Offeree Name:_____ Memorandum Number:_____

JWCM Vivian, DST

PRIVATE PLACEMENT MEMORANDUM

Minimum Purchase for Section 1031 Investors: 0.21659% Interest ($100,000 of equity and $102,205 of debt)

Minimum Purchase for Cash Investors: 0.05415% Interest ($25,000 of equity and $25,551 of debt)

Maximum Offering Amount: $46,170,900 of equity

The date of this Memorandum is September 15, 2025

Investing in Interests involves a high degree of risk. Before investing you should review the entire Private Placement Memorandum, including the "Risk Factors" beginning on page 13.

JWCM Vivian, DST

PRIVATE PLACEMENT MEMORANDUM

Class 1 Beneficial Interests in a Delaware Statutory Trust
Minimum Purchase for Section 1031 Investors: 0.21659% Interest ($100,000 of equity and $102,205 of debt)
Minimum Purchase for Cash Investors: 0.05415% Interest ($25,000 of equity and $25,551 of debt)
Maximum Offering Amount: $46,170,900 of equity (100% ownership of the Trust)

The Trust

JWCM Vivian, DST (the "**Trust**") is a recently formed Delaware statutory trust ("**DST**") that is offering to sell (the "**Offering**") 100% of the Class 1 Beneficial Interests in the Trust (each, a "**Class 1 Beneficial Interest**" or "**Interest**") to "accredited investors" as defined in Rule 501(a) of Regulation D under the Securities Act (as defined herein), pursuant to the terms of this Private Placement Memorandum (this "**Memorandum**"). Purchasers of Interests pursuant to this Offering ("**Purchasers**") will become beneficial owners of the Trust. **You should read this Memorandum in its entirety before making an investment decision.**

The Sponsor

JWCM Exchange I, LLC ("**JWCM Exchange**") is the sponsor (the "**Sponsor**") of the Trust and this Offering.

The Manager of the Trust

JWCM Vivian Manager, LLC, a Delaware limited liability company (the "**Manager**"), which is an affiliate of JWCM Exchange, will manage the Trust. The Manager of the Trust will ultimately be managed by senior members of the Sponsor's and Jesselson Warsavsky Capital Management, LLC's ("**JWCM**") (an affiliate of the Sponsor) management teams, which teams are described herein.

The Property

"The Vivian" is a mid-rise style multifamily apartment community located at 1246 Allene Avenue Southwest, Atlanta, Georgia 30310 (the "**Property**"). The seller of the Property, 1246 Allene Owner, LP, a Delaware limited partnership (the "**Seller**"), was an unaffiliated third-party. The Vivian benefits from a significant long-term tax abatement provided by the Fulton County Development Authority (the "**Development Authority**") through participation in a popular "bond-lease" program under which the Development Authority temporarily owns the fee interest and leases the land and improvements comprising the Property to the Trust until, upon the expiration of the Trust's lease of the Property, the Trust is obligated to acquire the fee simple interest in the Property (the "**Bond Program**"). The Property consists of approximately 8.471 acres of land, upon which is situated three three-, four- and five-story apartment buildings. The Property amenities include a swimming pool, a fitness center, a grilling area, a coffee shop, a dog park, EV charging, a meeting space and lounge, a yoga room, a clubhouse and access to the Atlanta "Beltline." The Property contains a total of approximately 264,136 square feet of net leasable residential floor area across 325 apartment units. According to the Property survey, the Property contains a total of 378 parking spaces, including 303 regular spaces, 56 compact spaces, 6 EV spaces and 13 handicap spaces.

The Property is subject to that certain Land Use Restriction Agreement between the Seller and the City of Atlanta, dated October 14, 2022, as assigned to the Trust (the "**LURA**") which places restrictions on the Property to provide affordable housing to eligible tenants and could limit the amount of distributions from the Property.

The Closing

On August 21, 2025, the Trust closed on the acquisition of the Property (the "**Closing**") with proceeds derived from (i) equity financing (the "**Equity Financing**") facilitated by an affiliate of the Sponsor, JWCM Vivian Depositor, LLC (the "**Depositor**"), and (ii) proceeds from a loan in the original principal amount of $47,189,000 (the "**Loan**") provided by KeyBank National Association (the "**Lender**") under the Federal National Mortgage Association ("**Fannie Mae**") Delegated Underwriting and Servicing ("**DUS**") program. At the time of the Closing, the Trust incurred the obligation to pay the Sponsor an acquisition fee in an amount equal to $2,241,250 (i.e., 2.75% of the purchase price of the Property) (the "**Acquisition Fee**"). In connection with the formation of the Trust and the foregoing transactions, the Trust issued all of the Class 2 Beneficial Interests in the Trust (the "**Class 2 Beneficial**

Interests") to the Depositor. Through the proceeds derived from the syndication of Interests pursuant to this Offering, the Trust intends to redeem the Class 2 Beneficial Interests issued to the Depositor.

Fulton County Development Authority Tax Abatement Program

The Property has the benefit of a significant long-term property tax abatement through participation in the Development Authority's program. Atlanta developers have been capitalizing on this tax abatement program for more than 10 years and the structure has been proven out and vetted by institutional investors, developers and lenders alike. The abatement mechanism itself is referred to as a bond-lease structure which was created to comply with Georgia law requiring uniform real estate tax treatment across privately owned property classes. In such transactions, to legally confer real estate tax abatements for qualifying properties (such as the Vivian), title to the fee estate is temporarily maintained in the name of the Development Authority. Upon the expiration of the Bond Lease (as defined herein), the Trust is obligated to acquire fee simple ownership of the Property. For additional details, see *"Summary of the Bond Program, the Bond Lease and Related Documents."* **Purchasers acquiring an Interest should be aware that the Trust does not have a fee title ownership interest in the land underlying the Property or the improvements located thereon. Each prospective Purchaser should seek the advice of a qualified tax advisor as to the implications of the Trust's ownership of a leasehold interest in the Property for any potential Section 1031 Exchange (as defined herein).**

The Leases

Concurrent with the acquisition of the Property and obtaining the Loan, the Trust leased the Property to an affiliate of the Sponsor, JWCM Vivian Master Tenant, LLC, a newly formed Delaware limited liability company (the "**Master Tenant**"), pursuant to a Master Lease Agreement (the "**Master Lease**"). The Master Tenant sub-leases the apartment units to the end-user tenants pursuant to residential leases and one retail lease.

The Trust

The Trust is governed by that certain Amended and Restated Trust Agreement dated August 21, 2025 (the "**Trust Agreement**"), by and among the Depositor, the Manager (also in its capacity as Signatory Trustee (as defined herein)), The Corporation Trust Company as the Delaware Trustee (the "**Delaware Trustee**"), and Ricardo Beausoleil, as the Independent Trustee (the "**Independent Trustee**").

Section 1031 Exchanges

A tax-deferred exchange under Section 1031 (a "**Section 1031 Exchange**") of the Internal Revenue Code of 1986, as amended (the "**Code**") generally allows the seller of investment and business property to defer federal and state capital gains taxation on the sale by exchanging certain real property for another real property of like-kind. Acquisition of the Interests is designed for, but not limited to, Purchasers seeking to participate in a Section 1031 Exchange. The Trust has not requested, and does not plan to request, a private letter ruling from the Internal Revenue Service (the "**IRS**") that the Interests will be treated as interests in real property by the Purchasers for purposes of Code Section 1031. However, tax counsel to the Trust has provided a tax opinion that the acquisition of an Interest by a Purchaser should be treated as a direct acquisition of an interest in the Property by a Purchaser for purposes of Code Section 1031. This opinion, however, is limited in scope and does not opine on all matters necessary for the prospective Purchaser's acquisition to qualify under Code Section 1031.

"Best Efforts" Offering

This Offering of Class 1 Beneficial Interests in the Trust is being made through the Managing Broker-Dealer (as defined herein), on a "best efforts" basis through the broker dealers participating in the offering ("**Participating Dealers**"), who are members of the Financial Industry Regulatory Authority ("**FINRA**"). The Trust, in its sole discretion, may cancel or modify this Offering, reject purchases of Interests in whole or in part, waive conditions to the purchase of Interests, and allow investments in increments smaller than the minimum purchase amount.

Proceeds received from any Purchasers pursuant to accepted subscriptions for Interests will be held in a separate account at City National Bank, and the Sponsor will conduct an initial closing of such subscriptions (the "**Initial Closing**"). The Sponsor may hold an Initial Closing at any time after one or more subscriptions for Interests have been processed. Subsequent to the Initial Closing, the remaining Interests will continue to be sold and additional closings may be thereafter conducted on a periodic basis in accordance with the Offering documents until the Maximum Offering Amount (as defined herein) of Interests is sold or, if earlier, until September 14, 2026 (the

"**Offering Termination Date**"). The Offering Termination Date may be extended at the Manager's discretion for one additional period of up to 12 months. *See "Plan of Distribution."* Notwithstanding the foregoing, in no event will the number of initial record holders of Interests exceed the threshold for registration under Section 12(g) of the Securities Exchange Act of 1934 (the "**Exchange Act**") or any successor provision.

Financing and Reserves

To acquire the Property, the Trust obtained the Loan from the Lender pursuant to the terms of that certain Multifamily Loan and Security Agreement; Multifamily Deed to Secure Debt, Assignment of Leases and Rents, Security Agreement and Fixture Filing; Assignment of Management Agreement; Multifamily Note; Environmental Indemnity Agreement; Guaranty of Non-Recourse Obligations; Subordination Agreement; Property Level Assignment of Leases and Rents; Master Lessee Estoppel Certificate; Lockbox - Deposit Account Control Agreement; Compliance Agreement for Radon Operations and Maintenance Plan; Bond Pledge Agreement; and additional loan documents (collectively, the "**Loan Documents**"), entered into as of the Closing.

The Trust has established (and directs) a reserve for costs and expenses associated with the Property, in the amount of $646,735 (the "**Supplemental Trust Reserve**"), which was funded from Loan proceeds. The Trust used $130,000 of Loan proceeds to establish a replacement reserve, $63,928 of Loan proceeds to establish an insurance escrow, and $11,223 to establish a tax escrow (the "**Lender Reserves**"), as required under the Loan Documents.

The Loan Documents provide for a $47,189,000 Loan with a 10-year term, and a fixed interest rate equal to 5.30% per annum. For the first seven years of the Loan term, the Trust is required to make interest-only payments. Beginning on October 1, 2032, and continuing for the final three years of the Loan term, the Trust will be required to make regularized payments on the Loan consisting of both principal and interest. The Loan is "non-recourse" to the Trust except for standard non-recourse carve outs contained within the Loan Documents.

In connection with the Loan, the Lender obtained an appraisal for the Property prepared by Newmark Valuation & Advisory (the "**Appraiser**"), dated August 5, 2025 (the "**Appraisal**"), reflecting a market value, "As Is," for the Property of $81,600,000. The purchase price of $81,500,000 for the Property at the time of the Closing is lower than the $93,359,900 sum of the equity, assuming the Maximum Offering Amount (defined below) is sold, in connection with the Class 1 Beneficial Interests ($46,170,900) and the proceeds of the Loan ($47,189,000).

An investment in an Interest is highly speculative and involves substantial risks including, but not limited to:

- this is a "best efforts" offering with no minimum raise or minimum escrow requirements;
- the lack of liquidity of the Interests;
- the holding of a beneficial interest in the Trust with no voting rights with respect to the management or operations of the Trust or in connection with the sale of the Property;
- risks associated with owning, financing, operating and leasing a multifamily apartment complex and real estate generally in Atlanta, Georgia;
- performance of the Master Tenant under the Master Lease, including the potential for the Master Tenant to defer a portion of rent payable under the Master Lease;
- reliance on the Master Tenant and the Property Manager (as defined herein) engaged by the Master Tenant, to manage the Property;
- risks associated with the Sponsor funding the Demand Note (as defined herein) that capitalizes the Master Tenant;
- risks relating to the terms of the financing for the Property, including the use of leverage;
- lack of diversity of investment;
- the existence of various conflicts of interest among the Sponsor, the Trust, the Master Tenant, the Property Manager and their affiliates;
- material tax risks, including treatment of the Interests for purposes of Code Section 1031 and the use of exchange funds to pay acquisition costs, which may result in taxable boot;
- the lack of a public market for the Interests;
- the Interests not being registered with the Securities and Exchange Commission (the "**SEC**") or any state securities commissions;
- risks relating to the costs of compliance with laws, rules and regulations applicable to the Property;
- risks related to competition from properties similar to and near the Property;
- risks related to the Bond Program;

- the Property is required to actively market units to a certain number of Workforce Residents (as defined herein) in accordance with the LURA; and
- the possibility of environmental risks related to the Property.

You must carefully consider the risk factors beginning on page 13 of this Memorandum. Neither the SEC nor any state securities commission has reviewed, approved or disapproved of this Memorandum or the Interests, nor have they passed upon the accuracy or adequacy of the information set forth in this Memorandum. Any representation to the contrary is a criminal offense.

For purposes of this Memorandum, various fees have been calculated based on the sale of 100% of the Interests, equivalent to $46,170,900 (the "**Maximum Offering Amount**").

