortgage currently outstanding which requires the consent of Lender for such disposition, Landlord shall be required to obtain Lender's consent to terminate this Lease in accordance with the terms of the Mortgage.

19.19 Limitation on Tenant's Duties and Obligations. Notwithstanding anything to the contrary contained in this Lease, all duties and obligations of Tenant under this Lease shall be subject to the following modifications, as needed:

(a) all duties and obligations of Tenant under this Lease shall in each case comply with or exceed those obligations and duties required under the Loan Documents; and

(b) subject to Section 19.19(a), all duties and obligations of Tenant under this Lease shall be strictly limited to, and shall not exceed in any manner, the duties and obligations imposed upon the Subtenants under the Subleases, including but not limited to, the duties and obligations provided under Articles 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17 and Section 1.7 of this Lease.

19.20 Loan Documents. Notwithstanding anything to the contrary contained in this Lease, Tenant shall at all times cause the Premises to be in compliance with all applicable provisions of the Loan Documents.

19.21 Reserve Accounts. The Loan Documents require the Trust to make the following reserve payments, the following which were (a) held by the Lender pursuant to the terms of the Loan Documents: (i) a required repair reserve was withheld from Loan proceeds by Lender and deposited on the Trust's behalf in the amount of \$144,273.25 on the Loan closing (the "Required

Repair Reserve”); (ii) a capital expense replacement reserve was withheld from Loan proceeds by Lender and deposited on the Trust’s behalf in the amount of \$676,408.20 on the Loan closing, as well as a monthly payment in the amount of \$1,196.14 for replacements and repairs to the Properties (the “Capital Reserve”), which monthly payment amount shall be added to the monthly Loan payment due to the Lender on each Loan payment date; (iii) (A) an upfront tenant improvement and leasing commission reserve (“Rollover Reserve”) was withheld from Loan proceeds by Lender and deposited on the Landlord’s behalf on the Loan closing in the amount of \$500,000 and (B) if a Default (as defined in the Loan Agreement) or Event of Default (as defined in the Loan Agreement) has occurred and is continuing, the Landlord shall deposit with the Lender a monthly rollover reserve in the amount of \$7,974.08 (the “Rollover Reserve Monthly Deposit”) on each Loan payment date; (iv) any sum or termination fee payable to the Trust in connection with any Tenant’s election to exercise any early termination option contained in its respective lease of space at any of the Properties or in connection with any other termination, amendment or modification of any Lease, reduction of rents, shortening of the term or surrender of space thereunder on the date of the Trust’s receipt thereof (the “Lease Termination Payments” and together with the Rollover Reserve and the Rollover Reserve Monthly Deposit collectively, the “Leasing Reserve”); and (v) a tenant improvement, leasing commissions and free rent or free rent abatements reserve was withheld from Loan proceeds by Lender and deposited on the Landlord’s behalf in the amount of \$344,553.28 on the Loan closing date (the “Unfunded Obligations Reserve”) and (b) held and controlled solely by the Landlord pursuant to the terms of the Loan Documents: (1) an operations and asset management reserve that was withheld from Loan proceeds by Lender in the amount of \$1,500,000 on the Loan closing date (the “Landlord Operations and Asset Management Reserve”).

19.22 Transfer Distribution. Subject to compliance with the applicable provisions of the Loan Documents, and notwithstanding any other provision herein, in the event of a Transfer Distribution (as defined in Section 9.2 of the Trust Agreement of Landlord), the parties hereto expressly acknowledge and agree that Landlord shall assign its interest in this Lease to the LLC (as defined in Section 9.2 of the Trust Agreement of Landlord). Unless otherwise provided to the Tenant in writing by the LLC, this Lease shall not terminate upon such assignment.

19.23 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State in which the Premises is located without regard to any applicable conflicts of laws principles that would require the application of the law of any other jurisdiction and venue with respect to any action to construe or enforce this Lease shall be laid in the State where the Premises is located.

19.24 Tax Matters. Landlord and Tenant hereby acknowledge and agree that (i) for all Federal, state and local income tax purposes (A) Landlord shall be treated as the owner, and Tenant as the tenant, of the Premises, and (B) this Lease shall be treated as a true lease and not as a financing, partnership or other tax classification and (ii) it shall file all Federal, state and local income tax returns in a manner consistent with the foregoing.

[Signatures follow on next page]

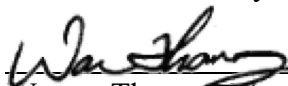
IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed as of the date first written above.

LANDLORD:

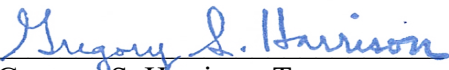
ExchangeRight Value-Add Portfolio 3 DST,
a Delaware statutory trust

By: EXCHANGERIGHT ASSET MANAGEMENT, LLC,
a California limited liability company; its manager

By: EXCHANGERIGHT REAL ESTATE, LLC,
a California limited liability company; its sole member

By: 
Warren Thomas, Manager

GREGORY S. HARRISON
as Trustee


Gregory S. Harrison, Trustee

TENANT:

EXCHANGERIGHT VALUE-ADD PORTFOLIO 3 MASTER LESSEE, LLC,
a Delaware limited liability company

By: EXCHANGERIGHT REAL ESTATE, LLC,
a California limited liability company; its sole member

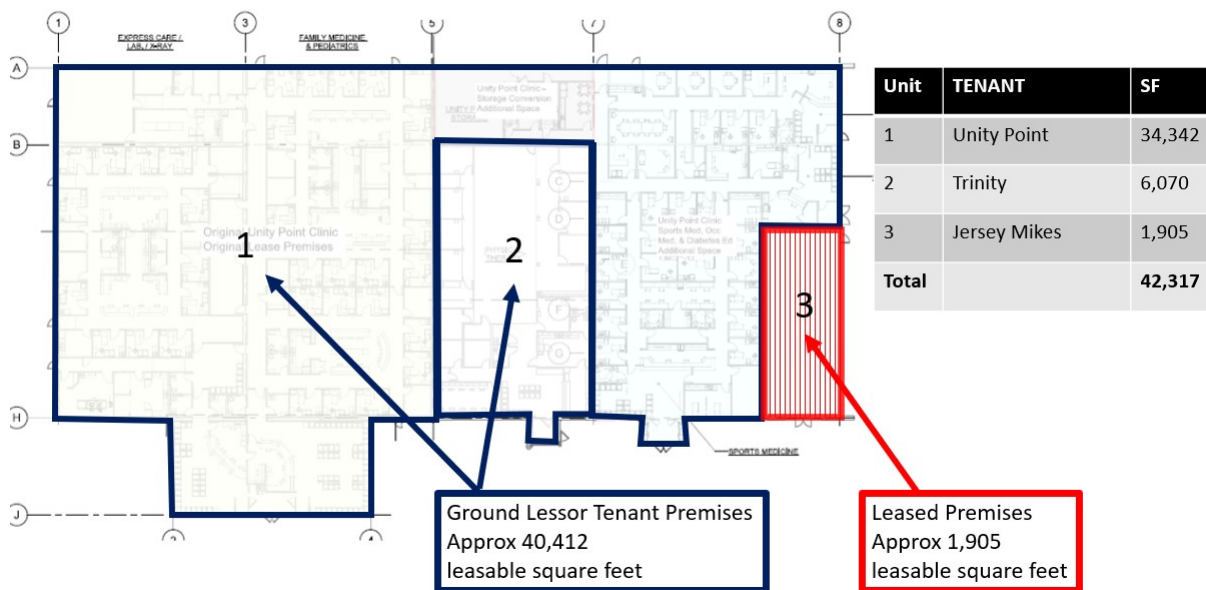
By: 
Warren Thomas, Manager

EXHIBIT A

PREMISES LEGAL DESCRIPTION

UnityPoint Center - Moline (16th) Illinois Property

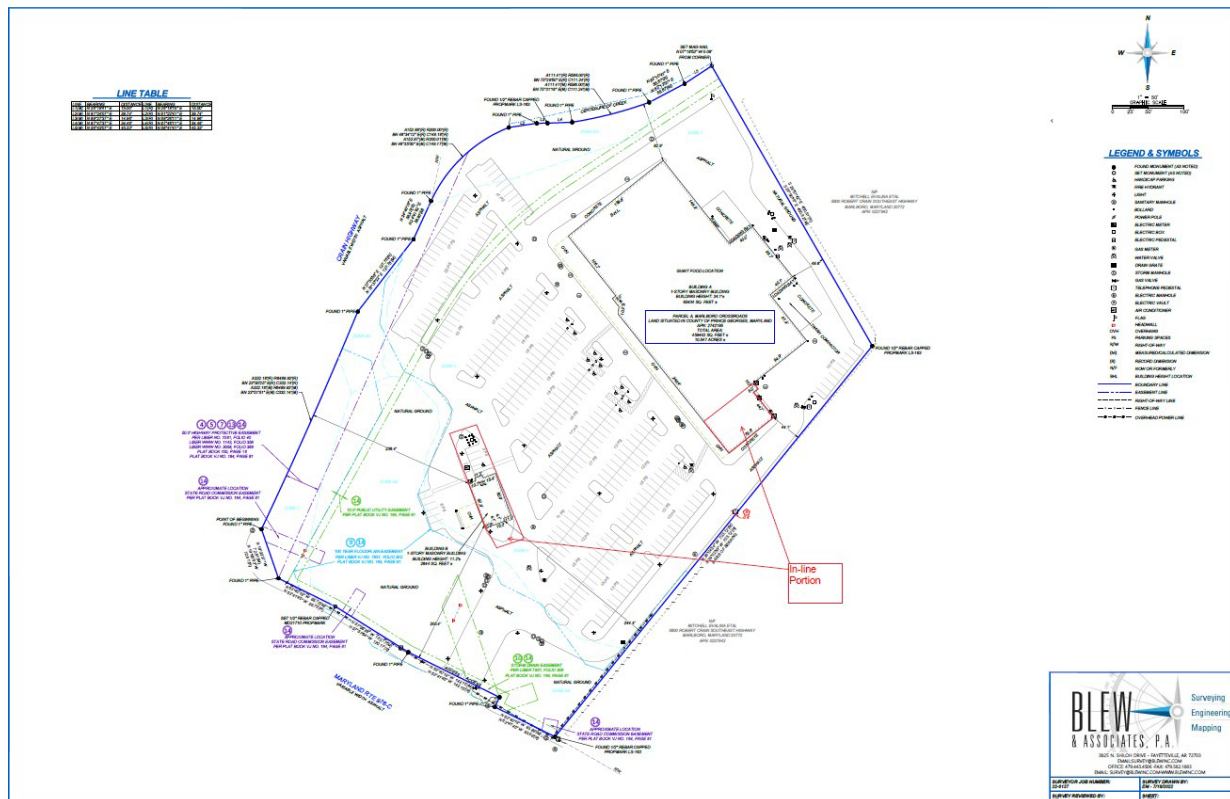
THAT CERTAIN Demised Premises containing approximately 1,905 leasable square feet of floor area as generally depicted as the “Leased Premises” on the Site Plan below and more particularly described in that certain Ground Lease dated January 20, 2023, by and between ExchangeRight Net-Leased Portfolio 61 DST, a Delaware limited liability company and ExchangeRight Value-Add Portfolio 3 DST, a Delaware limited liability company (“**Landlord**” or “**Ground Lessee**”).



“Ground Lessor” in the Site Plan above refers to ExchangeRight Net-Leased Portfolio 61 DST.

Marlboro Crossroads - Upper Marlboro (Crain), Maryland Property

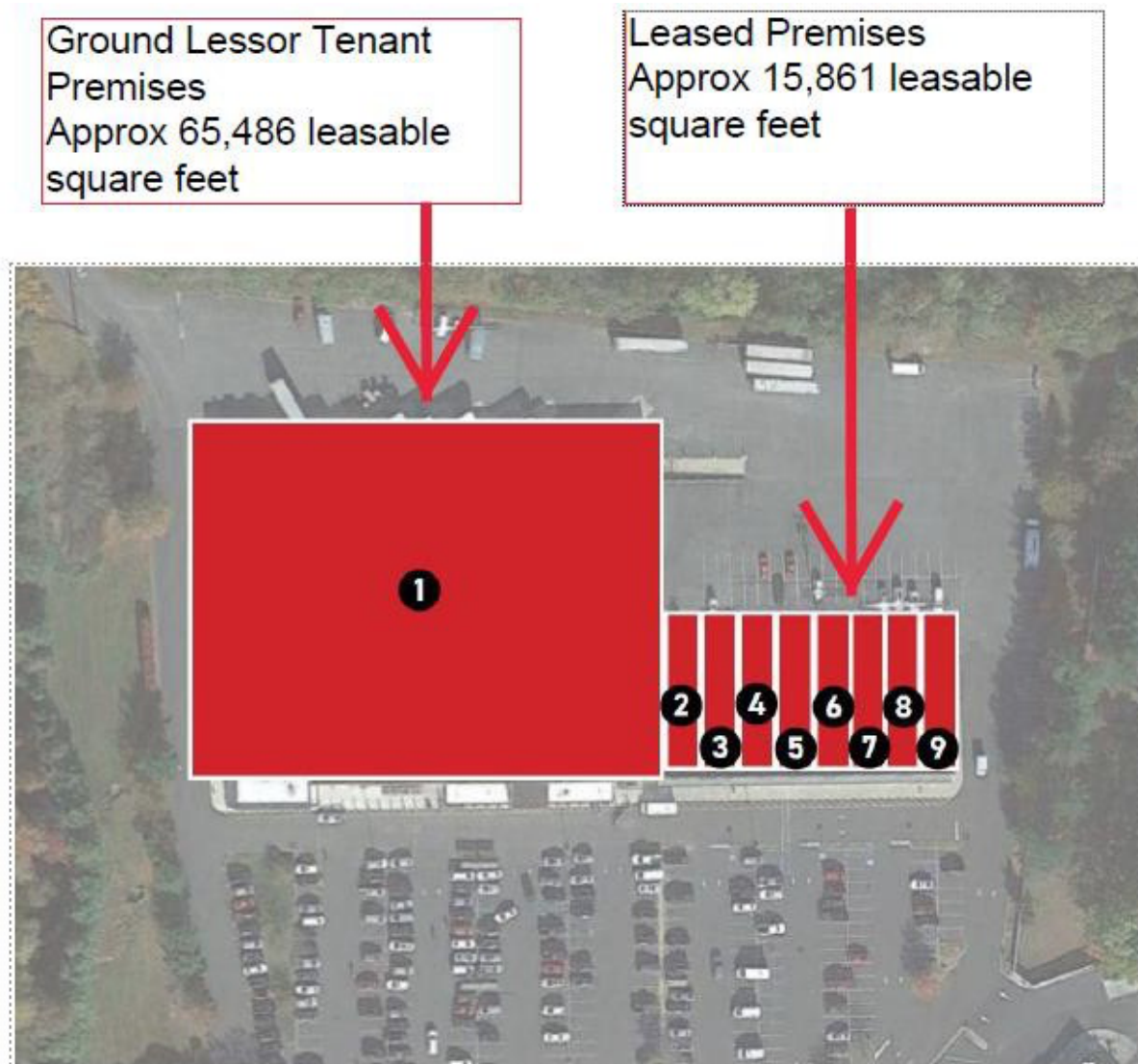
THAT CERTAIN Demised Premises containing approximately 4,399 square feet of floor area and the approximately 2,644 square feet of floor area, each as generally depicted as the outlined area identified as the “In-Line Portion” on the Site Plan below and more particularly described in that certain Ground Lease dated January 19, 2023, by and between ExchangeRight Net-Leased Portfolio 61 DST, a Delaware limited liability company and Landlord.



“Ground Lessor” in the Site Plan above refers to ExchangeRight Net-Leased Portfolio 61 DST.

Upper Deerfield Shopping Center - Upper Deerfield (Pearl), New Jersey Property

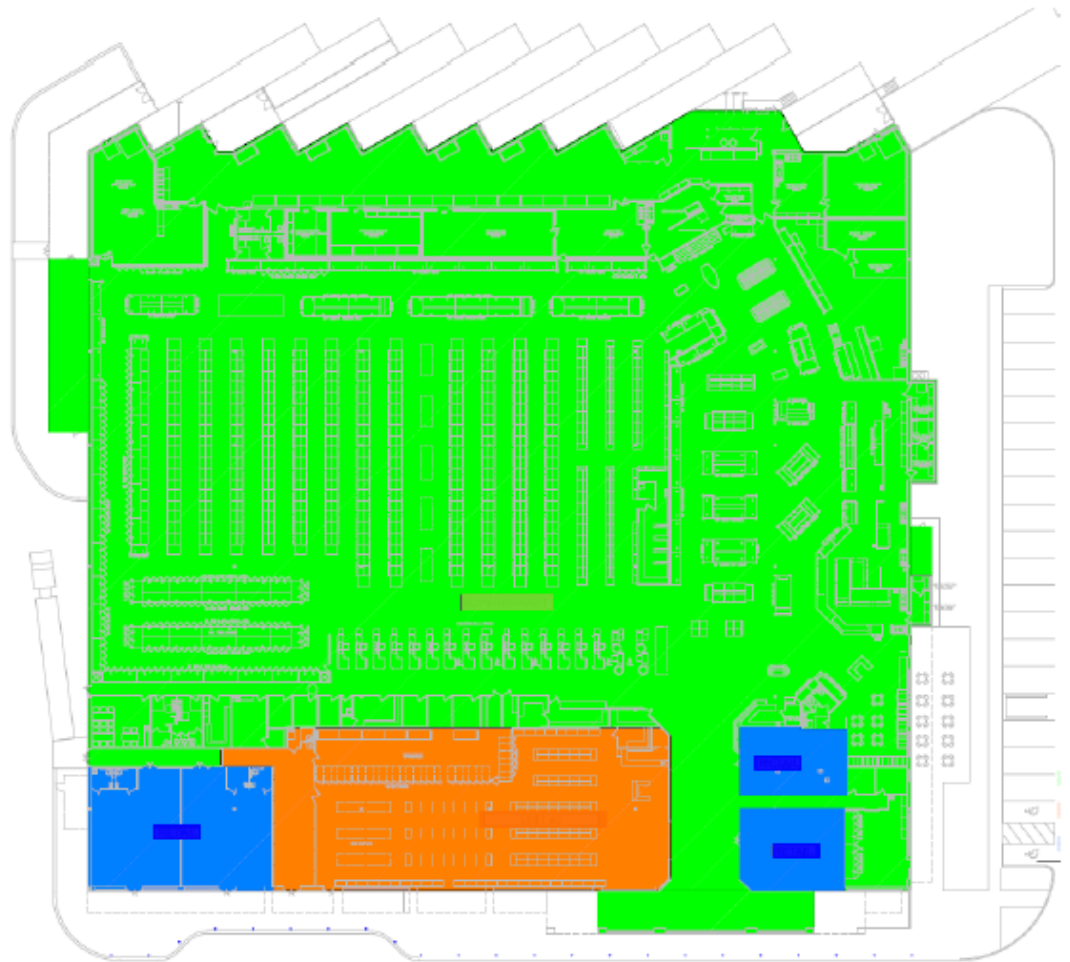
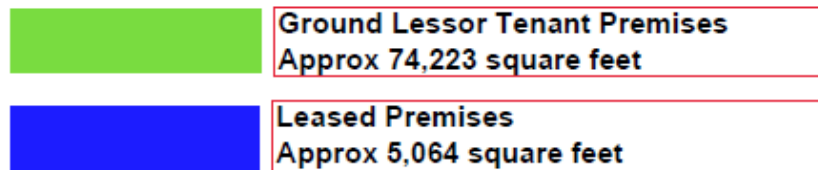
THAT CERTAIN Demised Premises containing approximately 15,861 square feet of floor area as generally depicted as the shaded area on the Site Plan below and more particularly described in that certain Ground Lease dated December 7, 2022, by and between Patriot ExchangeRight Upper Deerfield DST, a Delaware limited liability company and Landlord.



“Ground Lessor” in the Site Plan above refers to Patriot ExchangeRight Upper Deerfield DST.

Vineland Shopping Center - Vineland (Landis), New Jersey Property

THAT CERTAIN Demised Premises containing approximately 5,064 square feet of floor area as generally depicted as the shaded area on the Site Plan below and more particularly described in that certain Ground Lease dated December 7, 2022 by and between Patriot ExchangeRight Vineland DST, a Delaware limited liability company and Landlord.



“Ground Lessor” in the Site Plan above refers to Patriot ExchangeRight Vineland DST.

Walnut Creek Plaza - Columbus (Hamilton), Ohio Property

***Please note that a partial fee interest was acquired in a gas station parcel at this Property as described below**

THAT CERTAIN Demised Premises containing approximately 29,169 square feet of floor area as generally depicted as the shaded area depicted on the Site Plan below and more particularly described in that certain Ground Lease dated January 20, 2023, as amended by that certain First Amendment to Ground Lease dated January 20, 2023. by and between ExchangeRight Net-Leased Portfolio 61 DST, a Delaware limited liability company and Landlord.

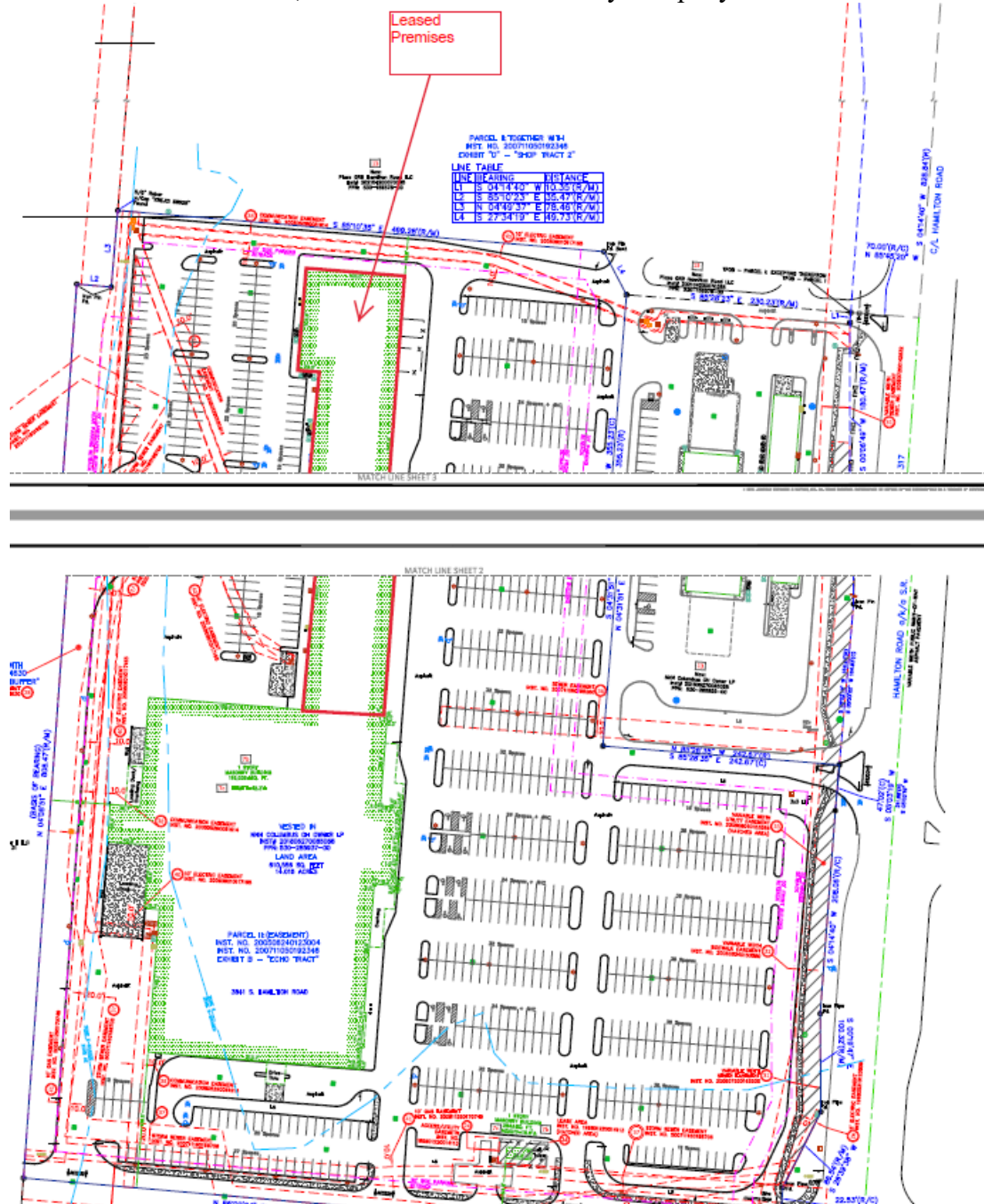


Exhibit A-5

“Ground Lessor” in the Site Plan above refers to ExchangeRight Net-Leased Portfolio 61 DST.

***Fee interest in Gas Station legal description:**

Parcel I:

Situated in the State of Ohio, County of Franklin, City of Columbus, located in Section 9, Township 11, Range 21, Congress Lands being out of that original 78.5 acre tract as conveyed to Plaza GRB Hamilton Road, LLC by deed of record in Instrument Number 200401210014610 (all references refer to the records of the Recorder's Office, Franklin County, Ohio unless otherwise noted) and being more particularly bounded and described as follows:

Beginning, for reference, at a magnetic nail set marking the intersection of the old centerline of State Route 33 as shown on plat S.H.49-SEC F, E1, D1, D2 on file at the Ohio Department of Transportation, with the centerline for Hamilton Road as shown on plat FRA-317-0.19 (B) on file at the Ohio Department of Transportation, being station 38+39.19 in the centerline of said Hamilton Road, said intersection being the northeasterly corner of that 14.464 acre tract conveyed to the City of Columbus, Ohio by deed of record in Instrument Number 200503290057673;

Thence South 04 deg. 14' 40" West, with the centerline of said Hamilton Road, the easterly line of said 14.464 acre tract, a distance of 828.84 feet;

Thence North 85 deg. 45' 20" West, leaving said centerline, a distance of 70.00 feet to an iron pin set in the westerly line of said 14.464 acre tract, being the TRUE POINT OF BEGINNING;

Thence with said westerly right-of-way line, and said westerly line, the following courses and distances:

South 04 deg. 14' 40" West, a distance of 10.35 feet to an iron pin set;

South 00 deg. 06' 49" West, a distance of 180.47 feet to an iron pin set;

South 05 deg. 03' 19" West, a distance of 164.94 feet to an iron pin set;

Thence across said 78.5 acre tract, the following courses and distances:

North 85 deg. 28' 35" West, a distance of 242.67 feet to an iron pin set;

North 04 deg. 31' 51" East, a distance of 355.23 feet to an iron pin set;

South 85 deg. 28' 23" East, a distance of 230.23 feet to the TRUE POINT OF BEGINNING, and containing 1.956 acres of land, more or less, and being out of Auditor's Parcel Number 530-156578.

This description was prepared through the use of existing records and an actual field survey.

Iron pins set, where indicated, are iron pipes, thirteen-sixteenth (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMH & T, INC.

Bearings are based on North 57 deg. 12' 05" West, between monuments FRANK 132 and 32 per Ohio State Plane Coordinate System NAD83 (1986 adjustment) South Zone.

Parcel II

Together with all beneficial easements set forth in that certain Amended and Restated Declaration of Reciprocal Easements and Restrictive Covenants of record in Instrument number 200711050192346; supplemented in Instrument Number 200809260144996; and as affected by Memorandum of REA

Supplemental Agreement recorded January 12, 2012 in Instrument No. 201201120005460 and by Memorandum of REA Supplemental Agreement recorded February 8, 2022 in Instrument No. 202202080021656; as amended by First Amendment to Amended and Restated Declaration Of Reciprocal Easements and Restrictive Covenants (Walnut Creek, dated August 25, 2022 and recorded September 30, 2022 in Instrument No. 202209300138968; as re-recorded November 29, 2022 in Instrument No. 202211290162038, Recorder's Office, Franklin County, Ohio).

Parcel III

Together with all beneficial easements set forth in that certain easement agreement of record in Instrument No. 200401210014624; as amended pursuant to that certain first amendment to easement agreement of record in Instrument No. 200711050192352, Recorder's Office, Franklin County, Ohio.

Parcel IV

Together with all beneficial easements set forth in that certain Reciprocal Access Easement Agreement of record in Instrument number 200401210014625; as amended pursuant to that certain first amendment to Reciprocal Access Easement Agreement of record in Instrument number 200711050192348, Recorder's office, Franklin County, Ohio.

Parcel V

Together with all beneficial easements set forth in that certain Reciprocal Landscape Buffer Easement Agreement of record in Instrument number 200401210014630; as amended pursuant to that certain first amendment to reciprocal landscape buffer easement agreement of record in Instrument number 200711050192351, Recorder's office, Franklin County, Ohio.

Parcel VI

Together with all beneficial easements set forth in that certain Storm Sewer Easement of record in Instrument number 200401210014636, Recorder's office, Franklin County, Ohio.

FOR INFORMATIONAL PURPOSES ONLY:

PPN: 530-285959-00

For informational purposes only:
3765 South Hamilton Road
Columbus, OH 43232

Weeksville Crossing - Elizabeth City (Weeksville) North Carolina Property

THAT CERTAIN Demised Premises containing approximately 6,225 square feet of floor area as generally depicted as the “In-Line Portion” on the Site Plan below and more particularly described in that certain Ground Lease dated March 14, 2023, by and between ExchangeRight Net-Leased Portfolio 62 DST, a Delaware limited liability company and Landlord.



“Ground Lessor” in the Site Plan above refers to ExchangeRight Net-Leased Portfolio 62 DST.

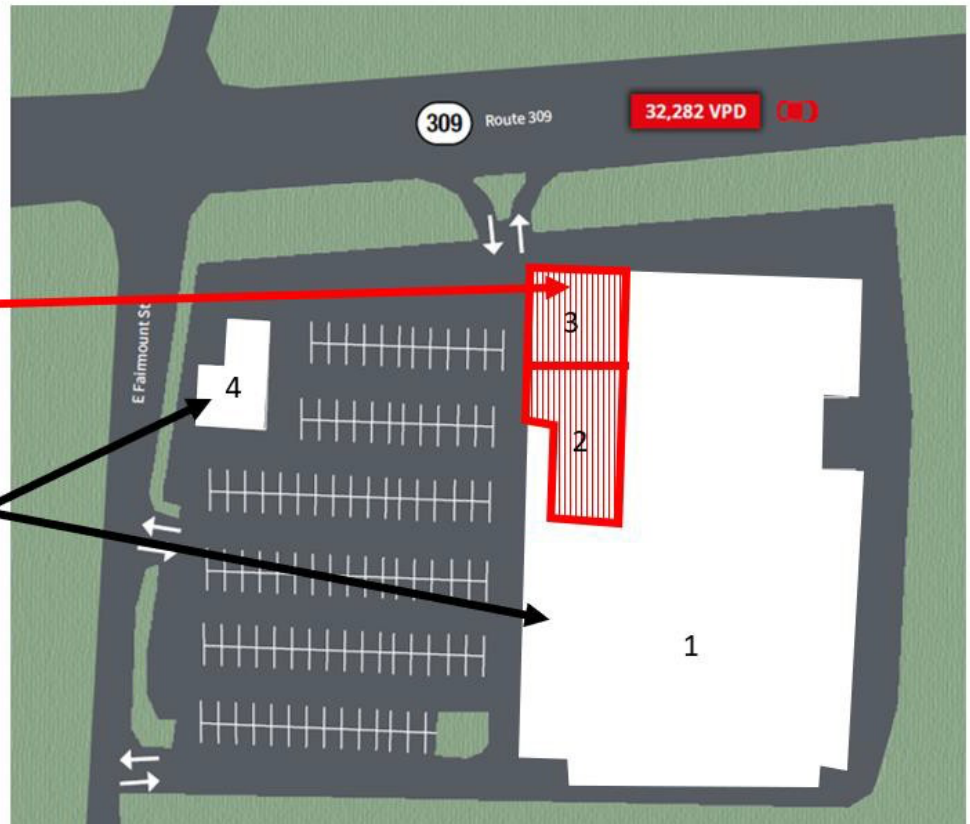
Coopersburg Commons Shopping Center - Coopersburg (Fairmount), Pennsylvania Property

THAT CERTAIN Demised Premises containing approximately 4,020 square feet of floor area as generally depicted as the shaded area on the Site Plan below and more particularly described in that certain Ground Lease dated December 7, 2022, by and between ExchangeRight Net-Leased Portfolio 60 DST, a Delaware limited liability company and Landlord.