	Cash Price To Purchasers	**Sales Commissions and Expenses[(1)]**	**Proceeds to the Trust[(2)]**
Per 0.21659% Interest (minimum purchase for Section 1031 investors)[(3)]	$100,000	$12,047	$87,953
Per 0.05415% Interest (minimum purchase for cash investors)[(4)]	$25,000	$3,012	$21,988
Maximum Offering Amount	$46,170,900	$5,562,197	$40,608,703

The date of this Memorandum is September 15, 2025

(1) Orchard Securities, LLC, a member of FINRA, will serve as Managing Broker-Dealer for the Offering (the "**Managing Broker-Dealer**"). The Managing Broker-Dealer will receive sales commissions of up to 6.00% of the purchase price of the Interests sold (the "**Sales Commissions**") in the Offering by Participating Dealers ("**Total Sales**"), which the Managing Broker-Dealer will re-allow to the Participating Dealers; provided, however, in the event a commission rate lower than 6.00% is negotiated with a Participating Dealer, the commission rate will be the lower agreed upon rate. In addition, the Managing Broker-Dealer will receive, on a non-accountable basis, and will re-allow to Participating Dealers on a non-accountable basis, allowances for marketing and due diligence expenses of up to 1.25% of Total Sales ("**Marketing/Due Diligence Expense Allowances**"). The Managing Broker-Dealer will also receive a Managing Broker-Dealer Fee of up to 2.00% of Total Sales (the "**Managing Broker-Dealer Fee**") which it may, in its sole discretion, partially re-allow to the Participating Dealers for non-accountable marketing expenses in addition to any other allowances and an additional 1.02% of Total Sales for a post-closing maintenance fee (the "**Maintenance Fee**"). The Sponsor and its affiliates will be entitled to reimbursement for projected expenses incurred in connection with the Offering, on an accountable basis, of 1.78% of the Maximum Offering Amount, including, but not limited to, the costs of organizing the Trust and other entities, estimated marketing, legal, finance, accounting and printing fees and expenses incurred in connection with this Offering (the "**Organization and Offering Expenses**"). *See "Compensation and Fees."* Accordingly, the total aggregate amount of Sales Commissions, Marketing/Due Diligence Expense Allowances, Managing Broker-Dealer Fee, Maintenance Fee and Organization and Offering Expenses (collectively, "**Sales Commissions and Expense**s") will not exceed 12.05% of Total Sales. The Trust may, in its discretion, accept purchases of Interests net of all or a portion of the Sales Commissions otherwise payable from Purchasers purchasing through a registered investment adviser (each, an "**RIA**") with whom the Purchaser has agreed to pay a fee for investment advisory services in lieu of commissions, and affiliates of the Trust, including the Sponsor, may purchase the Interests net of Sales Commissions and the Marketing/Due Diligence Expense Allowances. *See "Plan of Distribution" and "Estimated Use of Proceeds."*

(2) The Trust is offering a maximum of $46,170,900 of Interests, which, if sold in full, will represent 100% of the outstanding Interests in the Trust at the end of the Offering. The proceeds shown are after deducting Sales Commissions and Expenses, but before deducting fees and expenses incurred in connection with the acquisition of the Property and the closing of the Loan, including those payable to the Sponsor and its affiliates. *See "Estimated Use of Proceeds" and "Compensation and Fees."*

(3) The minimum purchase price for Section 1031 investors of $100,000 and deemed debt assumption of $102,205 represents a 0.21659% ownership interest in the Trust. The Trust may waive the minimum purchase requirement in its sole discretion. Payments received from any Purchaser prior to the Initial Closing or any other closing with respect to such Purchaser will be held in an escrow account. Purchasers will not receive any interest on funds held in the escrow account.

(4) The minimum purchase price for cash investors of $25,000 and deemed debt assumption of $25,551 represents a 0.05415% ownership interest in the Trust. The Trust may waive the minimum purchase requirement in its sole discretion. Payments received from any Purchaser prior to the Initial Closing or any other closing with respect to such Purchaser will be held in an escrow account. Purchasers will not receive any interest on funds held in the escrow account.

POTENTIAL PURCHASERS SHOULD CAREFULLY CONSIDER THE FOLLOWING:

Do not construe the contents of this Memorandum as legal, financial or tax advice. Consult your own independent counsel, accountant or business advisor as to legal, tax and related matters concerning an investment in Interests. None of 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 Section 1031 Exchange.

Neither the Trust, the Sponsor, nor any of their respective affiliates has authorized any person to make any representations or furnish any information with respect to the Interests or the Property, other than as set forth in this Memorandum or other documents or information the Trust or the Sponsor may furnish to you upon request. You are encouraged to ask the Trust or the Sponsor questions concerning the terms and conditions of this Offering and the Property.

This Memorandum constitutes an offer of Interests only to the person whose name appears in the appropriate space on the cover page of this Memorandum. Furthermore, the delivery of this Memorandum does not constitute an offer, or solicitation of an offer, to purchase an Interest to anyone in any jurisdiction in which such an offer or solicitation is not authorized.

The Sponsor has prepared this Memorandum solely for the benefit of persons interested in acquiring Interests. You may not reproduce or distribute this Memorandum, in whole or in part, or disclose any of its contents without the prior written consent of the Trust or the Sponsor. You agree, by accepting delivery of this Memorandum, that, upon the request of the Trust or the Sponsor, you will immediately return this Memorandum to the Sponsor along with all other documents provided to you in connection with the Offering if you do not purchase any of the Interests or if the Offering is withdrawn or terminated.

This Memorandum contains summaries of certain agreements and other documents. While the Sponsor believes these summaries are accurate, you should refer to the actual agreements and documents for more complete information about the rights, obligations and other matters in the agreements and documents. The Sponsor will make the agreements and documents relating to this investment available to you and/or your advisors upon request, if such requested agreements and documents are readily available to the Sponsor.

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A WARNING ABOUT FORWARD-LOOKING STATEMENTS

This Memorandum contains statements about operating and financial plans, terms and performance of the Property and other projections of future results. Forward-looking statements may be identified by the use of words such as "expects," "anticipates," "intends," "plans," "will," "may" and similar expressions. The "forward-looking" statements are based on various assumptions, for example, the growth and expansion of the economy, projected financing environment and real property market value trends, and these assumptions may prove to be incorrect. Accordingly, such forward-looking statements might not accurately predict future events or the actual performance of an investment in the Interests. In addition, you must disregard any projections and representations, written or oral, which do not conform to those contained in this Memorandum.

MARKET DATA

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. Neither the Trust, the Sponsor, nor their affiliates have independently verified the data obtained from these sources and they 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 brand names, trademarks, service marks, and copyrighted works appearing in this Memorandum are the property of their respective owners. This Memorandum may contain references to registered trademarks, service marks, and copyrights owned by the third-party information providers. None of the third-party information providers is endorsing the offering of, and will not in any way be deemed an issuer or underwriter of, the Interests, and will not have any liability or responsibility for any statements made in this Memorandum or for any financial statements, financial projections or other financial information contained in, or attached as an exhibit to, this Memorandum.

NOTICE TO INVESTORS IN ALL STATES

The Interests are being offered only to persons who are "accredited investors" as that term is defined in Rule 501(a) promulgated under the Securities Act of 1933, as amended (the "Securities Act") and applicable state securities laws.

The Interests will not be registered under the Securities Act or the securities laws of any state. We will offer and sell the Interests in reliance on exemptions from the registration requirements of these laws. The Interests will be subject to restrictions on transferability and resale and you will not be able to transfer or resell Interests or any beneficial interest therein unless the Interests are registered pursuant to or exempted from such registration requirements. You 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 your investment.

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 the consideration paid. We believe 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 Purchaser institute an action claiming that the Offering conducted as described herein was required to be registered or qualified, the contents of this Memorandum will be deemed to constitute notice of the facts of the alleged violation.

PROSPECTIVE PURCHASERS ARE HEREBY NOTIFIED THAT: ANY DISCUSSION OF FEDERAL INCOME TAX ISSUES CONTAINED OR REFERENCED IN THIS MEMORANDUM IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING BY THE TRUST OF THE TRANSACTIONS OR MATTERS ADDRESSED IN THIS MEMORANDUM. PROSPECTIVE PURCHASERS SHOULD SEEK ADVICE BASED ON THEIR PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

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SUMMARY OF THE OFFERING

The following summary provides selected limited information regarding the Offering and should be read in conjunction with, and is qualified in its entirety by, the more detailed information appearing elsewhere in this Memorandum. You should read this entire Memorandum, including "Risk Factors," before making a decision to invest in an Interest. In this Memorandum, unless the context suggests otherwise, references to "we," "us" and "our" mean the Trust and the Sponsor and, where the context permits, its affiliates that may provide services in connection with the Offering, management of the Trust, and acquisition, financing, leasing, management and disposition of the Property.

The Interests	We are offering to "accredited investors" up to $46,170,900 in Class 1 Beneficial Interests in the Trust, which is the owner of the Property (the owners of such Interests, along with the Depositor, are referred to herein as the "**Beneficial Owners**"). The Interests being sold in this Offering will represent 100% of the outstanding beneficial interests in the Trust if the Maximum Offering Amount of Interests is sold. The minimum purchase price for Code Section 1031 investors is $100,000, which represents a 0.21659% beneficial ownership interest in the Trust. The minimum purchase price for cash investors is $25,000, which represents a 0.05415% beneficial ownership interest in the Trust. Although Purchasers will not assume any liability for the Loan, for purposes of determining liabilities assumed for federal income tax purposes (including in connection with a Section 1031 Exchange), each Purchaser should be deemed to have assumed $102,205 of mortgage debt for each 0.21659% beneficial ownership Interest in the Trust that he, she or it acquires. The price of an Interest will include a *pro rata* portion of the value of the Property, Sales Commissions and Expenses, Financing Closing Costs (as defined herein), Other Closing Costs (as defined herein), the Acquisition Fee, Lender Reserves and the Supplemental Trust Reserve. *See "Estimated Use of Proceeds" and "Compensation and Fees."*
Investment Objectives and Risks	The Sponsor's business plan for the Property and its investment objectives for the Interests will be to (i) preserve the Purchasers' capital investment, (ii) make monthly distributions estimated to start at 5.31% annualized for Year 1, and projected to range from 4.44% to 5.96% annualized from Year 1 through Year 10, which may be partially tax-deferred as a result of depreciation and amortization expenses, and (iii) sell the Property at a profit within approximately five to ten years. *See "Business Plan."* There is no guarantee that the objectives will be successfully achieved, that the Property's value will be enhanced, or that the Property will be sold within the planned time period. An investment in the Interests involves substantial risks. *See "Risk Factors."*
The Property	The Property consists of approximately 8.471 acres of land, upon which is situated three three-, four- and five-story apartment buildings. The Property's amenities include a swimming pool, a fitness center, a grilling area, a coffee shop, a dog park, EV charging, a meeting space and lounge, a yoga room, a clubhouse and access to the Atlanta "Beltline." The Property benefits from a significant long-term tax abatement provided by the Development Authority through participation in the Bond Program. The Property contains a total of approximately 264,136 square feet of net leasable residential floor area across 325 apartment units. According to the Property survey, the Property contains a total of 378 parking spaces, including 303 regular spaces, 56 compact spaces, 6 EV spaces and 13 handicap spaces.
Fulton County Development Authority Tax Abatement Program	The Property has the benefit of a significant long-term real estate tax abatement through participation in the Bond Program. Atlanta developers have been capitalizing on this tax abatement program for more than 10 years and the structure has been proven out and vetted by institutional investors, developers and lenders alike. The abatement mechanism itself is referred to as a "bond-lease" structure which was created to comply with Georgia law requiring uniform real estate tax treatment across privately owned property classes. For qualifying projects (such as the Property), tax

abatement is provided on a sliding scale, providing 50% savings in the first year, and then reduced by 5% over each of the next succeeding nine years (i.e., 50% savings the first year, 45% savings the second year, 40% savings the third year, 35% savings the fourth year and so on) of the lease term.

With respect to the Property, the Seller—as the developer of the improvements comprising the Property—won approval of the project and successfully entered into the bond-lease with the Development Authority which issued to the Seller approximately $55,000,000 of taxable development bonds (the "**Bonds**"). In such transactions, to legally confer real estate tax abatement for qualifying properties (such as the Property), title to the fee estate is temporarily maintained in the name of the Development Authority. Upon the expiration of the Bond Lease, the Trust is obligated to acquire the fee simple ownership of the Property. The opinion of Tax Counsel, attached as **Exhibit D** hereto, confirms that the potential Purchasers (via their Interests in the Trust), and not the Development Authority, should be treated as the true owners of the Property for U.S. federal income tax purposes. For additional details, *see "Summary of the Bond Program, the Bond Lease and Related Documents."*

Depositor and the Acquisition of the Property

On August 21, 2025, the Trust completed the Closing with proceeds derived from (i) the Equity Financing facilitated by the Depositor, and (ii) proceeds from the Loan from the Lender. At the time of the Closing, the Trust incurred the obligation to pay the Sponsor the Acquisition Fee in an amount equal to $2,241,250 (i.e., 2.75% of the purchase price of the Property). In connection with the formation of the Trust and the foregoing transactions, the Trust issued all of the Class 2 Beneficial Interests to the Depositor. Through the proceeds derived from the syndication of Interests pursuant to this Offering, the Trust intends to redeem the Class 2 Beneficial Interests issued to the Depositor.

The Sponsor and the Master Tenant

The Offering is sponsored by JWCM Exchange I, LLC.

Concurrently with the Closing, the Trust master leased the Property to the Master Tenant pursuant to the Master Lease. The Master Tenant is managed by the Sponsor. The Master Lease is subject to the existing apartment and retail leases with end-user tenants who sublease the Property from the Master Tenant. A copy of the Master Lease is attached to this Memorandum as **Exhibit A**.

The Trust

Each Purchaser will acquire beneficial ownership interests in the Trust subject to the terms of the Trust Agreement and will thereupon become a Beneficial Owner of the Trust. The Trust Agreement will govern the rights and obligations of the Beneficial Owners with respect to the Trust. A copy of the Trust Agreement is attached to this Memorandum as **Exhibit B**.

The Trust has two classes of Interests: (1) the Class 1 Beneficial Interests; and (2) the Class 2 Beneficial Interests. In connection with the formation of the Trust and the acquisition of the Property, the Trust issued to the Depositor all of the Class 2 Beneficial Interests, which initially constitutes 100% of the issued and outstanding beneficial interests in the Trust.

Pursuant to this Offering, the Trust is offering Class 1 Beneficial Interests for sale to prospective Purchasers. As Class 1 Beneficial Interests are sold to Purchasers, the Depositor's Class 2 Beneficial Interests will be redeemed by the Trust on a one-for-one basis until the Maximum Offering Amount has been achieved and all Class 1 Beneficial Interests have been sold.

The net proceeds of the sale of Class 1 Beneficial Interests will be used by the Trust, in accordance with the Trust Agreement. The Trust may and will retain and utilize any net proceeds to fund any reimbursements, compensation and fees owed to the Sponsor and/or its affiliates in connection with the Offering. With regard to the foregoing, the term "net proceeds" from the sale of Class 1 Beneficial Interests will

be equal to the purchase price of each Class 1 Beneficial Interest, less the Sales Commissions and Expenses allocable to each such sale. *See "Estimated Use of Proceeds" and "Compensation and Fees."*

The Manager may, in its sole discretion, appoint from time to time a co-trustee to serve with the Delaware Trustee for the limited purpose of executing any documentation that may require the signature of an authorized representative of the Trust (the "**Signatory Trustee**", and, collectively with the Delaware Trustee and the Independent Trustee, the "**Trustees**"). The Manager has appointed itself as the initial Signatory Trustee of the Trust.

The Purchasers may be required to exchange their Interests for units of an equal aggregate value ("**Units**") in one or more entities organized or identified by the Manager (each, an "**Exchange Entity**"), or elect to have their Interest purchased, if such entity exercises its exchange right under the Trust Agreement ("**Exchange Right**"). *See "Summary of the Trust Agreement" and "Risk Factors."*

Management of the Trust

JWCM Vivian Manager, LLC serves as the Manager of the Trust. The Manager has the power and authority to manage substantially all of the affairs and limited investment activities of the Trust, the primary responsibility for performing administrative actions in connection with the Trust, and the sole power to determine when it is appropriate to sell the Property, all of such power and authority limited to the extent such powers and authority are materially consistent with the powers and authority conferred upon the trustee in Revenue Ruling 2004-86. The Manager is managed by the Sponsor, which is ultimately managed by senior members of JWCM's management team. *See "Management."*

The Trust will terminate upon the first to occur of (i) the sale of the Property or (ii) a Transfer Distribution (as defined herein). The Manager will sell all of the Trust's right, title and interest in and to the Master Lease and the end-user leases, the Property and any and all other property and assets (the "**Trust Estate**") upon its determination (in its sole discretion) that the sale of the Trust Estate is appropriate; provided, however, that absent unusual circumstances, it is currently anticipated that the Trust will hold the Trust Estate for at least two years.

For purposes of this Memorandum, a "**Transfer Distribution**" will be deemed to occur in the event the Manager determines that the Master Tenant is insolvent or has defaulted in paying rent, that the Property is in jeopardy of being lost due to a default or imminent default on the Loan, or in certain other circumstances, and the Manager further determines to transfer title to the Property to a newly-formed Delaware limited liability company (the "**Springing LLC**") and terminate the Trust. If the Trust is terminated pursuant to a Transfer Distribution, the Beneficial Owners will become members in the Springing LLC, and the Manager, or an entity controlled by the Manager, will become the manager of the Springing LLC. *See "Summary of the Trust Agreement."*

Master Lease

The Trust master leased the entirety of the Property to the Master Tenant under the Master Lease. The Master Tenant will operate the Property pursuant to the Master Lease and its subleases with the end-user tenants of the Property. The Master Lease is, with certain exceptions regarding Landlord Costs (as defined herein), an "absolute net" lease, allocating to the Master Tenant all expenses and debt service obligations associated with the Property; provided, however, the Trust is obligated under the Master Lease to reimburse the Master Tenant for any expenses incurred to make repairs to maintain the Property and for capital expenditures (as determined under generally accepted accounting principles) with respect to (i) repairs and replacements of the structure, foundations, roofs, exterior walls, parking lots and improvements to meet the needs of tenants; (ii) leasing commissions; (iii) certain hazardous substances costs; (iv) any repairs identified in the PCA (as defined herein), or similar engineering report, performed in connection with the acquisition of the Property; and (v) other

improvements or replacements to the Property that would be considered capital expenditures or are required by law (collectively, "**Landlord Costs**"). The Master Tenant may also be allocated certain amounts from the Trust's reserves, including the Supplemental Trust Reserve to the extent available and as would be permitted under the Master Lease and the Loan Documents, to meet its obligations. The Master Lease commenced concurrently with the Closing, and will continue for a base term expiring three months and one day after the maturity date of the Loan, unless sooner terminated pursuant to the terms of the Master Lease.

The Master Tenant is a newly-formed Delaware limited liability company capitalized with a non-interest bearing demand note from the Sponsor in the amount of $2,400,000 (the "**Demand Note**"), but does not have other substantial assets except its leasehold interest in the Property under the Master Lease. *See "Risk Factors."*

Pursuant to the Master Lease, the Master Tenant pays to the Trust the following amounts as "**Rent**" on a monthly basis: (i) an amount equal to certain debt service payments including interest payments as well as real estate tax, insurance, and certain other escrows and reserves (collectively, "**Base Rent**"); (ii) the amount by which the gross revenues exceed the Additional Rent Breakpoint (as defined in the Master Lease and set forth in the table below) up to a maximum annual ceiling ("**Additional Rent**"); and (3) when Base Rent and Additional Rent have been fully paid, an amount equal to 90% of the amount by which annual gross revenues exceed the Supplemental Rent Breakpoint as defined in the Master Lease and set forth in the table below (**"Supplemental Rent"**). The difference between the Base Rent and the Additional Rent Breakpoint for the Property for a given month, if any, after taking into account any expenses of the Property, will inure to the benefit of the Master Tenant, and will not be available for distributions to the Trust or the Purchasers.

Additionally, the Master Lease sets forth projections for certain uncontrollable costs with respect to the Property (the "**Projected Uncontrollable Costs**"); in the event that (a) the Projected Uncontrollable Costs for any calendar year exceed the actual uncontrollable costs, the Master Tenant would be required to pay the Trust the amount of such excess; and (b) the actual uncontrollable costs for any calendar year exceed the Projected Uncontrollable Costs, the Master Tenant would be responsible for the payment of such excess, but would be entitled to a reimbursement by offsetting such amount against Additional Rent and (if necessary) Supplemental Rent.

If the Property's operating cash flow for a period is insufficient to pay all of the associated expenses of the Property and the full Base Rent, then in such event, the Master Tenant may defer the payment of a portion of the Additional Rent and Supplemental Rent due under the Master Lease until cash flow becomes available to pay such shortfall amounts or upon disposition of the Property. In such event, interest will accrue on the deferred rent, if any, in accordance with the terms of the Master Lease.

The following table sets forth certain amounts included in the calculation of anticipated Rent. Changes in the debt service portion (i.e., the Base Rent) could cause the Base Rent to be higher or lower than as projected below. Not depicted in the following table, Rent for the final three months of the term of the Master Lease will be at the same rate as Year 10. *See "Summary of the Master Lease."*

Rent Amounts Pursuant to the Master Lease Agreement

Lease Period	Base Rent	Gross Revenue Additional Rent Breakpoint	Additional Rent Annual Maximum	Gross Revenue Supplemental Rent Breakpoint
Year 1	$2,730,546	$4,751,400	$1,884,300	$6,635,700
Year 2	$2,888,145	$4,903,200	$1,884,300	$6,787,500
Year 3	$2,902,403	$4,979,000	$1,884,300	$6,863,300

Year 4	$3,209,814	$5,349,900	$1,884,300	$7,234,200
Year 5	$3,707,452	$5,912,900	$1,884,300	$7,797,200
Year 6	$3,926,083	$6,197,700	$1,884,300	$8,082,000
Year 7	$4,005,080	$6,344,800	$1,884,300	$8,229,100
Year 8	$4,679,500	$7,089,400	$1,884,300	$8,973,700
Year 9	$4,752,676	$7,234,900	$1,884,300	$9,119,200
Year 10	$4,785,215	$7,341,800	$1,884,300	$9,226,100

Property Management

Concurrently with the Closing, the Master Tenant entered into a property management and leasing agreement with respect to the Property (the "**Property Management Agreement**") with RangeWater Residential, LLC, a Georgia limited liability company (the "**Property Manager**"). The property management fee payable under the Property Management Agreement will be an amount equal to the greater of $10,000, or 2.5% of the monthly Gross Receipts (as defined in the Property Management Agreement) received from the Property (a "**Property Management Fee**"). *See "Summary of Property Management Agreement"*; also see the copy of the Property Management Agreement, which is attached to this Memorandum as **Exhibit C**.

Asset Management

The Manager will provide management services to the Trust with respect to the Property, arrange for financing of the Property, implement all decisions and policies of the Trust and oversee and supervise the provision of services by the Property Manager to ensure that the Property Manager is performing in a manner consistent with the terms of the Property Management Agreement.

Financing and Lender-Controlled Reserves

The Trust entered into a Loan in the original principal amount of $47,189,000 from the Lender under the Fannie Mae DUS program. In addition to the acquisition of the Property, Loan proceeds were used to fund the Lender Reserves.

The Loan Documents provide for a $47,189,000 Loan with a 10-year term, and a fixed interest rate equal to 5.30% per annum. For the first seven years of the Loan term, the Trust is required to make interest-only payments. Beginning on October 1, 2032, and continuing for the final three years of the Loan term, the Trust will be required to make regularized payments on the Loan consisting of both principal and interest.

The Property is subject to a first priority deed to secure debt and other standard collateral rights granted in favor of the Lender, to secure the Trust's obligations under the Loan Documents. The Loan is "non-recourse" to the Trust except for standard non-recourse carve outs contained within the Loan Documents.

Purchasers, as Beneficial Owners in the Trust, will not be required to execute personal guarantees for any portion of the Loan, and will not incur any personal liability with respect to the operation of the Property or under the Loan Documents, including liability for environmental claims. However, since the Property will secure the Trust's obligations under the Loan, Beneficial Owners could lose their entire investment if the Trust were to default on the Loan and the Lender were to foreclose on the Property. *See "Risk Factors – Risks Relating to Financing of the Property."*

Purchasers of Interests should be deemed for federal income tax purposes, including for purposes of Code Section 1031, to have assumed their *pro rata* portion of the principal amount of the Loan. *See "Federal Income Tax Consequences."*

The Property loan-to-value ratio is 50.55%, based on the Maximum Offering Amount for the Interests and the amount of the Loan.

Before investing, you should carefully consider the potential liabilities described under *"Acquisition of the Property and Financing Terms"* and the risk factors set forth under "*Risk Factors – Risks Related to Financing of the Property."*

Trust-Directed Reserves	In addition to the Lender Reserves, the Trust has established and directs the Supplemental Trust Reserve, which was initially funded from Loan proceeds in the aggregate amount of $646,735, for Property renovations, costs and expenses (including Landlord Costs), which may be drawn upon by the Master Tenant as provided in the Master Lease.
Georgia Brownfield Program	According to a potential purchaser environmental summary letter prepared by United Consulting, the Property was historically occupied by a lead-acid battery manufacturing and distribution facility from the late 1940's through 2000. Operations at the Property included lead casting, plate formation, acid filling, and battery charging, resulting in releases of hazardous substances to the environment, including lead and other heavy metals. To obtain limitation of liability benefits under the Brownfield Program (as defined herein), a prior owner of the Property enrolled the Property in the VRP Program (as defined herein) which placed certain restrictions on the Property and obligations on the owner and tenants of the Property, including the Trust, the Master Tenant, and the end-user tenants of the Property. Failure to comply with such requirements or obligations could materially impact the financial performance of the Trust. For more information on the status of the Property as a Brownfield site, see *"The Property – Agreements and Other Matters Affecting the Property – Georgia Brownfield Program."*
Strategy	The Sponsor will seek to maintain a mid-90% occupancy range while maximizing rents organically based on the strength and desirability of the submarket and the Property. Additionally, the Property Manager, an institutional quality property manager with a known track record of efficiently controlling costs while driving top-line revenue performance will manage the Property. Full details are outlined in "*Business Plan.*"
Purchaser Suitability Requirements	Only subscribers who qualify as "accredited investors" as defined in Rule 501(a) of Regulation D under the Securities Act who also meet certain other requirements as described in the "Who May Invest" section of this Memorandum may acquire Interests in this Offering. **Interests are not suitable investments for qualified plans, individual retirement accounts, tax-exempt entities or foreign persons. *See "Who May Invest."***
Plan of Distribution	The Managing Broker-Dealer and Participating Dealers will make offers and sales of Interests on a "best efforts" basis. The commissions and expense reimbursements to the Managing Broker-Dealer and the Participating Dealers are described in *"Estimated Use of Proceeds"* and *"Plan of Distribution"* below.
Closings	There is no minimum escrow requirement in this Offering, and the Sponsor can hold the Initial Closing at any time after one or more subscriptions for Interests have been accepted by the Trust. Thereafter, the Sponsor may hold subsequent periodic closings in its discretion.
Offering Termination Date	The Interests will be offered until the earlier of the date the Maximum Offering Amount is attained, or September 14, 2026. The Offering Termination Date may be extended at the Manager's discretion for one additional period of up to 12 months.
Offers to Purchase Interests	To offer to buy an Interest, you must follow the instructions set forth in "*Method of Purchase*" below. The Trust may accept or reject a prospective Purchaser's Purchase Agreement (as defined herein) in its sole discretion. If the Trust does not accept a Purchase Agreement within 30 days of its submission, then it will be deemed rejected. In the event a Purchase Agreement is rejected, the full amount of any check or wired funds you have sent will be returned to you.