SUITE	TENANT	SF
1 & 4	GIANT and GIANT Fuel	87,529
2	Ecco Domani	1,920
3	Subway	2,100
Total		91,549

Leased Premises
Approx 4,020
leasable square feet

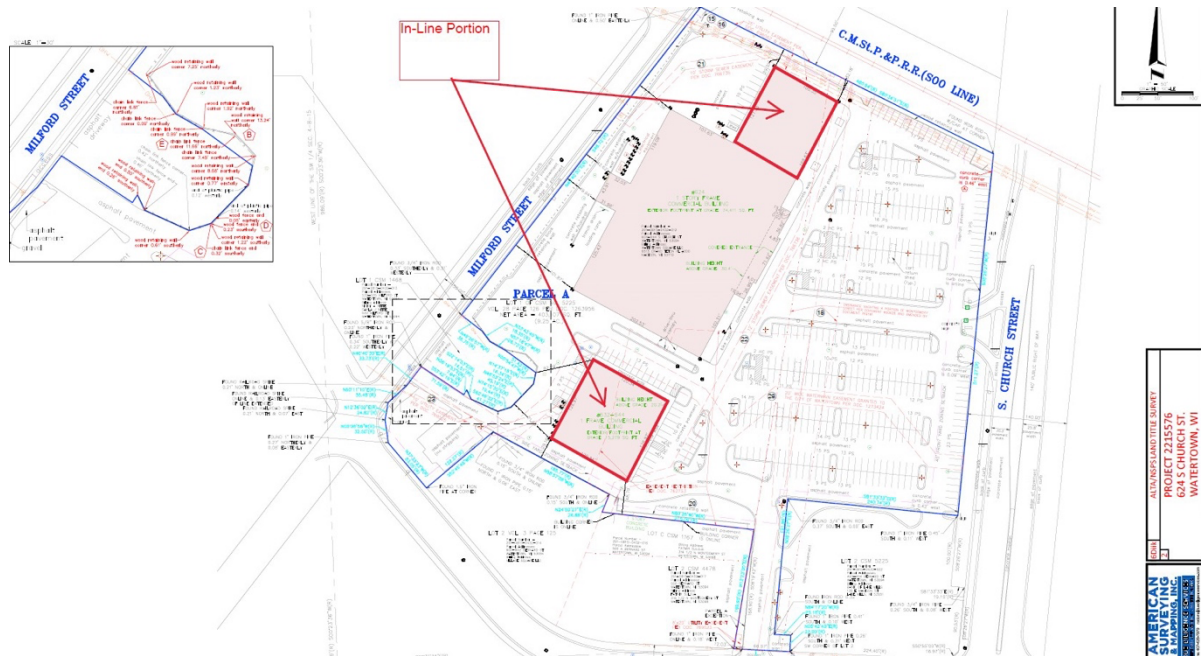
Ground Lessor
Tenant Premises
Approx 87,529
leasable square feet



“Ground Lessor” in the Site Plan above refers to ExchangeRight Net-Leased Portfolio 60 DST.

Pick 'n Save Center - Watertown (Church), Wisconsin Property

THAT CERTAIN Demised Premises containing approximately 11,900 square feet of floor area and the approximately 14,743 square feet of floor area, each as generally depicted as the outlined area identified as the “In-Line Portion” on the Site Plan below and more particularly described in that certain Ground Lease dated March 14, 2023, by and between ExchangeRight Net-Leased Portfolio 62 DST, a Delaware limited liability company and Landlord.



“Ground Lessor” in the Site Plan above refers to ExchangeRight Net-Leased Portfolio 62 DST.

EXHIBIT B

<u>Property Name</u>	<u>Full Address</u>
Coopersburg Commons Shopping Center - Coopersburg (Fairmount), Pennsylvania	216 E Fairmount Street, Coopersburg, PA 18036-1634
Marlboro Crossroads - Upper Marlboro (Crain), Maryland	5720-5728 Crain Highway, Upper Marlboro, MD 20772
Pick 'n Save Center - Watertown (Church), Wisconsin	604-648 S Church St, Watertown, WI 53094-6229
Upper Deerfield Shopping Center - Upper Deerfield (Pearl), New Jersey	1000-1020 N Pearl St, Upper Deerfield Township, NJ 08302
Vineland Shopping Center - Vineland (Landis), New Jersey	1255 W Landis Ave, Vineland, NJ 08360
UnityPoint Center - Moline (16th), Illinois	3918 16th St, Moline, IL 61265
Walnut Creek Plaza - Columbus (Hamilton), Ohio	3773-3841 South Hamilton Road, Columbus, Ohio 43125
Weeksville Crossing - Elizabeth City (Weeksville), North Carolina	1805 Weeksville Rd, Elizabeth City, NC 27909

EXHIBIT C

RENT

The Annual Base Rent for each year of the Master Lease shall be as follows:

Year 1	\$1,257,957
Year 2	\$1,272,340
Year 3	\$1,198,041
Year 4	\$1,433,741
Year 5	\$1,465,758
Year 6	\$1,440,141
Year 7	\$1,375,841
Year 8	\$1,491,542
Year 9	\$1,498,555
Year 10	\$1,472,942

The Master Lease Revenue Targets for Fiscal Years 1 – 10 of the Master Lease shall be as follows:

Year 1	\$1,963,888
Year 2	\$2,016,394
Year 3	\$1,968,608
Year 4	\$2,240,979
Year 5	\$2,296,798
Year 6	\$2,293,611
Year 7	\$2,250,086
Year 8	\$2,395,169
Year 9	\$2,428,606
Year 10	\$2,427,722

EXHIBIT E
LLC AGREEMENT

LIMITED LIABILITY COMPANY AGREEMENT
OF
[____], LLC

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**LIMITED LIABILITY COMPANY AGREEMENT
OF
[____], LLC**

This Limited Liability Company Agreement, effective as of the Formation Date, is entered into by and between ExchangeRight Asset Management, LLC, a California limited liability company as Managing Member and ExchangeRight Value-Add Portfolio 3 DST, a Delaware statutory trust as the Initial Member and [____], an individual, as the Independent Director and the Special Member (each as defined below), pursuant to the Act on the following terms and conditions.

RECITALS

WHEREAS, the Trust was established to acquire and hold the Real Estate and sell Beneficial Interests in such Trust to the Beneficial Owners pursuant to that certain Private Placement Memorandum dated as of June 5, 2023 (the "Memorandum");

WHEREAS, the Manager has determined that a conversion of the Trust Estate to the Company in exchange for all of the Company's Class A Units and a subsequent distribution of the Class A Units to the Beneficial Owners in exchange for, and in termination of, their Beneficial Interests should be made pursuant to Section 9.2 of the Trust Agreement in order to preserve and protect the Trust Estate;

WHEREAS, on the Formation Date, ExchangeRight Asset Management, LLC formed the Company;

WHEREAS, ExchangeRight Asset Management, LLC will contribute cash to the Company in exchange for one Class B Unit;

WHEREAS, in order to preserve and protect the Trust Estate, the Manager will cause the Trust to (i) contribute the Trust Estate to the Company in exchange for all of the Class A Units and (ii) immediately thereafter distribute all of the Class A Units to the Beneficial Owners (in the amounts reflected on Exhibit C attached hereto) in exchange for, and in termination of, their Beneficial Interests;

WHEREAS, the Managing Member will admit the Beneficial Owners as Members of the Company at the time of the Trust's distribution to the Beneficial Owners of the Class A Units and the interest of the Trust as Initial Member in the Company will become null and void; and

WHEREAS, immediately upon termination of the Beneficial Interests and the admission of the Owners as Members of the Company, the Trust will terminate;

NOW THEREFORE, ExchangeRight Asset Management, LLC as Managing Member and the Trust as the Initial Member agree that the Company shall be governed by and operated pursuant to the Act and the terms of this Agreement as hereinafter set forth.

1. **Organization.**

1.1 **Formation.** On the Formation Date, ExchangeRight Asset Management, LLC filed a Certificate of Formation with the office of the Division of Corporations of Delaware in accordance with and pursuant to the Act to form the Company.

1.2 **Name and Place of Business.** The name of the Company shall be [____], LLC. The Managing Member may change such name, change such place of business or establish additional places of business of the Company as the Managing Member may determine to be necessary or desirable.

1.3 **Business and Purpose of the Company.** The nature of the business and the purposes to be conducted and promoted by the Company are to engage solely in the following activities:

1.3.1 To own, hold, sell, assign, transfer, operate, lease, mortgage, pledge and otherwise deal with the Property.

1.3.2 To exercise all powers enumerated in the Act if necessary or convenient to the conduct, promotion or attainment of the business or purposes otherwise set forth herein.

1.3.3 Notwithstanding anything to the contrary set forth in paragraphs 1.3.1 and 1.3.2 above, since its formation and thereafter until the Loan is paid in full, the Company will (i) be organized solely for the purpose of owning the Real Estate, (ii) not engage in any business unrelated to the ownership of the Real Estate, and (iii) not have any assets other than those related to the Real Estate. After the repayment of the Loan in full, such purposes may be amended or expanded as determined by the Managing Member.

1.4 Term. The term of the Company shall terminate as provided in Section 14 of this Agreement; provided, however, that the Company may not be dissolved at any time until the Loan is paid in full.

1.5 Required Filings. The Managing Member shall execute, acknowledge, file, record and/or publish such certificates and documents, as may be required by this Agreement or by law in connection with the formation and operation of the Company.

1.6 Registered Office and Registered Agent. The Company's initial registered office and initial registered agent shall be as provided in the Certificate of Formation. The registered office and registered agent may be changed from time to time by the Managing Member by filing the address of the new registered office and/or the name of the new registered agent pursuant to the Act.

1.7 Certain Transactions. Any Member, or any Affiliate of a Member, or any shareholder, officer, director, employee, partner, member or any Person owning an interest therein, may engage in or possess an interest in any other business or venture of any nature or description, whether or not competitive with the Company including, but not limited to, the acquisition, syndication, ownership, financing, leasing, operation, maintenance, management, brokerage, construction and development of property similar to the Property that consists of real property and no Managing Member, Member or other Person or entity shall have any interest in such other business or venture by reason of their interest in the Company.

1.8 Independent Director. Upon the occurrence of any event that causes the Managing Member to cease to be a member of the Company (other than (i) upon an assignment by the Managing Member of its Class B Unit and the admission of the transferee pursuant to 11.1, or (ii) the resignation of the Managing Member and the admission of a replacement manager pursuant to Section 10), the Person acting as an Independent Director pursuant to Section 7.10.2 shall, without any action of any Person and simultaneously with the Managing Member ceasing to be a member of the Company, automatically be admitted to the Company as a Special Member and shall continue the Company without division or dissolution. No Special Member may resign from the Company or transfer its rights as Special Member unless (i) a successor Special Member has been admitted to the Company as Special Member by executing a counterpart to this Agreement, and (ii) such successor has also accepted its appointment as Independent Director pursuant to Section 7.10.2; provided, however, the Special Member shall automatically cease to be a member of the Company upon the admission to the Company of a substitute Managing Member. Each Special Member shall be a member of the Company that has no interest in the profits, losses and capital of the Company and has no right to receive any distributions of Company assets. Pursuant to Section 18-301 of the Act, a Special Member shall not be required to make any capital contributions to the Company and shall not receive a limited liability company interest in the Company. A Special Member, in its capacity as Special Member, may not bind the Company. Except as required by any mandatory provision of the Act, each Special Member, in its capacity as Special Member, shall have no right to vote on, approve or otherwise consent to any action by, or matter relating to, the Company, including, without limitation, the merger, consolidation or conversion of the Company. In order to implement the admission to the Company of any Special Member, each Person acting as an Independent Director pursuant to Section 7.10.2 shall execute a counterpart to this Agreement. Prior to its admission to the Company as Special Member, each Person acting as an Independent Director pursuant to Section 7.10.2 shall not be a member of the Company.

2. Definitions. Definitions for this Agreement are set forth on Exhibit A and are incorporated herein.

3. Capitalization and Financing.

3.1 Members' Capital Contributions.

3.1.1 Initial Member; Contribution of the Managing Member. The Trust, as the Initial Member, shall contribute the Trust Estate to the Company in exchange for all of the authorized Class A Units in the Company. The Trust shall then distribute the Class A Units to the Beneficial Owners in proportion to and in exchange for, and in termination of, their Beneficial Interests in the Trust. ExchangeRight Asset Management, LLC shall contribute the amount of cash reflected on Exhibit C attached hereto to the Company in exchange for the one Class B Unit authorized under this Agreement.

3.1.2 Units. The Company is hereby authorized to issue ten thousand (10,000) Class A Units which shall first be issued to the Initial Member and then be distributed to the Beneficial Owners as contemplated under Section 3.1.1 and to admit the Beneficial Owners as Members of the Company. In addition, the Company is hereby authorized to issue one (1) Class B Unit to ExchangeRight Asset Management, LLC. Upon distribution of the Class A Units to the Beneficial Owners, they shall automatically be admitted as Members and they shall be bound by this Agreement without further action on their part, in accordance with and as contemplated by Section 10.10 of the Trust Agreement.

3.1.3 Liabilities of Members. Except as specifically provided in this Agreement, neither the Managing Member nor any Member shall be required to make any additional contributions to the Company and no Managing Member or Member shall be liable for the debts, liabilities, contracts, or any other obligations of the Company, nor shall the Managing Member or the Members be required to lend any funds to the Company or to repay to the Company, any Member, or any creditor of the Company any portion of the capital contributed to the Company by the Members.

3.1.4 Certificates. The Managing Member may, in its sole discretion, determine to issue certificates to the Members representing the Membership Interests held by each Member. In the event that certificates representing Membership Interests are issued, such certificates will bear the following legends:

“THE SALE, PLEDGE, HYPOTHECATION, TRANSFER, ASSIGNMENT OR OTHER DISPOSITION OR ENCUMBRANCE OF THE MEMBERSHIP INTEREST REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO RESTRICTION PURSUANT TO THE LIMITED LIABILITY COMPANY AGREEMENT (THE “AGREEMENT”). THIS MEMBERSHIP INTEREST MAY NOT BE SOLD, PLEDGED, HYPOTHECATED, TRANSFERRED, ASSIGNED OR OTHERWISE DISPOSED OF OR ENCUMBERED, EXCEPT IN STRICT ACCORDANCE WITH SUCH AGREEMENT. A TRANSFEREE OF THE MEMBERSHIP INTEREST REPRESENTED HEREBY SHALL BE BOUND BY THE AGREEMENT. COPIES OF THE AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE MANAGING MEMBER OF THE COMPANY.

THE MEMBERSHIP INTEREST REPRESENTED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE STATE SECURITIES LAWS OF ANY STATE. WITHOUT SUCH REGISTRATION, SUCH MEMBERSHIP INTEREST MAY NOT BE SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED OR ENCUMBERED AT ANY TIME WHATSOEVER, EXCEPT UPON DELIVERY TO THE COMPANY OF AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED FOR SUCH TRANSFER AND/OR THE SUBMISSION TO THE COMPANY OF SUCH OTHER EVIDENCE AS MAY BE SATISFACTORY TO THE COMPANY TO THE EFFECT THAT ANY SUCH TRANSFER WILL NOT BE IN VIOLATION OF THE SECURITIES ACT OF 1933, AS AMENDED, AND/OR APPLICABLE STATE SECURITIES LAWS AND/OR ANY RULE OR REGULATION PROMULGATED THEREUNDER.”

3.2 Managing Member Loans. Provided it does not violate or conflict with the Loan Documents, the Managing Member or its Affiliates may, but will have no obligation to, make loans to the Company to pay expenses and other obligations of the Company. Any such loan shall bear interest at the actual cost of funds to the Managing Member and provide for the payment of principal and any accrued but unpaid interest in accordance with the terms of the promissory note evidencing such loan, but in no event later than division or dissolution of the Company.

3.3 Company Loans. Subject to the terms of the Loan Documents and this Agreement, the Company may obtain, in the sole and absolute discretion of the Managing Member, loans, including loans to refinance any real property owned by the Company.

4. Allocation of Tax Items.

4.1 Allocation of Income and Loss. For each fiscal year, the income and loss of the Company shall be allocated to the Members in proportion to their Class A Units. No income or loss of the Company shall be allocated to a Member as a result of its ownership of a Class B Unit.

4.2 Allocation Among Class A Units. Except as otherwise provided in this Agreement, all Distributions and allocations made to the Class A Units shall be in the ratio of the number of Class A Units held by each such Member on the date of such allocation (which allocation date shall be deemed to be the last day of each month) to the total outstanding Class A Units as of such date, and, except as otherwise provided in this Agreement without regard to the number of days during such month that the Class A Units were held by each Member.

4.3 Allocation of Company Items. Except as otherwise provided herein, whenever a proportionate part of income or loss is allocated to a Member, every item of income, gain, loss or deduction entering into the computation of such income or loss, and every item of credit or tax preference related to such allocation and applicable to the period during which such income or loss was realized, shall be allocated to the Member in the same proportion.

4.4 Assignment. In the event of the transfer, assignment, sale or other disposition of a Class A Unit, the income and loss shall be apportioned as between the Member and his or her assignee based upon the number of months of their respective ownership during the year in which the assignment occurs, without regard to the results of the Company's operations during the period before or after such assignment. Distributions shall be made to the holder of record of the Class A Units as of the date of the Distribution. An assignee that acquires Class A Units during the first 15 days of a month will receive any allocations relative to such month. An assignee that acquires Class A Units on or after the sixteenth day of a month will be treated as acquiring his or her Class A Units on the first day of the following month.

4.5 Consent of Members. The methods for allocating income and loss are hereby expressly consented to by each Member as a condition of becoming a Member. Each Member will cooperate with the Partnership Representative and do or refrain from doing any or all things reasonably requested by the Partnership Representative including as needed to comply with the Revised Partnership Audit Procedures.

4.6 Withholding Obligations.

4.6.1 If the Company is required (as determined in good faith by the Managing Member) to make a payment to discharge any legal obligation on the part of the Company or the Managing Member to make payments to any governmental authority with respect to any federal, foreign, state or local tax arising as a result of a Member's interest in the Company, (a "Tax Payment") then, notwithstanding any other provision of this Agreement to the contrary, the amount of any such Tax Payment shall be deemed to be a loan by the Company to such Member, which loan shall bear interest at the Prime Rate and be payable to the Company upon demand or by a reduction to any Distribution which otherwise would be made to such Member.

4.6.2 If and to the extent the Company is required to make any Tax Payment with respect to any Member, either (i) such Member's proportionate share of any Distribution subsequent the Tax Payment shall be reduced by the amount of such Tax Payment, or (ii) such Member shall pay to the Company prior to such

Distribution an amount of cash equal to such Tax Payment. In the event any portion of a Distribution in kind is retained by the Company pursuant to clause (i) above, such retained property may, in the discretion of the Managing Member, either (A) be distributed to the other Members, or (B) be sold by the Company to generate the cash necessary to repay any deemed loan arising from such Tax Payment. If the property is sold, then only for purposes of the allocation of tax items under this Section 4, any gain or loss from such sale or exchange shall be allocated to the Member to whom the Tax Payment relates. If the property is sold at a gain, and the Company is required to make any Tax Payment as a result of such gain, the Member to whom the gain is allocated shall pay the Company, prior to the due date of such Tax Payment, an amount of cash equal to such Tax Payment.

4.6.3 The Managing Member shall be entitled to hold back any Distribution to any Member to the extent the Managing Member believes in good faith that a Tax Payment will be required with respect to such Member in the future and the Managing Member believes that there will not be sufficient subsequent Distributions to recover amounts paid pursuant to Section 4.6.2 with respect to such Tax Payment.

5. Distributions.

5.1 Distributable Cash. Except as provided in Section 5.2 and as otherwise provided in Section 14, Distributable Cash with respect to each calendar year shall be distributed to the Members in proportion to their Class A Units. No Distributable Cash shall be distributed to a Member as a result of its owning a Class B Unit.

5.2 Restrictions. The Company intends to make periodic distributions of substantially all cash determined by the Managing Member to be distributable, subject to the following: (i) Distributions may be restricted or suspended for periods when the Managing Member determines in its reasonable discretion that it is in the best interest of the Company; (ii) all Distributions are subject to the payment, and the maintenance of reasonable reserves for payment, of Company obligations; and (iii) all Distributions shall be paid only to the extent that all currently due operating expenses have been paid or otherwise provided for and all amounts then due and payable under the Loan Documents have been paid or otherwise provided for.

6. Compensation to the Managing Member and its Affiliates.

6.1 Managing Member's and Affiliates' Compensation. The Managing Member and its Affiliates shall be entitled to receive an administrative fee, a finance coordination fee, real estate commissions, and other compensation for any service performed on behalf of the Company, including services performed in its capacity as Managing Member. Such fees shall not exceed the then customary rate for similar services. The Managing Member and its Affiliates shall also be entitled to receive leasing commissions, property management fees, and construction management fees, including in connection with renovation and remodeling, with respect to the operation of the Property, legal appearance fees, refinancing fees, and fees for protesting or appealing property tax assessments with respect to the Property, as long as such fees do not exceed the then customary rate for similar services. Such fees, commissions and other compensation shall be paid to the Managing Member and its Affiliates, as the case may be, before the payment to Members of Distributable Cash, if any.

6.2 Company Expenses.

6.2.1 Operating Expenses. Subject to the limitations set forth in Section 6.2.2, the Company shall pay directly, or reimburse the Managing Member as the case may be, for all of the costs and expenses of the Company's operations, including, without limitation, the following costs and expenses: (i) all Organization Expenses advanced or otherwise paid by the Managing Member; (ii) all costs of personnel employed by the Company and directly involved in the Company's business; (iii) all compensation due to the Managing Member or its Affiliates as provided in Section 6.1; (iv) all costs of personnel employed by the Managing Member or its Affiliates and directly involved in the business of the Company; (v) all costs of borrowed money, taxes and assessments on the Property and other taxes applicable to the Company; (vi) legal, accounting, audit, brokerage, and other fees; (vii) fees and expenses paid to independent contractors, mortgage bankers, real estate brokers, and other agents; (viii) costs of owning, developing, improving, operating, and disposing of the Property; (ix) expenses incurred in connection with the development, alteration, maintenance, repair, remodeling, refurbishment, leasing and operation of the Property; (x) all expenses incurred in connection with the maintenance of Company books and records, the preparation and dissemination of reports, tax returns or other information to the Members and the

making of Distributions to the Members; (xi) expenses incurred in preparation and filing reports or other information with appropriate regulatory agencies; (xii) expenses of insurance as required in connection with the business of the Company, other than any insurance insuring the Managing Member against losses for which it is not entitled to be indemnified under Section 7.7; (xiii) costs incurred in connection with any litigation in which the Company may become involved, or any examination, investigation, or other proceedings conducted by any regulatory agency, including legal and accounting fees; (xiv) the actual costs of goods and materials used by or for the Company; (xv) the costs of services that could be performed directly for the Company by independent parties such as legal, accounting, secretarial or clerical, reporting, transfer agent, data processing and duplicating services but which are in fact performed by the Managing Member or its Affiliates, but not in excess of the lesser of: (a) the actual costs to the Managing Member or its Affiliates of providing such services; or (b) the amounts which the Company would otherwise be required to pay to independent parties for comparable services in the same geographic locale; (xvi) expenses of Company administration, accounting, documentation and reporting, (xvii) expenses of revising, amending, modifying, or terminating this Agreement; (xviii) all travel expenses incurred in connection with the Company's business, including travel to and from the Property; and (xix) all other costs and expenses incurred in connection with the business of the Company exclusive of those set forth in Section 6.2.2. All payments set forth herein shall be paid from any funds available after payment of, or other provision for, all other currently due operating expenses for the Property and all currently due amounts under the Loan Documents.

6.2.2 Managing Member Overhead. Except as set forth in this Section 6, the Managing Member and its Affiliates shall not be reimbursed for overhead expenses incurred in connection with the Company, including but not limited to rent, depreciation, utilities, capital equipment, or other administrative items.

7. Authority and Responsibilities of the Managing Member.

7.1 Management. The Managing Member shall manage the business and affairs of the Company under the direction of the Board of Directors. Except as otherwise set forth in this Agreement and the Certificate of Formation, and to the maximum extent permitted by law, the Managing Member shall have full and complete authority, power and discretion to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the Company's business, subject only to the direction of the Board of Directors.

7.2 Number, Tenure and Qualifications. The Company shall have one Managing Member, which shall be ExchangeRight Asset Management, LLC. The Managing Member shall hold office until such Managing Member is removed or withdraws or resigns.

7.3 Managing Member Authority. The Managing Member shall have all authority, rights and powers conferred by law (subject only to Section 7.1, Section 7.4 and Section 9 hereof and the Certificate of Formation) and those required or appropriate to the management of the Company's business, as limited by Section 1.3, which, by way of illustration but not by way of limitation, shall include the right, authority and power to cause the Company to:

7.3.1 Take all actions relating to the management of the Property;

7.3.2 Hold, develop, lease, rent, operate, sell, exchange, invest, re-invest, subdivide and otherwise dispose of the Property;

7.3.3 Borrow money, and, if security is required therefor, pledge or mortgage or subject the Property to any security device, obtain replacements of any mortgage or other security device and to prepay, in whole or in part, refinance, increase, modify, consolidate, or extend any mortgage or other security device, including, but not limited to the right, authority and power to renegotiate the terms of the Loan with the Lender. All of the foregoing shall be on such terms and in such amounts as the Managing Member, in its sole discretion, deems to be in the best interest of the Company and subject to any restrictions or limitations established under the Loan Documents;

7.3.4 Place record title to, or the right to use, Property in the name or names of a nominee or nominees for any purpose convenient or beneficial to the Company;

7.3.5 Enter into such contracts and agreements as the Managing Member determines to be reasonably necessary or appropriate in connection with the Company's business and purpose (including contracts with Affiliates of the Managing Member), and any contract of insurance that the Managing Member deems necessary or appropriate for the protection of the Company and the Managing Member, including errors and omissions insurance, for the conservation of Company assets, or for any purpose convenient or beneficial to the Company;

7.3.6 Employ persons, who may be Affiliates of the Managing Member, in the operation and management of the business of the Company;

7.3.7 Prepare or cause to be prepared reports, statements, and other relevant information for distribution to the Members;

7.3.8 Open accounts and deposit and maintain funds in the name of the Company in banks, savings and loan associations, "money market" mutual funds and other instruments as the Managing Member may deem in its discretion to be necessary or desirable;

7.3.9 Make or revoke any of the elections referred to in the Code (the Managing Member shall have no obligation to make any such elections);

7.3.10 Select as its accounting year a calendar or fiscal year as may be approved by the Internal Revenue Service (the Company initially intends to adopt the calendar year);

7.3.11 Determine the appropriate accounting method or methods to be used by the Company;

7.3.12 In addition to any amendments otherwise authorized herein, amend this Agreement without any action on the part of the Members by special or general power of attorney or otherwise to:

(a) Add to the representations, duties, services or obligations of the Managing Member or its Affiliates, for the benefit of the Members;

(b) Cure any ambiguity or mistake, correct or supplement any provision herein that may be inconsistent with any other provision herein, or make any other provision with respect to matters or questions arising under this Agreement that will not be inconsistent with the provisions of this Agreement;

(c) Delete or add any provision of this Agreement required to be so deleted or added for the benefit of the Members by the staff of the Securities and Exchange Commission or by a state "Blue Sky" Commissioner or similar official;

(d) Amend this Agreement to reflect the addition or substitution of Members;

(e) Minimize the adverse impact of, or comply with, any final regulation of the United States Department of Labor, or other federal agency having jurisdiction, defining "plan assets" for ERISA purposes;

(f) Reconstitute the Company under the laws of another state if beneficial;

(g) Execute, acknowledge and deliver any and all instruments to effectuate the foregoing, including the execution, acknowledgment and delivery of any such instrument by the attorney-in-fact for the Managing Member under a special or limited power of attorney, and to take all such actions in connection therewith as the Managing Member shall deem necessary or appropriate with the signature of the Managing Member acting alone; and

(h) Make any changes to this Agreement as requested or required by the Lender that may be required to obtain financing or any refinancing of the Loan, as needed.

7.3.13 Require in any Company contract that the Managing Member shall not have any personal liability, but that the person or entity contracting with the Company is to look solely to the Company and its assets for satisfaction;

7.3.14 Lease personal property for use by the Company;

7.3.15 Establish reserves from income in such amounts as the Managing Member may deem appropriate;

7.3.16 Temporarily invest the proceeds from the sale of Units in short-term, highly-liquid investments;

7.3.17 Provided it does not violate or conflict with the Loan Documents, make secured or unsecured loans to the Company and receive interest at the rates set forth herein;

7.3.18 Redeem or repurchase Units on behalf of the Company;

7.3.19 Identify a successor Managing Member before the resignation, expulsion, division or dissolution of the Managing Member;

7.3.20 Enter into any partnership or venture.

7.4 Restrictions on Managing Member's Authority. Subject to the balance of the terms of this Agreement and the Certificate of Formation, neither the Managing Member nor any Affiliates shall have authority, without a Super Majority Vote of the Units, to:

7.4.1 Enter into contracts with the Company that would bind the Company after the expulsion, withdrawal, Event of Insolvency, or other cessation to exist of the Managing Member, or to continue the business of the Company after the occurrence of such event;

7.4.2 Use or permit any other Person to use Company funds or assets in any manner except for the exclusive benefit of the Company;

7.4.3 Alter the primary purpose of the Company;

7.4.4 Except for the Real Estate, or an undivided interest therein, sell or lease to the Company any real property in which the Managing Member or any Affiliate has any interest;

7.4.5 Admit another Person or entity as the Managing Member, except with the consent of the Members as provided in this Agreement;

7.4.6 Reinvest Cash from Operations in any additional real property other than the Real Estate;

7.4.7 Enter into any agreement imposing personal liability on any Member; or

7.4.8 Commingle the Company funds with those of any other Person or entity, except for (i) the temporary deposit of funds in a bank checking account for the sole purpose of making Distributions immediately thereafter to the Members or (ii) funds attributable to the Property and held for use in the management of the operations of the Property.

7.5 Responsibilities of the Managing Member. The Managing Member shall:

7.5.1 Have a fiduciary responsibility for the safekeeping and use of all the funds and assets of the Company;

7.5.2 Devote such of its time and business efforts to the business of the Company as it shall in its discretion, exercised in good faith, determine to be necessary to conduct the business of the Company for the benefit of the Company and the Members;

7.5.3 File and publish all certificates, statements, or other instruments required by law for formation, qualification and operation of the Company and for the conduct of its business in all appropriate jurisdictions;

7.5.4 Cause the Company to be protected by public liability, property damage and other insurance determined by the Managing Member in its discretion to be appropriate to the business of the Company;

7.5.5 At all times use its best efforts to meet applicable requirements for the Company to be classified, for federal income tax purposes, as a partnership and not as an association taxable as a corporation;

7.5.6 Represent the Company and the Members, at the Company's expense, as Partnership Representative (with all powers and responsibilities granted to a Partnership Representative) in connection with all examinations by tax authorities of the Company's affairs, and any other tax administrative or judicial proceeding regarding the tax treatment of items of Company income, loss, deduction or credit, or any other matter reflected in the Company's returns, and, if reasonably determined to be in the best interest of the Members, the Partnership Representative is authorized to take any action in connection with any tax examination, audit, administrative or judicial proceeding of the Company to the extent permitted by applicable law, including the authority to agree to final Company administrative adjustments or file a petition for a readjustment of the Company items in question with the applicable court;

7.5.7 Initiate, settle and defend legal actions on behalf of the Company;

7.5.8 Admit itself as a Member;

7.5.9 Merge or combine the Company or "roll-up" the Company into a partnership, limited liability company or other entity with a Majority Vote of the Units;

7.5.10 Place all or a portion of the Property in a single purpose or bankruptcy remote entity, or otherwise structure or restructure the Company to accommodate any financing for all or a portion of the Property;

7.5.11 Perform any and all other acts which the Managing Member is obligated to perform hereunder; and

7.5.12 Execute, acknowledge and deliver any and all instruments to effectuate the foregoing and take all such actions in connection therewith as the Managing Member may deem necessary or appropriate. The Managing Member may, on behalf and in the name of the Company, execute any and all documents or instruments.

7.6 Administration of Company. So long as it is the Managing Member and the provisions of this Agreement for compensation and reimbursement of expenses of the Managing Member are observed, the Managing Member shall have the responsibility of providing continuing administrative and executive support, advice, consultation, analysis and supervision with respect to the functions of the Company, including decisions regarding the sale or refinancing or other disposition of the Property, and compliance with federal, state and local regulatory requirements and procedures. In this regard, the Managing Member may retain the services of such Affiliates or unaffiliated parties as the Managing Member may deem appropriate to provide management and financial consultation and advice, and may enter into agreements for the management and operation of Company assets.

7.7 Indemnification of Managing Member.

7.7.1 The Managing Member, its shareholders, Affiliates, officers, directors, partners, managers, members, employees, agents and assigns, shall not be liable for, and shall be indemnified and held harmless (to the extent of the Company's assets) from, any loss or damage incurred by them, the Company or the Members in connection with the business of the Company, including costs and reasonable attorneys' fees and any amounts expended in the settlement of any claims of loss or damage resulting from any act or omission performed or omitted in good faith, which shall not constitute gross negligence or willful malfeasance, pursuant to the authority granted, to promote the interests of the Company. Moreover, the Managing Member shall not be liable to the Company or the Members because any taxing authorities disallow or adjust any deductions or credits, or adjust any income, reflected on any tax return filed by the Company.

7.7.2 Notwithstanding anything contained herein to the contrary, any indemnification of the Managing Member or any Member shall be fully subordinated to any obligations encumbering the Property (including, without limitation, the Loan Documents which secure the Loan) and such indemnification shall not constitute a claim against the Company in the event that cash flow in excess of amounts necessary to pay holders of such obligations is insufficient to pay such indemnification obligations.