Following its receipt of your completed Purchase Agreement, your confirmation of funding capability for the full amount of the purchase price for your Interests, and review of your suitability, the Trust will make available to you and your advisors, upon your written request, additional due diligence materials that may be material to your investment decision, if such requested agreements and documents are readily available to the Trust and the Sponsor. After reviewing such supplemental materials, you may determine to withdraw from the Offering, and not complete the remaining purchase documents, if notice of the withdrawal is given to us in a timely fashion, in which case the full amount of any check or wired funds you have sent will be refunded to you.

Compensation to Sponsor and its Affiliates

The Sponsor and its affiliates will receive substantial compensation and fees from the sourcing, due diligence and completion of the acquisition of the Property, and in connection with the Offering and sale of Interests and the management, financing, leasing, operation and disposition of the Property, which may include, but are not limited to, rents from the Property in excess of the amounts the Master Tenant is required to pay to the Trust under the Master Lease, the Acquisition Fee, and the Disposition Fee (as defined herein). *See "Compensation and Fees."*

Reports

The Manager will prepare and furnish unaudited reports to each of the Beneficial Owners on an annual and quarterly basis. Such annual and quarterly unaudited reports will include the amounts of rent received from the Master Tenant, the expenses incurred by the Trust with respect to the Property, the amount of any reserves, and the amount of the distributions made by the Trust to the Beneficial Owners. In addition, the Trust will send to each Beneficial Owner such tax information as may be necessary for the preparation of the Beneficial Owner's tax returns. *See "Reports."*

Federal Income Tax Consequences

In connection with the Offering, we have obtained from our tax counsel, Baker & McKenzie LLP ("**Tax Counsel**"), a legal opinion (the "**Tax Opinion**") stating that:

- the Trust should be treated as an investment trust described in Treasury Regulations Section 301.7701-4(c) that is classified as a "trust" under Treasury Regulations Section 301.7701-4(a);
- the Beneficial Owners should be treated as "grantors" of the Trust;
- as "grantors," the Beneficial Owners should be treated as owning an undivided fractional interest in the Property for federal income tax purposes;
- the Interests should not be treated as securities for purposes of Section 1031;
- the Interests should not be treated as certificates of trust or beneficial interests for purposes of Section 1031;
- the Master Lease should be treated as a true lease and not a financing for federal income tax purposes;
- the Master Lease should be treated as a true lease and not a deemed partnership for federal income tax purposes;
- the Beneficial Owners, via their Interests in the Trust, should be treated as the true owners of the Property rather than lessees for federal income tax purposes;
- the discussions of the federal income tax consequences contained in this Memorandum are correct in all material respects; and
- certain judicially created doctrines should not apply to change the foregoing conclusions.

A copy of the Tax Opinion is attached hereto as **Exhibit D** to this Memorandum.

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

Each Beneficial Owner must report his, her or its proportionate share of taxable income or loss on his, her or its own federal income tax return. For a more complete

discussion of the tax consequences of ownership of Interests, *see "Federal Income Tax Consequences."*

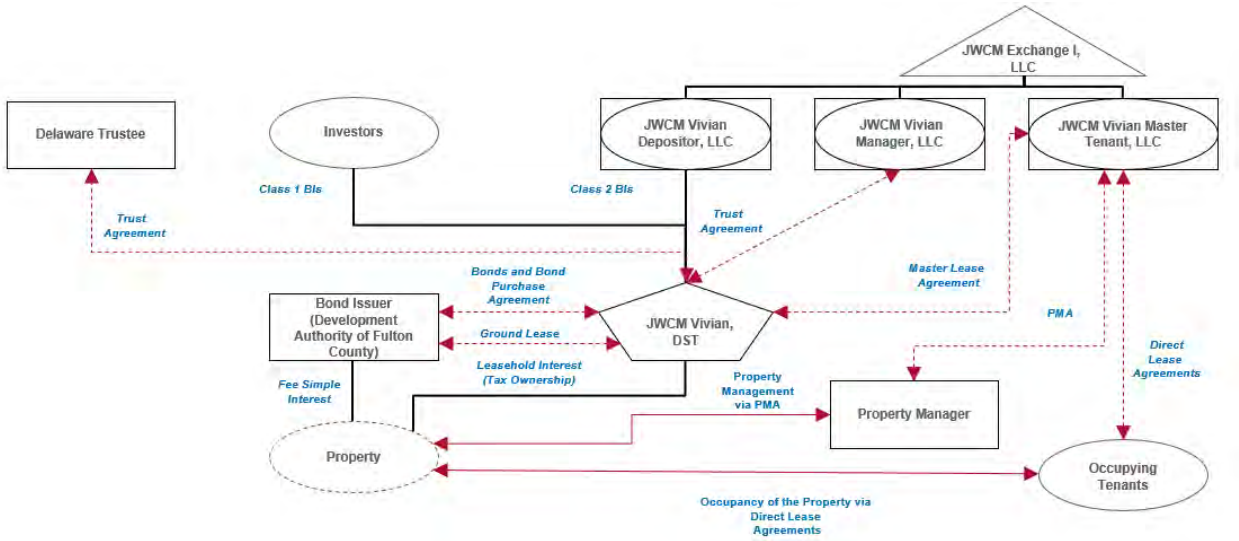
Each Purchaser must consult with his, her or its tax advisor concerning the identification requirements under Code Section 1031 and other requirements for successfully completing a qualifying like-kind exchange under Code Section 1031.

THE PURCHASERS 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 PURCHASER MUST CONSULT HIS, HER OR ITS OWN INDEPENDENT ATTORNEYS, ACCOUNTANTS AND OTHER TAX ADVISORS REGARDING THE TAX IMPLICATIONS OF A PURCHASE OF AN INTEREST, INCLUDING WHETHER SUCH PURCHASE WILL QUALIFY AS PART OF A PROPOSED TAX-DEFERRED EXCHANGE UNDER CODE SECTION 1031, 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 Purchasers 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"* and *"Federal Income Tax Consequences,"* and consult with your personal tax advisor before making an investment in Interests.

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ORGANIZATIONAL CHART



JWCM Vivian Depositor, LLC was initially issued all unsold Class 2 Beneficial Interests, which will be redeemed using a portion of the proceeds from the sale of Class 1 Beneficial Interests to third-party investors who invest in the Trust through the Offering.

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FREQUENTLY ASKED QUESTIONS

We have summarized certain aspects of the Offering below. The responses to these frequently asked questions do not contain all of the information a prospective Purchaser should consider before making a decision to purchase an Interest. Read this Memorandum in its entirety and consult with your legal, tax and financial advisors about making an investment in an Interest.

Who is the Sponsor?

The Sponsor of the Trust and this Offering is JWCM Exchange I, LLC.

What is the Bond Program and what are its benefits?

The Property benefits from a significant long-term real estate tax abatement provided by the Development Authority through participation in a popular "bond-lease" program. The purpose of the Bond Program is to encourage economic development within Fulton County, Georgia, by facilitating significant real estate tax abatement for qualifying projects. For qualifying projects, the tax abatement benefits are provided on a sliding scale, providing 50% savings in the first year, and then reduced by 5% over each of the next succeeding nine years (i.e., 50% savings the first year, 45% savings the second year, 40% savings the third year, 35% savings the fourth year and so on). The structure of the tax abatement program requires that the Trust temporarily own a leasehold interest in the Property until the expiration of the Bond Lease, at which point the structure is automatically unwound to establish fee ownership in the Trust. With respect to the Property, the Seller was the developer of the improvements that comprise the Property. Pursuant to the Bond Program, the Seller won approval of the project and successfully transacted with the Development Authority to grant it fee title, in exchange for which the Development Authority leased the Property to the Seller and issued to the Seller the Bonds.

The Trust acquired all of the Seller's rights under the Bond Program by taking an assignment from the Seller of its rights under the lease of the Property and the Bonds, to thereby succeed to the full real estate tax abatement benefits available to the Property under the Bond Program, beginning in 2025.

Is there any economic cost to the Trust under the Bond Lease?

No. Under the Bond Lease (as defined herein), the Trust is required to make rental payments to the Development Authority and the Development Authority is obligated to make payments in the same exact amount to the Trust under the Bonds. As such, the payments due to the other party offset each other.

For additional details regarding the Bond Program, the Bond Lease and the Bonds, *see "Summary of the Bond Program, the Bond Lease and Related Documents."*

Does the Bond Program still allow my investment to qualify for a Section 1031 Exchange?

Yes, Tax Counsel has issued a Tax Opinion attached as **Exhibit D** confirming that the Beneficial Owners, via their Interests in the Trust, should be treated as true owners of the Property rather than lessees for federal income tax purposes. Consequently, Interests should be treated as real property for U.S. federal income tax purposes and be eligible for a Section 1031 Exchange.

What is a Delaware Statutory Trust?

An offering of DST interests is used to syndicate real estate while preserving a Purchaser's ability to exchange their relinquished property for Interests in the Trust in connection with a Section 1031 Exchange, and upon a sale of the Property, engage in a subsequent like-kind exchange (assuming the tax status of the DST remains unchanged). The DST structure provides certain advantages over a tenant-in-common structure. Some of the advantages of owning property under the DST structure are (i) more favorable financing terms; (ii) no personal liability for beneficiaries under the financing of the property; and (iii) lower transaction costs including lower administrative costs. The primary disadvantage of the DST structure is that the manager of the trust is limited in the actions it may take to address issues that may arise in connection with the ownership of the property. Additionally, while a tenant-in-common structure requires investor consent for certain material actions, in a DST structure, the Beneficial Owners have no right to participate in the Trust's management.

What is the Springing LLC?

A Transfer Distribution occurs in the event that the Manager determines the Master Tenant is insolvent or has defaulted in paying rent, that the Property is in jeopardy of being lost due to a default or imminent default on the Loan, or in certain other circumstances, and the Manager further determines to address such risks by transferring title to the Property to the Springing LLC, a newly-formed Delaware limited liability company, and terminating the Trust. If the Trust is terminated pursuant to a Transfer Distribution, the Beneficial Owners will become members in the Springing LLC, and the Manager, or an entity controlled by or affiliated with the Manager, will become the manager of the Springing LLC.

How is the Master Tenant capitalized?

The Master Tenant is a newly-formed Delaware limited liability company and an affiliate of the Sponsor, capitalized with a non-interest-bearing Demand Note from the Sponsor in the amount equal to $2,400,000.

Will there be debt on the Property?

Yes. Code Section 1031 generally requires taxpayers to offset debt on their relinquished property with equal or greater debt on their replacement property (or additional cash from another source). Purchasers who are exchanging relinquished property with a larger amount of debt than the proportionate amount of the Loan they are deemed to have assumed for tax purposes in connection with the acquisition of an Interest may recognize taxable gain (although additional cash from another source may offset the reduction in debt).

Am I responsible for any out-of-pocket costs associated with my purchase of the Interests?

Yes. You are responsible for all costs associated with your accountant, tax advisor, financial advisor and attorney in connection with the purchase of Interests. Please note that these costs should not be funded from the Section 1031 Exchange escrow held by your qualified intermediary, if applicable.

How do I find a qualified intermediary?

If you do not currently have a qualified intermediary, the Sponsor can provide a list of qualified intermediaries familiar with this type of sophisticated transaction upon request.

What happens if the Manager exercises its Exchange Right?

If the Manager exercises the Exchange Right under the Trust Agreement, you will be required to (i) exchange your Interests for Units in one or more Exchange Entities or (ii) accept a cash amount equal to the then fair market value of your Interests. The fair market value of your interests will be determined by multiplying: (i) your percentage of Interests in the Trust by (ii) the fair market value of the Property, as determined by an independent appraisal firm selected by the Manager in its sole discretion. *See "Summary of the Trust Agreement."* The Manager cannot exercise its Exchange Right until the Purchasers have held their Interests for at least two years. Those investors who exchange their Interests for Units would then be interest holders in the Exchange Entity(ies) identified by the Manager and will have same rights and obligations of the other interest holders under the operating agreement for such Exchange Entity(ies). It is anticipated that under the operating agreement, after you have held your Units for a specified period of time, you may have the option to exchange your Units for shares in a real estate investment trust (each, a "**REIT**"), provided however, that such exchange will be governed by the terms of any applicable offering materials at the time of such exchange. In addition, if and after the Exchange Right is exercised, you will not be able to engage in a subsequent, individual Section 1031 Exchange. Furthermore, your ability to sell your Units or shares in any REIT may be impacted due to the general volatility of the capital markets, the risks associated with the market and the limited market for Units.