7.8 No Personal Liability for Return of Capital. The Managing Member shall not be personally liable or responsible for the return or repayment of all or any portion of the capital contributed by any Member to the Company or any loan made by any Member to the Company, it being expressly understood that any such return of capital or repayment of any loan shall be made solely from the assets (which shall not include any right of contribution from any Member) of the Company. The Company will, to the fullest extent to which it is empowered to do so by the Act or any other applicable law, indemnify and make advances for expenses to any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that it is or was a Managing Member of the Company, against losses, damages, expenses (including attorneys' fees), judgments, fines and amounts reasonably incurred by it in connection with such action, suit or proceeding.

7.9 Authority as to Third Persons.

7.9.1 No third party dealing with the Company shall be required to investigate the authority of the Managing Member or secure the approval or confirmation by any Member of any act of the Managing Member in connection with the Company business. No purchaser of any property or interest owned by the Company shall be required to determine the right to sell or the authority of the Managing Member to sign and deliver any instrument of transfer on behalf of the Company, or to see to the application or distribution of revenues or proceeds paid or credited in connection therewith.

7.9.2 The Managing Member shall have full authority to execute on behalf of the Company any and all agreements, contracts, conveyances, deeds, mortgages and other instruments, and the execution thereof by the Managing Member, executing on behalf of the Company, shall be the only execution necessary to bind the Company thereto. No signature of any Member shall be required.

7.9.3 The Managing Member shall have the right by separate instrument or document to authorize one or more individuals or entities to execute leases and lease-related documents on behalf of the Company and any leases and documents executed by such agent shall be binding upon the Company as if executed by the Managing Member.

7.10 Board of Director and Officers.

7.10.1 Board of Directors. In accordance with Section 7.1 and subject to Section 9, the business and affairs of the Company shall be managed by or under the direction of a Board of one or more Directors designated by the Managing Member. Subject to Section 7.10.2, the Managing Member may determine at any time in its sole and absolute discretion the number of Directors to constitute the Board. The authorized number of

Directors may be increased or decreased by the Managing Member at any time in its sole and absolute discretion, upon notice to all Directors, and subject in all cases to Section 7.10.2. The initial number of Directors shall be 2, one of which shall be an Independent Director pursuant to Section 7.10.2. Each Director elected, designated or appointed by the Managing Member shall hold office until a successor is elected and qualified or until such Director's earlier death, resignation, expulsion or removal. Directors need not be a Member. The initial Directors designated by the Member are listed on Exhibit B hereto.

(a) Powers. Subject to Section 9, the Board of Directors shall have the power to do any and all acts necessary, convenient or incidental to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise. Subject to Section 1.3, the actions of the Board of Directors taken in accordance with this Agreement have the authority to bind the Company.

(b) Meeting of the Board of Directors. The Board of Directors of the Company may hold meetings, both regular and special, within or outside the State of Delaware. Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board. Special meetings of the Board may be called by the Managing Member, Chief Executive Officer or President on not less than one day's notice to each Director by telephone, facsimile, mail, telegram or any other means of communication, and special meetings shall be called by the President or Secretary in like manner and with like notice upon the written request of any one or more of the Directors.

(c) Quorum: Acts of the Board. Subject to Section 9, at all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business and, except as otherwise provided in any other provision of this Agreement, the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board. If a quorum shall not be present at any meeting of the Board, the Directors present at such meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee, as the case may be.

(d) Telephonic Communications. Members of the Board, or any committee designated by the Board, may participate in meetings of the Board, or any committee, by means of telephone conference or similar communications equipment that allows all Persons participating in the meeting to hear each other, and such participation in a meeting shall constitute presence in Person at the meeting. If all the participants are participating by telephone conference or similar communications equipment, the meeting shall be deemed to be held at the principal place of business of the Company.

(e) Committees of Directors.

(i) The Board may, by resolution passed by a majority of the whole Board, designate one or more committees, each committee to consist of one or more of the Directors of the Company. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

(ii) In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

(iii) Any such committee, to the extent provided in the resolution of the Board, and subject to, in all cases, Sections 7.10.2 and 9, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

(f) Compensation of Directors; Expenses. The Board shall have the authority to fix the compensation of Directors. The Directors may be paid their expenses, if any, of attendance at meetings of the Board, which may be a fixed sum for attendance at each meeting of the Board or a stated salary as Director. No such payment shall preclude any Director from serving the Company in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

(g) Removal of Directors. Unless otherwise restricted by law, subject to Section 7.10.2, any Director or the entire Board of Directors may be removed or expelled, with or without cause, at any time by the Managing Member, and, subject to Section 7.10.2, any vacancy caused by any such removal or expulsion may be filled by action of the Managing Member.

(h) Directors as Agents. To the extent of their powers set forth in this Agreement and subject to Section 9, the Directors are agents of the Company for the purpose of the Company's business, and the actions of the Directors taken in accordance with such powers set forth in this Agreement shall bind the Company. Notwithstanding the last sentence of Section 18-402 of the Act, except as provided in this Agreement or in a resolution of the Directors, a Director may not bind the Company.

7.10.2 Independent Director. As long as the Loan is outstanding, the Managing Member shall cause the Company at all times to have at least one Independent Director who will be appointed by the Managing Member. To the fullest extent permitted by law, including Section 18-1101(c) of the Act, the Independent Director shall consider only the interests of the Company, including its respective creditors, in acting or otherwise voting on the matters referred to in Section 9.1.2. No resignation or removal of an Independent Director, and no appointment of a successor Independent Director, shall be effective until such successor (i) shall have accepted his or her appointment as an Independent Director by a written instrument, and (ii) shall have executed a counterpart to this Agreement. In the event of a vacancy in the position of Independent Director, the Member shall, as soon as practicable, appoint a successor Independent Director. All right, power and authority of the Independent Director shall be limited to the extent necessary to exercise those rights and perform those duties specifically set forth in this Agreement. Except as provided in the second sentence of this Section 7.10.2, in exercising their rights and performing their duties under this Agreement, any Independent Director shall have a fiduciary duty of loyalty and care similar to that of a director of a business corporation organized under the General Corporation Law of the State of Delaware. No Independent Director shall at any time serve as trustee in bankruptcy for any Affiliate of the Company.

7.10.3 Officers. The Managing Member shall have authority to designate officers of the Company ("Officers") to act on behalf of the Company. The initial Officers of the Company shall be designated by the Managing Member. The additional or successor Officers of the Company shall be chosen by the Managing Member and shall consist of at least a President and a Secretary. Any number of offices may be held by the same person. The Managing Member shall choose the President and Secretary. The Managing Member may appoint such other Officers and agents as it shall deem necessary or advisable who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Managing Member. The President or any other Officer authorized by the Managing Member shall have the authority to execute documents on behalf of the Company. The salaries of all Officers and agents of the Company shall be fixed by or in the manner prescribed by the Managing Member. The Officers of the Company shall hold office until their successors are chosen and qualified. The Managing Member may remove any Officer at any time, with or without cause. The Managing Member shall fill any vacancy occurring in any office of the Company. The initial Officers of the Company designated by the Managing Member are listed on Exhibit B hereto.

(a) Chief Executive Officer. The Chief Executive Officer shall be the chief executive officer of the Company and shall be responsible for seeing that all orders and resolutions of the Managing Member are carried into effect. The Chief Executive Officer shall perform such other duties as may be prescribed from time to time by the Managing Member, under whose supervision the Chief Executive Officer shall serve.

(b) President. In the absence of the Chief Executive Officer, or in the event of his inability or refusal to act, the President shall perform the duties of the Chief Executive Officer, and when so

acting shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer. The President shall perform such other duties as may be prescribed from time to time by the Managing Member, under whose supervision the President shall serve.

(c) Secretary. The Secretary shall be responsible for maintaining records for the Company. The Secretary shall attend all meetings and record all the proceedings of the meetings, if any, of the Members and shall perform like duties for the standing committees when required. The Secretary shall give, or shall cause to be given, notice of all meetings, if any, of the Members and shall perform such other duties as may be prescribed from time to time by the Managing Member, under whose supervision the Secretary shall serve.

(d) Officers as Agents. The Officers, to the extent of their powers set forth in this Agreement or otherwise vested in them by action of the Managing Member not inconsistent with this Agreement, are agents of the Company for the purpose of the Company's business and the actions of the Officers taken in accordance with such powers shall bind the Company.

(e) Duties of Officers. Except to the extent otherwise provided herein, each Officer shall have a fiduciary duty of loyalty and care similar to that of officers of business corporations organized under the General Corporation Law of the State of Delaware.

(f) Indemnification and Limitation of Liability. Each Officer shall have all rights (and be subject to all the limitations) to indemnification and limitations of liability equal to those afforded to the Managing Member under this Agreement, including, without limitation, Section 7.7 and 7.8 hereof, under the Act, and/or applicable law.

8. Rights, Authority and Voting of the Members.

8.1 Members Are Not Agents. Pursuant to Section 7 (and as set forth therein) and the Certificate of Formation, the management of the Company is vested in the Managing Member. No Member, acting solely in the capacity of a Member, is an agent of the Company nor can any Member in such capacity bind or execute any instrument on behalf of the Company. Notwithstanding anything contained herein to the contrary, when acting on matters subject to the vote of the Members, notwithstanding that the Company is not then insolvent, the Members shall take into account the interest of the Company's creditors, as well as those of the Members.

8.2 Voting by a Member. Subject to the terms of the Loan Documents, Members who own Class A Units shall be entitled to cast one vote for each Unit they own. Except as otherwise specifically provided in this Agreement or as otherwise required, Members who own Class A Units shall have the right to vote only upon the following matters:

- 8.2.1 Remove the Managing Member as provided in Section 10.2 of this Agreement;
- 8.2.2 Elect a successor Partnership Representative;
- 8.2.3 Amend this Agreement (except for amendments permitted under Section 7.3.12);
- 8.2.4 Elect to continue the business of the Company as set forth in Section 14.1.5 when there is a Dissolution Event;
- 8.2.5 Approve the assignment of the Managing Member's Class B Unit under Section 11.1;
- 8.2.6 Elect an additional Managing Member; or
- 8.2.7 Elect a successor Managing Member.

8.3 Member Vote; Consent of Managing Member; Deemed Approval and Consent by the Members. All matters upon which the Members may vote shall require a Super Majority Vote and (except for removal of the Managing Member as provided in Section 10.2) the consent of the Managing Member to pass and become effective. The foregoing notwithstanding, at any time the Loan is outstanding, all Members shall be conclusively deemed to have elected to continue the existence of the Company under Section 8.2.4. Whenever in this Agreement the vote, consent or approval of the Members is required or otherwise requested, the Members shall have fifteen (15) days from the date the vote or request for consent or approval is submitted by the Managing Member to approve or disapprove of the matter in writing (unless a longer or shorter period for response is specifically provided for herein). In the event a Member does not disapprove in writing of such matter within such fifteen (15) day period (or such longer or shorter period expressly provided for herein), the Member shall be deemed to have voted in the affirmative or approved the matter as applicable.

8.4 Meetings of the Members. The Managing Member may at any time call for a meeting of the Members, or for a vote without a meeting, on matters on which the Members are entitled to vote, and shall call for such a meeting (but not a vote without a meeting) following receipt of a written request therefor of Members holding more than 50% of the Units entitled to vote as of the record date. Within 20 days after receipt of such request, the Managing Member shall notify all Members of record on the record date of the Company meeting.

8.4.1 Notice. Except as provided by Section 8.4.5, written notice of each meeting shall be given to each Member entitled to vote, either personally or by mail or other means of written communication, charges prepaid, addressed to such Member at his or her address appearing on the books of the Company or given by him or her to the Company for the purpose of notice or, if no such address appears or is given, at the principal executive office of the Company, or by publication of notice at least once in a newspaper of general circulation in the county in which such office is located. All such notices shall be sent not less than 5, nor more than 60, days before such meeting. The notice shall specify the place, date and hour of the meeting and the general nature of business to be transacted, and no other business shall be transacted at the meeting.

8.4.2 Adjourned Meeting and Notice Thereof. When a Members' meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Company may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 45 days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member of record entitled to vote at the meeting.

8.4.3 Quorum. The presence in person or by proxy of the persons entitled to vote a majority of the Units shall constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum, if any action taken (other than adjournment) is approved by at least a Super Majority Vote or such greater vote as may be required by this Agreement or by law. In the absence of a quorum, any meeting of Members may be adjourned from time to time by a Majority Vote of the Units represented either in person or by proxy, but no other business may be transacted, except as provided above.

8.4.4 Consent of Absentees. The transactions of any meeting of Members, however called and noticed and wherever held, are as valid as though they occurred at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the persons entitled to vote, not present in person or by proxy, signs a written waiver of notice, or a consent to the holding of the meeting or an approval of the minutes thereof. All waivers, consents and approvals shall be filed with the Company records or made a part of the minutes of the meeting.

8.4.5 Action Without Meeting. Except as otherwise provided in this Agreement, any action which may be taken at any meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by Members having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all entitled to vote thereon were present and voted. In the event the Members are requested to consent on a matter without a meeting, each Member shall be given not less than 5, nor more than 60, days notice. Unless delayed as a result of the preceding sentence, any action taken without a meeting will be effective five days after the required minimum number of voters have consented;

however, the action will be effective immediately if the Managing Member and Members representing at least 90% of the Class A Units have consented.

8.4.6 Record Dates. For purposes of determining the Members entitled to notice of any meeting or to vote or entitled to receive any Distributions or to exercise any rights in respect of any other lawful matter, the Managing Member may fix in advance a record date, which is not more than 60 nor less than 5 days prior to the date of the meeting nor more than 60 days prior to any other action. If no record date is fixed:

(a) The record date for determining Members entitled to notice of or to vote at a meeting of Members shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held;

(b) The record date for determining Members entitled to give consent to Company action in writing without a meeting shall be the day on which the first written consent is given;

(c) The record date for determining Members for any other purpose shall be at the close of business on the day on which the Managing Member adopts it, or the 60th day before the date of the other action, whichever is later; and

(d) A determination of Members of record entitled to notice of or to vote at a meeting of Members shall apply to any adjournment of the meeting unless the Managing Member, or the Members who requested the meeting, fix a new record date for the adjourned meeting, but the Managing Member, or such Members, shall fix a new record date if the meeting is adjourned for more than 45 days from the date set for the original meeting.

8.4.7 Proxies. Every person entitled to vote or execute consents shall have the right to do so either in person or by one or more agents authorized by a written proxy executed by such person or his duly authorized agent and filed with the Managing Member. No proxy shall be valid after the expiration of 3 months from the date thereof unless otherwise provided in the proxy. Every proxy continues in full force and effect until revoked as specified or unless it states that it is irrevocable. A proxy that states that it is irrevocable is irrevocable for the period specified therein to the fullest extent permitted by law.

8.4.8 Chairman of Meeting. The Managing Member may select any Person to preside as Chairman of any meeting of the Members, and if such Person shall be absent from the meeting, or fail or be unable to preside, the Managing Member may name any other Person in substitution therefor as Chairman. In the absence of an express selection by the Managing Member of a Chairman or substitute therefor, the Chief Executive Officer, President, Vice President, Secretary, or Chief Financial Officer of ExchangeRight Real Estate, LLC, shall preside as Chairman, in that order. The Chairman of the meeting shall designate a secretary for such meeting, who shall take and keep or cause to be taken and kept minutes of the proceedings thereof. The conduct of all Members' meetings shall at all times be within the discretion of the Chairman of the meeting and shall be conducted under such rules as he may prescribe. The Chairman shall have the right and power to adjourn any meeting at any time, without a vote of the Units present in Person or represented by proxy, if the Chairman shall determine such action to be in the best interests of the Company.

8.4.9 Inspectors of Election. In advance of any meeting of Members, the Managing Member may appoint any Persons other than nominees for Managing Member or other office as the inspector of election to act at the meeting and any adjournment thereof. If an inspector of election is not so appointed, or if any such Person fails to appear or refuses to act, the Chairman of any such meeting may, and on the request of any Member or his proxy shall, make such appointment at the meeting. The inspector of election shall determine the number of Units outstanding and the voting power of each, the Units represented at the meeting, the existence of a quorum, the authenticity, validity and effect of proxies, receive votes, ballots or consents, hear and determine all challenges and questions in any way arising in connection with the right to vote, count and tabulate all votes or consents, determine when the polls shall close, determine the result and do such acts as may be proper to conduct the election or vote with fairness to all Members.

8.4.10 Record Date and Closing Company Books. When a record date is fixed, only Members of record on that date are entitled to notice of and to vote at the meeting or to receive a Distribution, or allotment of rights, or to exercise the rights, as the case may be, notwithstanding any transfer of any Units on the books of the Company after the record date.

8.5 Rights of Members. No Member shall have the right or power to: (i) withdraw or reduce his contribution to the capital of the Company, except as a result of the division, dissolution and termination of the Company or as otherwise provided in this Agreement or by law; (ii) bring an action for partition against the Company; or (iii) demand or receive property other than cash in return for its contribution to the capital of the Company. Except as provided in this Agreement, no Member shall have priority over any other Member either as to the return of its contribution of capital to the Company or as to allocations of the income, loss or Distributions of the Company. Other than upon the termination, division and dissolution of the Company as provided by this Agreement, there has been no time agreed upon when the contribution of each Member (other than the Initial Member) is to be returned.

8.6 Restrictions on the Member. No Member owning a Class A Unit shall:

8.6.1 Disclose to any non-Member other than their lawyers, accountants or consultants and/or commercially exploit any of the Company's business practices, trade secrets or any other information not generally known to the business community;

8.6.2 Do any other act or deed with the intention of harming the business operations of the Company; or

8.6.3 Do any act contrary to the Agreement.

8.7 Return of Capital of Member. In accordance with the Act, a Member may, under certain circumstances, be required to return to the Company, for the benefit of the Company's creditors, amounts previously distributed to the Member. If any court of competent jurisdiction holds that any Member is obligated to make any such payment, such obligation shall be the obligation of such Member and not of the Company, the Managing Member or any other Member.

9. SEPARATENESS PROVISIONS.

9.1 Lender Covenants. This Section 9 is being adopted in order to comply with certain provisions required in order to qualify the Company as a "special purpose" entity and so long as the Loan is outstanding, notwithstanding anything herein to the contrary, this Section 9 shall control.

9.1.1 The Managing Member shall not, so long as the Loan outstanding, amend, alter, change or repeal the definition of "Independent Director" or Sections 1.3, 1.8, 2, 7, 8, 9, 10, 11, 12, 14 and 17 or Exhibit A of this Agreement without the unanimous written consent of the Board (including the Independent Director). Subject to this Section 9, the Managing Member reserves the right to amend, alter, change or repeal any provisions contained in this Agreement in accordance with Section 17.

9.1.2 Notwithstanding any other provision of this Agreement and any provision of law that otherwise so empowers the Company, the Managing Member, the Board, any Officer or any other Person, neither the Managing Member nor the Board nor any Officer nor any other Person shall be authorized or empowered, nor shall they permit the Company, without the prior unanimous written consent of the Managing Member and the Board (including the Independent Director), to take any Material Action, provided, however, that the Board may not vote on, or authorize the taking of, any Material Action, unless an Independent Director is then serving in such capacity.

9.1.3 The Board and the Managing Member shall cause the Company to do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights (charter and statutory) and franchises; provided, however, that the Company shall not be required to preserve any such right or franchise if:

(1) the Board shall determine that the preservation thereof is no longer desirable for the conduct of its business and that the loss thereof is not disadvantageous in any material respect to the Company and (2) the Rating Agency Condition is satisfied. The Board and the Managing Member also shall cause the Company to, and the Company shall:

- (a) maintain its own separate books and records and bank accounts;
- (b) at all times hold itself out to the public and all other Persons as a legal entity separate from the Member and any other Person;
- (c) have a Board of Directors separate from that of the Members and any other Person;
- (d) file its own tax returns, if any, as may be required under applicable law, to the extent (1) not part of a consolidated group filing a consolidated return or returns or (2) not treated as a division for tax purposes of another taxpayer, and pay any taxes so required to be paid under applicable law;
- (e) not maintain its assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual assets from those of any other Person and, except as may be contemplated by the Loan Documents, not commingle its assets with assets of any other Person;
- (f) conduct its business in its own name and strictly comply with all organizational formalities to maintain its separate existence;
- (g) maintain separate financial statements;
- (h) pay its own liabilities only out of its own funds;
- (i) maintain an arm's length relationship with its Affiliates and Members and not enter into any contract or agreement with any Affiliate or Member, except upon terms and conditions that are intrinsically fair and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties;
- (j) pay the salaries of its own employees, if any and maintain sufficient number of employees in light of contemplated business;
- (k) not hold out its credit or assets as being available to satisfy the obligations of others;
- (l) allocate fairly and reasonably any overhead for shared office space;
- (m) use separate stationery, invoices and checks;
- (n) except as may be contemplated by the Loan Documents, not pledge its assets for the benefit of any other Person;
- (o) hold itself out to the public as a legal entity separate and distinct from any other Person and not as a division or part of any other Person, conduct its business solely in its own name, and correct any known misunderstanding regarding its separate identity;
- (p) maintain adequate capital in light of its contemplated business purpose, transactions and liabilities;
- (q) cause its Board of Directors to meet at least annually or act pursuant to written consent and keep minutes of such meetings and actions and observe all other Delaware limited liability company formalities;

(r) not acquire any securities of the Managing Member; and

(s) cause the Directors, Officers, agents and other representatives of the Company to act at all times with respect to the Company consistently and in furtherance of the foregoing and in the best interests of the Company.

9.1.4 So long as the Loan is outstanding, the Board and the Managing Member shall not cause or permit the Company to, and the Company shall not:

(a) except as contemplated by the Loan Documents, guarantee any obligation of any Person, including any Affiliate;

(b) engage, directly or indirectly, in any business other than the actions required or permitted to be performed under Section 1.3, the Loan Documents or this Section 9;

(c) incur, create or assume any indebtedness other than as expressly permitted under the Loan Documents;

(d) make or permit to remain outstanding any loan or advance to, or own or acquire any stock or securities of, any Person, except that the Company may invest in those investments permitted under the Loan Documents and may make any advance required or expressly permitted to be made pursuant to any provisions of the Loan Documents and permit the same to remain outstanding in accordance with such provisions;

(e) to the fullest extent permitted by law, engage in any division, dissolution, liquidation, consolidation, merger, asset sale or transfer of ownership interests other than such activities as are expressly permitted pursuant to any provision of the Loan Documents;

(f) form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other);

(g) assume or guaranty the debts of any other Person, hold itself out to be responsible for the debts of any other Person, or otherwise pledge its assets for the benefit of any other Person or hold out its credit as being available to satisfy the obligations of any other Person; or

(h) violate or cause to be violated the assumptions made with respect to each such entity and its principals in the Non-Consolidation Opinion or in any New Non-Consolidation Opinion (as each of such terms are defined in the Loan Agreement).

9.1.5 Notwithstanding any other provisions of this Agreement, the Managing Member shall cause the Company to, and the Company shall conduct its operations as a Single Purpose Entity (as such term is defined in the Loan Agreement) and as such shall take all actions necessary to cause the Company, to comply with, and will refrain from taking any actions in violation of, the conditions set forth in Section 5.1 of the Loan Agreement.

9.1.6 Notwithstanding anything to the contrary in this Agreement or in any other document governing the formation, management or operation of the Company, the Company shall not have the power to divide pursuant to Section 18-217 of the Act, and each of the Managing Member and each other Member expressly acknowledges that the Company does not have the power to divide pursuant to Section 18-217 of the Act.

Failure of the Company, or the Member or Board on behalf of the Company, to comply with any of the foregoing covenants or any other covenants contained in this Agreement shall not affect the status of the Company as a separate legal entity or the limited liability of the Member or the Directors.

10. Resignation, Withdrawal or Removal of the Managing Member.

10.1 Resignation or Withdrawal of Managing Member. Subject to Section 11 hereof, the Managing Member shall not resign or withdraw as the Managing Member or do any act that would require its resignation or withdrawal without a Super Majority Vote. So long as the Loan is outstanding, the Managing Member may not resign, except as permitted under the Loan Documents. If the Managing Member is permitted to resign pursuant to this Section 10.1, an additional manager of the Company shall be admitted to the Company upon its execution of an instrument signifying its agreement to be bound by the terms and conditions of this Agreement, which instrument may be a counterpart signature page to this Agreement. Such admission shall be deemed effective immediately prior to the resignation and, immediately following such admission, the resigning Managing Member shall cease to be the Managing Member of the Company.

10.2 Removal. Subject to the terms of the Loan Documents, the Managing Member may be removed by a Super Majority Vote for "cause." For purposes of this Section 10.2 "cause" shall be deemed to exist (i) if the Members have determined by a Super Majority Vote that the Managing Member has engaged in willful misconduct, committed malfeasance, materially breached this Agreement and, to the extent such breach is susceptible of being cured, such breach has continued for thirty (30) days after written notice thereof from the Members owning a more than 75% of the Class A Units to the Managing Member (provided, however, that if such breach is susceptible of cure but such cure cannot be accomplished with reasonable diligence within said period of time, and if the Managing Member commences to cure such breach promptly after receipt of notice thereof from Members owning a majority of the Class A Units, and thereafter prosecutes the curing of such breach with reasonable diligence, such period of time shall be extended for such period of time as may be necessary to cure such breach with reasonable diligence), or breached its fiduciary duties to the Company, or (ii) upon an Event of Insolvency of the Managing Member.

10.3 Managing Member's Fees. Upon the removal of the Managing Member pursuant to Section 10.2 or its termination or its withdrawal with the approval of a Super Majority Vote, the Company shall redeem the Managing Member's Class B Unit for \$100, and such Managing Member shall be paid all of its earned but unpaid fees and other compensation remaining to be paid under this Agreement. The Company shall pay these amounts to the Managing Member in cash within 60 days of the withdrawal of the Managing Member. If the Managing Member and the Company cannot agree upon the accrued but unpaid fees within 30 days, the amount shall be determined by arbitration as described in Section 19.12.

11. Assignment of the Managing Member's Interest.

11.1 Permitted Assignments. Except for transfers to Affiliates and as otherwise provided in this Agreement, the Managing Member may not sell, assign, hypothecate, encumber or otherwise transfer any part or all of its interest in the Company except with the consent of a Super Majority Vote, which consent may be withheld by such Members in their sole and absolute discretion and without reason or for any reason whatsoever. If the Members consent to the transfer, the interest may only be sold to the proposed transferee within the time period approved by the Members, or within 90 days of such consent on the proposed terms and price, if later. All costs of the transfer, including reasonable attorneys' fees (if any), shall be borne by the transferring Managing Member. The transfer of the Managing Member's interest in the Company shall also require the consent of the Lender so long as the Loan is outstanding.

11.1.1 Any assignment or transfer of the Managing Member's interest provided for by this Agreement can be an assignment or transfer of all of its interest or any portion or part of its interest.

11.1.2 Any transfer of all or a part of any Managing Member's interest may be made only pursuant to the terms and conditions contained in this Section 11.

11.1.3 Any such assignment shall be by a written instrument of assignment, the terms of which are not in contravention of any of the provisions of this Agreement, and which has been duly executed by the assignor of such Managing Member's interest and accepted by the Members pursuant to a Super Majority Vote.

11.1.4 The assignor and assignee shall have executed, acknowledged, and delivered such other instruments as the Members, pursuant to a Super Majority Vote, may deem necessary or desirable to effect such substitution of any such proposed transfer, and which shall include the written acceptance and adoption by the assignee of the provisions of this Agreement.

11.2 Substitute Managing Member. Upon acceptance by the Members and, if necessary, the Lender of an assignment by the Managing Member, any assignee of such Managing Member's interest in compliance with this Section 11 shall be substituted as the Managing Member.

11.3 Transfer in Violation Not Recognized. Any assignment, sale, exchange or other transfer in contravention of the provisions of this Section 11 shall be void and ineffectual and shall not bind or be recognized by the Company.

12. Assignment of Units.

12.1 Permitted Assignments. Subject to the terms and conditions of the Loan Documents, a Member (other than the Managing Member) may only sell, assign, hypothecate, encumber or otherwise transfer any part (but not less than the lesser of (i) one Unit or (ii) the Member's entire interest in the Company) or all of his or her interest in the Company if the following requirements are satisfied:

12.1.1 The Managing Member consents in its sole and absolute discretion in writing to the transfer;

12.1.2 No Member shall transfer, assign or convey or offer to transfer, assign or convey all or any portion of a Unit to any Person who does not possess the financial qualifications required of all Persons who become Members, as described in the Memorandum (including to the extent the legal requirements thereunder may have been modified by law;

12.1.3 No Member shall have the right to transfer any Unit to any minor or to any Person who, for any reason, lacks the capacity to contract for himself or herself under applicable law. Such limitations shall not, however, restrict the right of any Member to transfer any one or more Units to a custodian or a trustee for a minor or other Person who lacks such contractual capacity;

12.1.4 The Managing Member, with advice of counsel, must determine that such transfer will not jeopardize the applicability of the exemptions from the registration requirements under the Securities Act of 1933, as amended, and registration or qualification under state securities laws relied upon by the Company and Managing Member in offering and selling the Units or otherwise violate any federal or state securities laws;

12.1.5 The Managing Member, with advice of counsel, must determine that, despite such transfer, Units will not be deemed traded on an established securities market or "readily tradable on a secondary market (or the substantial equivalent thereof)" under the provisions applicable to publicly traded partnership status;

12.1.6 Any such transfer shall be by a written instrument of assignment, the terms of which are not in contravention of any of the provisions of this Agreement, and which has been duly executed by the assignor of such Units and accepted by the Managing Member in writing;

12.1.7 A transfer fee shall be paid by the transferring Member in such amount as may be required by the Managing Member and/or Lender to cover all reasonable expenses, including attorneys' fees, connected with such assignment;

12.1.8 The transfer will not result in qualified benefit plans owning 25% or more of the Units; and

12.1.9 The transfer will not violate any of the terms of the Loan Documents, including any requirement for Lender approval of the transfer.

12.2 Substituted Member.

12.2.1 Conditions to be Satisfied. Subject to the terms of the Loan Documents, no Person shall have the right to become a Substituted Member unless the Managing Member shall consent thereto in accordance with Section 12.2.2 and all of the following conditions are satisfied:

(a) A duly executed and acknowledged written instrument of assignment shall have been filed with the Company, which instrument shall specify the number of Units being assigned and set forth the intention of the assignor that the assignee succeed to the assignor's interest as a Substituted Member in his or her place;

(b) The assignor and assignee shall have executed, acknowledged and delivered such other instruments as the Managing Member may deem necessary or desirable to effect such substitution, which may include an opinion of counsel regarding the effect and legality of any such proposed transfer, and which shall include: (i) the written acceptance and adoption by the assignee of the provisions of this Agreement and (ii) the execution, acknowledgment and delivery to the Managing Member of a special power of attorney, the form and content of which are more fully described herein; and

(c) A transfer fee sufficient to cover all reasonable expenses connected with such substitution shall have been paid to the Company.

12.2.2 Consent of Managing Member. The consent of the Managing Member shall be required to admit a Person as a Substituted Member. The granting or withholding of such consent shall be within the sole and absolute discretion of the Managing Member.

12.2.3 Consent of Member. By executing or adopting this Agreement, each Member hereby consents to the admission of additional or Substituted Members upon consent of the Managing Member and in compliance with this Agreement.

12.3 Assignment of 50% or More of Units. No assignment of any Units may be made if the Units to be assigned, when added to the total of all other Units and Managing Member interests assigned within the 13 immediately preceding months, would, in the opinion of counsel for the Company, result in the termination of the Company under the Code.

12.4 Transfer Subject to Law. No assignment, sale, transfer, exchange or other disposition of any Units may be made except in compliance with the applicable governmental laws and regulations, including state and federal securities laws.

12.5 Termination of Membership Interest. Upon the transfer of a Unit in violation of this Agreement or the occurrence of a Dissolution Event as to such Member that does not result in the dissolution of the Company, the Membership Interest of a Member shall be converted into an Economic Interest.

13. Books, Records, Accounting and Reports.

13.1 Records, Audits and Reports. The Company shall maintain at its principal office the Company's records and accounts of all operations and expenditures of the Company including the following:

13.1.1 A current list in alphabetical order of the full name and last known business or resident address of each Member and Managing Member, together with the number of Units owned by each Member;

13.1.2 A copy of the Certificate of Formation and all amendments thereto, together with any powers of attorney pursuant to which the Certificate of Formation or any amendments thereto were executed;

13.1.3 Copies of the Company's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years;

13.1.4 Copies of this Agreement and any amendments thereto together with any powers of attorney pursuant to which any written accounting or any amendments thereto were executed;

13.1.5 Copies of any financial statements of the Company, if any, for the six most recent years;
and

13.1.6 The Company's books and records as they relate to the internal affairs of the Company for at least the current and past four fiscal years.

13.2 Delivery to Members and Inspection.

13.2.1 Each Member, or its representative designated in writing, has the right, upon reasonable written request for purposes related to the interest of that Person as a Member, which purposes are set forth in the written request, to receive from the Company:

(a) True and full information regarding the status of the business and financial condition of the Company;

(b) Promptly after becoming available, a copy of the Company's federal, state and local income tax returns for each year;

(c) A current list of the name and last known business, residence or mailing address of each Member and Managing Member;

(d) A copy of this Agreement and the Certificate of Formation and all amendments thereto, together with executed copies of any written powers of attorney pursuant to which this Agreement and any certificate and all amendments thereto have been executed; and

(e) True and full information regarding the number of Units owned by each Member.

13.3 Annual Report. The Managing Member will cause the Company, at the Company's expense, to prepare an annual report containing a year-end balance sheet, income statement and a statement of changes in financial position. Copies of such statements shall be distributed to each Member within 90 days after the close of each fiscal year of the Company.

13.4 Tax Information. The Managing Member shall cause the Company, at the Company's expense, to prepare and timely file income tax returns for the Company with the appropriate authorities, and shall cause all Company information necessary in the preparation of the Members' individual income tax returns to be distributed to the Members not later than 90 days after the end of the Company's fiscal year. The Managing Member shall also distribute a copy of the Company's tax return to a Member, if requested by such Member. Each Member shall timely provide to the Company and the Company shall timely provide to the Members (i) such assistance as may be reasonably requested by such Member or the Company in connection with the preparation of any tax return, any audit or any claim of refund or credit in respect of taxes, and (ii) any records or other information relevant to such tax returns, audits or claims, in each case relating to the business of the Company and including any information reasonably requested by the Partnership Representative to comply with the Revised Partnership Audit Procedures (including the making and taking advantage of any elections available to the Company under such procedures).

14. Termination and Dissolution of the Company.

14.1 Termination of Company. Subject to the limitations contained in Section 1.4, Section 9 and the terms of Section 7.10 of this Agreement and the Certificate of Formation, the Company shall be dissolved, shall terminate and its assets shall be disposed of, and its affairs wound up upon the earliest to occur of the following:

14.1.1 Upon the happening of any event of dissolution specified in the Certificate of Formation;

14.1.2 A determination by the Managing Member to terminate the Company;

14.1.3 Upon the entry of a decree of judicial dissolution;

14.1.4 The sale of all the real property held by the Company, or the receipt of the final payment on any seller financing provided by the Company on the sale of the Property, if later; or

14.1.5 So long as no amount remains outstanding under the Loan, the occurrence of a Dissolution Event unless the business of the Company is continued by a Super Majority Vote within 90 days following the occurrence of the event.

The bankruptcy, death, division, dissolution, liquidation, termination or adjudication of incompetency of a Member shall not cause the termination, division or dissolution of the Company and the business of the Company shall continue.

14.2 Certificate of Cancellation. As soon as possible following the completion of the winding up of the Company, the Managing Member who has not wrongfully dissolved the Company or, if none, the Members, shall execute and file a Certificate of Cancellation in such form as shall be required by the Act. The Company shall continue to exist as a separate legal entity until the Certificate of Cancellation has been filed in accordance with the Act.

14.3 Liquidation of Assets. Upon a division, dissolution and termination of the Company, the Managing Member (or in case there is no Managing Member, the Members or Person designated by a Majority Vote) shall take full account of the Company assets and liabilities, shall liquidate the assets as promptly as is consistent with obtaining the fair market value thereof, and shall apply and distribute the proceeds therefrom in the following order:

14.3.1 To the payment of the Lender and other creditors of the Company, other than Members who are creditors, but excluding secured creditors whose obligations will be assumed or otherwise transferred on liquidation of Company assets, and then to the payment of Members who are creditors of the Company;

14.3.2 To the setting up of any reserves as required by law for any liabilities or obligations of the Company; provided, however, that said reserves shall be deposited with a bank or trust company in escrow with interest for the purpose of disbursing such reserves for the payment of any of the aforementioned contingencies and, at the expiration of a reasonable period, for the purpose of distributing the balance remaining in accordance with the remaining provisions of this Section 14.3;

14.3.3 To those Members holding Class A Units in proportion to their Class A Units; and

14.3.4 To the Managing Member in an amount equal to \$100.

14.4 Distributions Upon Dissolution. Each Member shall look solely to the assets of the Company for all Distributions, and shall have no recourse therefor (upon division, dissolution or otherwise) against any Managing Member or any Member.

14.5 Limitation on Distributions. Notwithstanding any other provision in this Agreement, the Company shall make no distribution that would violate the Act, the Loan Documents or other applicable law.

14.6 Waiver of Dissolution and Termination. Notwithstanding anything to the contrary contained in this Agreement, the Company and its Members, including the Special Member, to the fullest extent permitted by law, hereby waive their right to dissolve or terminate (and waive their right to consent to the division, dissolution or termination of) the Company or this Agreement, and shall not take any action towards that end, so long as the Loan remains outstanding to Lender, except upon the express prior written consent of the Lender. This paragraph shall cease to be of further force or effect once the Company no longer has any outstanding Loan or other obligation of any kind whatsoever owing or due the Lender.

15. Special and Limited Power of Attorney.

15.1 Power of Attorney. The Managing Member shall at all times during the term of the Company have a special and limited power of attorney as the attorney-in-fact for each Member, with power and authority to act in the name and on behalf of each such Member to execute, acknowledge, and swear to in the execution, acknowledgment and filing of documents that are not inconsistent with the provisions of this Agreement and which may include, by way of illustration but not by way of limitation, the following:

15.1.1 This Agreement, as well as any amendments to the foregoing which, under the laws of the State of Delaware or the laws of any other state, are required to be filed or which the Managing Member shall deem it advisable to file;

15.1.2 Any other instrument or document that may be required to be filed by the Company under the laws of any state or by any governmental agency or which the Managing Member shall deem it advisable to file;

15.1.3 Any instrument or document that may be required to effect the continuation of the Company, the admission of Substituted Members, or the division, dissolution and termination of the Company (provided such continuation, admission or division, dissolution and termination are in accordance with the terms of this Agreement);

15.1.4 Any contract for purchase or sale of real estate, and any deed, deed of trust, mortgage, or other instrument of conveyance or encumbrance, with respect to the Property;

15.1.5 This Agreement or any other instrument or document to include any special purpose entity or bankruptcy remote entity requirement imposed by the Lender; and

15.1.6 Any and all other instruments as the Managing Member may deem necessary or desirable to effect the purposes of this Agreement and carry out fully its provisions, including, but not limited to, those in Section 17.

15.2 Provision of Power of Attorney. The special and limited power of attorney of the Managing Member:

15.2.1 Is a special power of attorney coupled with the interest of the Managing Member in the Company, and its assets, is irrevocable, shall survive the death, incapacity, termination, division or dissolution of the granting Member, and is limited to those matters herein set forth;

15.2.2 May be exercised by the Managing Member by and through one or more of the officers of the Managing Member, for each of the Members by the signature of the Managing Member acting as attorney-in-fact for all of the Members, together with a list of all Members executing such instrument by their attorney-in-fact or by such other method as may be required or requested in connection with the recording or filing of any instrument or other document so executed; and

15.2.3 Shall survive an assignment by a Member of all or any portion of his or her Units except that, where the assignee of the Units owned by the Member has been approved by the Managing Member for admission to the Company as a Substituted Member, the special power of attorney shall survive such assignment for the sole purpose of enabling the Managing Member to execute, acknowledge and file any instrument or document necessary to effect such substitution to the fullest extent permitted by law.

15.3 Notice to Members. The Managing Member shall promptly furnish to a Member a copy of any amendment to the Limited Liability Company Agreement executed by the Managing Member pursuant to a power of attorney from the Member.

16. Relationship of this Agreement to the Act. Many of the terms of this Agreement are intended to alter or extend provisions of the Act as they may apply to the Company or the Members. Any failure of this Agreement to mention or specify the relationship of such terms to provisions of the Act that may affect the scope or application of such terms shall not be construed to mean that any of such terms are not intended to be a limited liability company agreement provision authorized or permitted by the Act or which in whole or in part alters, extends or supplants provisions of the Act as may be allowed thereby.

17. Amendment of Agreement.

17.1 Admission of Member. Amendments to this Agreement for the admission of any Member or Substitute Member shall not, if in accordance with the terms of this Agreement and the Loan Documents, require the consent of any Member.

17.2 Amendments with Consent of Members. Subject to the terms of Section 9.1 hereof and the Certificate of Formation, in addition to any amendments otherwise authorized herein, this Agreement may be amended by the Managing Member with a Super Majority Vote of the Units; provided, however, that any amendment that would treat a specific Member less favorably than another Member (in application but not in effect), then such amendment shall require the vote of such adversely affected Member.

17.3 Amendments Without Consent of the Members. Subject to the terms of Section 9.1 hereof and the Certificate of Formation, in addition to the Amendments authorized pursuant to Section 7.3.12 or otherwise authorized herein, the Managing Member may amend this Agreement, without the consent of any of the Members, to (i) change the name and/or principal place of business of the Company, or (ii) decrease the rights and powers of the Managing Member (so long as such decrease does not impair the ability of the Managing Member to manage the Company and conduct its business and affairs); provided, however, that no amendment shall be adopted pursuant to this Section 17.3 unless the adoption thereof (A) is for the benefit of or not adverse to the interests of the Members, (B) is not inconsistent with Section 7 or Section 9, and (C) does not affect the limited liability of the Members or the status of the Company as a partnership for federal income tax purposes. Further, the Managing Member shall be allowed to amend this Agreement without the consent of any of the Members to comply with any terms or modifications required by any lender to make this Agreement comply with any special purpose entity requirements or otherwise.

17.4 Execution and Recording of Amendments. Any amendment to this Agreement shall be executed by the Managing Member, and by the Managing Member as attorney-in-fact for the Members pursuant to the power of attorney contained in Section 15. After the execution of such amendment, the Managing Member shall also prepare and record or file any certificate or other document which may be required to be recorded or filed with respect to such amendment, either under the Act or under the laws of any other jurisdiction in which the Company holds any property or otherwise does business.

18. Member Representations. Each Member hereby represents and warrants to the Company, the Managing Member and all other Members that:

18.1 Such Member has the power and authority to execute and comply with the terms and provisions hereof.

18.2 Such Member's interest in the Company has not and will not be registered under the Federal Securities Act of 1933, as amended, or the securities laws of any state, and cannot be sold or transferred without compliance with the registration provisions of said Securities Act of 1933, as amended, and the applicable state securities laws, or compliance with the exemptions, if any, available thereunder. Such Member understands that neither the Company nor the Managing Member or any other Member has any obligation or intention to register the Member interest under any federal or state securities act or law, or to file the reports to make public the information required by Rule 144 under the Securities Act of 1933, as amended.

19. Miscellaneous.

19.1 Counterparts. This Agreement may be executed in several counterparts, and all so executed shall constitute one Agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to the original or the same counterpart.

19.2 Successors and Assigns. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective Members.

19.3 Severability. In the event any sentence or Section of this Agreement is declared by a court of competent jurisdiction to be void, such sentence or Section shall be deemed severed from the remainder of this Agreement and the balance of this Agreement shall remain in full force and effect.

19.4 Notices. All notices under this Agreement shall be in writing and shall be given to the Member entitled thereto, by personal service or by mail, posted to the address maintained by the Company for such Person or at such other address as he or she may specify in writing; provided, however, that in the event that any such Member does not respond to the personal service or mail as set forth above, that the Managing Member shall send out one additional notice by certified mail return receipt requested or by a delivery service that maintains records regarding their deliveries or attempted deliveries.

19.5 Managing Member's Address. The name and address of the Managing Member is as follows:

ExchangeRight Asset Management, LLC
1055 E. Colorado Blvd., Suite 310
Pasadena, CA 91106

19.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

19.7 Captions. Section titles or captions contained in this Agreement are inserted only as a matter of convenience and reference. Such titles and captions in no way define, limit, extend or describe the scope of this Agreement nor the intent of any provisions hereof.

19.8 Gender. Whenever required by the context hereof, the singular shall include the plural, and vice versa, the masculine gender shall include the feminine and neuter genders, and vice versa.

19.9 Time. Time is of the essence with respect to this Agreement.

19.10 Additional Documents. Each Member, upon the request of the Managing Member, shall perform any further acts and execute and deliver any documents that may be reasonably necessary to carry out the provisions of this Agreement, including, but not limited to, providing acknowledgment before a Notary Public of any signature made by a Member.

19.11 Descriptions. All descriptions referred to in this Agreement are expressly incorporated herein by reference as if set forth in full, whether or not attached hereto.

19.12 Binding Arbitration. Any controversy arising out of or related to this Agreement or the breach thereof or an investment in the Units shall be settled by arbitration in Los Angeles, California in accordance with the rules of The American Arbitration Association, and judgment entered upon the award rendered may be enforced by appropriate judicial action. The arbitration panel shall consist of one member, which shall be the mediator if mediation has occurred or shall be a Person agreed to by each party to the dispute within 30 days following notice by one party that he desires that a matter be arbitrated. If there was no mediation and the parties are unable within such 30 day period to agree upon an arbitrator, then the panel shall be one arbitrator selected by the Los Angeles, California office of The American Arbitration Association, which arbitrator shall be experienced in the area of real estate and limited liability companies and who shall be knowledgeable with respect to the subject matter area of the

dispute. The losing party shall bear any fees and expenses of the arbitrator, other tribunal fees and expenses, reasonable attorney's fees of both parties, any costs of producing witnesses and any other reasonable costs or expenses incurred by him or the prevailing party or such costs shall be allocated by the arbitrator. The arbitration panel shall render a decision within 30 days following the close of presentation by the parties of their cases and any rebuttal. The parties shall agree within 30 days following selection of the arbitrator to any prehearing procedures or further procedures necessary for the arbitration to proceed, including interrogatories or other discovery; provided, in any event each Member shall be entitled to discovery.

19.13 Venue. Subject to Section 19.12, any action relating to or arising out of this Agreement shall be brought only in a court of competent jurisdiction located in Los Angeles, California.

19.14 Partition. The Members agree that the assets of the Company are not and will not be suitable for partition. Accordingly, each of the Members hereby irrevocably waives any and all rights that he may have, or may obtain, to maintain any action for partition of any of the assets of the Company.

19.15 Integrated and Binding Agreement. This Agreement contains the entire understanding and agreement among the Members with respect to the subject matter hereof, and there are no other agreements, understandings, representations or warranties among the Members other than those set forth herein except the purchase agreement executed in connection with the purchase of Beneficial Interests in the Trust. This Agreement may be amended only as provided in this Agreement.

19.16 Legal Counsel. Each Member acknowledges and agrees that counsel representing the Company, the Managing Member and its Affiliates does not represent and shall not be deemed under the applicable codes of professional responsibility to have represented or to be representing any or all of the Members, other than the Managing Member, in any respect. In addition, each Member consents to the Managing Member hiring counsel for the Company that is also counsel to one or more of the Managing Members.

19.17 Title to Company Property. All property owned by the Company shall be owned by the Company as an entity and, insofar as permitted by applicable law, no Member shall have any ownership interest in any Company property in its individual name or right, and each Member's Membership Interest shall be personal property for all purposes. As long as any obligation to Lender is outstanding, nothing herein is intended to give any creditor of the Member any rights in the Member's interest in the Company other than as an assignee of the Member's interest in the Company and such creditor will have no direct claim to the assets of the Company.

19.18 Conflict. In the event of a conflict between the terms of this Agreement and the Certificate of Formation, the terms of the Certificate of Formation shall control.

19.19 Signature of the Members. The Members hereby acknowledge and agree that by signing the Trust Agreement they are also agreeing to be bound by the terms of this Agreement and that their signature hereto will not be required as of the Conversion Date.

* * * *

[Remainder of page intentionally left blank; signatures follow.]

IN WITNESS WHEREOF, the undersigned have set their hands to this Limited Liability Company Agreement as of the date set forth below.

MANAGING MEMBER:

ExchangeRight Asset Management, LLC,
a California limited liability company

By: ExchangeRight Real Estate, LLC,
a California limited liability company, its sole member

By: _____
Printed Name: _____
Title: Manager
Date: _____

INITIAL MEMBER:

ExchangeRight Value-Add Portfolio 3 DST,
a Delaware statutory trust

By: ExchangeRight Asset Management, LLC
a California limited liability company

By: ExchangeRight Real Estate, LLC,
a California limited liability company, its sole member

By: _____
Printed Name: _____
Title: Manager
Date: _____

INDEPENDENT DIRECTOR:

[], an individual

SPECIAL MEMBER:

[], an individual

EXHIBIT A

DEFINITIONS

“Act” shall mean the Delaware Limited Liability Company Act, as the same may be amended from time to time.

“Affiliate” shall mean (i) any Person directly or indirectly controlling, controlled by or under common control with another Person; (ii) a Person owning or controlling 10% or more of the outstanding voting securities of such other Person; (iii) any officer, director or partner of such other Person; and (iv) if such other Person is an officer, director or partner, any company for which such person acts in any capacity.

“Agreement” shall mean this Limited Liability Company Agreement, as amended from time to time.

“Beneficial Interest” means a beneficial interest in the Trust as defined in the Trust Agreement.

“Beneficial Owner” means each Person who, at the time of determination, holds a Beneficial Interest as reflected on the Ownership Records (as defined in the Trust Agreement) as of the Conversion Date.

“Board” or “Board of Directors” means the Board of Directors of the Company.

“Cash from Operations” shall mean the cash realized by the Company from all sources, including, but not limited to, the operations of the Company including the sale, financing, refinancing, investing, re-investing or other disposition of the Property after payment of all cash expenditures of the Company, including, but not limited to, all operating expenses including all fees payable to the Managing Member or Affiliates, all payments of principal and interest on indebtedness, expenses for repairs and maintenance, capital improvements and replacements, and such reserves and retentions as the Managing Member reasonably determines to be necessary and desirable in connection with Company operations with its then existing assets and any anticipated acquisitions.

“Certificate of Formation” shall mean the Certificate of Formation of the Company as filed with the Division of Corporations of Delaware as the same may be amended or restated from time to time.

“Class A Units” shall mean the ten thousand (10,000) Class A Units authorized and issued pursuant to Section 3 of this Agreement.

“Class B Unit” shall mean the one (1) Class B Unit authorized and issued pursuant to Section 3 of this Agreement.

“Code” shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequently enacted federal revenue laws.

“Company” shall refer to [____], LLC

“Conversion Date” shall mean the date the Trust Estate is converted into the Company by the Initial Member to preserve and protect the Trust Estate pursuant to Section 9.2 of the Trust Agreement.

“Directors” means the Persons elected to the Board of Directors from time to time by the Managing Member, including the Independent Directors, in their capacity as managers of the Company.

“Dissolution Event” shall mean with respect to the Managing Member one or more of the following: the death, insanity, withdrawal, retirement, resignation, expulsion, Event of Insolvency, division or dissolution (unless reconstituted by the Managing Member) of the Managing Member unless the Members consent to continue the business of the Company pursuant to Section 14.1.5.

“Distributable Cash” shall mean Cash from Operations and capital contributed to the Company by the Members as determined by the Managing Member to be available for Distribution to the Members.

“Distribution” shall refer to any money or other property transferred without consideration (other than repurchased Units) to Members with respect to their interests or Units in the Company but shall not include any payments to the Managing Member pursuant to Section 6.

“Economic Interest” shall mean an interest in the income, loss and Distributions of the Company but shall not include any right to vote or to participate in the management of the Company.

“Event of Insolvency” shall occur when an order for relief against the Managing Member is entered under Chapter 7 of the federal bankruptcy law, or (A) the Managing Member: (1) makes a general assignment for the benefit of creditors, (2) files a voluntary petition under the federal bankruptcy law, (3) files a petition or answer seeking for that Managing Member a reorganization, arrangement, composition, readjustment, liquidation, division, dissolution or similar relief under any statute, law or regulation, (4) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Managing Member in any proceeding of this nature, or (5) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of that Managing Member or of all or a substantial part of that Managing Member’s properties, or (B) the expiration of 60 days after either (1) the commencement of any proceeding against the Managing Member seeking reorganization, arrangement, composition, readjustment, liquidation, division, dissolution or similar relief under any statute, law, or regulation, if the proceeding has not been dismissed, or (2) the appointment without the Managing Member’s consent or acquiescence of a trustee, receiver, or liquidator of the Managing Member or of all or any substantial part of the Managing Member’s properties, if the appointment has not been vacated or stayed (or if within 60 days after the expiration of any such stay, the appointment is not vacated).

“Formation Date” shall mean the date of filing the Certificate of Formation with the Delaware Division of Corporations to form the Company.

“Independent Director” means a natural Person who, for the five-year period prior to his or her appointment as Independent Director has not been, and during the continuation of his or her service as Independent Director is not: (i) an employee, director, manager, member, stockholder, partner or officer of the Company or any of its Affiliates (other than his or her service as an Independent Director or other similar capacity of the Company or an Affiliate other than any Person that owns a direct or indirect equity interest in the Company); (ii) a creditor, customer or supplier of the Company or any of its Affiliates; or (iii) any member of the immediate family of a Person described in (i) or (ii), or (iv) a Person controlling, controlled by or under common control with any Person described above.

“Initial Member” shall mean the Trust.

“Lender” shall mean Barclays Capital Real Estate Inc., its successors and/or assigns.

“Liquidation” means in respect to the Company the earlier of the date upon which the Company is terminated under Section 708(b)(1) of the Code or the date upon which the Company ceases to be a going concern (even though it may exist for purposes of winding up its affairs, paying its debts and distributing any remaining balance to its Members), and in respect to a Member where the Company is not in Liquidation means the date upon which occurs the termination of the Member’s entire interest in the Company by means of a distribution or the making of the last of a series of Distributions (whether or not made in more than one year) to the Member by the Company.

“Loan” shall mean that certain loan in the approximate amount of \$7,332,000 made by the Lender to the Company (as successor to the Trust) in accordance with the terms, conditions and provisions of the Loan Documents.

“Loan Agreement” shall mean that certain loan agreement between the Company (as successor to the Trust) and Lender in connection with the Loan, as the same may be further amended, restated, supplemented or otherwise modified from time to time.

“Loan Documents” means the Loan Agreement, together with all documents and certificates contemplated thereby or delivered in connection therewith, including the Loan Documents (as defined in such Loan Agreement).

“Majority Vote” shall mean the vote of more than 67% of the Class A Units entitled to vote. Members shall be entitled to cast one vote for each Unit they own, and a fractional vote for each fractional Class A Unit they own.

“Manager” means ExchangeRight Asset Management, LLC, appointed as manager of the Trust.

“Managing Member” shall refer to ExchangeRight Asset Management, LLC, a California limited liability company. The term “Managing Member” shall also refer to any successor or additional Managing Member who is admitted to the Company as the Managing Member.

“Material Action” means (i) to the fullest extent permitted by law, to dissolve, wind up or liquidate the Company, (ii) to sell or otherwise dispose of all or substantially all of the assets of the Company, (iii) to merge, combine or consolidate with any other Person, or, (iv) to do any of the following: file any insolvency, reorganization case or proceeding, or institute proceedings to have the Company be adjudicated bankrupt or insolvent; institute proceedings under any applicable insolvency law; seek any relief under any law relating to relief from debts or the protection of debtors; consent to the filing of or consent to the institution of bankruptcy or insolvency proceedings against the Company or file a voluntary bankruptcy petition or any other petition seeking, or consent to, reorganization or relief with respect to the Company under any applicable federal or state law relating to bankruptcy or insolvency; seek or consent to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Company or a substantial part of its property; make any assignment for the benefit of creditors of the Company; admit in writing the Company’s inability to pay its debts generally as they become due; or take action in furtherance of any such action.

“Member” or “Members” shall mean any Person admitted as a member to the Company.

“Membership Interest” shall mean a Member’s entire interest in the Company including such Member’s Economic Interest and such voting and other rights and privileges that the Member may enjoy by being a Member.

“Officer” means an officer of the Company described in Section 7.

“Organization Expenses” shall mean all expenses incurred in connection with the organization and formation of the Company, including but not limited to legal and accounting fees, tax planning fees, promotional fees or expenses, filing and recording fees and other costs or expenses incurred in connection therewith.

“Partnership Representative” means the “partnership representative” for any tax period subject to the provisions of Section 6223 of the Code, as amended by the Revised Partnership Audit Procedures. The Partnership Representative shall be the Managing Member until such time as a new Partnership Representative is selected by the Company.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, limited liability partnership, association, joint stock company, trust, unincorporated organization, or other organization, whether or not a legal entity, and any governmental authority.

“Prime Rate” shall mean the reference rate announced from time-to-time by the Wall Street Journal, and changes in the Prime Rate shall be deemed to occur on the date that changes in such rate are announced.

“Property” shall refer to any or all of such real and tangible or intangible personal property or properties owned, or to be acquired, by the Company (including the proceeds thereof).

“Rating Agency” has the meaning assigned to that term in the Loan Documents.

“Rating Agency Condition” means (i) with respect to any action taken at any time before the Loan has been sold or assigned to a securitization trust, that the lender thereunder has consented in writing to such action, and (ii) with respect to any action taken at any time after such loan has been sold or assigned to a securitization trust, that each Rating Agency shall have been given ten days prior notice thereof and that each of the Rating Agencies shall have notified the Company in writing that such action will not result in a reduction or withdrawal of the then current rating by such Rating Agency of any of securities issued by such securitization trust.

“Real Estate” has the meaning assigned to such term in the Trust Agreement.

“Revised Partnership Audit Procedures” means the provisions of Subchapter C of Chapter 63 of the Code, as amended by P.L. 114-74, the Bipartisan Budget Act of 2015 (together with any subsequent amendments thereto, regulations promulgated thereunder, and published administrative interpretations thereof) or any similar procedures established by a state or local taxing authority.

“Special Member” shall mean, upon such Person’s admission to the Company as a member of the Company, the Person bound by this Agreement as Special Member in such Person’s capacity as a member of the Company. A Special Member shall only have the rights and duties expressly set forth in this Agreement.

“Substituted Member” shall mean any Person admitted as a substituted Member pursuant to this Agreement.

“Super Majority Vote” shall mean the vote of more than 75% of the Class A Units entitled to vote. Members shall be entitled to cast one vote for each Unit they own, and a fractional vote for each fractional Class A Unit they own.

“Tax Payment” shall have the meaning set forth in Section 4.12.

“Trust” means ExchangeRight Value-Add Portfolio 3 DST, that certain Delaware statutory trust formed by and in accordance with, and governed by, the Trust Agreement.

“Trust Agreement” means that certain Trust Agreement dated as of April 27, 2022, by and among the Trustee, ExchangeRight Value-Add Portfolio 3 DST, a Delaware statutory trust, as the Sole Beneficial Owner (as defined in the Trust Agreement), and ExchangeRight Asset Management, LLC, as the Manager (as defined in the Trust Agreement).

“Trustee” means the Person serving, at the time of determination, as the trustee under the Trust.

“Trust Estate” means all of the Trust’s right, title, and interest in and to the Master Lease Agreement (as defined in the Trust Agreement), the underlying tenant leases and the Real Estate (as defined in the Trust Agreement), and any and all other property and assets (whether tangible or intangible) in which the Trust has any right, title or interest as of the Conversion Date.

“Unit” shall represent an interest in the Company entitling the owner of the Unit if admitted as a Member to the respective voting and other rights afforded to a Member holding a Unit, and affording to such Member a share in income, loss and Distributions as provided for in this Agreement. The Units shall consist of ten thousand (10,000) Class A Units held by the Members (other than the Managing Member) and one Class B Unit held by the Managing Member.

EXHIBIT B

INITIAL DIRECTORS AND OFFICERS

<u>Name</u>	<u>Title</u>
Joshua Ungerecht	Director
David Fisher	Director
Warren Thomas	Director
Gregory Harrison	Independent Director
Joshua Ungerecht	Chief Executive Officer
David Fisher	President
Warren Thomas	Secretary

EXHIBIT C
**UNITS TO BE OWNED BY
 BENEFICIAL OWNERS OF THE TRUST AND EXCHANGERIGHT ASSET MANAGEMENT**

<u>Name</u>	<u>Address</u>	<u>Percentage Interest in the Trust</u>	<u>Number of Units</u>
ExchangeRight Asset Management		--0--	1 Class B Unit (in exchange for \$100).
[Members]		100%	10,000 Class A Units (distributed by Initial Member)

EXHIBIT F
TAX OPINION

June 5, 2023

ExchangeRight Real Estate, LLC
1055 E. Colorado Blvd.
Suite 310
Pasadena, CA 91106

Re: ExchangeRight Value-Add Portfolio 3 DST

Ladies and Gentlemen:

ExchangeRight Real Estate, LLC, a California limited liability company ("**ExchangeRight**"), and ExchangeRight Value-Add Portfolio 3 DST, a Delaware statutory trust (the "**Trust**"), have retained Venable LLP as special tax counsel to address certain federal income tax consequences and render opinions on specified federal income tax issues in connection with the transactions described in the Confidential Offering Memorandum dated June 5, 2023 for the offering of beneficial ownership interests in the Trust (the "**Memorandum**"). All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Memorandum.

In connection with our representation of ExchangeRight and the Trust, and as a basis for the opinion hereinafter set forth, we have examined originals or copies, certified or otherwise identified to our satisfaction, of the following documents (collectively, the "**Documents**"):

1. The Memorandum;
2. The Trust Agreement of the Trust dated as of April 27, 2022 (the "**Trust Agreement**");
3. The Master Lease Agreement (the "**Master Lease**");
4. Certain terms of the loan documents (the "**Loan Documents**") relating to (i) that certain fee interest in Parcel II (i.e., the gas station parcel) located at 3773-3841 South Hamilton Road, Columbus, OH 43232 (such fee interest referred to hereafter as the "**Fee Property**") and (ii) certain 99-year leasehold interests in all other properties (such leasehold interests referred to hereinafter as the "**Leasehold Properties**", and collectively with the Fee Property, the "**Properties**");
5. The Ground Leases, as supplemented by those certain Ground Lessor's Estoppel Certificates and Agreements (as supplemented, the "**Leases**"), pursuant to which the leasehold interests in the Leasehold Properties were created;¹ and

¹ While technically the Leases grant the Trust only a 99-year leasehold interest, with a 50-year renewal option (at the Trust's sole discretion) in each Leasehold Property, the Leases are structured such that the Trust is considered the true owner of each Leasehold Property for federal income tax purposes. After the first year, the annual rent, for both the initial term and the renewal term, is one dollar. Each Lease is what is generally referred to in the real estate industry as a "triple net" or "absolute net" lease, such that the Trust is obligated to pay all costs and expenses incurred with respect to, and associated with, each Leasehold Property and the business operated thereon and

ExchangeRight Real Estate, LLC

June 5, 2023

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6. That certain representation letter provided to us on June 5, 2023 (the “**Representation Letter**”) signed on behalf of ExchangeRight, the Trust, the Manager and the Master Lessee, upon which we have relied in issuing this opinion.

In connection with rendering this opinion, we have assumed or obtained representations, which we have no reason to believe are inaccurate and, with your consent, are relying thereon that:

1. All factual representations and statements in the Documents are true and correct.
2. Each party who has executed or adopted, or will execute or adopt, the Documents had, or will have, the proper authority and capacity to do so.
3. Any documents that have been provided to us in draft form have been executed, adopted and/or filed without material modification.

Based on our review of the Documents, it is our opinion that: (i) the Trust should be treated as an investment trust described in Treasury Regulations Section 301.7701-4(c)² that is classified as a “trust” under Treasury Regulation Section 301.7701-3(a); (ii) the Owners should be treated as “grantors” of the Trust; (iii) as “grantors,” the Owners should be treated as owning an undivided fractional interest in each of the Properties for federal income tax purposes; (iv) the Interests should not be treated as securities for purposes of Code Section 1031; (v) the Interests should not be treated as certificates of trust or beneficial interests for purposes of Code Section 1031; (vi) the Master Lease should be treated as a true lease and not a financing for federal income tax purposes; (vii) the Master Lease should be treated as a true lease and not a deemed partnership for federal income tax purposes; (viii) the discussions of the federal income tax consequences contained in the Memorandum are correct in all material respects; and (ix) certain judicially created doctrines that are described herein should not apply to change the foregoing conclusions.

Our opinion does not address, and should not be viewed as expressing any opinion concerning, whether the acquisition of an Interest will, in light of the facts and circumstances applicable to a

therein. Moreover, each Lease also contains extensive provisions (including nominee provisions) that clarify that (i) the Trust, and not the nominal fee owner, possesses all benefits and burdens of ownership of each Leasehold Property, (ii) the Trust, and not the nominal fee owner, should be treated as the true owner of each Leasehold Property for federal income tax purposes, and (iii) the nominal fee owner is holding only bare record title to each Leasehold Property, as nominee and agent for, and on behalf of, the Trust, and should not be treated as the actual owner of any of the Leasehold Properties for federal income tax purposes. Based on the foregoing, we believe that the Trust’s leasehold interest in each Leasehold Property represents true ownership of each Leasehold Property for federal income tax purposes. Note, however, that the conclusions in this opinion are not dependent on the Trust’s leasehold interest in each Leasehold Property representing true ownership of each such Property.

² All section references provided for herein refer to the Internal Revenue Code of 1986, as amended (the “**Code**”), and the Treasury Regulations promulgated thereunder.

ExchangeRight Real Estate, LLC

June 5, 2023

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specific purchaser of Class 1 interests, constitute an acquisition of like-kind replacement property in a transaction that qualifies for nonrecognition of gain or loss under Code Section 1031.

DISCUSSION

Code Section 1031(a)(1) provides that “[n]o gain or loss shall be recognized on the exchange of real property held for productive use in a trade or business or for investment if such real property is exchanged solely for real property of like kind which is to be held either for productive use in a trade or business or for investment.” Nonrecognition treatment does not apply, however, if the interests in the property being exchanged are, *inter alia*, regarded as interests in a partnership, securities, or certificates of trust or beneficial interests.³ Code Section 1031 does not expressly address the treatment of interests in a Delaware Statutory Trust (a “**DST**”).