What if I want to sell my Interest before the Property is sold?

The Interests are being offered and sold pursuant to exemptions from the registration provisions of federal and state securities laws. Accordingly, the Interests are subject to restrictions on transfer (and the Trust Agreement and the Loan Documents contain additional transfer restrictions). If you are able to sell your Interest, you or your purchaser(s) will bear the costs, if any, of the sale or transfer.

Will I be subject to state income tax in the state in which the Property is located?

Some states have income thresholds that must be exceeded to be subject to income tax, but each state has its own filing requirements and tax code. You should consult with your own tax professional regarding individual state filings.

Is there an additional form that must be returned to the IRS when I transfer business property in a Section 1031 Exchange?

Yes. The IRS requires that you file Form 8824 with your annual tax filings for the year that you transfer the property. State and local governmental entities may also require additional filings. You should consult with your own tax professional regarding such filings.

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RISK FACTORS

The purchase of an Interest involves a number of risks. Do not acquire an Interest if you cannot afford to lose your entire investment. Carefully consider the risks described below, as well as the other information in this Memorandum before making a decision to purchase an Interest. Consult with your legal, tax and financial advisors about an investment in an Interest. The risks described below are not the only risks that may affect an investment in an Interest. Additional risks and uncertainties that we do not presently know or have not identified may also materially and adversely affect the value of an Interest, the Property or the performance of your investment.

Legal Counsel to the Trust, the Sponsor and their affiliates does not represent the Purchasers. Each Purchaser must acknowledge and agree in the Purchase Agreement that legal counsel, including Baker & McKenzie LLP, represents the Trust, the Sponsor, the Manager, the Master Tenant, the Depositor and their affiliates and does not represent, and will not be deemed under the applicable codes of professional responsibility, to have represented or to be representing, any or all of the Purchasers.

Delaware Statutory Trust Structure Risks

Beneficial Owners possess limited control and rights. The Trust is operated and managed solely by the Trustees and the Manager (an affiliate of the Sponsor). Purchasers, as Beneficial Owners, will have no right to participate in any aspect of the operation or management of the Trust. The Trustees and Manager will not consult with the Beneficial Owners when making any decisions with respect to the Trust and the Property, including whether to sell the Property or effectuate a Transfer Distribution. The Beneficial Owners waive any right to file a petition in bankruptcy on behalf of the Trust or to consent to any filing of an involuntary bankruptcy proceeding involving the Trust. The Manager will collect rents due from the Master Tenant under the Master Lease and make distributions pursuant to the Trust Agreement. The Manager will sell the Property in accordance with the provisions of the Trust Agreement, which provide that the Manager has sole power to determine when it is appropriate to sell the Property. The Delaware Trustee may, upon written notice to the Manager, remove the Manager or limit the duties of the Manager under the Trust Agreement. The Manager may remove the Delaware Trustee for the willful misconduct, bad faith, fraud or gross negligence of the Delaware Trustee.

Beneficial Owners do not have legal title. The Beneficial Owners will not have legal title to the Property. The Beneficial Owners will not have any right to seek an in-kind distribution of the Property or divide or partition the Property. The Beneficial Owners do not have the right to sell or cause the sale of the Property.

The Delaware Trustee, the Independent Trustee and the Manager have limited duties to Beneficial Owners. The Delaware Trustee, the Independent Trustee and the Manager will not owe any duties to the Beneficial Owners other than those duties set forth in the Trust Agreement. In performing their duties under the Trust Agreement, the Delaware Trustee and the Independent Trustee will only be liable to the Beneficial Owners for their own willful misconduct, bad faith, fraud or gross negligence. Similarly, the Manager will only be liable to the Beneficial Owners for its own fraud or gross negligence.

The Delaware Trustee, the Independent Trustee and the Manager have limited powers, and the Trust may therefore face increased termination risk. In order to comply with the tax law regarding investment trusts and Section 1031 Exchanges, the Trust Agreement expressly prohibits the Delaware Trustee, the Signatory Trustee, the Independent Trustee and the Manager from taking a number of actions, including the following: (a) selling, transferring or exchanging the Property except as required or permitted under the Trust Agreement; (b) reinvesting any monies of the Trust, except to make permitted modifications or repairs to the Property or in short-term liquid assets; (c) renegotiating the terms of the Loan or entering into new financing, except in the case of the bankruptcy or insolvency of the Master Tenant; (d) renegotiating the Master Lease or entering into new leases, except in the case of the Master Tenant's bankruptcy or insolvency; (e) making modifications to the Property (other than minor non-structural modifications) unless required by law; (f) accepting any capital from a Beneficial Owner (other than capital (i) used to pay expenses of the offer and sale of Interests, (ii) used to fund Trust reserves, or (iii) used to repurchase of the Depositor's Class 2 Beneficial Interests and thereby reduce the Depositor's ownership interest in the Trust); or (g) taking any other action that would in the opinion of Tax Counsel to the Trust cause the Trust to be treated as a business entity for federal income tax purposes.

As a result, the Trust may be required to effectuate a Transfer Distribution in order to take the actions necessary to preserve and protect the Property. *See "Summary of the Trust Agreement."* While the Property will remain subject to the Loan after such conversion or transfer, the Beneficial Owners will no longer be considered to own, for federal income tax purposes, a direct ownership interest in the Property.

Management and indemnification. The Manager will have administrative authority with respect to the Trust. The Trust Agreement provides for indemnification by the Beneficial Owners of the Delaware Trustee and the Independent Trustee against liabilities not attributable to the Delaware Trustee's or the Independent Trustee's own willful misconduct, bad faith, fraud or gross negligence, and of the Manager against liabilities not attributable to the Manager's own fraud or gross negligence. Such indemnity and limitation of liability may limit rights that Beneficial Owners would otherwise have to seek redress against the Delaware Trustee, the Independent Trustee and the Manager. Beneficial Owners will have personal, recourse liability for payment of any indemnity owed to the Delaware Trustee, the Independent Trustee or the Manager.

Revenue Ruling 2004-86. The utilization of a DST (like the Trust) to acquire and hold property for purposes of a Section 1031 Exchange is based primarily on Revenue Ruling 2004-86, which sets forth terms under which a trust will be treated as an "entity" that is taxable as a "trust" rather than taxable as a partnership. It is possible that the IRS could modify or revoke Revenue Ruling 2004-86 or, in the alternative, determine that the Trust does not comply with the requirements of that ruling. A determination that the Trust is not taxable as a trust (within the meaning of Treasury Regulations Section 301.7701-4) could have a significant adverse impact on the Beneficial Owners.

Sale. The Manager will sell the Trust Estate upon its determination (in its sole discretion) that the sale of the Trust Estate is appropriate; provided, however, that absent unusual circumstances, it is currently anticipated that the Trust will hold the Trust Estate for at least two years. This sale will occur without regard to the tax position, preferences or desires of any of the Beneficial Owners, and the Beneficial Owners will have no right to approve (or disapprove) of the sale of the Property. The Beneficial Owners will not have the right to sell the Property. A Beneficial Owner may or may not be able to defer the recognition of gain for federal, state or local income tax purposes when a sale occurs.

Transfer to newly-formed Delaware limited liability company. If the Manager determines that it is necessary to effectuate a Transfer Distribution, the Trust will transfer the Property to the Springing LLC, a newly-formed Delaware limited liability company. The Springing LLC will be treated as a partnership for federal income tax purposes, and the Beneficial Owners will become members in the Springing LLC. Unlike interests in the Trust, membership interests in the Springing LLC will not be treated as interests in real property for federal income tax purposes (including for purposes of Code Section 1031). Thus, if the Trust transfers the Property to the Springing LLC in a Transfer Distribution, it is unlikely that any of the Beneficial Owners will thereafter be able to defer the recognition of gain on a subsequent disposition of their membership interests in the Springing LLC or the Property under Code Section 1031.

The transfer of the Property to the Springing LLC will occur under the circumstances set forth in the Trust Agreement without regard to the costs incurred as a result of such transfer. It is possible that such transfer will result in the imposition of (i) state and/or local transfer, sales or use taxes; or (ii) federal income tax (although no federal income tax would be imposed under current law).

In the event of an adverse effect on the income of the Trust, the Trust is not permitted to obtain additional funds through additional borrowings or additional capital, and therefore could be required to effectuate a Transfer Distribution so as to seek to raise capital through the Springing LLC. If, after a Transfer Distribution, additional funds are not available from any source, the Springing LLC may be forced to dispose of all or a portion of the Property on terms that may not be favorable to the Beneficial Owners. Further, apart from potential adverse economic consequences of a Transfer Distribution, a Transfer Distribution may have adverse tax consequences for the Beneficial Owners. *See "Federal Income Tax Consequences."*

The Trust Agreement restricts Beneficial Owners' rights to information. The Trust Agreement eliminates certain rights to information the Beneficial Owners would have otherwise had under the Delaware Statutory Trust Act (the "**DST Act**"). While the Sponsor believes this is reasonable, necessary and prudent to protect the interests of legitimate Purchasers in the Trust from 'greenmail' or other attacks by parties such as so-called 'vulture investors' that are potentially harmful to the investment program, this would nevertheless mean that a Purchaser will have less access to information from the Trust than a Purchaser would be entitled to under the DST Act, including contact information for other Beneficial Owners.

Real Estate Risks

Accuracy of anticipated results of operations. The anticipated results of operations for the Trust as set forth in this Memorandum, including the pro forma financial projections attached as **Appendix I: Financial Forecast**, are based upon current estimates of income and expenses relating to the operation of the Property, should be considered

speculative and are qualified in their entirety by the assumptions, information, limitations and risks disclosed in this Memorandum. If the assumptions on which these estimates are based do not prove correct, the Beneficial Owners who own Interests in the Trust will have difficulty in achieving their anticipated results. The anticipated results of operations assume occupancy levels and certain net rental rates. There can be no assurance that the Property can achieve stabilization or maintain the occupancy level or rate increases anticipated. Some of the other underlying assumptions inevitably may not materialize and unanticipated events and circumstances may occur. Therefore, the actual results achieved during the life of the ownership of the Property may vary from those anticipated, and the variation may be material. As a result, the rate of return to the Trust and the Beneficial Owners may be lower than that projected. Any return to the Beneficial Owners on their investment will depend on the ability of the Master Tenant and the Property Manager to operate the Property profitably and ultimately sell the Property at a profit, which, in turn, will depend upon economic factors and conditions beyond their control.

Risks of real estate ownership. The investment by Beneficial Owners will be subject to the risks generally incident to the ownership of real property, including changes in national and local economic conditions, changes in the investment climate for real estate investments, changes in demand for or supply of competing properties, changes in local market conditions and neighborhood characteristics, the availability and cost of mortgage funds, the obligation to meet fixed and maturing obligations (if any), unanticipated holding costs, the availability and cost of necessary utilities and services, changes in real estate tax rates and other operating expenses, changes in governmental rules and fiscal policies, changes in zoning and other land use regulations, environmental controls, acts of God (which may result in uninsured losses), and other factors beyond the control of the Trust. Any negative change in the general economic conditions in the United States could adversely affect the financial condition and operating results of the Trust.

The Trust also will be subject to those risks inherent in the ownership of income-producing real property, such as occupancy, operating expenses and rental schedules, which in turn may be adversely affected by general and local economic conditions, the supply of and demand for properties of the type selected for investment, the financial condition of tenants and sellers of properties, zoning laws, federal and local rent controls and real property tax rates. Certain expenditures associated with real estate equity investments are fixed (principally mortgage payments, if any, real estate taxes, and maintenance costs) and are not necessarily decreased by events adversely affecting the income from such investments. The ability of the Trust to meet its obligations will depend on factors such as these and no assurance of profitable operations can be given.

The Property is subject to risks relating to the local real estate market. Weakness or declines in the local economy and real estate market could cause vacancy rates at the Property to increase and could adversely affect the Trust's ability to sell the Property under favorable terms. The factors which could affect economic conditions in the market generally include business layoffs, industry slowdowns, relocations of businesses, changing demographics, infrastructure quality and any oversupply of or reduced demand for real estate. Declines in the condition of the market could diminish your investment in and value of the Property.

Risks of investing in multifamily rental properties; competition. The rental of multifamily residential space is a highly competitive business. Ownership of the Property could be adversely affected by competitive properties in the real estate market, which could affect the operations of the Property and the ultimate value of the Property. Success in owning the Property, therefore, will depend in part upon the ability of the Master Tenant and the Property Manager (i) to retain current tenants at favorable rental rates; (ii) to attract other quality tenants upon the termination of existing leases if the existing tenants fail to renew or as otherwise needed; and (iii) to provide an attractive and convenient living environment for the tenants.

Although the Property will be leased to the Master Tenant throughout the term of the Trust, the Master Tenant is a newly-formed entity with limited financial resources. The financial performance of the Property therefore will be dependent to a significant degree on the ability of the Master Tenant and the Property Manager to retain current tenants, to attract new tenants and, as planned, to increase rental rates, all of which may in turn depend on factors both within and beyond the control of the Manager, the Trust, the Master Tenant and the Property Manager. These factors include changing demographic trends and traffic patterns, the availability and rental rates of competing residential space, and general and local economic conditions. The number of competitive multifamily properties in a particular area, and any increased affordability of owner occupied single and multifamily homes caused by declining housing prices, mortgage interest rates and government programs to promote home ownership, could have a material adverse impact on the Master Tenant and the Property Manager's ability to lease the Property and the rents they are able to obtain. The loss of a tenant or the inability to maintain favorable rental rates with respect to the Property would

adversely affect the value of the Property and/or the ability of the Master Tenant to pay rent, which could result in the Lender declaring the Loan in default and foreclosing on the Property. This could result in the Purchasers losing their entire investment in the Property. The occurrence of a casualty resulting in damage to the Property could also decrease or interrupt the payment of tenant rentals, which could adversely affect the Master Tenant's performance under the Master Lease. The end-user tenant leases generally allow the end-user tenants to terminate their leases if the leased premises are partially or completely damaged or destroyed by fire or other casualty. Such leases will also permit the end-user tenants to partially or completely abate rental payments during the time needed to rebuild or restore such damaged premises. The leases or local law may permit tenants to assign their leases or sublet the premises they occupy, but such assignment or subletting generally will not relieve the tenant of its primary obligations under the lease.

The financial performance of the Property will depend upon the ability of the Property Manager to attract and retain tenants who will meet their rental obligations on a timely basis, care for their living space and preserve or enhance the reputation of the Property. The financial performance of the Property and the related ability of the Property Manager to meet the financial projections contained herein will depend upon many factors, a significant one being the tenants' timely payment of rent under their leases and care for their living spaces. If a large number of tenants become unable to make rental payments when due, decide not to renew their leases or decide to terminate their leases, this could result in a significant reduction in rental revenues, which could adversely affect the ability of the Master Tenant to make payments under the Master Lease, including payment of principal and interest on the Loan, which could adversely affect the value of the Property and/or result in the Lender declaring the Loan in default and foreclosing on the Property. This could result in the Purchasers losing their entire investment in the Property. In addition, the failure by a large number of tenants to properly care for their units or common areas or to preserve or enhance the reputation of the Property could lead to increased repair and maintenance costs or otherwise adversely affect the value of the Property. Failure on the part of a tenant to comply with the terms of his or her lease may give the Master Tenant the right to terminate the lease, repossess the applicable premises and enforce payment obligations under the lease. However, the cost and effort involved in pursuing these remedies and collecting damages from a defaulting tenant could be greater than the value of the lease. There can be no assurance that the Master Tenant will be able to successfully pursue and collect from defaulting tenants or re-let the premises to new tenants without incurring substantial costs, if at all. If other tenants are found, the Property Manager may not be able to enter into new leases on favorable terms. The financial projections assume a minimum occupancy rate and certain net rental rates for the Property to enable the Master Tenant to comply with its obligations under the Master Lease, but there can be no assurance that the Property will maintain the minimum occupancy rate or that the minimum net rental rates will be achieved. The Loan Documents provide that the Lender must approve any change of the Master Tenant or the Property Manager, which may make it difficult and/or costly to make a desired change in the management of the Property.

The Property Manager's operation of apartment communities within the surrounding geographical area may impact the operations and performance of the Property. The Property Manager currently manages the following apartment communities: (i) "Lilli Midtown" located at 693 Peachtree St. NE, Atlanta, Georgia 30308 ("**Lilli Midtown**"); (ii) "555 Boulevard" located at 555 Boulevard NE, Atlanta, Georgia 30308 ("**555 Boulevard**"); (iii) "Castleberry Park" located at 99 Centennial Olympic Park Dr, Atlanta, Georgia 30303 ("**Castleberry Park**"); (iv) "Lofts Centennial Yards South" located at 125 Ted Turner Dr SW, Atlanta, Georgia 30315 ("**Lofts Centennial Yards South**"); (v) "Maverick" located at 72 Milton Ave SE, Atlanta, Georgia 30315 ("**Maverick**"); (vi) "Allora Eastland" located at 1296 Moreland Ave SE, Atlanta, Georgia 30316 ("**Allora Eastland**" and, together with Lilli Midtown, 555 Boulevard, Castleberry Park, Lofts Centennial Yards South, and Maverick, the "**Commonly-Managed Properties**"), which are located within five miles of the Property. Since the financial performance of the Property is dependent to a significant degree on the ability of the Property Manager to retain current tenants, to attract new tenants and, as planned, to increase rental rates, the ability of the Property Manager to safely and effectively manage the Commonly-Managed Properties, the Property, or other properties may have an impact on the operations and performance of the Property. There is no assurance that the Property Manager will be able to attract residents to the Property and retain residents at the Property given the aforementioned circumstances.

Competition from apartment communities in the surrounding geographic area. A number of apartment communities of similar size and amenities are located in the Property's immediate apartment sub-market. *See "Market and Location Overview"* and *"Conflicts of Interest."* The Manager has identified several comparable apartment communities, each located within close proximity to the Property. There are a number of apartment communities in the surrounding region that may be more attractive to renters, including the Commonly-Managed Properties, which are currently managed by the Property Manager, and the Property Manager may in the future own or manage additional apartment communities that compete with the Property for tenants or otherwise. As a result, the Property Manager

could direct tenants away from renewing their existing leases at the Property and toward leasing apartment units at the Commonly-Managed Properties or such other properties. Competing apartment communities may reduce demand for the Property, increase vacancy rates, decrease rental rates and impact the value of the Property itself. There may also be additional real property available in the general vicinity of the Property that could support additional multifamily properties. If newer housing is built, it may siphon demand away from the Property, as newer housing tends to be more attractive to prospective tenants. It is possible that tenants from the Property will move to existing or new apartment communities in the surrounding area, which could adversely affect the financial performance of the Property. Competition from nearby apartment communities could make it more difficult to attract new tenants and ultimately sell the Property on a profitable basis. The Property could also experience competition for real property investments from individuals, corporations and other entities engaged in real estate investment activities. Other properties and real estate investments may be more attractive than the Property. The foregoing factors may encourage potential renters to purchase residences rather than lease them. There is no assurance that the Property Manager will be able to attract residents to the Property given these facts.

Leases for the Property generally have short terms, and the Property Manager may be unable to renew leases or re-let units as leases expire. Most of the existing leases for the units at the Property have lease terms of 12 months. Consequently, the Property's performance may in large measure depend upon the effectiveness of the Property Manager's marketing efforts to attract replacement tenants and to maintain the occupancy rate for the Property, which may require significant time and money. If tenants decide not to renew their leases upon expiration or decide to terminate their leases, the Property Manager may not be able to re-let their units. Even if the tenants do renew or their units are re-let, the terms of renewal or re-leasing may be less favorable than current lease terms. If the Property Manager cannot promptly renew the leases or re-let the units, or if the rental rates upon renewal or re-leasing are significantly lower than expected rates, then the Property's financial operations and condition will be adversely affected and this, in turn, may adversely affect the Property's cash flow, the ability of the Master Tenant to pay all rents due under the Master Lease and the ability of the Trust to service its debt and pay distributions to the Beneficial Owners.

Changes in laws could adversely affect the Property. Various federal, state and local regulations, such as fire and safety requirements, environmental regulations, the Americans with Disabilities Act of 1990, non-discrimination and equal housing laws, land use restrictions and taxes affect the Property. If the Property does not comply with these requirements, the Trust may incur governmental fines or private damage awards. New, or amendments to existing, laws, rules, regulations or ordinances could require significant unanticipated expenditures or impose restrictions on the operation, redevelopment or sale of the Property. Such laws, rules, regulations or ordinances may adversely affect the ability of the Trust to operate or sell the Property.

Corporate Transparency Act. As of the date of this Memorandum and pursuant to an interim final rule issued by the Financial Crimes Enforcement Network ("**FinCEN**"), the Trust is currently expected to be exempt from the Beneficial Ownership Information ("**BOI**") reporting obligations under the Corporate Transparency Act (the "**CTA**"). Under the CTA, "reporting companies" (as defined under the CTA) are required to file BOI reports with FinCEN disclosing information about the entity itself and "beneficial owners" (also as defined under the CTA) of the entity. BOI consists of identifying information about the individuals who directly or indirectly own or control a company, i.e., who (i) exercise substantial control over a reporting company, or (ii) own or control at least 25% of the ownership interests of a reporting company. When filing BOI reports with FinCEN, a reporting company is required to identify and report information about itself and each of its beneficial owners, including: name, birthdate, address, and a unique identifying number and issuing jurisdiction from an acceptable identification document (and the image of such document), such as a driver's license, State ID, or passport. If subject to the reporting obligations, the Trust would be required to file a BOI report identifying and disclosing certain information with respect to all Purchasers who exercise substantial control or own or control at least 25% of its Interests (and update its BOI report if that information changes). Certain Purchasers may initially be over 25%, and then, after additional sales, may be diluted to below 25%, in which case such Purchasers will be reported and then removed from later BOI report updates. Purchasers with a FinCEN ID may supply such ID in lieu of their personal information. In connection with the ongoing developments regarding the implementation of the CTA, the Manager expects to undertake any required actions to ensure that the Trust remains compliant with any BOI reporting obligations it may have with respect to the CTA.

The operation of the Property will depend, in part, on the availability of public utilities and services, especially for water and electric power. Any reduction, interruption or cancellation of these services may adversely affect the Trust and the Master Tenant. Public utilities, especially those that provide water and electric power, are fundamental for the sound operation of the Property. The delayed delivery or any material reduction or

prolonged interruption of these services could allow the residents to terminate their leases or result in an increase in the Master Tenant's costs, as it may be forced to use backup generators.

An increase in real estate taxes may affect the operating results of the Property and the Trust. The projected income from the Property is based on certain assumptions, including an increase in real estate taxes. However, from time to time the real estate taxes may increase further as property values or assessment rates change or for other reasons deemed relevant by the assessors. Real estate taxes may increase even if the value of the Property declines. An increase in the assessed valuation of the Property for real estate tax purposes will result in an increase in the related real estate taxes on the Property. In the event that the actual uncontrollable costs (which include real estate, personal property and franchise taxes and similar impositions, utility costs, and insurance costs) for any calendar year for the Property exceed the Projected Uncontrollable Costs for such year for the Property, then the Master Tenant will be responsible for payment of such excess amount, but will be entitled to reimbursement of such excess amount by offsetting such amount against Additional Rent and, if necessary, Supplemental Rent, which could adversely affect the financial condition and operating results of the Trust.

Agreements and other matters affecting the Property may impact the operations and performance of the Property. Multifamily properties, such as the Property, may be subject to various easements, declarations, restrictions, encroachments, and other agreements of record with neighboring landowners, and local governmental entities that may restrict certain land and/or property uses, impose certain fees or obligations, and otherwise impact the operation and performance of such properties. See "*The Property – Agreements and Other Matters Affecting the Property*" for a discussion of any such agreements which may be material to a possible investment pursuant to this Memorandum.

Public health risks may affect the economic performance of your participation in the Offering. Public health concerns related to any outbreak of an infectious disease such as severe acute respiratory syndrome, avian flu, H1N1/09 flu and COVID-19 or any other serious public health concern (in each case, a "**Public Health Event**"), could have a negative impact on the economy and the business activities in which the Trust may engage. The Trust's business activities and economic performance could also be negatively impacted in the event a federal, state or local government has a reaction to a Public Health Event resulting in restrictions on travel, quarantines, or other directives designed to reduce the effects of such Public Health Event. The full extent of the impact of a Public Health Event on the future financial performance of the Trust, as a whole, and, specifically, on its investments, real estate acquisitions, construction and tenants of real estate properties could be compromised by negative economic effects caused by a Public Health Event. The full impact will depend on subsequent developments, including, among other factors, the duration and spread of the Public Health Event, along with any related travel advisories or restrictions, government orders preventing business and/or tenant operations, the recovery time of the disrupted supply chains, unemployment, any consequential staff shortages and production delays, and any uncertainty with respect to the accessibility of additional liquidity or to the capital markets. A Public Health Event could have a continued adverse impact on economic and market conditions and trigger a period of global economic slowdown. Based on the economic climate, it may be even more difficult to predict the economic performance of a Purchaser's participation in the Offering. Even if federal, state or municipal governments intervene and provide aid to the industries negatively affected by a Public Health Event, there can be no assurances provided that such aid would be received by the Trust or any of its affiliates or service providers, or that any amount of such aid would mitigate any material economic reduction in value of the Interests.

With regard to the Offering, Purchasers are advised that they could experience one or more of the following adverse consequences as a result of a Public Health Event: (i) jurisdictional differences in governing law with regard to any governmental response to the Public Health Event; (ii) revenue or cash flow uncertainty caused by a decrease in rental payments received by the Master Tenant; (iii) default on the Loan encumbering the Property; and (iv) uncertainty regarding the exit strategy for the Trust and other market participants.

The Property is required to actively market units to a certain number of Workforce Residents. Pursuant to the LURA, the Property is required to actively market 15% of its units to Workforce Residents (as defined herein). This requirement may limit the potential revenues from the Property and may adversely affect the performance of the Property; consequently, the value of your investment and the ability of the Trust to service its debt and pay distributions to the Beneficial Owners may be affected. *See "The Property – Agreements Affecting the Property – LURA"* for additional discussion.