The Internal Revenue Service (“**IRS**”) concluded in Revenue Ruling 2004-86⁴ that, under the limited circumstances set forth therein, beneficial owners of a DST that, in turn, owns real estate will be treated as owning a direct interest in such real estate for purposes of the nonrecognition provisions of Code Section 1031. In order to reach this conclusion, the IRS determined that (i) the DST described therein will be treated as an investment trust under Treasury Regulation Section 301.7701-4(c) that is classified as a “trust” under Treasury Regulation Section 301.7701-4(a), and (ii) the beneficial owners of the DST are “grantors” and, as such, are treated as owning direct interests in the DST’s property for federal income tax purposes. We believe that the tax treatment of the Trust and the Owners (and the Interests that are the subject of this Offering) should be the same as the DST and its beneficial owners were treated in Revenue Ruling 2004-86 for federal income tax purposes.

³ I.R.C. §§ 1031(a)(2)(C), (D), and (E) (1984) (prior to amendment by the TCJA (as hereinafter defined)). On December 22, 2017, the Tax Cuts and Jobs Act (the “**TCJA**”) was signed into law and significantly modified Code Section 1031 by limiting it to exchanges of real property not held primarily for sale. For exchanges completed after December 31, 2017, exchanges of personal property and intangible property do not qualify for a Code Section 1031 Exchange. Additionally, the TCJA eliminated specific language providing that exchanges of certain types of property (stock in trade or other property held primarily for sale, stocks, bonds, or notes, other securities, or evidences of indebtedness or interest; interests in a partnership; certificates of trust or beneficial interest, or choses in action) are excluded from Code Section 1031. Although the specific language providing for the exclusion of interests in a partnership, securities, or certificates of trust or beneficial interests has been eliminated from the statute, an analysis of these terms remains relevant to the analysis and conclusion set forth herein that the Owners should be treated as owning real property for federal income tax purposes.

⁴ 2004-2 C.B. 191.

ExchangeRight Real Estate, LLC

June 5, 2023

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I. The Trust should be treated as an investment trust described in Treasury Regulation Section 301.7701-4(c) that is classified as a “trust” under Treasury Regulation Section 301.7701-4(a)

The Trust should be classified as a “trust” under Treasury Regulations Section 301.7701-4(a) because it (i) should be recognized as an entity separate from the Owners for federal income tax purposes, and (ii) should be treated as an investment trust described in Treasury Regulation Section 301.7701-4(c).

A. The Trust should be recognized as an entity separate from the Owners for federal income tax purposes

Whether an organization is an entity separate from its owners for federal income tax purposes is a matter of federal tax law and does not depend on whether the organization is recognized as an entity under local law.⁵ Thus, an entity formed under local law is not always recognized as a separate entity for federal income tax purposes.⁶ When participants in a venture form a state law entity and avail themselves of the benefits of that entity for a valid business purpose, however, the entity generally will be recognized for federal income tax purposes.⁷

An entity formed under state law that acts as a mere agent of its owners will not be treated as an entity separate from its owners for federal income tax purposes. In *Commissioner v. Bollinger*,⁸ a corporation was treated as an agent of its owners where the corporation functioned merely as the nominal debtor and record title holder to mortgaged property. The shareholders entered into a written agreement providing that (i) the corporation would hold title to the property as the shareholders’ nominee and agent (and not as a principal of the corporation) solely to secure financing, (ii) the shareholders had sole control and responsibility for the mortgaged property and (iii) the shareholders were the principals and owners of the property during its financing, construction and operation. The Supreme Court held that the shareholders, rather than the corporation, were the owners of the property because the relationship between the shareholders and the corporation was, in both form and substance, an agency with the shareholders as principals.

⁵ Treas. Reg. § 301.7701-1(a)(1).

⁶ Treas. Reg. § 301.7701-1(a)(3).

⁷ See *Moline Properties, Inc. v. Comm’r*, 319 U.S. 436 (1943).

⁸ 485 U.S. 340 (1988).

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Similarly, the IRS concluded in Revenue Ruling 92-105⁹ that an Illinois land trust was not to be treated as an entity separate from its owner for federal income tax purposes. A single taxpayer created an Illinois land trust and named a domestic corporation as trustee. The taxpayer transferred legal and equitable title to real property to the trust subject to the provisions of an accompanying land trust agreement. Under the agreement, the taxpayer (i) retained exclusive control of the management, operation, rental, and sale of the real property, together with an exclusive right to the earnings and proceeds from the real property, and (ii) was required to file all tax returns, pay all taxes, and satisfy any other liabilities with respect to the real property. Under Illinois law, there is no limitation on liability of a beneficiary of an Illinois land trust. Because the trustee's only responsibility was to hold and transfer title to the property at the direction of the beneficiary, and because the beneficiary retained the direct obligation to pay liabilities and taxes related to the property, the right to manage and control the property, as well as any liability with respect to the property, the IRS concluded that the Illinois land trust could not rise to the level of an "entity" separate from the beneficial owner for federal income tax purposes.

In contrast, the IRS concluded in Revenue Ruling 2004-86 that the DST described therein is an entity that should be recognized as separate from its owners for federal income tax purposes. The IRS did so by looking to the powers, limitations and benefits that Delaware law accords to a DST and its beneficial owners. Under Delaware law, creditors of a beneficial owner in a DST may not assert claims directly against the property held by a DST; they can seek payment only from the beneficial owner itself. The property of a DST is subject to attachment and execution with respect to liabilities of the DST as if the DST were a corporation. A DST may sue or be sued. The beneficial owners of a DST are entitled to the same limitation on personal liability stemming from actions of a DST that is extended to stockholders of a corporation organized under Delaware law. A DST may merge or consolidate with or into one or more statutory entities or other business entities. Lastly, a DST can be formed for investment purposes. These powers and privileges afforded to a DST and the beneficial owners thereof, as well as the purpose of a DST and the limited powers provided by the trust agreement (discussed below), led the IRS to conclude that a DST is an entity separate from its owners for federal income tax purposes.¹⁰

Based on the authorities discussed above, the Trust should be recognized as an entity separate from the Owners. The Trust should not be viewed merely as an agent of the Owners because, unlike the trusts in *Bollinger* and Revenue Ruling 92-105, the Owners have no right or power to direct in any manner the actions of the Trust, the Master Lessee, the Sponsor, or the Manager in connection with the management or operation of the Trust or the Properties.¹¹ Specifically, the Owners have

⁹ 1992-2 C.B. 204.

¹⁰ Citing to Del. Code Ann. Title 12, §§ 3801-3824.

¹¹ See Trust Agreement at § 6.4.

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no voting rights, including as to whether or not the Properties are sold nor any right or power to (i) contribute additional assets to the Trust; (ii) cause the Trust to negotiate or re-negotiate loans or leases; or (iii) cause the Trust to sell all or any portion of its assets and re-invest the proceeds of such sale or sales.¹² Additionally, so long as any obligations secured by the Note (as defined in the Loan Documents) remain outstanding and not discharged in full, the Manager is covenanting that the Trust has not and will not, *inter alia*, (i) commingle its assets with the assets of any other Person (as defined in the Trust Agreement), or permit any Affiliate (as defined in the Trust Agreement) or constituent party independent access to its bank accounts, (ii) fail to (A) hold itself out to the public as a legal entity separate and distinct from any other Person, (B) conduct its business solely in its own name or (C) correct any known misunderstanding regarding its separate identity; (iii) identify itself as a department or division of any other Person, (iv) except for capital contributions or capital distributions permitted under the terms and conditions of the Trust's organizational documents and properly reflected on its books and records, enter into any transaction, contract or agreement with any Owner or guarantor of the obligations of the Trust, or any Affiliate of the foregoing, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arm's-length basis with unaffiliated third parties; or (v) fail to maintain and use separate stationery, invoices and checks bearing its own name.¹³

These requirements and prohibitions all evidence an intent that the Trust will engage in activities on its own behalf rather than as an agent of the Owners. Lastly, because the Trust is organized as a DST, the Owners may avail themselves only of the limited powers and privileges afforded to beneficial owners under Delaware law. Thus, the Trust (as a DST) and the Owners have substantially all of the same powers, limitations and benefits as the trust that the IRS found to constitute an entity separate from its owners for federal income tax purposes in Revenue Ruling 2004-86. Accordingly, the Trust should be recognized, for federal income tax purposes, as an entity separate from the Owners.

B. The Trust should be treated as an investment trust described in Treasury Regulation Section 301.7701-4(c)

A trust arrangement generally will be classified as a "trust" rather than another form of business entity for federal income tax purposes if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint

¹² *Id.*

¹³ See Trust Agreement at § 3.2(c).

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enterprise for the conduct of a business for profit.¹⁴ A trust with a single class of ownership interests that provides no power to vary the investments of the trust is classified as an investment trust that is treated as a “trust” for federal income tax purposes.¹⁵ A trust with multiple classes of ownership interests that otherwise meets the description of an investment trust also will be classified as a “trust” for federal income tax purposes if the existence of multiple classes of ownership interests is incidental to the purpose of facilitating the direct investment in the trust’s assets.¹⁶ As discussed in greater detail below, the Trust should be treated as an investment trust described in Treasury Regulation Section 301.7701-4(c).

1. No power exists under the Trust Agreement for the Trustee or Manager to vary the investments of the Trust

The courts and the IRS have considered the extent to which the powers granted under a trust arrangement exceed those required simply to protect and conserve property for the benefit of the trust owners. Two opinions issued by the United States Court of Appeals for the Second Circuit (the “*Second Circuit*”) on the same day generally are viewed as the leading judicial guidance on the distinction between a trust arrangement that meets the description of an investment trust and a trust arrangement granting the power to vary the investments held therein. Additionally, the IRS has issued several revenue rulings, the most relevant being Revenue Ruling 2004-86, that distinguish the limited arrangements that would constitute an investment trust from a broader grant of powers that prohibits classification as a “trust.” In all material respects, we believe that the powers granted to the Trustee and Manager in the Trust Agreement are consistent with the limited scope of powers applicable to an investment trust described in Treasury Regulation Section 301.7701-4(c).

a. Authorities

(i) Case Law

In *Commissioner v. Chase National Bank*,¹⁷ the court addressed whether a state law trust arrangement should be classified as a “trust” for federal income tax purposes. In that case, the depositor purchased shares of the common stock of several corporations and made up “units” consisting of a number of shares of the common stock of each corporation. The “units” were deposited in a trust, and then certificates in the trust were sold to investors.

¹⁴ Treas. Reg. § 301.7701-4(a).

¹⁵ Treas. Reg. § 301.7701-4(c)(1).

¹⁶ *Id.*

¹⁷ 122 F. 2d 540 (2d Cir. 1941).

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The trustee was vested with all of the rights of ownership of the shares except that the depositor controlled the voting rights of the shares and the trust instrument governed and restricted the disposal of the shares. Under the terms of the trust instrument, property deposited into the trust was held until some disposition of it was made consistent with the terms of the trust instrument. Further, distributions of currently available funds were required. No purchases were to be made by the trustee by way of reinvestment of funds or otherwise. The Second Circuit found that the trust instrument “prevented the trusts from being, or becoming, more than what are sometimes called strict investment trusts.” The court concluded that the trust required “that the trust property was to be held for investment and not to be used as capital in the transaction of business for profit like a corporation organized for such a purpose. This distinction is what makes the difference tax-wise.”¹⁸

In another opinion released on the same day as *Chase National Bank*, the Second Circuit reached a different result. In *Commissioner v. North American Bond Trust*,¹⁹ the court recognized that, although the trust arrangement in *North American Bond Trust* was similar to the trust in *Chase National Bank*, the trust instrument in *North American Bond Trust* was slightly different because it provided the depositor with the power “in effect to change the investment of certificate holders at his discretion.”²⁰ In making up new units, the depositor was not confined to the same bonds he had selected for the previous units. Additionally, the bonds of all units constituted a single pool in which each certificate holder shared according to his proportion of all the certificates issued. As a result, the money from new investors could be used to purchase new bond issues that would in turn reduce the existing certificate holders’ interests in the old bond issues. The depositor thus could take advantage of market variations in a manner that could improve the investment of the original investors through dilution of the original investment. Based on these facts, the court held that the depositor “had power, though a limited power, to vary the existing investments of all certificate holders at will”²¹ and, accordingly, that the trust was treated as taxable as an association rather than as a fixed investment trust.

(ii) Revenue Ruling 2004-86

The analyses and conclusions of the IRS in Revenue Ruling 2004-86 are consistent with the Second Circuit’s holdings in the cases discussed above. Revenue Ruling 2004-86 considered the situation in which an individual, A, borrowed money from an unrelated lender, BK, and signed a

¹⁸ *Id.* at 543.

¹⁹ 122 F.2d 545 (2d Cir. 1941), *cert. denied*, 314 U.S. 701 (1942).

²⁰ *Id.* at 546.

²¹ *Id.*

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10-year note bearing adequate stated interest. A then used the proceeds of the loan to purchase Blackacre, which was rental real property. The note was secured by Blackacre and nonrecourse to A. Immediately thereafter, A entered into a net lease with Z for a term of 10 years.²² Under the terms of the lease, Z was required to pay all taxes, assessments, fees, or other charges imposed on Blackacre by federal, state, or local authorities. In addition, Z was required to pay all insurance, maintenance, ordinary repairs, and utilities relating to Blackacre. Z was free to sublease Blackacre to anyone Z chose.

The rent paid by Z to A was a fixed amount that could be adjusted by a formula described in the lease agreement that was based upon a fixed rate or an objective index, such as an escalator clause based upon the Consumer Price Index, but adjustment to the rate or index was not within the control of any of the parties to the lease. The rent paid by Z was not contingent upon Z's ability to lease the property or on Z's gross sales or net profits derived from Blackacre.²³

On the same date that A acquired Blackacre and leased it to Z, A also formed a Delaware statutory trust under Delaware law to which A contributed fee title to Blackacre (after entering into the loan with BK and the lease with Z). Upon contribution, the trust assumed A's rights and obligations under the note with BK and the lease with Z. In accordance with the nonrecourse nature of the note, neither the trust nor any of its beneficial owners were personally liable to BK on the note, which continued to be secured by Blackacre. The trust agreement provided that interests in the trust were freely transferable. However, interests in the trust were not publicly traded on an established securities market. The trust would terminate on the earlier of 10 years from the date of its creation or the disposition of Blackacre, but would not terminate on the bankruptcy, death or incapacity of any owner or on the transfer of any right, title or interest of the beneficial owners of the trust.

The trust agreement authorized the trustee to engage in only those activities central to the collection, investment, and distribution of income arising from Blackacre. The trust agreement authorized the trustee to use trust funds to establish a reasonable reserve to pay expenses incurred in connection with holding Blackacre. The trustee was required to distribute on a quarterly basis all available cash less such reserves to the beneficial owners in proportion to their respective interests in the trust. The trustee was required to invest cash received from Blackacre between

²² The ruling does not indicate whether A is related to Z, but given that the ruling states that Z is not related to B, C, or the trustee (i.e., persons described in the ruling other than A), it is our view that it can be assumed that Z is related to A in the ruling.

²³ Although the lease from A to Z is described in Rev. Rul. 2004-86 as a "net" lease, it is not clear whether the lessor or the lessee would be required to make capital improvements or major repairs to the property. Thus, the lease might be "double net," in which the lessor remains liable for certain capital improvements and repairs (such as repairs to the roof) instead of a "triple net" lease in which the lessee is responsible for the property in all events.

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each quarterly distribution and all cash reserves in short-term obligations, i.e., maturing prior to the next quarterly distribution date, of (or guaranteed by) the United States or any agency or instrumentality thereof, and in certificates of deposit of any bank or trust company having a minimum stated surplus and capital. The trustee was required to hold such obligations until maturity. In addition to the right to a quarterly distribution of cash, each beneficial owner had the right to an in-kind distribution of its proportionate share of the property of the trust.

The trust agreement provided that the trustee's activities were limited to the collection, investment and distribution of income arising from Blackacre. The trustee could not exchange Blackacre for other property, purchase assets other than the short-term investments described above, or accept additional contributions of assets (including money) to the trust. The trustee could not renegotiate the terms of the debt used to acquire Blackacre and could not renegotiate the lease with Z or enter into leases with tenants other than Z, except in the case of Z's bankruptcy or insolvency.²⁴

In addition, the trustee could make only minor non-structural modifications to Blackacre, unless otherwise required by law. The trust agreement further provided that the trustee could engage in ministerial activities to the extent required to maintain and operate the trust under local law. In addition, the trustee could not enter into a written agreement with A or indicate to third parties that the trustee (or the trust) is A's agent.

Immediately after A contributed its interest in Blackacre to the trust, it conveyed its entire interest in the trust to individuals B and C in exchange for interests in Whiteacre and Greenacre, respectively. B and C were not related to BK or Z (the lessee of Blackacre) and neither the trustee nor the trust was an agent of B or C. B and C desired to treat their acquired interests in the trust as replacement property pursuant to a Code Section 1031 like-kind exchange for their relinquished properties, Whiteacre and Greenacre, respectively.

Neither the trust nor the trustee entered into a written agreement with A, B or C creating an agency relationship. In dealings with third parties, neither the trust nor the trustee was represented as an agent of A, B, or C.

To determine whether the trust arrangement qualified as an investment trust classified as a "trust" for federal income tax purposes, the IRS examined whether the trust agreement granted the power to vary the investment of the trust's beneficial interest holders. Because the duration of the trust was the same as the duration of the loan and the lease that were assumed by the trust at the time of

²⁴ Revenue Ruling 2004-86, in its statement of facts, expressly provides that "[t]he trustee may not renegotiate the terms of the debt used to acquire [the Property] and may not renegotiate the lease with [the Tenant] or enter into leases with tenants other than [the Tenant], except in the case of [the Tenant's] bankruptcy or insolvency." We believe the correct interpretation of this provision is that the exception applies to renegotiating the financing as well as new leases.

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its formation, the financing and leasing arrangements of the trust and its assets (Blackacre) were fixed for the entire life of the trust. Furthermore, the trustee was permitted to invest only in short-term obligations that matured prior to the next quarterly distribution date and was required to hold these obligations until maturity. Because the trust agreement required that (i) any cash from Blackacre, and any cash earned on short-term obligations held by the trust between distribution dates, be distributed quarterly, (ii) no cash could be contributed to the trust by the beneficiaries, (iii) the trust could not borrow any additional money, and (iv) the disposition of Blackacre would result in the termination of the trust, the IRS concluded that there was no possibility of the reinvestment of money under the trust agreement.

In the Revenue Ruling's analysis, the IRS emphasized that the trustee's activities were limited to the collection and distribution of income. The trustee could not exchange Blackacre for other property, purchase assets other than short-term investments or accept any additional contributions of assets (including money) for the trust. The trustee could not renegotiate the terms of the debt used to acquire Blackacre and could not renegotiate the lease with Z or enter into leases with tenants other than Z except in the case of Z's bankruptcy or insolvency. In addition, the trustee could make only minor non-structural modifications to the property except to the extent required by law. The IRS observed that the trustee had none of the powers that would indicate an intent to carry on a profit-making business. Accordingly, the IRS concluded that the trustee had no power to vary the investment of the beneficiaries of the trust, which is consistent with the description of an investment trust classified as a "trust" for federal income tax purposes.

The IRS expressly warned in Revenue Ruling 2004-86, that the trust arrangement would not have qualified as an investment trust, and therefore would not have been classified as a "trust," if the trustee had been given the power to do one or more of the following:

- dispose of Blackacre and acquire new property;
- renegotiate the lease with Z or enter into leases with tenants other than Z (except in the case of Z's bankruptcy or insolvency);
- renegotiate or refinance the obligation used to purchase Blackacre (except in the case of Z's bankruptcy or insolvency);
- receive capital contributions from the investors;
- invest cash received to profit from market fluctuations; or
- make more than minor non-structural modifications to Blackacre not required by law.

Thus, it is not sufficient that the trustee never takes any of the actions described above - the trustee must lack the power to undertake those actions. This aspect of Revenue Ruling 2004-86 is consistent with the case law in which a trust is classified in accordance with the powers that the trustee has under the trust agreement without regard to what actions, if any, the trustee has performed other than to conserve and protect the property of the trust.

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(iii) Other Revenue Rulings

The IRS also addressed the classification of trust arrangements in several other revenue rulings. Revenue Ruling 75-192²⁵ involved a trust agreement that required the trustee to invest cash on hand between quarterly distribution dates only in specified short-term obligations maturing prior to the next distribution date and to hold such obligations until maturity. The IRS concluded that, because the restrictions on the types of permitted investments limited the trustee to a fixed return similar to that earned on a bank account, and eliminated any opportunity to profit from market fluctuations, the power to invest in such assets was not a power to vary the trust's investments.

Similarly, the IRS classified the trust arrangement described in Revenue Ruling 79-77,²⁶ which was formed to hold real property, as a "trust" for federal income tax purposes. The beneficiaries were required to approve all agreements entered into by the trustee and they were personally liable for the debts of the trust. The beneficiaries directed the trustee to enter into a 20-year lease that required the tenant to pay all taxes, assessments, fees or other charges imposed on the property by federal, state or local authorities. In addition, the tenant paid all insurance, maintenance, repairs and utilities relating to the property. The trustee could determine whether to allow the tenant to make minor non-structural alterations to the real estate, but only if the alterations would protect and conserve the property or were required by law. The trustee was empowered to institute legal or equitable actions to enforce any provisions of the lease.

The trust would terminate on the sale of substantially all of its assets or upon unanimous agreement of the beneficiaries. Based upon the above, the IRS classified the trust arrangement described in Revenue Ruling 79-77 as a "trust" for federal income tax purposes.

In contrast, the IRS concluded that the trust arrangement described in Revenue Ruling 78-371²⁷ was classified as a business entity rather than a "trust." Unlike the trust arrangement described in Revenue Ruling 79-77 that restricted the trustee to dealing with a single piece of property subject to a net lease, the trust arrangement in Revenue Ruling 78-371 expressly authorized the trustees to purchase and sell contiguous or adjacent real estate, to accept or reject certain contributions of contiguous or adjacent real estate, to raze or erect any building or structure, to make any improvements to the land contributed to the trust, to borrow money and to mortgage and lease the trust property. The IRS concluded in Revenue Ruling 78-371 that the trustee's power to engage in extensive real estate operations and to reinvest the sales proceeds in financial products indicated

²⁵ 1975-1 C.B. 384.

²⁶ 1979-1 C.B. 448.

²⁷ 1978-2 C.B. 344.

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that the trust arrangement was not formed merely to protect and conserve the trust's property and ruled that the trust was taxable as a business entity treated as a corporation.

The existence of a power to sell trust assets does not always give rise to a power to vary the trust's investments. The courts and the IRS have concluded that even though a trustee may possess the power to sell trust assets under certain limited circumstances, such a trust arrangement can still qualify as an investment trust classified for federal income tax purposes as a "trust."²⁸ These authorities have clarified that, instead of the mere power to sell trust assets, it is the ability of the trustee to substitute new investments in order to take advantage of variations in the market that prohibit a trust arrangement from being treated as an investment trust classified as a "trust" for federal income tax purposes.

b. The Trust Agreement

The powers and authority granted to the Trustee, Manager, Owners, and the Trust in the Trust Agreement fall within the limited scope of the powers and authority that may be exercised with respect to an "investment trust." From and after the issuance of the Conversion Notice (as defined in the Trust Agreement), the Trust Agreement authorizes the Manager, as agent of the Trust, to take each of the following actions necessary to conserve and protect the Trust Estate: (1) acquire title to the Properties subject to the tenant leases; (2) enter into and comply with the Loan Documents; (3) enter into the Master Lease with the Master Lessee; (4) collect rents from the Properties, if any, and make distributions thereof, if any; (5) enter into any agreements with qualified intermediaries for purposes of enabling an Owner's acquisition of an Interest pursuant to Code Section 1031; (6) notify the relevant parties of any defaults under the Transaction Documents; and (7) solely to the extent necessitated by the bankruptcy or insolvency of the Master Lessee, enter into a new lease or renegotiate or refinance debt on the Properties.²⁹

The Trust Agreement expressly denies the Trustee, the Manager, the Owners and/or the Trust the enumerated powers that are prohibited under Revenue Ruling 2004-86 (i.e., any power and authority specifically outlined by the IRS as impermissible in Revenue Ruling 2004-86 in order for the trust arrangement to qualify as an investment trust described in Treasury Regulation Section 301.7701-4(c)).³⁰ Moreover, the Trust Agreement expressly denies the Trustee, the Manager, the

²⁸ See *Comm'r v. North American Bond Trust*, 122 F.2d 545 (2d Cir. 1941), *cert denied* 314 U.S. 701 (1941); *Pennsylvania Co. for Insurances on Lives and Granting Annuities v. United States*, 146 F.2d 392 (3d Cir. 1944). See also Rev. Rul. 78-149, 1978-1 C.B. 448; Rev. Rul. 73-460, 1973-2 C.B. 425.

²⁹ See Trust Agreement § 5.3(b).

³⁰ See Trust Agreement § 3.3(c)(1)-(8). The facts in Revenue Ruling 2004-86 state that Z and the trustee in the ruling are not related. The analysis in the revenue ruling, however, does not discuss the tax considerations underlying the relationship of the various parties. Therefore, nothing in the analysis in the revenue ruling appears to require that the

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Owners and/or the Trust any power and authority to take any other action which would cause the Trust to be treated as a business entity for federal income tax purposes if the effect would be that such action or actions would constitute a power under the Trust Agreement to “vary the investment of the certificate holders” under Treasury Regulation Section 301.7701-4(c)(1) and Revenue Ruling 2004-86.³¹ Furthermore, the Trust Agreement provides that none of the Trustee, the Manager, the Owners and the Trust shall have any power or authority to undertake any actions that are not permitted to be undertaken by an entity that is treated as a “trust” within the meaning of Treasury Regulation Section 301.7701-4 and not treated as a “business entity” within the meaning of Treasury Regulation Section 301.7701-3.³²

Although distinctions exist between the Trust Agreement and other related arrangements and the trust and other related arrangements described in Revenue Ruling 2004-86, we believe these distinctions are not material. These distinctions include, but are not limited, to the following, which we view as those distinctions necessitating discussion and analysis: (i) the conversion of the Trust for tax purposes by the Sponsor from a “disregarded entity” for federal income tax purposes into an investment trust prior to admission of the Owners; (ii) the ongoing role of the Manager, which is wholly owned by the Sponsor, but with powers limited to those permitted to be exercised by the Trustee; (iii) the potential conversion of the Trust into a Delaware limited liability company that would constitute a “partnership” for federal income tax purposes as a result of a LLC Conversion; (iv) the Trust’s acceptance of multiple contributions from purchasers of Class 1 interests over time, rather than through a single contribution; (v) the fact that the Sponsor may retain a beneficial interest in the Trust during the period of the Offering, and the Key Principals will own at least 1% of the Class 1 interests in the Trust as required by the Lender; (vi) the fact that the Trust Agreement empowers the Manager (and only the Manager) to determine in its sole discretion when a Disposition of the Properties would be reasonable using its commercially reasonable business judgment and, thus, when the Properties shall be sold; (vii) the obligation of the Trust to pay the Capital Expenses (as defined in the Master Lease) of the Properties, which includes capital expenditures with a term that exceeds the term of the Master Lease, and the right of the Master Lessee to use reserves to pay such Capital Expenses; (viii) the fact that the Key Principals of ExchangeRight (which owns the Sponsor, the Master Lessee and the Manager) have executed certain limited guaranties with respect to the Loan; (ix) the fact that in addition to Annual Base Rent of a fixed amount, the Master Lease provides for the payment of Annual Bonus Rent to

Manager and the Master Lessee be unrelated parties. We are of the opinion that the relation of the Manager and the Master Lessee should not serve to constructively transfer or impute prohibited powers to the Manager as the relationship of the parties appears irrelevant under the revenue ruling and the Trust Agreement expressly limits the powers of the Manager.

³¹ See Trust Agreement § 3.3(c)(9).

³² See Trust Agreement § 3.3(c) (flush language).

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the Trust by the Master Lessee equal to 20% of the effective annual revenues of the Properties over a predetermined annual effective gross revenue benchmark amount; and (x) the power to sell the Trust's corpus. We believe that, like the material provisions discussed above, these provisions are consistent with, rather than contrary to, the analysis in Revenue Ruling 2004-86 for the reasons set forth below.

First, prior to the conversion of the Trust by the Sponsor into an investment trust, the Trust is not recognized as an entity separate from the Sponsor for federal income tax purposes. Accordingly, the conversion feature of the Trust from a disregarded entity to a fixed investment trust for tax purposes, prior to admission of the Owners, should be viewed on its own as a mere formation of the Trust as a fixed investment trust in a manner that is not inconsistent with the analysis under Revenue Ruling 2004-86.

Second, the ongoing role of the Manager, which is wholly owned by the Sponsor, should not be viewed as inconsistent with the analysis in Revenue Ruling 2004-86 because the Manager's powers are limited to those permitted to be exercised by the Trustee. Like the Trustee, the Manager's power is limited to the powers and authority that may be exercised by a trustee of a fixed investment trust.

Third, the potential conversion of the Trust into a Delaware limited liability company that would constitute a "partnership" for federal income tax purposes as a result of a LLC Conversion should not be viewed as inconsistent with the analysis in Revenue Ruling 2004-86. Although no direct authority exists regarding the power to make a LLC Conversion in connection with a fixed investment trust, we believe that providing this mechanism as used in the Trust Agreement is consistent with treating the Trust as a fixed investment trust for federal income tax purposes. The purpose of this mechanism is to provide a means to preserve and protect the Trust Estate for the benefit of the Owners in certain limited circumstances where the Manager, in its discretion, determines that continuing the trust structure would be significantly detrimental to the Owners. Moreover, ExchangeRight, the Trust and the Manager have represented that: (i) no LLC Conversion is currently intended or anticipated; (ii) to their knowledge, an event which would cause a LLC Conversion with respect to any of the assets of the Trust is not expected; and (iii) they believe that the occurrence of such an event would be rare and unusual. In considering this issue, we have taken into account the fact that Sections 9.2(a)(3)-(7) of the Trust Agreement provide for a LLC Conversion in certain circumstances outside the determination and discretion of the Manager. We view these provisions requested by the Lender as not inconsistent with Revenue Ruling 2004-86.

Fourth, the Trust's acceptance of multiple contributions from purchasers of Class 1 interests over time, rather than through a single contribution, should not be viewed as raising additional capital (which is prohibited under Revenue Ruling 2004-86). Both the term and the amount of the

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Offering were established at the time the Trust Agreement was made. The majority of the cash paid for the purchase of the Class 1 interests (all at the same price) will be distributed to the Sponsor to redeem its Class 2 interests. Because the terms of the Offering are fixed and the contributed cash will be used to redeem the Sponsor, the additional contributions over the period of the Offering do not enable the Trust to raise additional capital or benefit from market fluctuations over time. The fact that 100% of the Interests will be sold in multiple closings rather than in a single closing is driven by practical considerations of the Offering and does not provide a basis for distinguishing a trust from a partnership.

Fifth, the fact that the Sponsor may retain a beneficial interest in the Trust during the period of the Offering should not result in the Trust being recharacterized as a partnership because such ownership is driven merely by practical considerations of the Offering and would be for a limited period of time, specified in advance (i.e., any such ownership will be temporary). The Sponsor has an absolute obligation to dispose of all of its Class 2 interests within one year of the date of the first sale of Class 1 interests. At such time, any remaining outstanding Class 2 interests must be surrendered to the Trust for no additional consideration. Ownership during a temporary period solely for the purpose of allowing an orderly sale of the Interests in the Trust does not create a potential for differing interests in the Properties, since the Class 2 interests otherwise have identical rights to the Class 1 interests after the issuance of the Conversion Notice (as defined in the Trust Agreement). By analogy to tenancy in common offerings, such a temporary period of ownership also should not justify a conclusion here that the Trust should be classified as a partnership rather than as an investment trust.³³

Such ownership is not completely temporary, however, because the Key Principals will own at least 1% of the Class 1 interests in the Trust. In Revenue Ruling 2004-86, B and C (the two beneficial owners of the trust) were not related to Z (the lessee of Blackacre) within the meaning of Code Sections 267(b) or 707(b). In the instant case, however, the indirect owners of the Sponsor will own at least 1% of the Class 1 interests in the Trust. The indirect owners of the Sponsor own ExchangeRight, which wholly owns the Manager and the Master Lessee, and such owners will therefore be in a position to control these entities. For tax purposes, the Manager and the Master Lessee are disregarded, such that ExchangeRight is the Manager and the Master Lessee for tax purposes. But, such ownership of at least 1% of the Class 1 interests is a requirement imposed by the Lender as a condition of the Loan, rather than the result of the indirect owners' desire to

³³ In tenancy in common offerings, sponsors and their tax advisors have gotten comfortable with allowing the sponsor to own tenant-in-common interests in the property at the same time that the sponsor or its affiliates is acting as a master tenant, because Revenue Procedure 2002-22, 2002-1 C.B. 733, appears to explicitly sanction a temporary overlap. Revenue Procedure 2002-22 is inapplicable to DST offerings, however. In Revenue Ruling 2004-86, the sponsor entered into the master lease and borrowed the funds necessary to acquire the property prior to transferring the property to the DST and sold 100% of the beneficial interests in the DST to unrelated persons in a single transaction.

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maintain an investment in the Trust.³⁴ This is an important distinction as it demonstrates that the indirect owners are not voluntarily purchasing an Interest in the Trust. Furthermore, ExchangeRight has represented that if the Lender (or any successor thereto) at any point no longer requires such interest (or any portion thereof) to be held, then the indirect owners of the Sponsor will sell such interest (or portion thereof) as soon as reasonably possible. Such ownership interest in the Trust is so small that it should not materially drive the decision-making of the Master Lessee. Thus, although an owner of the Trust will be related to the Master Lessee and the Manager, we view such a small purchased interest that was mandated by the Lender as not inconsistent with the intent and purpose of Revenue Ruling 2004-86.

Since no Class 2 interests may be reissued, and after the period of the Offering, the Owners (except to the extent of the ownership of at least 1% of the Class 1 interests discussed above) will be unrelated to the Master Lessee and the Manager, the Trust arrangement should not be classified as a partnership arrangement, but instead as an investment trust.

Sixth, the discretionary power granted under the Trust Agreement to the Manager (and only the Manager) to determine when it is appropriate to make a Disposition of the Properties should not be viewed as a power to vary the Trust's investments. Immediately after a disposition of one or more of the Properties, the disposition proceeds must be distributed to the Owners.³⁵ At the time the last of the Properties is disposed of, the Trust will terminate pursuant to Section 9.1 of the Trust Agreement. Neither the Trustee nor the Manager has the power to purchase replacement investments with the proceeds from the disposition of any or all of the Properties.³⁶ Moreover, this discretion afforded to the Manager is subject to the overall limitation of the Manager having no power to engage on behalf of the Trust in activities in which the Trust could not engage directly. The disposition of the Properties under these circumstances is consistent with the objective of achieving an attractive investment return on the assets comprising the initial trust estate when the Owners acquired their interest therein. Because the disposition proceeds cannot be reinvested by the Trustee or the Manager, the Trust Agreement does not confer the power to "better" the investments in the Trust by taking advantage of market variations. The assets that can be held by the Trust are restricted to the Properties and the cash reserves that accumulate between monthly distributions.³⁷ All cash reserves will be invested only in the types of debt instruments expressly

³⁴ Section 7.3 of the Loan Agreement effectively requires the Sponsor and/or the Sponsor and/or the Key Principals to collectively own at all times at least 1% of the Interests in the Trust.

³⁵ See Trust Agreement at §§ 9.1 & 9.3.

³⁶ See Trust Agreement at §§ 3.3(c) & 9.1.

³⁷ See Trust Agreement at §§ 3.2(c), 3.3(c) & 7.1.

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permitted under Revenue Ruling 2004-86.³⁸ Accordingly, providing the Manager with the discretion concerning the timing and amount of the disposition of the Properties, or to decide that one or more of the Properties should be disposed of and the others retained, should not prevent the Trust from being treated as an investment trust that is classified as a “trust” for federal income tax purposes.

Seventh, we have considered the obligation of the Trust to pay the Capital Expenses (as defined in the Master Lease) of the Properties, which includes capital expenditures with a term that exceeds the term of the Master Lease, and the right of the Master Lessee to use reserves to pay such Capital Expenses. It is unclear whether the lease in Revenue Ruling 2004-86 was a triple net lease under which the tenant would have been responsible for all capital improvements, or a double net lease under which the lessor would have remained responsible for certain repairs, such as repairs to the roof. We have considered the issue and believe that the Trust’s obligation to pay for capital expenses with a life or term that exceeds the term of the Master Lease is not inconsistent with a trustee’s duty to conserve and protect trust property and should not be indicative of a partnership or constitute the varying of the Trust’s investment. ExchangeRight, the Trust, and the Manager have represented that to their knowledge, none of the Trust, the Master Lessee nor any of the sub-tenants at the Properties plans to construct more than minor, non-structural improvements, additions or alterations to the Properties, and they believe and expect that capital expenditures will not be needed for improvements, additions or alterations to each of the Properties (taking into account their age and condition) other than minor, non-structural improvements, additions or alterations.³⁹

Moreover, the Trust is not responsible for any Capital Expenses or, otherwise, for making or performing (or incurring any cost, expense or expenditure for the making or performing of) any repairs, replacements or improvements to, for and/or in respect of any of the Properties that the Trust determines (in its sole discretion) it is not permitted to be responsible for, make, perform and/or incur pursuant to the terms of the Trust Agreement. We do not view the allocation of responsibilities to the Trust described above as risk sharing indicative of a partnership; rather, such allocation is consistent with normal leasing practice and is reasonable in light of the fact that the Trust will derive substantial benefit from any expenditures with a life or term that exceeds the term of the Master Lease. Moreover, we have taken into account the fact that under Section 8.2 of the

³⁸ See Trust Agreement at § 7.1.

³⁹ Note as well that, although the Trust may be required, under Section 6.(b) of the Master Deed Creating and Establishing the Vineland Crossing Condominium, recorded August 1, 2012 (as amended from time to time, the “*Condo Deed*”), to fund certain capital expenditures with respect to that certain Leasehold Property located at 1255 W Landis Avenue, Vineland, New Jersey 08360 (the “*Vineland Property*”), ExchangeRight, the Trust, the Manager, and the Master Lessee represent that expenses should relate only to the funding of minor non-structural modifications associated with the Vineland Property, unless otherwise required by law.

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Master Lease, the Master Lessee is entitled to utilize funds in reserves to pay for such Capital Expenses. Revenue Ruling 2004-86 provided that in the facts therein, under the trust agreement, the trustee was authorized to establish a reasonable reserve for expenses associated with holding Blackacre that may be payable out of trust funds. It should make no difference that the Master Lessee is able to access such reserves to pay for those expenses that are the responsibility of the Trust. Therefore, we do not believe the above is inconsistent with the intent and purpose of Revenue Ruling 2004-86.

Eighth, we have taken into account the fact that the owners of ExchangeRight (which owns the Sponsor, the Master Lessee and the Manager) have executed certain limited guaranties with respect to the Loan. Under the limited guaranties, they will be responsible for liabilities, costs, expenses, claims, losses or damages incurred by the Lender as a result of certain non-recourse carveout events (including the failure of the Trust to satisfy the requirement set forth in the Loan Documents for the Trust to deliver to the Lender a condominium association estoppel certificate in form and substance reasonably satisfactory to Lender with respect to the Shop Rite Shopping Center (Vineland) Property (the “**Post-Closing Requirement**”)) and springing recourse liabilities with respect to the Loan. The occurrence or non-occurrence of these events will largely be solely within their (and their affiliates’) control. Since these limited guaranties otherwise generally impose liability only for actions which are within the control of the owners of ExchangeRight, they should not constitute impermissible guaranties of the Loan for these purposes. The satisfaction of the Post-Closing Requirement is, to a significant extent, within the control of the owners of ExchangeRight and their affiliates. To the extent that such satisfaction is not within their control, ExchangeRight and its affiliates have represented that (i) the Post-Closing Requirement would typically be satisfied at or prior to Closing, (ii) where such requirement has not been satisfied at or prior to Closing, it is commercially reasonable and customary to require that it be satisfied within some reasonable period after Closing, (iii) the Trust expects to easily and fully satisfy such requirement in a timely manner, and (iv) failure to fully satisfy such requirement in a timely manner would be extremely rare and highly unusual. Further, these guaranties should not be viewed as an obligation of the Sponsor, ExchangeRight or the owners of ExchangeRight to contribute additional capital to the Trust. While the owners of ExchangeRight are potentially liable for environmental matters not directly within their control under the guaranties of certain environmental liabilities with respect to the Properties, such liability might otherwise result under federal environmental laws regardless of the terms provided under the Loan Documents. Accordingly, we do not view the existence of such limited guaranties as inconsistent with Revenue Ruling 2004-86.

Ninth, we have considered that in addition to Annual Base Rent of a fixed amount, the Master Lease provides for the payment of Annual Bonus Rent to the Trust by the Master Lessee equal to 20% of the effective annual revenues of the Properties over a predetermined annual effective annual benchmark amount. In Revenue Ruling 2004-86, Z’s (the lessee of Blackacre) rent is a

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fixed amount that may be adjusted by a formula described in the lease agreement that is based upon a fixed rate or an objective index, such as an escalator clause based upon the Consumer Price Index, but adjustments to the rate or index are not within the control of any of the parties to the lease. Z's rent is not contingent on Z's ability to lease the property or on Z's gross sales or net profits derived from the property. Although the provision for Annual Bonus Rent in the Master Lease is different from the facts in Revenue Ruling 2004-86, this provision as defined and used in the Master Lease should not be inconsistent with treating the Trust as a fixed investment trust for federal income tax purposes, and thus, not inconsistent with the legal analysis in Revenue Ruling 2004-86. ExchangeRight, the Trust, the Manager, and the Master Lessee have represented that, considering the entire Master Lease and all of the surrounding facts and circumstances, the specific terms of the Annual Bonus Rent in the Master Lease are consistent with normal business practices and standard market terms of similar leases in the same geographic area, and not an indirect means of basing rent on, or sharing in, income or profits. Moreover, even though the Annual Bonus Rent is based on effective annual revenues of the Properties, the fact that it is a formula composed of a fixed rate and predetermined benchmark amount is consistent with the notion in the Revenue Ruling that adjustments to rent by a pre-determined formula are acceptable. The percentage used for calculating the Annual Bonus Rent is fixed for the term of the Master Lease, which is consistent with the factual statement in Revenue Ruling 2004-86 that "adjustments to the rate or index are not within the control of any of the parties to the lease." In this way, the fixed formulaic provision for Annual Bonus Rent in the Master Lease is more akin to an "escalator clause" than to a method of profit sharing. Accordingly, the provision for such an Annual Bonus Rent of a fixed percentage of gross revenues over a predetermined annual benchmark amount should not prevent the Trust from being treated as an investment trust that is classified as a "trust" for federal income tax purposes, and thus, such Annual Bonus Rent should not be inconsistent with the analysis and conclusions in Revenue Ruling 2004-86.

Because none of the above distinctions permits the Trustee or Manager to vary the investments of the Trust in a manner that results in the Owners improving their investment results based on variations in the market, we believe they are consistent with treating the Trust as a fixed investment trust.

c. The Master Lease

Under the terms of the Master Lease, which is subject to the Loan Documents relating to the Properties, the Master Lessee does not have the right to make other than minor, non-structural alterations, additions or improvements to the Properties unless otherwise required by law or permitted at the time that the Trust acquired the Properties under the leases assigned to the Master Lessee.⁴⁰ ExchangeRight, the Trust, the Manager and the Master Lessee have represented that to

⁴⁰ See Master Lease § 8.5.

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their knowledge, none of the Trust, the Master Lessee nor any of the sub-tenants at the Properties plan to construct more than minor, non-structural improvements, additions or alterations to the Properties, and they believe and expect that capital expenditures will not be needed for improvements, additions or alterations to each of the Properties (taking into account their age and condition) other than minor, non-structural improvements, additions or alterations. ExchangeRight, the Master Lessee, and the Manager have represented that if a sub-tenant intends to make other than a minor, non-structural improvement, addition or alteration to any of the Properties (unless required by law), then either: (i) the Master Lessee will cause such sub-tenant to agree, upon the expiration or earlier termination of the sub-lease, to remove the improvement, addition or alteration so as to restore the Properties to the condition the Properties would have been in had such improvement, addition or alteration never been made, or (ii) the Manager will make a LLC Conversion pursuant to the terms of the Trust Agreement.

Further, we believe that the limited alteration rights provided to the Master Lessee under the Master Lease should not be attributed to the Trustee or the Manager and, therefore, are not inconsistent with treating the Trust as an investment trust for federal income tax purposes. The terms of the Master Lease do not provide the Trustee or the Manager with the unfettered power to make structural modifications to the Properties; such alteration rights are held solely by the Master Lessee in the limited circumstances noted above. Moreover, the Trust is not responsible for any capital expenses or, otherwise, for making or performing (or incurring any cost, expense or expenditure for the making or performing of) any repairs, replacements or improvements to, for and/or in respect of any of the Properties that the Trust determines (in its sole discretion) it is not permitted to be responsible for, make, perform and/or incur pursuant to the terms of the Trust Agreement.

Although not free from doubt, we believe that the alteration rights provided to the Master Lessee under the Master Lease, and the treatment of the sub-leases as discussed above, are consistent with treating the Trust as a fixed investment trust, the intent and purpose of Revenue Ruling 2004-86, and the underlying cases and rulings governing whether a trustee possesses an impermissible right to vary the investments of a trust.

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- 2. Although the Trust has more than one class of ownership interests, the Trust nonetheless should be described as an investment trust classified as a “trust” because it was formed to facilitate direct investment in the Properties and the repurchase of the Class 2 interests is incidental to that purpose**

The oft-cited principle that the economic substance of a transaction, and not its mere form, governs the tax treatment of a given transaction is a well-established doctrine of federal tax law.⁴¹ Treasury Regulation Section 301.7701-4(c) (and the examples therein) contemplate that certain additional classes of trust interests will not defeat “trust” classification for federal income tax purposes by providing that a trust arrangement that otherwise would be treated as an investment trust absent multiple classes of ownership interests nonetheless will be so treated if the multiple classes of ownership interests are incidental to the investment purpose of the trust.⁴² The Treasury Regulation illustrates by example the type of different ownership rights that would be merely incidental to a trust’s investment purpose.

The first example illustrates a circumstance whereby the existence of two classes of ownership interests in a trust is incidental to the trust’s purpose of facilitating direct investment in a portfolio of residential mortgages.⁴³ The originator of the mortgage portfolio transferred the mortgages to a bank under a trust agreement, retained the class D beneficial ownership interest in the trust and sold to investors the class C beneficial ownership interests in the trust. The two classes are identical except that, in the event of a default on the underlying mortgages, the payment rights of the class D interests are subordinate to the rights of the class C certificate holders. The example observes that the interests of the beneficial holders in the aggregate, however, is substantially equivalent to an undivided ownership interest in the mortgage pool, coupled with a limited recourse guarantee running from the originator to the class C beneficial holders. Thus, the difference in rights between the class D and class C beneficial ownership interests is present simply to facilitate the investment by the class C beneficial owners in the trust’s assets.

⁴¹ See, e.g., *Gregory v. Helvering*, 293 U.S. 465, 467, 470 (1935) (holding that “the reorganization attempted was without substance and must be disregarded”); *Comm’r v. Court Holding Co.*, 324 U.S. 331, 334 (1945) (stating that “the incidence of taxation depends on the substance of a transaction. The tax consequences which arise from gains from a sale of property are not finally to be determined solely by the means employed to transfer legal title.”); *Weiss v. Steam*, 265 U.S. 242, 254 (1924) (stating that the court “must regard matters of substance and not mere form”); *Higgins v. Smith*, 308 U.S. 473, 477 (1940) (holding that the Government may look at “actualities” and disregard the form of a transaction if it is “unreal” or a “sham”).

⁴² Treas. Reg. § 301.7701-4(c).

⁴³ See Treas. Reg. § 301.7701-4(c)(2), Example 2.

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Likewise, the second example illustrates a circumstance where multiple classes of ownership interests in a trust merely facilitate direct investment in the assets held by the trust.⁴⁴ Public investors purchased trust certificates evidencing the right to receive a particular payment with respect to a specific bond that is included in a bond portfolio held by the trust. Because the purchase of stripped interests in bonds and coupons are treated as separate bonds for federal income tax purposes, the example states that the multiple classes simply provide each certificate holder with a direct interest in what would be treated as a separate bond. Because the certificate holders acquired an interest in the trust's assets that was similar to what the certificate holder could acquire by direct investment, the multiple classes of ownership interest would not prevent the trust arrangement from being treated as a trust rather than a business entity for federal income tax purposes.

It is possible that the IRS may assert that the existence and redemption of the Sponsor's Class 2 interests give rise to impermissible multiple classes of ownership interests.⁴⁵ Consistent with the facts in the examples discussed above, however, we believe that the existence of the Class 2 interests and the redemption right of the Sponsor with respect to such Class 2 interests also should be treated as existing simply to facilitate the Owners' investment in the Properties through the Class 1 beneficial interests.

Immediately upon the issuance of the Conversion Notice, which must occur prior to an Owner investing in the Trust, the rights of a Class 2 beneficial owner (other than the redemption right) will be identical to the rights of the Class 1 beneficial owners.⁴⁶ The redemption simply replaces the Sponsor's pro rata ownership interest in the Trust and its underlying assets with that of the Owners. This same result could be accomplished by either the Sponsor selling directly to the Owners its Class 2 beneficial interest or the Sponsor selling to the Owners a direct interest in the Properties followed by the Owners' contribution of the Properties to the Trust. Because under either scenario the result is the same, and in neither situation is there any variation in the underlying assets owned by the Trust, we believe that the formal mechanism by which the Sponsor's interest in the Properties is transferred to the Class 1 beneficial owners should not affect the tax consequences of the underlying transaction.

This analysis is consistent with the IRS statement in Revenue Ruling 2004-86 that its conclusions would have been the same regardless of whether the trust property (Blackacre) had been sold directly to B and C, and then contributed to the trust or, as in the facts in the ruling, contributed to the trust followed by a sale of an interest in the trust to B and C. The rights of the Sponsor with

⁴⁴ See Treas. Reg. § 301.7701-4(c)(2), Example 4.

⁴⁵ See Trust Agreement § 6.5.

⁴⁶ See Trust Agreement §§ 6.3 and 6.5.

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respect to the underlying assets in the Trust, i.e., the Properties, are no different vis-à-vis a Class 1 beneficial owner for as long as the Sponsor retains any Class 2 interests.

The use of this formal mechanism of redemption is the economic equivalent of the Owners purchasing a direct interest in the Properties from the Sponsor and then contributing the purchased interests in the Properties to the Trust. Under these circumstances, it is our view that no impermissible multiple classes of ownership interests in the Trust should exist.

Based on the foregoing discussion, the Trust (i) should be recognized as an entity separate from the Owners for federal income tax purposes, and (ii) should be treated as an investment trust described in Treasury Regulation Section 301.7701-4(c). As a result, the Trust should be classified as a “trust” under Treasury Regulation Section 301.7701-4(a).

II. The Owners should be treated as “grantors” of the Trust

A “grantor” of a trust includes any person to the extent such person either creates a trust or directly or indirectly makes a gratuitous transfer of property, including cash, to a trust.⁴⁷ A gratuitous transfer to a trust includes a transfer of cash to the trust in exchange solely for an interest in the trust.⁴⁸ The term “grantor” also includes any person who acquires an interest in a trust from a “grantor” of the trust if the interest acquired is an interest in an investment trust described in Treasury Regulation Section 301.7701-4(c).⁴⁹

The Owners should be treated as “grantors” of the Trust. The Owners will transfer cash to the Trust in exchange solely for Interests therein. Because receiving an Interest in the Trust is not treated as the receipt of property, the Owners should be treated as making a gratuitous transfer to the Trust. Thus, the Owners should be treated as “grantors” of the Trust.

III. As “grantors,” the Owners should be treated as owning an undivided fractional interest in each of the Properties for federal income tax purposes

A “grantor” that is treated as the owner of an undivided fractional interest of the assets in a trust under the provisions of subchapter J of the Code is also treated as owning an undivided fractional interest of such assets for all federal income tax purposes.⁵⁰ Code Sections 673 through 678 set

⁴⁷ Treas. Reg. § 1.671-2(e)(1).

⁴⁸ Treas. Reg. § 1.671-2(e)(2).

⁴⁹ Treas. Reg. § 1.671-2(e)(3).

⁵⁰ See Rev. Rul. 88-103, 1988-2 C.B. 304; Rev. Rul. 85-45, 1985-1 C.B. 183; and Rev. Rul. 85-13, 1985-1 C.B. 184. See also Treas. Reg. § 1.1001-2(c), Example 5.

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forth rules for determining when the grantor or another person is treated as the owner of any portion of a trust.⁵¹ Under Code Section 673(a), a grantor is treated as owning any portion of a trust in which the grantor has a reversionary interest in either the trust assets or the income therefrom if, as of the inception of that portion of the trust, the value of such interest exceeds 5% of the value of such portion.

Under Code Section 677(a), a grantor is treated as the owner of any portion of a trust whose income, without the approval or consent of any adverse party is, or in the discretion of the grantor or a non-adverse party, or both, may be distributed to the grantor or held or accumulated for future distribution to the grantor.⁵²

Revenue Ruling 2004-86 also considered whether the purchase of interests in the trust arrangement by B and C would be treated as an acquisition of interests in the real property, Blackacre, owned by the trust (in exchange for their interests in Whiteacre and Greenacre that were conveyed to A). The IRS concluded that B and C should be treated as grantors of the trust when they acquire their interests in the trust from A, who had formed the trust. The IRS also concluded that, because B and C have the right to distributions of all the income of the trust attributable to their undivided fractional interests, they should be treated under Code Section 677 as the owners of an aliquot portion of the trust, and all income, deductions and credits attributable to that portion are includible by B and C in computing their taxable income. Because the owner of an undivided fractional interest of a trust is considered to own the trust assets attributable to that interest for federal income tax purposes, the IRS treated B and C as each owning an undivided fractional interest in Blackacre for federal income tax purposes.

The IRS treatment of B and C as the owners of the trust's property for purposes of Code Section 1031 is consistent with the treatment by the IRS of grantors of a trust for Code Section 1033 purposes. Code Section 1033 is similar to Code Section 1031 in that it confers nonrecognition treatment on the involuntary conversion of property into similar or related-use property.⁵³ In several rulings, the IRS has concluded that, because the owner of a grantor trust is treated as the owner of the trust's property for federal income tax purposes, whether replacement property was purchased by a grantor or the grantor's trust is of no consequence for Code Section 1033 purposes.⁵⁴

⁵¹ Treas. Reg. § 1.671-2(a).

⁵² I.R.C. § 677(a). For purposes of this provision, a trustee who lacks an economic interest in the assets of a trust is not an adverse party. *See* Treas. Reg. § 1.672(a)-1(a).

⁵³ *See* I.R.C. § 1033(a).

⁵⁴ *See* Rev. Rul. 88-103, 1988-2 C.B. 304; Rev. Rul. 70-376, 1970-2 C.B. 164.

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Several of the rights accorded, directly and indirectly, under the Trust Agreement to the Owners as “grantors” should result in the Owners being treated as owning a direct interest in the Properties for federal income tax purposes. The Owners have the right to the distribution of all income, if any, received by the Trust from the Properties without the approval, consent or exercise of discretion by any person (except as the Manager determines is necessary to pay anticipated ordinary current and future Trust expenses).⁵⁵ Additionally, the Owners have a total reversionary interest in the assets of the Trust.⁵⁶ These rights of the Owners as grantors should result in the Owners being treated as owning a direct interest in the Trust’s assets, i.e., the Properties, under Code Sections 673 and 677, and therefore, also for all federal income tax purposes, including Code Section 1031.

IV. The Interests should not be treated as securities for purposes of Code Section 1031

If the Interests are determined to be securities for purposes of Code Section 1031, an investor would recognize gain, if any, on the exchange of property for an Interest to the extent the fair market value of the Interest received in the exchange exceeded the adjusted tax basis of the relinquished property.⁵⁷ For the reasons discussed below, the Interests should not constitute securities for purposes of Code Section 1031.⁵⁸

A. Legislative History of Code Section 1031

The exclusion of certain property set forth in Code Section 1031 was added to the predecessor to Code Section 1031 in 1923.⁵⁹ The legislation amended the predecessor to Code Section 1031 to include the following italicized language:

When any such property held for investment or for productive use in trade or business (not including stock-in-trade or other property held primarily for sale, *and in the case of property held for investment not including stock, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or*

⁵⁵ See Trust Agreement § 7.1.

⁵⁶ See Trust Agreement § 7.2.

⁵⁷ I.R.C. § 1001; I.R.C. § 1031(a)(2)(C) (prior to amendment by the TCJA).

⁵⁸ Although the Interests may be “securities” for purposes of the Securities Act of 1933 or the Securities Exchange Act of 1934, it should be noted that this is not the relevant test for determining whether the Interests are securities for federal income tax purposes but, rather, only the starting point for the analysis.

⁵⁹ See, e.g., H.R. 13774, Public No. 545, 67th Cong., 4th Sess., ch. 294.

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evidences of indebtedness or interest), is exchanged for property of a like kind or use.

The reason for the addition of the language above was to prevent taxpayers from using the predecessor to Code Section 1031 to exchange investment securities, such as stocks and bonds, tax free. A letter from the Secretary of Treasury dated January 13, 1923, provided as follows:

The revenue act of 1921 provides, in section 202, for the exchange of property held for investment for other property held for investment for other property of a like kind without the realization of taxable income. Under this section, a taxpayer who purchases a bond of \$1,000 which appreciates in value may exchange that bond for another bond of the value of \$1,000, together with \$100 in cash (the \$100 in cash representing the increase in the value of the bond while held by the taxpayer), without the realization of taxable income. This provision of the act is being widely abused. Many brokers, investment houses and bond houses have established exchange departments and are advertising that they will exchange securities for their customers in such a manner as to result in no taxable gain. Under this section, therefore, taxpayers owning securities which have appreciated in value are exchanging them for other securities and at the same time receiving a cash consideration without the realization of taxable income, but if the securities have fallen in value since acquisition, [taxpayers] will sell them and in computing net income deduct the amount of the loss on sale. This result is manifestly unfair and destructive of the revenues. The Treasury accordingly urges that the law be amended so as to limit the cases in which securities may be exchanged for other securities without the realization of taxable income to those cases where the exchange is in connection with the reorganization, consolidation or merger of one or more corporations.⁶⁰

In response to the concern expressed in the letter above, Congress amended the predecessor to Code Section 1031 to exclude securities.⁶¹

⁶⁰ *Id.*

⁶¹ *Id.*

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B. Use of the term “securities” in the Code

The term “securities” is not defined in either Code Section 1031 or the Treasury regulations promulgated thereunder. The term “securities” is narrowly defined in other Sections of the Code, including the following:

- Code Section 165(g) (defining the term “security” as “(A) a share of stock in a corporation; (B) a right to subscribe for, or to receive, a share of stock in a corporation; or (C) a bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or by a government or political subdivision thereof, with interest coupons or in registered form”);
- Code Section 402(e)(4)(E)(i) (providing that “[t]he term ‘securities’ means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form”);
- Former Code Section 1083(f) (stating that “the term ‘stock or securities’ means shares of stock in any corporation, certificates of stock or interest in any corporation, notes, bonds, debentures and evidences of indebtedness (including any evidence of an interest in or right to subscribe to or purchase any of the foregoing)”);⁶² and
- Code Section 1236(c) (providing that “the term ‘security’ means any share of stock in any corporation, certificate of stock or interest in any corporation, note, bond, debenture, or evidence of indebtedness, or any evidence of an interest in or right to subscribe to or purchase any of the foregoing”).

The Interests clearly would not be considered “securities” under any of the above Code Sections which, although not expressly applicable for Code Section 1031 purposes, may inform how broad or restrictive the scope of the term “securities” is for Code Section 1031 purposes.

In addition, there are instances in the Code where a term is defined by specific reference to federal securities law, such as the following examples:

- Code Section 67(c)(2)(B)(i)(I) (“continuously offered pursuant to a public offering (within the meaning of Section 4 of the Securities Act of 1933, as amended. . .)”);
- Code Section 83(c)(3) (“so long as the sale of property at a profit could subject a person to suit under Section 16(b) of the Securities Exchange Act of 1934”);
- Code Section 162(m)(2) (“the term ‘publicly held corporation’ means any corporation which is an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c))- (A) the securities of which are required to be registered under section 12 of

⁶² Section 1083 was repealed by the Gulf Opportunity Zone Act of 2005. See Pub. L. No. 109-135, § 402(a)(1), 119 Stat. 2610 (2005).

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such Act (15 U.S.C. 781), or (B) that is required to file reports under section 15(d) of such Act (15 U.S.C. 78o(d))”);

- Code Section 277(b)(3) (“which for each day of any taxable year is a national securities exchange subject to regulation under the Securities Exchange Act of 1934 or a contract market subject to regulation under the Commodity Exchange Act”); and
- Code Section 409(e)(4)(A) (“a class of securities required to be registered under Section 12 of the Securities Exchange Act of 1934”).

C. Relevant Tax Court Case

In *Plow Realty Co. of Texas v. Commissioner*,⁶³ the Tax Court addressed whether two mineral deeds, each conveying an undivided one-eighth interest in oil, gas, sulphur, and other minerals, were “securities” for purposes of determining whether the gains from such conveyances constituted “personal holding company income” under Section 502(b) of the Internal Revenue Code of 1939. If such gains were “securities,” and hence, “personal holding company income” as defined under the 1939 revenue code, the gains would be subject to a 25% surtax.

The taxpayer contended that the mineral deeds were conveyances of an interest in real estate and not a sale of “securities.” The Tax Court agreed:

Under [the] securities and exchange acts[,] mineral deeds and assignments of mineral rights have been held to be “securities.” But here we have a revenue statute and not a question of the exercise of police power by a state or the National Government for the protection of the public. The respondent’s regulations define “stock or securities” in broad and comprehensive language, but even so, we do not think the instruments herein can be classified as securities under the revenue act. What we have here is two deeds of conveyance evidencing two private sales of undivided interests in realty, under which title passed to and became vested in the grantees. Such sales do not, in our opinion, under the circumstances here constitute a sale of securities under Respondent’s regulations.⁶⁴

Based on this reasoning, the Tax Court held that the gains realized by the taxpayer upon the conveyance of the mineral deeds were not “personal holding company income” because the mineral deeds did not convey “securities.”

⁶³ 4 T.C. 600 (1945).

⁶⁴ *Id.* at 608 (internal citation omitted).

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D. General Counsel Memorandum

In General Counsel Memorandum 35,242,⁶⁵ the IRS stated that “[a]lthough [the definitions under Code Section 165(g), Code Section 402(a)(3), former Code Section 1083(f) and Code Section 1236(c)] do not control for purposes of Code Section 1031, we believe it persuasive that Congress has consistently defined the term ‘securities’ in a limited sense.” Accordingly, the IRS determined that an exchange of whisky receipts for other whisky receipts qualified for nonrecognition treatment under Code Section 1031(a).

Equally important, General Counsel Memorandum 35,242 determined that the whisky receipts were not “securities” for purposes of Code Section 1031 even though the Securities and Exchange Commission believed such receipts constituted securities under the Securities Act of 1933 and the Securities Exchange Act of 1934. This is consistent with the Tax Court’s position that property which constitutes a security under applicable securities laws is not necessarily a “security” for purposes of a specific provision of the Code.⁶⁶

The IRS further noted, in the proposed revenue ruling attached to the general counsel memorandum, that the “securities” exception to nonrecognition treatment was added to “preclude brokers, investment houses, and bond houses from arranging the tax free exchanges of appreciated securities for their clients.”⁶⁷

Based on the narrow scope of the definition of “securities” for various Code provisions, the IRS endorsement of this narrow definition in the Code Section 1031 context, the Tax Court’s conclusion that the definition of a “security” under applicable securities laws is irrelevant, and of course, the analysis and conclusion in Revenue Ruling 2004-86, we believe that the Interests should not be treated as securities for purposes of Code Section 1031.

⁶⁵ G.C.M. 35,242 (Feb. 16, 1973).

⁶⁶ *Plow Realty Co. of Texas*, 4 T.C. 600 (1945) (concluding that mineral deeds were not securities for purposes of the predecessor to Code Section 543 (personal holding company income) despite the fact that they were securities under securities and exchange acts).

⁶⁷ G.C.M. 35,242 (Feb. 16, 1973), citing S. Rept. 1113, 67th Cong. (1927), 1939-1 (Part 2) C.B. 845-46.

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V. The Interests should not be treated as certificates of trust or beneficial interests for purposes of Code Section 1031

The nonrecognition rules of Code Section 1031 do not apply to an exchange of certificates of trust or beneficial interests.⁶⁸ However, as concluded above, the Trust should be treated as a fixed investment trust within the meaning of Treasury Regulation Section 301.7701-4(c) and the Owners should be treated as grantors. Therefore, the Trust is considered to be a grantor trust and the Owners should be viewed as owning an underlying fractional interest in the Properties (as opposed to an interest in the Trust itself for federal income tax purposes). Thus, the Interests should not be viewed as prohibited certificates of trust or beneficial interests for purposes of Code Section 1031.

VI. The Master Lease should be treated as a true lease and not a financing for federal income tax purposes

A. Generally

The economic substance of a leasing transaction is analyzed in light of all of the facts and circumstances.⁶⁹ Transactions structured as leases may be recharacterized for federal income tax purposes to reflect their economic substance.⁷⁰ For example, in appropriate circumstances, a purported lease of property may be recharacterized as a sale of the property providing for deferred payments (i.e., a financing). Such a recharacterization in this context would have significant and adverse tax consequences. For example, if the Master Lease were to be recharacterized as a financing, then for tax purposes, the Owner would be treated as having immediately sold the acquired Interest in the Properties to the Master Lessee (which would be treated as having purchased the Properties from the Owners in exchange for an installment note). The rent payments under the Master Lease would be recharacterized as interest and principal payments on a loan incurred to finance the Master Lessee's purchase of the Properties. The Master Lessee would be entitled, as the owner of the Properties for tax purposes, to claim any depreciation deductions. Since the Owners would not be considered the owner of the Properties for tax purposes, an Owner

⁶⁸ I.R.C. § 1031(a)(2)(E) (prior to amendment by the TCJA). As noted above, although the specific language providing for the exclusion of interests in a partnership, securities, or certificates of trust or beneficial interests has been eliminated from the statute, an analysis of these terms remains relevant to the analysis and conclusion set forth herein that the Owners should be treated as owning real property for federal income tax purposes.