Risks Relating to the Master Tenant and the Master Lease

Limited capital of the Master Tenant. The financial stability of the Master Tenant may affect the financial performance of the Property. The Master Tenant's initial capitalization is supported solely by the Demand Note from the Sponsor in the amount equal to $2,400,000. The Sponsor is under no obligation to contribute capital to the Master Tenant other than the amount of the Demand Note from the Sponsor. If the Master Tenant requires funds in excess of the Property net operating income to pay the Rent (subject to a limited right of deferral) or satisfy its other obligations under the Master Lease, it will need to call upon the Sponsor to contribute the amount of its Demand Note. However, no assurance can be given that the amount of the Demand Note will be sufficient to enable the Master Tenant to pay the Rent or to fund its obligations under the Master Lease, or that the Sponsor will be able to fund the Demand Note if called upon by the Master Tenant to do so. If the Master Tenant is unable to pay the rent or satisfy its obligations under the Master Lease, the Master Tenant would be in default under the Master Lease. A Master Tenant default also constitutes an event of default under the Loan Documents, which could result in suspension or termination of distributions to Beneficial Owners and/or a foreclosure of the Property by the Lender. In addition, the costs and time involved in enforcing the Trust's rights under the Master Lease may be significant. If the Trust terminated the Master Lease, it may not be able to master lease the Property on terms similar to the Master Lease. If the Trust were unable to enter into a new master lease for the Property, the returns to Purchasers would likely be materially adversely affected. In addition, if the Trust were unable to enter into a new master lease, it would likely become necessary for the Trust to effectuate a Transfer Distribution, in order to engage in leasing activities, which would likely give rise to adverse tax consequences to Purchasers. Absent insolvency or a bankruptcy by the Master Tenant, the Delaware Trustee may not be empowered to execute such replacement master lease. Furthermore, if the Master Tenant is unable to pay the Rent or satisfy its obligations under the Master Lease, the Trust may be unable to pay the debt service on the Loan and the Lender could foreclose on the Property. In such event, the Purchasers could lose their entire investment in the Property and suffer adverse tax consequences.

The Sponsor may be unable to fulfill its obligations under the Demand Note. The Sponsor has made the Demand Note equal to the amount of $2,400,000 in favor of the Master Tenant in order to capitalize the Master Tenant. However, there can be no assurance that the Sponsor will be able to satisfy its obligations pursuant to such Demand Note. The net worth or current assets of the Sponsor may be insufficient to support its obligations under the Demand Note at the time of being called. If the Sponsor is required to perform on outstanding or future demand notes, guaranties or other debt obligations or otherwise experiences an adverse financial event, it is possible that the Sponsor may not have sufficient funds or resources to perform its obligations under its Demand Note and may be unable to fulfill its obligations to the Master Tenant. In the event of the insolvency or bankruptcy of the Sponsor, the Master Tenant would be required to compete with any other creditor claims that may be asserted against the same assets of those entities and any secured creditor claims would be superior to those of the Master Tenant under the Demand Note, which is unsecured. The assets of the Sponsor and its affiliates are subject to the various risks of real estate ownership, syndication and management, including, but not limited, to market value fluctuations and uncertainty of profitability of business operations. The ultimate value of these existing assets will depend upon their ability to successfully implement their respective business plans, which in turn depends upon competition and other market factors. If the Sponsor is unable to pay its Demand Note when called upon, the Master Tenant may have insufficient funds to pay the Rent or property expenses, including without limitation the Base Rent upon which the Trust relies in order to be able to pay the debt service on the Loan. Any failure of the Master Tenant to pay the Rent would materially and adversely affect returns to the Purchasers, may cause the Trust to terminate the Master Lease, and may cause a default under the Loan resulting in foreclosure and a complete loss of the Property and the entire investment of the Purchasers.

Performance of the Master Tenant under the Master Lease. The ability of the Trust to meet its obligations is dependent upon the performance of the Master Tenant and its payment of Rent and other payments required under the Master Lease.

The Master Tenant has a limited right to defer rental payments under the Master Lease. Under the Master Lease, if the Property's operating cash flow is insufficient to pay all of the associated expenses of the Property (not including the Asset Management Fee (as defined herein)), and the full Base Rent, then in such event, the Master Tenant has a limited right to defer and accrue a portion of the Additional Rent and the Supplemental Rent payments due under the Master Lease (but not any portion of the Base Rent required to make debt service payments due under the Loan Documents). Because the Master Tenant may accrue a portion of the Additional Rent and the Supplemental Rent, it will not be required to call the Demand Note from the Sponsor in order to make up such a shortfall. In such an instance, Purchasers may receive less or more varied distributions than they would have if the Master Tenant were required to call the Demand Note to fund any such Rent shortfall. Furthermore, if future cash flow from the Property

or disposition proceeds are insufficient to pay the accrued Rent and the Sponsor is unable to fund the Demand Note when called, then the Trust may never receive the full amount of any such accrued Rent, which could materially and adversely affect the returns to the Purchasers.

Additionally, in the event that the Master Tenant elects to defer payment of a portion of the Rent, although the issue is not completely settled under existing law, under Code Section 467, Beneficial Owners may be required to report and pay tax on rent in accordance with the rent schedule attached to the Master Lease, even though the Master Tenant may have elected to defer the payment of a portion of such rent. As a result, Beneficial Owners may be required to recognize rental income even though rent is not being fully paid, and therefore Beneficial Owners may have to use funds from other sources to pay tax on such income. *See "Summary of the Master Lease."*

Risks Relating to an Investment in the Property

Valuation. In connection with the Loan, the Lender obtained the Appraisal for the Property prepared by the Appraiser, dated August 5, 2025, reflecting a market value for the Property, "As Is," of $81,600,000. The purchase price of $81,500,000 for the Property at the time of the Closing is lower than the $93,359,900 sum of the equity, assuming the Maximum Offering Amount is sold, in connection with the Class 1 Beneficial Interests ($46,170,900) and the proceeds of the Loan ($47,189,000). *See "Estimated Use of Proceeds."* Thus, the Trust will be subject to immediate dilution and the Beneficial Owners may recover less than their invested capital upon any eventual sale of the Property. There can be no assurance that the value of the Property will appreciate, or appreciate at a rate sufficient to provide a positive return on investment.

Property is not a diversified investment. By the terms of the Trust Agreement (as well as the terms of the Loan Documents) the Trust generally is not permitted to acquire real property other than the Property or any other assets or make any other investments. Because an investment in Interests represents an investment in one property, it is not a diversified investment. Accordingly, the poor performance of the Property would likely materially and adversely affect your investment in an Interest.

Physical condition of the Property; no representations to Purchasers. The Trust will not make any warranties or representations to the Purchasers regarding the condition of the Property. The Lender has received a Property Condition Assessment dated July 8, 2025 (the "**PCA**"), prepared for the Lender by Blew & Associates, P.A. ("**Blew**"). The PCA identified no need for immediate repairs. The PCA recommends future capital repairs over the 12-year period specified therein of (uninflated) $480,240.

Following the Closing, the Trust has $646,735 in the Supplemental Trust Reserve, versus approximately $480,240 in uninflated estimated replacement repair items estimated by the PCA. The Trust will also make annual contributions of $32,500 to the Supplemental Trust Reserve starting in year 2 and the year 1 contribution was funded at Closing. There can be no assurance of the accuracy of the PCA with regard to future capital expenditure requirements of the Property, or that the Sponsor has budgeted adequately in the Financial Forecast for all such repairs, replacements, and other expenditures that are or become necessary. If the Supplemental Trust Reserve is insufficient (including due to the possibility that reimbursements and other compensation items due the Sponsor may be or have been drawn from resources credited, held or controlled by the Trust, including the Supplemental Trust Reserve), the Trust's Rent could be used by the Trust to reserve for or pay such expenses (instead of being used to pay distributions to Purchasers), or those expenses and costs could possibly be so significant as to require additional capital to be infused which could not be done except through a Transfer Distribution, which would likely have material and adverse tax consequences for Purchasers.

Environmental problems are possible and can be costly. Federal, state and local laws and regulations relating to the protection of the environment may require a current or previous owner or operator of real estate to investigate and clean up hazardous or toxic substances or petroleum product releases at or affecting the Property. The owner or operator may have to pay a governmental entity or third-parties for property damage and for investigation and clean-up costs incurred by such parties in connection with any such contamination. These laws typically impose clean-up responsibility and liability without regard to whether the owner or operator knew of or caused the presence of the contaminants. Even if more than one person may have been responsible for the contamination, each person covered by the environmental laws may be held responsible for all of the clean-up costs incurred. In addition, third-parties may sue the owner or operator of a site for damages and costs resulting from environmental contamination emanating from that site. We are also aware that environmental agencies and third-parties have, in the case of certain properties with on-site or nearby contamination, asserted claims for remediation, property damage or personal injury based on the alleged actual or potential intrusion into buildings of chemical vapors (e.g., radon) or volatile organic

compounds from soils or groundwater underlying or in the vicinity of those buildings or nearby properties. We can provide no assurance that we will not incur any material liabilities as a result of vapor intrusion at the Property.

The Property has been evaluated for environmental hazards pursuant to a non-invasive Phase I Environmental Site Assessment Report, dated July 14, 2025 (the "**Phase I Report**") prepared for the Lender by Blew, based on a site visit. The Phase I Report, which consisted of a walk-through observation of the accessible areas and interviews with facility personnel and local agency representatives, limited observations of surrounding properties, and a records review including regulatory databases and historical use information, revealed no evidence of recognized environmental conditions ("**RECs**") in connection with the site. Four controlled recognized environmental conditions ("**CRECs**") were identified in connection with the Property. In addition, no historical recognized environmental conditions were identified, and one business environmental risk ("**BER**") was identified.

The CRECs identified include: (i) the Property was identified as a Voluntary Cleanup Program site and is included in the federal and state of Georgia Brownfield redevelopment program for past impacts to soil and groundwater; (ii) the Property operated as a battery manufacturing plant from 1948 through 2000, with lead waste previously detected in soils above reportable limits; (iii) the Property and surrounding area are included in Brownfield site areas for past industrial use with documented impacts to soil and/or groundwater; and (iv) the Property is included in the Georgia Brownfield Program for redevelopment under an institutional control use limitation due to past impacts with residual contaminants in soil and groundwater.

The BER identified levels of radon at or above the EPA action level of 4 pCi/L in two units tested as a result of a sampling conducted at the Property.

Blew did not observe suspect friable asbestos-containing materials ("**ACM**") during the site visit at the Property. Suspect non-friable materials were observed by Blew, which included flooring mastic, drywall, joint compound and roofing materials, all of which were observed to be in good condition.

Regarding the CRECs and BER, Blew recommended the following: (i) review and adherence to all Brownfield and state Voluntary Remediation Program ("**VRP**") guidelines to ensure continued compliance with risk reduction standards; (ii) groundwater not be utilized as a potable source, and avoidance of exposure to groundwater due to known prior impacts with documented residual contaminants below reportable limits; (iii) consultation with a certified environmental consultant prior to any change of use, or any development activities that may require exposure to onsite soils (below the top two feet) and/or groundwater; and (iv) additional radon testing or the installation of a radon mitigation system. For more information on the status of the Property as a Brownfield site, see *"The Property – Agreements and Other Matters Affecting the Property – Georgia Brownfield Program."*

A Phase I environmental assessment report generally will not involve any invasive testing, but instead is limited to a physical walk through or inspection of the Property and a review of the related governmental records. Accordingly, the Sponsor cannot provide any assurance to potential Purchasers that actual environmental problems with the Property will be exposed by the Phase I Report. In light of the material risks and potential liability associated with the discovery of an environmental hazard at the Property, the Purchasers of the Interests should be certain that they understand, and can accept, the risks associated with any known and unknown hazardous substances affecting the Property. In addition, it is possible that an environmental claim may be raised in such a manner that liability could penetrate any limited liability protections otherwise available to shield the owners of an entity from liability, thereby allowing such claims to be enforceable against the Purchasers. Finally, it is possible that the existence of any environmental issues with the Property may make it more difficult, and perhaps impossible, to obtain financing for the Property.

Governmental laws and regulations may impose significant costs. Real property and the operations conducted on real property are subject to federal, state and local laws and regulations relating to protection of the environment and human health. We could be subject to liability in the form of fines, penalties or damages for noncompliance with these laws or regulations. These laws and regulations generally govern wastewater discharges, air emissions, the operation and removal of underground and above-ground storage tanks, the use, storage, treatment, transportation and disposal of solid and hazardous materials, the presence of toxic building materials, and other health and safety-related concerns. Some of these laws may impose joint and several liability on the tenants, owners or operators of real property for the costs to investigate or remediate contaminated properties, regardless of fault, whether the contamination occurred prior to purchase, or whether the acts causing the contamination were legal.

Construction of improvements. Under applicable tax rules, if the Trust were to cause the construction of more than minor, non-structural improvements, this activity could require a Transfer Distribution, which may have adverse tax consequences for the Beneficial Owners.

Risk of mold contamination. Mold growth may occur when excessive moisture accumulates in buildings or on building materials, particularly if the moisture problem remains undiscovered or is not addressed over a period of time. Mold contamination has been linked to a number of health problems, which could result in litigation by tenants seeking various remedies, including damages and the ability to terminate their leases. Recently there have been an increasing number of lawsuits against property owners and managers alleging personal injury and property damage caused by the presence of toxic molds. Some of these lawsuits have resulted in substantial monetary judgments or settlements. Insurance carriers generally exclude mold-related claims from standard policies and price mold endorsements at prohibitively high rates. The assessment of the Property in connection with the PCA included a limited visual inspection for the significant presence of mold. Blew did not observe evidence of water intrusions or suspect mold at the Property, and therefore determined mold did not constitute a BER. No assurance can be given either that additional undetected mold condition does not presently exist at the Property or that other mold conditions will not arise in the future. Mold conditions would create the risk of substantial damages, legal fees and possibly loss of tenants. If a significant mold condition arises in the future at the Property, we could be required to undertake a costly remediation program to contain or remove the mold from the Property and could be exposed to other liabilities that may exceed any applicable insurance coverage.