⁶⁹ Joint Committee on Taxation, Technical Explanation of the Revenue Provisions of the "Reconciliation Act of 2010," as Amended, in Combination with the "Patient Protection and Affordable Care Act," 153 & n. 350 (2010).

⁷⁰ See, e.g., *Frank Lyon Co. v. United States*, 435 U.S. 561 (1978), rev'g 536 F.2d 746 (8th Cir. 1976), rev'g 73-2 USTC ¶9,523 (E.D. Ark. 1973); *Rice's Toyota World, Inc. v. Comm'r*, 752 F.2d 89 (4th Cir. 1985), aff'g 81 T.C. 184 (1983); *Helvering v. F. & R. Lazarus & Co.*, 308 U.S. 252 (1939); *Emershaw v. Comm'r*, T.C. Memo. 1990-246 (1990), *aff'd*, 949 F.2d 841 (6th Cir. 1991).

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would be unable to treat the acquired Interest as qualified “replacement property” in a Code Section 1031 exchange, because the Interest would constitute an interest in real property that the Owner would not hold for investment. As a result, purchasers of Class 1 interests attempting to participate in Code Section 1031 exchanges would not be treated as having received qualified replacement property when they acquired their Interests. Such a recharacterization would thus have a significant adverse impact on the tax consequences of an investment in an Interest.

We believe that the Master Lease has the hallmarks of a bona fide, true lease and, therefore, should be treated as such for federal income tax purposes. In furtherance thereof, the Master Lease affirmatively recites that (i) the Trust shall be treated as the true owner of the Properties, (ii) the parties intend the Master Lease be characterized as a “true lease” for federal income tax purposes, (iii) the parties agree that the Master Lease does not represent a financing for federal income tax purposes, and (iv) the parties shall file all tax returns in a manner consistent with the foregoing.⁷¹

B. Revenue Procedure 2001-28

It is possible that the Master Lease could be classified as a financing rather than a true lease for federal income tax purposes. There is, however, no bright line test for making this determination. This question will be analyzed in the context of Revenue Procedure 2001-28,⁷² which sets forth guidelines for obtaining an advanced ruling that a lease constitutes a true lease (and not a financing) for federal income tax purposes, as well as the federal income tax case law governing this area.

In recent cases, courts have conducted a two-part analysis to determine whether the purported lease should be respected for federal income tax purposes, including an analysis of whether (i) the purported lease should be disregarded as a “sham” transaction and, if not, (ii) whether the lessor retained a sufficient amount of the traditional benefits and burdens of ownership of the property. A leasing transaction will be deemed a sham, and thus disregarded, if it was entered into for the sole purpose of obtaining tax benefits and the transaction is devoid of any reasonable opportunity for economic profit (exclusive of tax benefits). A transaction is not a sham if there is either a business purpose or economic substance to the transaction.⁷³ The business purpose test has been

⁷¹ See Master Lease § 19.24.

⁷² 2001-1 C.B. 1156. The guidelines were designed with equipment, rather than real estate, leveraged leases as a primary concern.

⁷³ See *Rice’s Toyota World, Inc.*, 752 F.2d 8; *Van Roekel v. Comm’r*, T.C. Memo. 1989-74 (1989), *app. dism’d*, 905 F.2d 80 (5th Cir. 1990); *Offermann v. Comm’r*, T.C. Memo. 1988-236 (1988); *L.W. Hardy Co. v. Comm’r*, T.C. Memo. 1987-63 (1987); *Greenbaum v. Comm’r*, T.C. Memo. 1987-222 (1987); *Torres v. Comm’r*, 88 T.C. 702 (1987); *Mukerji v. Comm’r*, 87 T.C. 926 (1986).

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described as a subjective analysis examining the motivations for entering into a transaction,⁷⁴ while the economic substance analysis is described as an objective analysis focusing on whether the transaction has a reasonable opportunity of producing a profit (exclusive of tax benefits).⁷⁵ If a transaction is shown not to be a sham, the lessor must additionally retain sufficient benefits and burdens of ownership to be regarded as the owner for federal income tax purposes.⁷⁶

The essence of the courts' benefits and burdens analysis is an examination of whether the purported lessor (i) is subject to the risks of ownership (i.e., downside) and (ii) will enjoy the profits of the property (i.e., upside).

Revenue Procedure 2001-28 sets forth advance ruling guidelines for "true lease" status. The Trust has not sought, and does not expect to request, a ruling from the IRS under Revenue Procedure 2001-28. These ruling guidelines provide certain criteria that the IRS will require to be satisfied in order to issue a private letter ruling that a lease is a "true lease" for federal income tax purposes. In the event of an examination by the IRS, the IRS and, ultimately, the courts of applicable jurisdiction, would consider these ruling guidelines, together with existing cases and rulings, for purposes of determining whether the Master Lease qualifies as a true lease for federal income tax purposes. However, we do not believe that strict compliance with Revenue Procedure 2001-28 is required to conclude that the Master Lease should be characterized as a true lease for federal income tax purposes. Rather, we believe that satisfying most of the material ruling guidelines should be sufficient for purposes of determining the characterization of the Master Lease for federal income tax purposes. Accordingly, the following discussion reviews the factors considered relevant by the IRS under Revenue Procedure 2001-28 guidelines, as well as the relevant case law.⁷⁷

⁷⁴ *Levy v. Comm'r*, 91 T.C. 838, 854 (1988).

⁷⁵ See *Levy*, 91 T.C. 838; *Rubin v. Comm'r*, T.C. Memo. 1989-484 (1989); *Moser v. Comm'r*, T.C. Memo. 1989-142 (1989), *aff'd*, 914 F.2d 1040 (8th Cir. 1990); *Van Roekel*, T.C. Memo. 1989-74; *Offermann*, T.C. Memo. 1988-236; *Larsen v. Comm'r*, 89 T.C. 1229 (1987), *aff'd & rev'd sub nom*, *Casebeer v. Comm'r*, 909 F.2d 1360 (9th Cir. 1990).

⁷⁶ See *Emershaw*, T.C. Memo. 1990-246; *Rubin*, T.C. Memo. 1989-484; *Pearlstein v. Comm'r*, T.C. Memo. 1989-621 (1989); *Moser*, T.C. Memo. 1989-142; *Van Roekel*, T.C. Memo. 1989-74; *Levy*, 91 T.C. 838.

⁷⁷ The factors enumerated in the case law are relevant to the guidelines as set forth in Revenue Procedure 2001-28; thus, for purposes of this analysis we refer to the case law factors within the framework of the guidelines.

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C. Minimum Unconditional At-Risk Investment

The lessor must make a minimum unconditional “at risk” investment in the property (the “*Minimum Investment*”) when the lease begins, must maintain such Minimum Investment throughout the entire lease term, and such Minimum Investment must remain at the end of the lease term. The Minimum Investment must be an equity investment (the “*Equity Investment*”) that includes only consideration paid, and personal liability incurred, by the lessor to purchase the property. The net worth of the lessor must be sufficient to satisfy any such personal liability.⁷⁸ We believe that satisfying the required Minimum Investment pursuant to the guidelines is also indicative of a lessor’s retention of downside risk as required under the framework established by the case law.⁷⁹

1. Initial Minimum Investment

When the property is first placed in service or use by the lessee, the Minimum Investment must be equal to at least 20% of the cost of the property. The Minimum Investment must be unconditional. That is, the lessor must not be entitled to a return of any portion of the Minimum Investment through any arrangement, directly or indirectly, with the lessee, a shareholder of the lessee, or any party related to the lessee (within the meaning of Code Section 318) (the “*Lessee Group*”).⁸⁰

The Owners will acquire their Interests in the Properties (through the Trust) for unconditional Equity Investments equal to approximately 69.20% of the cost of their Interests. No Owner will be entitled to demand the return of his, her or its Equity Investment from the Trust, the Master Lessee, or any party related to such parties, either through a put option, a guaranty of residual value, or other arrangement with such persons.

2. Maintenance of Minimum Investment

The Minimum Investment must remain equal to at least 20% of the cost of the property at all times throughout the entire lease term. That is, the excess of the cumulative payments required to have been paid by the lessee to or for the lessor over the cumulative disbursements required to have been paid by or for the lessor in connection with the ownership of the property must never exceed

⁷⁸ Rev. Proc. 2001-28, § 4.01.

⁷⁹ For example, courts have treated a lessor as the owner of property when the lessor has made cash investments substantially smaller than the 20% required by the Revenue Procedure 2001-28 guidelines. *See, e.g., Emershaw*, T.C. Memo. 1990-246 (6% investment); *Greenbaum*, T.C. Memo. 1987-222 (7% investment); *Hardy*, T.C. Memo. 1987-63 (17% investment).

⁸⁰ Rev. Proc. 2001-28, § 4.01(1).

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the sum of (i) any excess of the lessor's initial Equity Investment over 20% of the cost of the property plus (ii) the cumulative pro rata portion of the projected profit from the transaction (exclusive of tax benefits).⁸¹

ExchangeRight, the Trust, and the Manager have represented to us that they anticipate that the equity invested in the Properties by the Owners will equal at least 20% of the cost of the Properties to the Trust at all times throughout the term of the Master Lease (disregarding fluctuations in value) and that, to their knowledge, no plans or intentions exist to reduce such equity through distributions or refinancing of the Properties or otherwise. It is impossible, however, to determine at this time whether the economic performance of the Properties will comply with the above stated requirement of Revenue Procedure 2001-28. Based upon the representations and supplemental supporting information provided, the estimation weighs in support of characterization of the Master Lease as a true lease for federal income tax purposes.

3. Residual Investment

Under Revenue Procedure 2001-28, the fair market value of the property at the end of the lease term must be estimated to be an amount equal to at least 20% of the original cost of the property. For this purpose, fair market value must be determined (i) without including in such value any increase or decrease for inflation or deflation during the lease term, and (ii) after subtracting from such value any cost to the lessor for removal and delivery of possession of the property to the lessor at the end of the lease term. In addition, under Revenue Procedure 2001-28, a reasonable estimate of the remaining useful life of the property at the end of the lease term must equal the longer of one year or 20% of the originally estimated useful life of the property.⁸²

ExchangeRight, the Trust, and the Manager have represented that each of the Properties is expected to have, based upon a third-party appraisal from a reputable appraiser, a value at the end of the term of the Master Lease (or the anticipated time of sale) which will exceed 20% of the original cost of each of the Properties, and the financial projections of the value of each of the Properties at such times are (i) not based on increases or decreases in inflation or deflation, (ii) reflect anticipated costs of sale, and (iii) if applicable, reflect the Trust's estimated cost to take possession of the Properties substantially in the state that they were in at the outset of the Master Lease. In addition, ExchangeRight, the Trust, and the Manager have represented that a reasonable estimate of the remaining useful life of each of the Properties at the end of the term of the Master Lease (or the anticipated time of sale) should equal the longer of one year or 20% of the originally estimated useful life of the Properties.

⁸¹ *Id.* at § 4.01(2).

⁸² *Id.* at § 4.01(3).

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D. Master Lease Term and Renewal Options

For purposes of determining whether the various requirements imposed under Revenue Procedure 2001-28 are satisfied, the lease term must include all renewal or extension periods except renewals or extensions at the option of the lessee at fair rental value at the time of such renewal or extension.⁸³

The Master Lease does not provide for any renewal options or extensions and terminates in all events concurrently with the Landlord's (as defined in the Master Lease) termination.⁸⁴ Because both the Equity Investment of the Owners and the Master Lease will terminate at the time of the anticipated sale of the Properties, the anticipated time of sale might be used as the measuring period for purposes of determining the term of the Master Lease.

E. Purchase and Sale Rights

Under Revenue Procedure 2001-28, no member of the Lessee Group may have a contractual right to purchase the property from the lessor at a price less than its fair market value at the time the right is exercised.⁸⁵ When the property is first placed in service or use by the lessee, the lessor may not have a contractual right to cause any party to purchase the property.⁸⁶ The lessor must also not have any present intention to acquire such a contractual right. A provision that permits the lessor to abandon the property to any party will be treated as a contractual right of the lessor to cause such party to purchase the property.⁸⁷ Despite this prohibition, both the IRS and the courts have recognized leases utilizing fixed-price purchase options as leases for federal income tax purposes. A number of courts have concluded that a true lease existed even when the lessee had the right to purchase the leased property at a fixed price so long as the purchase price represented an estimate of the fair market value of the leased property as of the option date, or was not nominal

⁸³ *Id.* at § 4.02.

⁸⁴ *See* Master Lease §§ 1.5 and 3.2.

⁸⁵ Rev. Proc. 2001-28, § 4.03.

⁸⁶ *Id.* at § 4.03.

⁸⁷ *Id.*

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in relation to such value.⁸⁸ Moreover, the IRS has also reached this conclusion in private rulings.⁸⁹ For example, in Private Letter Ruling 8120024, the IRS approved use of a fixed-price purchase option because an appraisal made at the inception of the transaction indicated that the option price reflected anticipated fair market value. Further, the IRS specifically noted the fact that the relationship between the parties established a “net lease,” a customary practice in the leasing industry.⁹⁰

The Master Lease (or any other Transaction Document) does not give the Trust a right to cause any party to purchase the Properties. The Trust has represented that it does not have any present intention to acquire such a contractual right, and ExchangeRight and the Manager have represented that there is not any intention to cause the Trust to acquire such a contractual right. Moreover, the Master Lease does not contain any provisions giving a contractual right to the Master Lessee (or any affiliate) to purchase the Properties. Thus, no member of the Lessee Group has a contractual right to purchase the Properties from the Trust at a price less than its fair market value at the time the right is exercised.

F. Investment by Lessee

Except as otherwise provided below, no part of the cost of the Properties or the cost of improvements, modifications, or additions to the Properties (“**Improvements**”), may be furnished by any member of the Lessee Group. If the leases require the lessee to maintain and keep the property in good repair during the term of the lease, ordinary maintenance and repairs performed by a member of the Lessee Group will not constitute an Improvement.⁹¹

⁸⁸ See *Hardy*, T.C. Memo. 1987-63; *Transamerica Corp. v. U.S.*, 15 Cl. Ct. 420 (1988), *aff’d*, 902 F.2d 1540 (Fed. Cir. 1990); *Cooper v. Comm’r*, 88 T.C. 84 (1987); *Belz Inv. Co. v. Comm’r*, 72 T.C. 1209 (1979), *aff’d*, 661 F.2d 76 (6th Cir. 1981), *acq.*, 1980-2 C.B. 1; *Northwest Acceptance Corp. v. Comm’r*, 58 T.C. 836 (1972), *aff’d*, 500 F.2d 1222 (9th Cir. 1974); *Lockhart Leasing Co. v. Comm’r*, 54 T.C. 301 (1970), *aff’d*, 446 F.2d 269 (10th Cir. 1971); see also Staff of the Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1984 (1984) (“Where [a] purchase option was more than nominal but relatively small in comparison with fair market value, the lessor was viewed as having transferred full ownership because of the likelihood that the lessee would exercise the option.”).

⁸⁹ See I.R.S. Priv. Ltr. Rul. 8120024 (Feb. 17, 1981); I.R.S. Priv. Ltr. Rul. 8130087 (Apr. 29, 1981); *but cf.* I.R.S. Priv. Ltr. Rul. 8634005 (May 2, 1986); I.R.S. Priv. Ltr. Rul. 8347098 (Aug. 25, 1983); I.R.S. Priv. Ltr. Rul. 8210007 (Sept. 17, 1980) (where a fixed price is nominal or has no correlation with the anticipated fair market value of the property at the exercise date the transaction structured as a lease should be treated as a sale).

⁹⁰ I.R.S. Priv. Ltr. Rul. 8120024. Note that, although the net lease in the private letter ruling referred to a “customary practice in the construction equipment leasing industry,” net leases are, likewise, a customary practice in the real property leasing industry.

⁹¹ Rev. Proc. 2001-28, § 4.04.

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The Key Principals will own at least 1% of the Class 1 interests in the Trust. However, such ownership of at least 1% of the Class 1 interests is a requirement imposed by the Lender as a condition of the Loan, rather than the result of such owners' desire to maintain an investment in the Trust.⁹² This is an important distinction as it demonstrates these owners are not voluntarily purchasing an Interest. Furthermore, ExchangeRight has represented that if the Lender (or any successor thereto) at any point no longer requires such Interest to be held, then such owners will sell such Interest as soon as reasonably possible. Thus, although a small part of the cost of the Properties is being furnished by the ultimate owners of the Master Lessee, we believe such Interest, which was mandated by the Lender, is consistent with ordinary commercial practice and should not prevent the Master Lease from qualifying as a true lease for federal income tax purposes.

While a tenant may incur some obligations to construct Improvements under one or more subleases, this should not affect the characterization of the applicable lease for federal income tax purposes. In general, the Master Lessee is required to maintain the Properties but is not obligated to construct Improvements. We believe that any Improvements that in certain rare circumstances could be required to be constructed by the Master Lessee under the Master Lease are consistent with ordinary commercial practice and should not prevent the Master Lease from qualifying as a true lease for federal income tax purposes.⁹³

G. No Lessee Loans or Guarantees

No member of the Lessee Group may lend to the lessor any of the funds necessary to acquire the property, or guarantee any indebtedness created in connection with the acquisition of the property by the lessor.⁹⁴ A guarantee by any member of the Lessee Group of the lessee's obligation to pay rent, properly maintain the property, or pay insurance premiums or other similar conventional obligations of a net lease does not constitute a guarantee of the indebtedness of the lessor.⁹⁵

As discussed in detail above, the Key Principals (the owners of ExchangeRight, which wholly-owns the Sponsor, the Master Lessee and the Manager) have executed guaranties of certain non-

⁹² Section 7.3 of the Loan Agreement effectively requires the Sponsor and/or the Key Principals to collectively own at all times at least 1% of the Interests in the Trust.

⁹³ In addition, in its private ruling practice under Revenue Procedure 75-21 (the predecessor to Revenue Procedure 2001-28, which included a similar requirement), the IRS has generally concluded that the making of an improvement by a tenant not permitted under this guideline will not affect the true lease analysis. *See* I.R.S. Priv. Ltr. Rul. 8712025 (Dec. 18, 1986); *see also* G.C.M. 36,727 (May 13, 1976) ("We too have found no statutory or judicial law reclassifying a lease transaction as a purchase because of lessee improvements.").

⁹⁴ Rev. Proc. 2001-28, § 4.05.

⁹⁵ *Id.* at § 4.05.

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recourse carveouts and springing recourse liabilities with respect to the Loan. However, such guaranties are conditional and largely relate to acts within the control of the owners of ExchangeRight, and therefore should not constitute an impermissible guaranty of the Trust's indebtedness for these purposes. While the owners of ExchangeRight are potentially liable for environmental liabilities not directly under their control, such liability might also result under federal environmental laws regardless of the terms of the Loan.

Accordingly, this guaranty should also not be viewed as a guaranty of the Loan for true lease characterization purposes. Thus, our view is that there are no loans or guarantees in the Transaction Documents that violate this requirement for purposes of lease characterization.

H. Profit Requirement

The lessor must expect to receive a profit from the transaction, apart from the value of or benefits obtained from the tax deductions, allowances, credits and other tax attributes arising from such transaction. Under the Revenue Procedure 2001-28 guidelines, this requirement is met if: (a) the aggregate amount required to be paid by the lessee to or for the lessor over the lease term plus the value of the residual investment exceed an amount equal to the sum of the aggregate disbursements required to be paid by or for the lessor in connection with the ownership of the property and the lessor's Equity Investment in the property, including any direct costs to finance the Equity Investment; and (b) the aggregate amount required to be paid to or for the lessor over the lease term exceeds by a reasonable amount the aggregate disbursements required to be paid by or for the lessor in connection with the ownership of the property.⁹⁶ Similarly, the return of a profit to the lessor is arguably indicative of a true upside, sufficient to satisfy the sham transaction and benefits and burdens framework established by the case law. ExchangeRight, the Trust and the Manager have represented that this requirement is expected to be satisfied.

In light of the above analysis of the relevant factors, the Master Lease should satisfy the pertinent material conditions set forth in Revenue Procedure 2001-28 that we believe are necessary for characterization as a true lease. Likewise, under the framework established in the case law, the Master Lease bears the hallmarks of a bona fide lease. Accordingly, we believe that the Master Lease should be treated as a true lease rather than a financing for federal income tax purposes.

VII. The Master Lease should be treated as a true lease and not a deemed partnership for federal income tax purposes

It also is necessary to consider whether the Master Lease could be recharacterized as a partnership for federal income tax purposes because if the Trust or the Owners are treated as partners with the

⁹⁶ *Id.* at § 4.06.

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Master Lessee with respect to the ownership of the Properties, the Owners would not be treated as directly holding interests in the Properties for income tax purposes. Case law provides that certain factors are indicative that a purported lease may in fact be a partnership for federal income tax purposes.⁹⁷

A. Applicable Standards

The courts have focused on the following factors when analyzing this issue:

1. Intent

In *Commissioner v. Culbertson*,⁹⁸ the Supreme Court stated that a transaction will be treated as a partnership rather than a lease “if the agreements and the conduct of the parties . . . plainly show the existence of such [a partnership] relationship, and the intent to enter into it”. The “intent” test set forth in *Culbertson* therefore is applicable in determining whether an agreement is treated as a partnership or as a lease. Further, the Master Lease affirmatively recites that (i) the Trust shall be treated as the true owner of the Properties, (ii) the parties intend the Master Lease be characterized as a “true lease” for federal income tax purposes, (iii) the parties agree that the Master Lease does not represent a partnership for federal income tax purposes, and (iv) the parties shall file all tax returns in a manner consistent with the foregoing.⁹⁹

2. Joint Contribution of Capital or Services

Where persons combine their capital and services together in an enterprise such that they are required to deal with each other to realize the economic benefits from the property, the arrangement generally will be characterized as a partnership.¹⁰⁰ The Trust and the Master Lessee do not intend to pool either their capital or services. The Trust will make the Properties available to the Master

⁹⁷ See *Haley v. Comm’r*, 203 F.2d 815 (5th Cir. 1953), *rev’g and rem’g* 16 T.C. 1509 (1951); *Bussing v. Comm’r*, 88 T.C. 449 (1987) (“A partnership for federal income tax purposes is formed when the parties to a venture join together capital or services with the intent of conducting a business or enterprise and of sharing the profits and/or losses of the venture”). In *Bussing*, the parties entered into a multiparty sale lease-back transaction intended to qualify under *Frank Lyon*. Rent payments generally offset amounts due under the debt incurred to purchase the asset, giving the purchaser-lessee an interest in the rent. Because of a remarketing agreement that enabled the seller-lessee to share along with the purchaser lessor in the residual value of the leased property. The purchaser-lessee took the property subject to already existing debt and therefore bore a risk of loss if this debt was not repaid.

⁹⁸ 337 U.S. 733 (1949).

⁹⁹ See Master Lease § 19.24.

¹⁰⁰ *Bussing*, 88 T.C. 449; *Alhouse v. Comm’r*, T.C. Memo. 1991-652 (1991), *aff’d sub nom., Bergdorf v. Commissioner*, 12 F.3d 166 (9th Cir. 1993).

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Lessee and will not participate in, or provide services to, the Master Lessee's business (except to the extent necessary to protect its investment in the Properties). Similarly, the Master Lessee will not provide capital to enable the Trust to acquire or improve the Properties and will not provide services to the Trust (except to the extent necessary to comply with its obligations under the Master Lease).

3. Joint Capital and Ownership of Capital and Earnings

Another factor is whether the participants will have joint control over the capital and earnings of the venture.¹⁰¹ The Master Lessee will have control over cash from the Properties. However, the Master Lessee should not be deemed to have an ownership interest in the funds to which the Trust is entitled and it does not have the power to spend such funds except pursuant to the specific terms provided under the Master Lease. The Trust and the Master Lessee will each earn a separate profit. The Master Lessee will recognize income or loss based on the difference between the rent it receives on its subleases and the expenses of leasing and operating the Properties. The Trust will receive rent from the Master Lessee, including a fixed base rent payment payable on a monthly basis, and additional rent and other sums under the terms of the Master Lease.¹⁰² The Master Lease does not provide for any rental payments based on net operating income or net cash flow from the operation of the Properties. Thus, none of these parties will jointly share in profits or losses; rather, each will bear its own separate risk that a profit will be realized.

¹⁰¹ I.R.C. § 704(e)(1).

¹⁰² See Master Lease at Articles 4 and 5.

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4. Sharing of Profits as Co-proprietors

Partners generally share profits as co-proprietors. A sharing of profits, however, is not alone sufficient to make partners or joint venturers out of participants in a business enterprise if the requisite element of co-ownership is not established.¹⁰³ A profit share in a lease can be received by a lessor as rent without the lessor becoming a partner in the enterprise, even if a component of the rent includes a “bonus” element that is based on gross revenues received by the lessee. A share of net receipts, as opposed to gross receipts, is stronger evidence that a partnership relationship exists, but without more, should not cause a lease to be recharacterized as a partnership. Under the Master Lease, the Master Lessee receives rent from the sublease of the Properties whereas the Trust receives rent from the Master Lessee. Under the Treasury Regulations, the sharing of gross rents, without more, is very unlikely to create a partnership arrangement.¹⁰⁴ As noted above, the Master Lease does not provide for any rental payments based on net operating income or net cash flow from the operation of the Properties or any other similar sharing relationships or arrangements beyond the sharing of gross rents from the Properties.

¹⁰³ See Treas. Reg. § 301.7701-1(a)(2) (if an individual owner of farm property leases it to a farmer for a cash rental or a share of the crops, they do not necessarily create a separate entity for federal tax purposes); *Grandview Mines v. Comm’r*, 282 F.2d 700 (9th Cir. 1960), *aff’d* 32 T.C. 759 (1959) (46.5% of lessee’s net profits from leased property; not recharacterized as partnership); *Freesen v. Comm’r*, 84 T.C. 920 (1985) (“The fact that the consideration paid for the use of property is a function of net profits, does not require a finding that a joint venture exists”), *rev’d on other grounds*, 798 F.2d 195 (7th Cir. 1986); see also *U.S. v. Myra Foundation*, 382 F.2d 107 (8th Cir. 1967) (sharecropping arrangement not partnership even though landowner furnished seed, paid half of certain expenses, and participated in farming operations through a farm manager); *White’s Iowa Manual Labor Inst. v. Comm’r*, T.C. Memo 1993-364 (same result); *Harlan E. Moore Charitable Trust v. U.S.*, 9 F.3d 623 (7th Cir. 1993) (same result); *Oblinger Trust v. Comm’r*, 100 T.C. 114 (1993); cf. *State National Bank of El Paso v. U.S.*, 509 F.2d 832 (5th Cir. 1975) (holding characterization as lease or partnership was a question for the jury and distinguishing *Myra Foundation*); Rev. Rul. 57-7, 1957-1 C.B. 435 (arrangements in which coin-operated entertainments were placed on premises and under which the owner of the premises received a percentage of the gross receipts were leases); *Manchester Music Co., Inc. v. U.S.*, 733 F. Supp. 473 (D.N.H. 1990) (reaching opposite conclusion from Rev. Rul. 57-7); *In re Acme Music Co., Inc.*, 196 B.R. 925 (W.D. Pa. 1996) (no partnership between owner of premises of operator of coin-operated entertainments where owner and operator shared only gross profits, not net profits); Rev. Rul. 92-49, 1992-1 C.B. 433 (allowing taxpayers to elect how to report arrangements described in Rev. Rul. 57-7); see also *Duley v. Comm’r*, T.C. Memo. 1981-246 (1981) (no partnership even though profit sharing because no intent to form partnership, no sharing of losses and no material interest in capital); *Koss v. Comm’r*, T.C. Memo. 1989-330 (1989), *aff’d*, 908 F.2d 962 (3d Cir. 1990) (no partnership when joint sharing of profits because no obligation to contribute capital or share losses and no proprietary interest in profits); I.R.S. Priv. Ltr. Rul. 8003027 (Oct. 23, 1979); G.C.M. 36,113 (Dec. 19, 1974); Rev. Rul. 75-43, 1975-1 C.B. 383.

¹⁰⁴ Treas. Reg. § 1.761-1(a); Treas. Reg. §301.7701-1(a)(2).

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5. Sharing of Losses

Although the sharing of losses is not required to obtain partner status, this has often been a significant factor in cases distinguishing leases from partnerships. A mere profit-sharing agreement would not be taxed as a partnership absent an intent to form a partnership, especially when there was no agreement to share losses. In this case, the Master Lessee will not share in losses generated from an ownership interest in the Properties. Further, in the case of the Master Lease, the Trust will lease the Properties to the Master Lessee, and will not share in losses, if any, sustained by the Master Lessee with respect to operating and subletting of the Properties.

6. Control Over the Business

An arrangement whereby two or more persons share the profits of a common undertaking does not constitute a joint venture in the absence of the power to control.¹⁰⁵ Typically, a lessor does not jointly manage the leased property with the lessee. The right of a lessor to participate in the management of the property, therefore, is an important factor distinguishing leases from partnerships.¹⁰⁶ Under the terms of the Master Lease, the Trust will have limited rights to participate in the management of the Properties. The Master Lessee will have the right to manage the day-to-day operation of the Properties. While any decision to sell the Properties will be made by the Manager on behalf of the Trust, this right is typical for a lessor to possess as the owner of the Properties and, therefore, does not support partnership characterization.

7. Parties' Agreement and Conduct in Executing its Terms

As stated above, the Master Lease specifically states that the parties do not intend to create a partnership or a financing arrangement. Further, we believe the terms of the Master Lease are not indicative of a partnership, joint venture, financing arrangement, or management arrangement. Accordingly, the terms of the Master Lease and, to our knowledge, the parties' conduct in executing its terms should not be indicative of a partnership for federal income tax purposes.

8. Maintenance of Separate Books

The Master Lessee will not keep books or records on behalf of the Trust; instead, such tasks will be performed by the Manager on behalf of the Trust.

¹⁰⁵ *Joe Balestrieri and Co. v. Comm'r*, 177 F.2d 867 (9th Cir. 1949); *O'Conner v. Comm'r*, T.C. Memo. 1960-70 (1960) (broker split profits but compensated for losses).

¹⁰⁶ See, e.g., *Grandview Mines v. Comm'r*, 282 F.2d 700 (9th Cir. 1960); *Haley*, 203 F.2d 815.

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9. Filing of Tax Returns or Other Partnership Action

Section 19.24 of the Master Lease provides that the Master Lease shall not be treated as a partnership and that the parties to the Master Lease shall file all tax returns in a manner consistent with the foregoing. Accordingly, the filing of partnership tax returns would be wholly inconsistent with the totality of the terms of the Master Lease.

10. Lessee Shares in Residual Proceeds

Although a number of cases have upheld transactions as leases even though the lessee was engaged to provide the lessor with remarketing services in exchange for a share of the sales proceeds,¹⁰⁷ this factor is not present here. In addition, any compensation of the Manager, if any, upon a sale of the Properties is a matter of contract between the Trust and the Manager and should not give rise to a partnership between the Master Lessee and the Trust for federal income tax purposes.

B. Conclusion

Based on these factors, the arrangement between and among the Trust and the Master Lessee should not give rise to a deemed partnership for federal income tax purposes.

VIII. The discussions of the federal income tax consequences contained in the Memorandum are correct in all material respects

We have reviewed the discussions of federal income tax consequences contained in the Memorandum and we believe that they are correct in all material respects. Our opinion, however, does not address whether an exchange entered into by an Owner satisfies all of the requirements of Code Section 1031.

IX. Certain judicially created doctrines should not apply to change the foregoing conclusions

There are four judicially created doctrines that may conceivably apply to the Trust's contractual arrangements and the Transaction Documents, including the economic substance, sham transaction, substance-over-form, and step transaction doctrines. For reasons discussed more fully below, none of the foregoing doctrines should apply to recharacterize the contractual arrangements or transactions in the instant case.

¹⁰⁷ See, e.g., *Levy*, 91 T.C. 838; *Casebeer*, 909 F.2d 1360.

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A. Economic Substance and Business Purposes

1. Applicable Rules

Taxpayers generally are free to structure their business transactions as they please, even if motivated by tax avoidance considerations.¹⁰⁸ While a transaction with no purpose other than to reduce taxes will not be recognized for U.S. federal income tax purposes, a transaction that has a meaningful business purpose and economic substance should be respected, regardless of whether the taxpayer also intended to reduce taxes.¹⁰⁹ In *Frank Lyon Co. v. United States*,¹¹⁰ the Supreme Court stated:

Where . . . there is a genuine multiple-party transaction with economic substance which is compelled or encouraged by business or regulatory realities, is imbued with tax independent considerations, and is not shaped solely by tax-avoidance features that have meaningless labels attached, the Government should honor the allocation of rights and duties effectuated by the parties.¹¹¹

¹⁰⁸ See *Gregory v. Helvering*, 293 U.S. 465 (1935); *Rice's Toyota World*, 81 T.C. 184.

¹⁰⁹ *Gregory*, 293 U.S. at 469; see also *Superior Oil Co. v. Mississippi*, 280 U.S. 390, 395-96 (1930) (“The only purpose of the [taxpayer] was to escape taxation. . . The fact that it desired to evade the law, as it is called, is immaterial, because the very meaning of a line in the law is that you intentionally may go as close to it as you can if you do not pass it”); *Knetsch v. United States*, 364 U.S. 361, 365 (1960) (citing *Gregory* regarding the legal right of a taxpayer to decrease or altogether avoid taxes); *ACM Partnership v. Comm’r*, 157 F.3d 231, 248 n.31 (3d Cir. 1998) (“[I]t is also well established that where a transaction objectively affects the taxpayer’s net economic position, legal relations, or non-tax business interests, it will not be disregarded merely because it was motivated by tax considerations. In analyzing both the objective and subjective aspects of ACM’s transaction in this case where the objective attributes of an economically substantive transaction were lacking, we do not intend to suggest that a transaction which has actual, objective effects on a taxpayer’s non-tax affairs must be disregarded merely because it was motivated by tax considerations.”), *aff’g in part, rev’g in part* T.C. Memo. 1997-115 (1997); *Yosha v. Comm’r*, 861 F.2d 494, 499 (7th Cir. 1988) (a transaction has economic substance when “... it is the kind of transaction that some people enter into without a tax motive, even though the people fighting to defend the tax advantages of the transaction might not or would not have undertaken it but for the prospect of such advantages - may indeed have had no other interest in the transaction.”).

¹¹⁰ 435 U.S. 561 (1978).

¹¹¹ *Id.* at 583-84. See also *Cottage Savings Ass’n v. Comm’r*, 499 U.S. 554 (1991) (a savings and loan association that swapped mortgage portfolios in order to recognize a tax loss was allowed such loss; the Supreme Court focused not on the tax-motivated purpose, but on whether the portfolios were materially different by tax as opposed to economic standards).

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As a result of *Frank Lyon*, a two-pronged test was developed to determine whether the form of a transaction should be respected or disregarded as a sham. In *Rice's Toyota World, Inc.*,¹¹² the Fourth Circuit articulated this test by stating that “[t]o treat a transaction as a sham, the court must find that the taxpayer was motivated by no business purposes other than obtaining tax benefits in entering the transaction, and that the transaction has no economic substance because no reasonable possibility of a profit exists.”¹¹³ This test therefore analyzes both the objective and subjective aspects of a transaction, i.e., the economic substance and the subjective business motivation behind the transaction, respectively. These objective and subjective aspects are not “discrete prongs of a ‘rigid two-step analysis,’ but rather are related factors in the analysis of whether a transaction has sufficient substance, apart from its tax consequences, to be respected.”¹¹⁴

With respect to determining profit potential, the courts have not traditionally established a threshold amount of profit to determine whether a transaction should be respected for U.S. Federal income tax purposes. The Tax Court has in some cases required more than a de minimis amount of profit, especially where transactions involving financial instruments are concerned.¹¹⁵ Other courts, however, have been reluctant to propose a threshold amount.¹¹⁶

¹¹² *Rice's Toyota World*, 752 F.2d 89.

¹¹³ *Rice's Toyota World*, 752 F.2d at 91; see also *Horn v. Comm'r*, 968 F.2d 1229, 1237 (D.C. Cir. 1992) (before declaring a transaction an economic sham, the court should consider whether the transaction presented a reasonable prospect for economic gain).

¹¹⁴ *Rice's Toyota World*, 75 F.2d at 92; see also *Jacobson v. Comm'r*, 915 F.2d 832, 837 (2d Cir. 1990) (the determination of economic substance looks to whether the transaction has any “practical economic effects other than the creation of income tax losses”); *Weller v. Comm'r*, 270 F.2d 294, 297 (3d Cir. 1959) (transactions that do not change the flow of economic benefits are disregarded if they do not change the taxpayer’s financial position); *Northern Ind. Pub. Serv. Co. v. Comm'r*, 115 F.3d 506 (7th Cir. 1997), *aff'g* 105 T.C. 341 (1995) (the IRS could not set aside transactions which resulted “in actual, non-tax related changes in economic position.”); *Larsen*, 89 T.C. 1229; *but cf. Kirchman v. Comm'r*, 862 F.2d 1486 (11th Cir. 1989) (existence of a nontax business purpose does not mandate the recognition of a transaction that otherwise lacks economic substance); *Goldstein v. Comm'r*, 364 F.2d 734 (2d Cir. 1966) (the court denied the taxpayer a prepaid interest deduction on debt incurred by the taxpayer solely to generate a deduction because the taxpayer could not reasonably have had any purpose in entering the transactions other than to reduce taxes).

¹¹⁵ See *Hilton v. Comm'r*, 74 T.C. 305, 353 (1980); *aff'd per curiam*, 671 F.2d 316 (9th Cir. 1982) (a 6% rate of return was required for purposes of the economic substance determination); *Krumhorn v. Comm'r*, 103 T.C. 29 (1994).

¹¹⁶ See *Estate of Thomas v. Comm'r*, 84 T.C. 412, 440 n. 52 (1985) (the court abstained, absent legislative guidance, from proposing a particular return for purposes of the determination of profit potential).

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In *United Parcel Service of America, Inc. v. Commissioner*,¹¹⁷ the Eleventh Circuit reversed the Tax Court¹¹⁸ on the issue of economic substance in finding that the restructuring by United Parcel Service (“UPS”) of its excess-value business had both real economic effects and a business purpose. The Court reasoned that setting up a transaction (that otherwise has economic substance) with tax planning in mind is permissible as long as it figures in a bona fide, profit-seeking business purpose. In its finding that UPS’ transaction had a valid business purpose, the Court noted that “a “business purpose” does not mean a reason for a transaction that is free of tax considerations. Rather, a transaction has a “business purpose ... as long as it figures in a bona fide, profit-seeking business.”¹¹⁹

The economic substance doctrine was developed under an extensive body of case law prior to being codified as Code Section 7701(o) as part of the Reconciliation Act of 2010.¹²⁰ Code Section 7701(o)(5)(C) provides that “[t]he determination of whether the economic substance doctrine is relevant to a transaction shall be made in the same manner as if this subsection had never been enacted.”¹²¹ For example, the Joint Committee Report specifically provides that “[l]easing transactions, like all other types of transactions, will continue to be analyzed in light of all the facts and circumstances.”¹²² This suggests that the economic substance doctrine as codified will be applied as it historically has been applied under the case law. However, taxpayers should anticipate that the courts and the IRS could apply the specific language of the statute.

If the economic substance doctrine applies, Code Section 7701(o) codifies the position, already taken by many courts, that the economic substance doctrine entails application of a conjunctive test.¹²³ Specifically, Code Section 7701(o)(1) provides that a transaction (or series of transactions) to which the economic substance doctrine applies is treated as having economic substance only if:

¹¹⁷ 254 F.3d 1014 (11th Cir. 2001), *rev’g* T.C. Memo. 1999-268 (1999).

¹¹⁸ 78 T.C.M. (CCH) 262 (1999).

¹¹⁹ *United Parcel Service of America, Inc.*, 254 F.3d at 1019.

¹²⁰ As codified, the Economic Substance Doctrine is the “common law doctrine under which tax benefits under subtitle A with respect to a transaction are not allowable if the transaction does not have economic *substance* or lacks a business purpose.” I.R.C. § 7701(o)(5)(A).

¹²¹ *See also* Joint Committee on Taxation, Technical Explanation of the Revenue Provisions of the “Reconciliation Act of 2010,” as amended, in combination with the “Patient Protection and Affordable Care Act” (JCX-18-10) (*Mar.* 21, 2010) [hereinafter Joint Committee Report], at 152 (“[T]he provision does not change present law standards in determining when to utilize the economic substance analysis.”).

¹²² *Id.*

¹²³ *See, e.g., Klamath Strategic Investment Fund v. United States*, 568 F.3d 537 (5th Cir. 2009); *Coltec v. United States*, 454 F.3d 1340 (Fed. Cir. 2006); *United Parcel Service of America, Inc.*, 254 F.3d 1014 (11th Cir. 2001).

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(1) it changes in a meaningful way (apart from any U.S. federal income tax effects) the taxpayer's economic position; and (2) the taxpayer has a substantial purpose (apart from U.S. federal income tax effects) for entering into such transaction. Before enacting Code Section 7701(o), some circuit courts of appeal would only require a change in economic circumstances or a business purpose. By enacting Code Section 7701(o), Congress eliminated any distinction between the different federal circuit courts of appeal as to whether the foregoing test should be applied conjunctively or disjunctively.

Although Congress eliminated the ambiguity around “how” the economic substance doctrine should be applied, it did not make it clear as to “when” the doctrine should be applied. By its terms, Code Section 7701(o) provides that the economic substance doctrine applies only to a “transaction to which the economic substance doctrine is relevant.”¹²⁴ Thus, the Code requires taxpayers and the IRS to look to common law precedent on the economic substance doctrine to determine whether the statutory economic substance doctrine applies at all.¹²⁵

The legislative history to Code Section 7701(o) provides limited guidance as to whether the economic substance doctrine applies in the first instance. Specifically, the House Report states that it does not intend for the provision to alter the tax treatment of “certain basic business transactions that, under longstanding judicial and administrative practice are respected, merely because the choice between meaningful economic alternatives is largely or entirely based on comparative tax advantages.”¹²⁶ The House Report goes on to note that, “as under present law, whether a particular transaction meets the requirements for specific treatment under any of these provisions is a question of facts and circumstances.”¹²⁷

In addition, the Large Business and International Division of the IRS issued guidance to assist examiners and their managers with determining whether it is appropriate to raise the economic substance doctrine with respect to a transaction under review (the “**LB&I Directive**”).¹²⁸ The LB&I Directive lists factors tending to show that it likely would be inappropriate to apply the economic substance doctrine, such as if (i) the transaction was not highly structured, (ii) the

¹²⁴ I.R.C. § 7701(o)(1) (emphasis added).

¹²⁵ H.R. Rep. No. 111-443 at 297 (March 17, 2010) (the “**House Report**”); *see also* Technical Explanation of the Revenue Provisions of the “Reconciliation Act of 2010,” as amended, in combination with the “Patient Protection and Affordable Care Act,” JCX-18-10 at 154 (March 21, 2010).

¹²⁶ H.R. Rep. 111-443 at 296.

¹²⁷ *Id.*

¹²⁸ LB&I Directive, Guidance for Examiners and Managers on the Codified Economic Substance Doctrine and Related Penalties, Control No: LB&I-4-0711-015 (July 15, 2011).

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transaction was based on arms' length terms negotiated by unrelated third parties, (iii) the transaction did not involve unnecessary steps, (iv) the transaction was not promoted by a tax department or outside counsel, or (v) the transaction generates targeted tax incentives that are, in form and substance, consistent with Congressional intent in providing the incentives.¹²⁹

2. Analysis

The Trust's contractual arrangements should be recognized for federal income tax purposes according to their form. The contractual arrangements and transactions at issue should be viewed as having economic substance because they are being undertaken so as to enable acquisition and ownership of a portion of each of the Properties by the Owners. An acquisition of real estate certainly changes in a meaningful, economic way (apart from any U.S. federal income tax effects) each of the Owners' respective economic positions. Because each Owner will be given an opportunity to own an interest in each of the Properties in a manner that such Owner would likely not otherwise be able to do on its own accord due to its respective individual financial limitations, the contractual arrangements and the transactions at issue have a substantial business purpose (i.e., a substantial purpose apart from U.S. federal income tax effects). In addition, each Owner will have a right to its pro rata share of all income and loss generated by the bona fide, profit-seeking business of leasing and operating the Properties. The allocation of all economic benefits and burdens associated with the Properties will correspond to the respective Interest owned by each Owner. Because the Trust's contractual arrangements have a meaningful business purpose and economic substance under both the statutory and case law analyses, the contractual arrangements should be respected.

B. Sham Transaction Doctrine

1. Applicable Rules

Under the sham transaction doctrine, a transaction may be disregarded if it constitutes a factual sham or an economic sham. A factual sham is a purported transaction that is not executed as a factual matter.¹³⁰ In contrast, an economic sham is a transaction that has occurred, but is devoid of economic substance.¹³¹

¹²⁹ *Id.*

¹³⁰ *Brown v. Comm'r*, 85 T.C. 968, 1000 (1985), *aff'd sub nom., Sochin v. Comm'r*, 843 F.2d 351 (9th Cir. 1988).

¹³¹ *Gregory v. Helvering*, 293 U.S. 465; *Knetsch*, 364 U.S. at 366 ("There may well be single-premium annuity payments with non-tax substance which create an 'indebtedness' for the purposes of Section 23(b) of the 1939 Code and Section 163(a) of the 1954 Code. But this one is a sham."); *Goldstein*, 364 F.2d at 742 ("[T]ransactions that lack all substance, utility, purpose, and which can only be explained on the ground the taxpayer sought an interest deduction

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In general, the economic sham doctrine will not be applied if the taxpayer can prove that there is either a business purpose for, or economic substance to, the given transaction.¹³²

The application of the sham transaction doctrine is extremely fact specific, and has led courts to render somewhat inconsistent rulings in this area. For example, the Third Circuit in *ACM Partnership v. Commissioner* disregarded the capital loss that arose from a complex, multi-step partnership transaction.¹³³ The court ultimately concluded that the steps involved in the transaction lacked a non-tax economic effect and did not possess a significant non-tax business purpose.¹³⁴ The Third Circuit nevertheless recognized that “it is well established that where a transaction objectively affects the taxpayer’s net economic position, legal relations, or non-tax business interests, [a transaction] would not be disregarded merely because it was motivated by tax considerations.”¹³⁵ The transaction at issue in *Boca Investorings Partnership v. United States*¹³⁶ was similar to the ACM transaction, but the District Court for the District of Columbia respected the partnership transactions at issue in that case. The *Boca* court concluded that the partnership had been formed as a valid investment partnership. It had the potential to make a profit or loss from its activities, and the partners were not sheltered from economic risk or guaranteed a specific return on their respective partnership investments.

The Fifth and Eighth Circuits have held that certain foreign tax credit planning strategies implemented to achieve tax benefits must be recognized under the sham transaction doctrine because the transactions were sufficiently imbued with both economic substance and business purpose. The Fifth Circuit in *Compaq Computer Corporation v. Commissioner*¹³⁷ reversed a decision of the Tax Court, and held that a purchase and immediate resale of American depository receipts (“*ADRs*”) of a foreign publicly traded corporation possessed economic substance.

in order to reduce his taxes, will also be so transparently arranged that they can candidly be labeled ‘shams.’”); *Alessandra v. Comm’r*, T.C. Memo. 1995-238 (1995), *aff’d*, 79 A.F.T.R.2d (RIA) 97-2145 (9th Cir. 1997).

¹³² *Rice’s Toyota World*, 81 T.C. at 203 (“Our analysis does not end here. Mr. Rice’s failure to focus on the business or non-tax aspects of the transaction is not necessarily fatal to petitioner’s claim. If an objective analysis of the investment indicates a realistic opportunity for economic profit which would justify the form of the transaction, it will not be classified as a sham.”). *See also Frank Lyon Co.*, 435 U.S. 561 (1978).

¹³³ 157 F.3d 231, 263 (3d Cir. 1998).

¹³⁴ *Id* at 247.

¹³⁵ *Id* at 248, fn. 31.

¹³⁶ 314 F.3d 625 (DC Cir. 2003).

¹³⁷ 277 F.3d 778 (5th Cir. 2001), *rev’g* 113 T.C. 214 (1999).

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Specifically, the court concluded that the transaction had objective economic substance because tax was Compaq's principal, but not sole, purpose in entering into the transaction.¹³⁸ As a result, Compaq could credit the foreign taxes associated with the dividend.¹³⁹ The Eighth Circuit came to a similar conclusion in *IES Industries, Inc. v. United States*,¹⁴⁰ which reversed a district court decision that a purchase and sale of ADRs were sham transactions.

2. Analysis

The sham transaction doctrine should also not apply to the contractual arrangements and transactions at issue because all of the necessary component steps for their implementation will actually occur. Moreover, the economic sham concept should not apply because the parties have a substantial business purpose in undertaking the investment in the Interests, and, as discussed above, the transactions will have economic substance. Thus, the sham transaction doctrine should not be applied to recharacterize the contractual arrangements and transactions at issue.

C. The Substance-Over-Form and Step Transaction Doctrines

1. Applicable Rules

It is an oft-cited principle that taxpayers generally are free to structure their business transactions as they please, even if motivated in part by a desire to reduce taxes.¹⁴¹ However, as a general rule, the incidence of taxation depends on the substance rather than the form of a transaction. Under the substance-over-form doctrine, a court should respect the form of a transaction where it accurately reflects the underlying substance.” If, however, the substance and form of a transaction do not comport, then the substance of the transaction controls for purposes of U.S. federal tax law.”¹⁴²

In determining whether the form of a transaction reflects the substance of the transaction, a taxpayer's motivations are “largely irrelevant — what instead is important is, in the words of

¹³⁸ *Id.* at 786-87.

¹³⁹ *Id.* at 788.

¹⁴⁰ 253 F.3d 350 (8th Cir. 2001), rehearing denied sub nom., *Alliant Energy Corp. v. United States*, 2001 U.S. App. LEXIS 24929 (8th Cir. 2001) (the facts of *Compaq Computer* and of *IES Industries* are in large part identical because the strategy upon which the transactions were based was developed and marketed by the same securities broker).

¹⁴¹ *Gregory v. Helvering*, 293 U.S. at 499.

¹⁴² *AWG Leasing Trust v. U.S.*, 592 F. Supp. 2d 953 (N.D. Ohio 2008).

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Gregory, “what was done.”¹⁴³ “To determine the substance of the transactions, we consider all of their aspects that shed any light upon their true character.”¹⁴⁴

Courts may recharacterize transactions using the substance-over-form doctrine in cases where mere formalities were designed to make a transaction appear to be other than what it was.¹⁴⁵ For example, in *Court Holding*, a corporation entered into an oral agreement to sell its sole asset; however, before the sale was consummated, the corporation’s tax attorney advised that the sale would result in the imposition of a large income tax on the corporation. To avoid this tax liability, and upon advice of its tax attorney, the corporation changed the transaction by having the corporation declare a liquidating dividend to its shareholders, and having the shareholders enter into a written agreement with the same purchaser on substantially the same terms and conditions previously agreed upon by the corporation. The Supreme Court affirmed the Tax Court’s holding that the sale by the shareholders was in substance a sale by the corporation.

The application of any substance-over-form doctrine is extremely fact specific, which has led courts to render somewhat inconsistent rulings in this area.¹⁴⁶ There are a number of cases in this area that are difficult to reconcile. Nevertheless, as enunciated by Judge Learned Hand in *Gregory v. Helvering*: “Any one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one’s taxes.”¹⁴⁷

A subset or derivation of the substance-over-form doctrine is the step transaction doctrine. Courts have applied three separate versions of the so-called “step transaction” doctrine to determine whether purportedly separate steps should be combined as components of a single transaction: (i) the “end result” test, (ii) the “mutual interdependence” test, and (iii) the “binding commitment” test.¹⁴⁸ Nevertheless, the IRS cannot use the step transaction doctrine to invent steps that did not occur or recast a transaction into another transaction with the same number of steps.¹⁴⁹

¹⁴³ *Principal Life Ins. Co. & Subs. v. U.S.*, 70 Fed. Cl. 144 (2006).

¹⁴⁴ *Comme’ns Satellite Corp. v. U.S.*, 223 Ct. Cl. 253, 625 F.2d 997 (1980).

¹⁴⁵ *Comm’r v. Court Holding Co.*, 324 U.S. 331 (1945).

¹⁴⁶ See, e.g., *ACM Partnership*, 157 F.3d at 263; *Boca Investorings Partnership*, 167 F. Supp. 2d 298 .

¹⁴⁷ 69 F.2d 809, 810 (2d Cir. 1934) *aff’d*, 293 U.S. 465 (1935).

¹⁴⁸ Stephen S. Bowen, *The End Result Test*, 72 TAXES 722 (December 1994).

¹⁴⁹ *Esmark, Inc. and Affiliated Companies v. Comm’r*, 90 T.C. 171, 196 (1988) (“Respondent proposes to recharacterize the tender offer/redemption as a sale of the Vickers shares followed by a self-tender. This

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The Tax Court applied both the end result and mutual interdependence tests in *Andantech v. Commissioner*, in which a U.S. partnership was formed with two non-U.S. partners to cause the foreign partners to recognize a significant portion of the income attributable to a sale leaseback transaction that the partnership entered into with Comdisco.¹⁵⁰ Almost all of the partnership interests were then contributed to a U.S. indirect subsidiary of a U.S. bank, so that the bank could enjoy the benefits of the losses (attributable to interest and depreciation) generated by the partnership's lease arrangement with Comdisco.¹⁵¹ The Tax Court, applying both the end result and mutual interdependence tests, concluded that a more direct characterization of the transaction was a direct sale-leaseback arrangement between Comdisco and bank's subsidiary.¹⁵² The court analyzed a number of facts in reaching this conclusion, but the salient fact was that all of the parties intended the ultimate result (i.e., that bank's subsidiary would participate in the lease) and the intermediate steps were meaningless apart from tax considerations.

The Second Circuit rejected a somewhat similar argument by the IRS in *Grove v. Commissioner*.¹⁵³ The IRS in *Grove* attempted to reorder a donation of stock followed by a redemption as a redemption of the stock followed by a gift of cash. The Tax Court refused to permit the IRS to recast the transaction, reasoning that there was no reason to recast the form of the transaction chosen by the taxpayer, even though the form was tax-motivated.¹⁵⁴ The only effect of the IRS's recast would be to create a tax liability, in a transaction form that was no more direct than the form chosen by the taxpayer. Thus, the mere fact that a taxpayer considers the U.S. federal income tax effects of a transaction in its planning should not transform a non-taxable event into a taxable event.

characterization does not simply combine steps; it invents new ones. Courts have refused to apply step-transaction in this manner."), *aff'd without published opinion*, 886 F.2d 1318 (7th Cir. 1989).

¹⁵⁰ T.C. Memo. 2002-97 (2002), *aff'd in part and remanded in part*, 331 F.3d 972 (DC Cir. 2003).

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ 490 F.2d 241 (2d Cir. 1973).

¹⁵⁴ *Id.* at 247 ("We are not so naive as to believe that tax considerations played no role in *Grove*'s planning. But, foresight and planning do not transform a non-taxable event into one that is taxable. Were we to adopt the Commissioner's view, we would be required to recast two actual transactions - a gift by *Grove* to RPI and a redemption from RPI by the Corporation - into two completely fictional transactions - a redemption from *Grove* by the Corporation and a gift by *Grove* to RPI. Based upon the facts as found by the Tax Court, we can discover no basis for elevating the Commissioner's 'form' over that employed by the taxpayer in good faith.").

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2. Analysis

The contractual arrangements and the transactions at issue should be respected according to their form because their form is consistent with their underlying substance, the acquisition by the Owners of an undivided fractional interest in each of the Properties, and there is a substantial business purpose for such form. Moreover, the allocation of all economic benefits and burdens associated with the Properties corresponds to the respective Interest in the Trust owned by each Owner such that the substance of the economic arrangement among the parties is consistent with the form.

The step transaction doctrine should not be applicable to recharacterize the contractual arrangements and the transactions at issue. The prospective purchasers of Class 1 interests constitute a separate, diverse and unrelated group desiring to acquire a portion of an interest in each of the Properties as offered by the Trust under a private placement of the Interests. The ultimate result of the contractual arrangements (i.e., collective ownership of the Properties by an unrelated group of investors) can only be achieved if the intermediate steps of (i) the Trust acquiring the Properties, and (ii) offering the Interests for sale to investors are first undertaken. Thus, the step transaction doctrine should not be applied to recharacterize the transaction steps utilized to implement the Offering of Interests in the Trust. Moreover, even if the IRS were to collapse these particular transaction steps together, the resulting transaction, a direct purchase of the Properties by the Owners, should not significantly change the resulting federal income tax effect of the Trust's contractual arrangements.

A number of issues discussed in this opinion have not been definitively resolved by statutes, regulations, rulings or judicial opinions. Accordingly, no assurances can be given that the conclusions expressed herein will be accepted by the IRS, or, if contested, would be sustained by a court, or that legislative changes or administrative pronouncements or court decisions may not be forthcoming that would significantly alter or modify the conclusions expressed herein. Each prospective Owner must consult its own tax counsel about the tax consequences of an investment in an Interest, including the tax consequences applicable to such prospective Investor under the TCJA.

This opinion is solely for your information and assistance with respect to the sale of Interests in the Properties. Each prospective Owner is encouraged to consult with his or her tax advisor in determining whether to purchase an Interest. Other than as set forth herein, this opinion may not be relied upon by any other person or for any other purposes, nor may it be quoted from or referred to or copies delivered to any other person without prior written consent. This opinion is not applicable as to any individual tax consequences of an Owner or the individual application of Code

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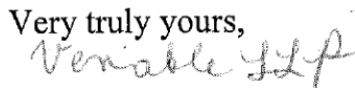
Section 1031 rules to such Owner. Our willingness to render the opinion set forth herein neither implies, nor should be viewed as implying, any approval or recommendation of an investment in the Properties.

In rendering our opinion, we have considered the applicable provisions of the Code, final, temporary and proposed regulations thereunder, pertinent judicial authorities, interpretive rulings and revenue procedures issued by the IRS and such other authorities as we have considered relevant as of the date of this opinion. It should be noted that statutes, regulations, judicial decisions and administrative interpretations are subject to change at any time and, in some cases, with retroactive effect. This opinion is not binding upon the IRS or courts of applicable jurisdiction, which may disagree with all or any portion of the opinion expressed herein. We undertake no obligation to update the opinion expressed herein after the date of this letter. Furthermore, our opinion is conditioned upon the accuracy and completeness of the representations set forth in the Representation Letter. This opinion does not address any other tax consequences of the acquisition of an Interest.

This opinion is written to support the promotion and marketing of the proposed transaction, and each prospective Owner should seek advice based on the Owner's particular circumstances from an independent tax advisor.

We are furnishing this opinion solely in connection with the sale of the Interests described herein. Accordingly, the Trust may only circulate this opinion in connection with the sale of the Interests to potential Owners. This opinion may be relied upon by Owners in connection with their purchase of Interests, but may not be relied upon, circulated, quoted or otherwise referred to by other persons in connection with any other transaction or arrangement.

Very truly yours,



Venable LLP

EXHIBIT G

PRO FORMA RENT AND CASH FLOWS FOR THE PROPERTIES

Exhibit G
Pro Forma Rent & Cash Flows

Year Ending	5/31/2024	5/31/2025	5/31/2026	5/31/2027	5/31/2028	5/31/2029	5/31/2030	5/31/2031	5/31/2032	5/31/2033
	1	2	3	4	5	6	7	8	9	10
Potential Base Rent	\$1,723,045	\$1,767,241	\$1,820,378	\$1,867,511	\$1,898,316	\$1,893,231	\$1,913,190	\$1,937,691	\$1,962,519	\$1,992,485
Absorption & Turnover Vacancy	(\$125,583)	(\$88,452)	(\$204,872)	(\$52,339)	(\$61,313)	(\$56,231)	(\$139,836)	(\$31,133)	(\$83,426)	(\$112,140)
Rent Abatement	(\$12,481)	(\$64,642)	(\$84,986)	(\$57,993)	(\$41,131)	(\$43,332)	(\$75,951)	(\$52,821)	(\$36,244)	(\$54,298)
Total Expense Recoveries	\$540,665	\$574,710	\$544,561	\$692,887	\$727,101	\$751,759	\$719,626	\$799,605	\$791,433	\$812,582
Total Vacancy & Credit Loss	(\$155,456)	(\$158,254)	(\$95,172)	(\$194,090)	(\$209,678)	(\$225,289)	(\$148,016)	(\$237,337)	(\$162,963)	(\$172,494)
Effective Gross Revenue	\$1,970,194	\$2,030,601	\$1,979,910	\$2,255,977	\$2,313,297	\$2,320,137	\$2,269,012	\$2,416,003	\$2,471,317	\$2,466,134
<i>Value-Add Portfolio 3 Economic Occupancy</i>	87.0%	86.7%	83.7%	88.1%	88.1%	87.7%	86.2%	88.3%	89.7%	87.9%
Total Operating Expenses	(\$738,256)	(\$757,063)	(\$775,312)	(\$807,237)	(\$831,042)	(\$853,469)	(\$874,244)	(\$903,627)	(\$930,050)	(\$954,780)
Net Operating Income	\$1,231,939	\$1,273,536	\$1,204,597	\$1,448,739	\$1,482,257	\$1,466,667	\$1,394,767	\$1,512,376	\$1,541,266	\$1,511,354
<i>Implied Cap Rate*</i>	7.85%	7.87%	6.95%	8.20%	8.36%	8.21%	7.61%	8.26%	8.42%	8.21%
<i>*(NOI) / (Investor Price - Ending Reserve Balance)</i>										
Annual Debt Service	(\$480,796)	(\$479,482)	(\$479,482)	(\$479,482)	(\$480,796)	(\$479,482)	(\$479,482)	(\$479,482)	(\$480,796)	(\$479,482)
Debt Service Coverage Ratio	2.56	2.66	2.51	3.02	3.08	3.06	2.91	3.15	3.21	3.15
CapEx Reserve Contributions	(\$35,000)	(\$40,000)	(\$5,000)	(\$120,000)	(\$120,000)	(\$150,000)	(\$75,000)	(\$120,000)	(\$125,000)	(\$75,000)
TI/LC Reserve Contributions	(\$50,000)	(\$55,000)	(\$10,000)	(\$125,000)	(\$150,000)	(\$90,000)	(\$95,000)	(\$160,000)	(\$155,000)	(\$175,000)
Asset Management Fee	(\$93,660)	(\$93,660)	(\$93,660)	(\$93,660)	(\$93,660)	(\$93,660)	(\$93,660)	(\$93,660)	(\$93,660)	(\$93,660)
Interest Income	\$32,323	\$13,011	\$4,746	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Targeted Net Cash Flow before Distribution	\$604,807	\$618,405	\$621,201	\$630,597	\$637,801	\$653,525	\$651,625	\$659,234	\$686,810	\$688,212
Targeted Distributions										
Master Lease Annual Base Rent Distribution	\$598,500	\$604,200	\$609,900	\$615,600	\$621,300	\$627,000	\$632,700	\$638,400	\$644,100	\$649,800
Master Lease Annual Base Rent Distribution %	5.25%	5.30%	5.35%	5.40%	5.45%	5.50%	5.55%	5.60%	5.65%	5.70%
Targeted Master Lease Annual Bonus Distribution ⁽¹⁾	\$1,261	\$2,841	\$2,260	\$3,000	\$3,300	\$5,305	\$3,785	\$4,167	\$8,542	\$7,682
Targeted Total Master Lease Annual Distribution	\$599,761	\$607,041	\$612,160	\$618,600	\$624,600	\$632,305	\$636,485	\$642,567	\$652,642	\$657,482
Targeted Total Master Lease Annual Distribution %	5.26%	5.32%	5.37%	5.43%	5.48%	5.55%	5.58%	5.64%	5.72%	5.77%

(1) Targeted Master Lease Annual Bonus Distributions are estimated payments that would be paid to investors if the properties produce effective gross revenues in excess of annual effective gross revenue benchmarks. There is no guarantee that the property will produce the necessary effective gross revenue to earn bonus rent payments.

Master Lease Annual Distributions are ultimately dependent on the successful operation of the properties. Significant and sustained underperformance of the properties could cause a delay or disruption to cash flow. The Trust is capitalized with upfront and ongoing reserves, but there is no guarantee that these reserves will be sufficient to protect investors from experiencing delays or disruptions to annual base rent distributions. Please carefully review the risks of this offering before considering an investment.

The Manager intends to structure a future acquisition of this portfolio by its REIT platform to provide investors with the option to complete a tax-deferred exchange of their DST interests for ownership in an operating partnership of a REIT or fund under Section 721 of the Internal Revenue Code, complete another 1031 exchange, cash out, or a combination of any of these exit options. If market conditions will not maximize value for the Owners through a disposition at the time of the aggregation, it is the Sponsor's intention to utilize the aggregation strategy to provide ample diversification and scale to mitigate lease rollover risk, maintain Owners' distributions, and protect the Owners' principal until the opportune time when market pricing is favorable. While there can be no guarantee that the Sponsor will meet its target or that a liquidity or exit transaction will take place within our targeted time frame, the Manager intends to pursue such an exit or liquidity event if it believes that it will be in the best interests of the Owners and will provide them with enhanced liquidity and value.

This offering is dated June 5, 2023. Year one net operating income is annualized to reflect of a full year of operations for the year ending May 31, 2024. Investing in this offering involves risk. There is no guarantee that these cash flows will be achieved. Please review this Private Placement Memorandum in its entirety, so that you may understand and weigh the potential benefits and risks accordingly, before making any investment decision. Past performance of the Sponsor and its principals is no guarantee of future performance.