The Supplemental Trust Reserve may be inadequate. The Master Tenant, subject to the express terms of the Loan Documents and the Master Lease, may draw upon the Supplemental Trust Reserve for Landlord Costs and other Property costs and expenses. To the extent that Property expenses increase or unanticipated expenses arise, and the available reserves are insufficient to meet such expenses, the Trust may be forced to use some or all of the Rent payments received from the Master Tenant to pay such obligations of the Trust, or to effect a Transfer Distribution in order to raise the necessary capital through the Springing LLC for such purposes, because the Trust itself is prohibited from raising additional capital. In addition, construction of more than minor, non-structural improvements out of reserves established by the Trust may require the Trust to effectuate a Transfer Distribution, which may have adverse tax consequences for the Beneficial Owners.

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 Property is located. We are unable 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 ability of the Property to meet stated goals. If such shortages occurred or such costs increased, however, they could materially and adversely affect the income derived by the Trust from the Property, the value of the Property and the value of the Interests.

Forum selection and governing law. Any disputes arising from the Master Lease must be brought in a court of competent jurisdiction in the state where the Property is located. Additionally, disputes arising under the Master Lease will be adjudicated under the law of the state where the Property is located. Any disputes arising from the Purchase Agreement, the Trust Agreement, the Springing LLC Agreement or the Asset Management Agreement (collectively, the "**Offering Documents**") must be brought in a court of competent jurisdiction in New York County, New York. Accordingly, any action brought under any of the Offering Documents in courts not located in New York County, New York may be dismissed for improper venue. By purchasing Interests pursuant to the Purchase Agreement, the purchaser waives his, her, or its right to a jury trial. Further, should any of the Offering Documents be the subject of any dispute, such dispute will be adjudicated under Delaware law.

Risks Related to Financing of the Property

Risks of leverage. The Trust owns the Property subject to the Loan. This use of leverage may increase the return on invested capital. However, it also presents an additional element of risk in the event that the cash receipts from the operation of the Property are insufficient to meet the principal and interest payments on such indebtedness. In order to comply with tax requirements for Section 1031 Exchanges, the Trust is not permitted to obtain new financing and Beneficial Owners are not permitted to make additional capital contributions to the Trust. Thus, if the cash flow from the Property is insufficient to allow the Master Tenant to make the required payments under the Master Lease, including payments required to service the Loan, the Lender may foreclose on the Property and the Beneficial Owners' equity in the Property may be reduced or lost entirely. A Transfer Distribution may make it possible to delay or avoid a foreclosure (because the Springing LLC is not restricted from refinancing the Property or raising new capital) but may, itself, cause adverse tax consequences for the Beneficial Owners. *See "Federal Income Tax*

Consequences." Moreover, the cost of any refinancing of the Property after a Transfer Distribution, in the form of interest charges and financing fees imposed by lenders or affiliates of the Sponsor might significantly reduce the profits or increase losses resulting from operation of the Property.

Although the Delaware Trustee can remove the Manager in certain limited circumstances, the Lender requires that there be an adequately capitalized successor Manager. This requirement may limit the ability of the Delaware Trustee to remove the Manager, since the exercise of such right would give rise to a default under the Loan absent the Lender's consent. The Trust cannot incur any additional borrowings or refinance the Property.

Scheduled debt payments could adversely affect the Property's financial condition. In the future, the Property's cash flow could be insufficient to meet required payments under the Loan Documents or to pay cash flow to the Trust at expected levels. As a result of any shortfall, the Manager may be forced to postpone capital expenditures necessary for the maintenance of the Property, suspend distributions to Beneficial Owners, or may require a sale or Transfer Distribution. There can be no assurance that the Manager will be able to sell the Property upon acceptable terms, if at all, or that after a Transfer Distribution the Springing LLC would be able to raise additional or sufficient capital to avert a Loan default and possible foreclosure of the Property by the Lender.

Events of default. The Loan is "non-recourse," meaning that the Lender may only seek recovery from the liquidation of its collateral (principally, the Property) for any amounts that remain due under the Loan after a default. However, the Loan Documents will contain certain events, including without limitation any default, event of default, or breach (however such terms may be defined), that would allow the Lender to proceed against the Trust to repay amounts due on the Loan, in addition to foreclosing on the Property and the other collateral for the Loan. Thus, if such events occur, "springing" liability to the Trust may result, including an amount equal, in certain instances, to the full amount of the Loan. *See "Acquisition of the Property and Financing Terms"* for the events under the Loan Documents for which the Trust may have liability beyond the value of the Lender's collateral.

Lender's approval rights. The Lender has numerous rights under the Loan Documents, including the right to approve certain changes in ownership and management. Prospective Purchasers are encouraged to review a complete set of the Loan Documents prior to subscribing for the Interests.

Restrictions on transfer and encumbrance. The terms of the Loan prohibit the transfer or further encumbrance of the Property or any interest in the Property except with the Lender's prior written consent, which consent may be withheld, or otherwise permitted under the Loan Documents. The Loan Documents provide that upon violation of these restrictions on transfer or encumbrance, the Lender may declare the entire amount of the Loan, including principal, interest, prepayment premiums and other charges, to be immediately due and payable. If the Lender declares the Loan to be immediately due and payable, the Trust will have the obligation to immediately repay the Loan in full. If the Trust is unable to obtain replacement financing or otherwise fails to immediately repay the Loan in full, the Lender may invoke its remedies under the Loan Documents, including proceeding with a foreclosure sale that is likely to result in the Beneficial Owners losing the entire value of their Interests. Further, since the Trust is prohibited from borrowing additional funds or from accepting additional capital contributions, the Trust would in such a situation be required to effectuate a Transfer Distribution into the Springing LLC.

Ability to repay the Loan. The ability of the Trust to repay the Loan will depend in part upon the sale or other disposition of the Property prior to, at the latest, the maturity date of the Loan. There can be no assurance that any such sale can be accomplished at a time or on such terms and conditions as will permit the Trust to repay the outstanding principal amount of the Loan. Financial market conditions in the future may affect the availability and cost of real estate loans, making real estate financing difficult or costly to obtain for potential buyers of the Property.

In the event that the Trust is unable to sell the Property prior to the maturity date of the Loan, the Trust may be required to effectuate a Transfer Distribution in order to allow the Springing LLC to seek to refinance the Loan. However, market conditions and the interest rate environment at that time could cause the cash flow from the Property to fluctuate and could impact capitalization rates, both of which could negatively impact the value of the Property and limit the Springing LLC sale or refinancing options. The Springing LLC may not be able to obtain refinancing on terms as favorable as the Loan. If additional funds are not available from a sale, refinancing or additional capital contributions to the resulting Springing LLC, the Springing LLC may be subject to the risk of losing the Property through foreclosure. Any such Transfer Distribution or foreclosure may have adverse tax consequences for the Beneficial Owners. *See "Federal Income Tax Consequences."*

Availability of financing and market conditions. Market fluctuations in real estate financing may affect the availability and cost of funds needed in the future for the Property. Moreover, credit availability has been restricted

in the past and may become restricted again in the future. Restrictions upon the availability of real estate financing or high interest rates for real estate loans could adversely affect the Property and the ability of the Trust to sell the Property at a profit or at any price.

Risks Relating to the Operation of the Property

Insurance; uninsured losses. The Master Tenant has obtained general liability and business interruption insurance for the Property. If a loss occurs that is partially or completely uninsured, the Beneficial Owners may lose all or a part of their investment. The Trust may be liable for any uninsured or underinsured personal injury, death or property damage claims. Liability in such cases may be unlimited. While insurance may help reduce the risk of loss, it increases costs and thus lowers the potential return to the Beneficial Owners.

Regulatory matters. The value of the Property may be adversely affected by legislative, regulatory, administrative, and enforcement actions at the local, state and national levels in the area, among others, of environmental controls. In addition to possible increasingly restrictive zoning regulations and related land use controls, such restrictions may relate to air and water quality standards, noise pollution and indirect environmental impacts such as increased motor vehicle activity.

Changes in the Bond Program or early termination of the Bond Lease could adversely affect returns. Under the Bond Program, the Trust is required under the Bond Lease to make rental payments to the Development Authority and, under the Bonds, the Development Authority is required to make payments to the Trust in an amount equal to the rental payments under the Bond Lease. As such, the payments due to the other party offset each other. Such payments will be less than (or equal to) the amount of real property taxes which would otherwise be owed on the Property depending on the year in question. If changes are made to the Bond Program that results in higher payments being owed by the Trust, or if the Bond Lease is terminated during the tax abatement period, this would increase the Property's operating expenses and may result in a reduction of amounts available for distribution to Investors. *See "Summary of the Bond Program, the Bond Lease and Related Documents."*

Reliance on management. Under the Trust Agreement, the Manager has the right to make administrative decisions on behalf of the Trust. Also, the Manager has the sole discretion to determine when to sell the Property and on what terms. The Manager has other extensive powers and authority, some of which are limited by the express terms of the Trust Agreement. In the event of a Transfer Distribution, however, the Manager or its affiliate, as the manager of the Springing LLC, would be granted expanded powers and the right to receive additional compensation. Accordingly, no Purchaser should purchase Interests unless such Purchaser recognizes that the Trust is limited in its ability to manage the Property and such Purchaser is willing to entrust such limited management of the Property and the power to sell the Property to the Delaware Trustee and the Manager, and after a Transfer Distribution the Purchaser is willing to entrust all aspects of the management of the Springing LLC to the Manager as its manager. *See "The Manager" and "Summary of the Trust Agreement – Termination of the Trust to Protect the Property; Transfer Distribution."* Furthermore, under the Trust Agreement, the Delaware Trustee has the power and authority to remove the Manager for cause (fraud or gross negligence causing material damage to, or diminution in value of, the Property), but only if the Lender consents (to the extent there is an outstanding Loan).

Conflicts. The Manager and its affiliates are subject to conflicts of interest between their activities, roles and duties for other entities and the activities, roles and duties they have assumed on behalf of the Trust. Conflicts exist in allocating management time, services and functions between their current and future activities and the Trust. *See "Conflicts of Interest."*

No substantial assets of the Manager or the Master Tenant. The Manager and the Master Tenant are newly-formed entities and do not have any substantial assets. Thus, there is no assurance that the Manager or the Master Tenant will have the financial resources to satisfy their obligations under the Trust, the Master Lease or the Property Management Agreement. Neither the Sponsor, the Manager nor the Master Tenant is obligated to invest or provide additional capital on behalf of the Trust, the Beneficial Owners or the Property. The Sponsor has agreed to initially capitalize the Master Tenant with the Demand Note in the amount of $2,400,000. This Memorandum does not contain financial statements for the Sponsor, the Manager or the Master Tenant.

Compensation and fees. The Sponsor and certain of its affiliates will receive certain compensation from the Trust for services rendered regardless of whether any sums are distributed to the Beneficial Owners. *See "Compensation and Fees."*

Offering Risks

No market for Interests. The transfer of Interests will be subject to certain limitations. *See "Summary of the Trust Agreement – Transfer Rights; Rights of First Refusal."* Moreover, it is not anticipated that any public market for Interests will develop, and the transfer of Interests may result in adverse tax consequences for the transferor. *See "Federal Income Tax Consequences."* Consequently, Purchasers of Interests may not be able to liquidate their investments in the event of emergency or for any other reason. Moreover, Purchasers are specifically notified that Interests are not likely to be readily accepted as collateral for outside financing. Any purchase of Interests, therefore, should be considered only as a long-term investment.

Purchase price of Interests. The purchase price of the Interests is based on the purchase price of the Property, and includes Sales Commissions and Expenses, Financing Closing Costs, the Acquisition Fee, the Lender Reserves and the Supplemental Trust Reserve. If the Trust is unable to sell the Property at a price which would net (after repayment of the Loan and other applicable expenses) at least the aggregate of the purchase price paid for the Interests, the Purchasers would suffer a loss on their investment.

Risk that Purchaser will not acquire Interest. After identifying the Property, a prospective Purchaser may not be accepted, or may be rejected as a Purchaser for any reason or for no reason at all and such prospective Purchaser may therefore lose the benefit of a Section 1031 Exchange. It is suggested and anticipated that prospective Purchasers will attempt to mitigate these risks by identifying multiple properties in connection with their Section 1031 Exchange.

Impact of leverage on Section 1031 Exchange. The Property is subject to financing in the form of the Loan. Code Section 1031 generally requires taxpayers to offset debt on their relinquished property with equal or greater debt on their replacement property (or additional cash from another source). Purchasers who are exchanging relinquished property with a larger amount of debt than the proportionate amount of the Loan they are deemed to have assumed for tax purposes in connection with the acquisition of an Interest may recognize taxable gain (although additional cash from another source may offset the reduction in debt). Each Purchaser will have its own unique debt and other Section 1031 Exchange issues. Therefore, each Purchaser must seek the advice of its own independent tax advisor as to qualification for tax deferral under Code Section 1031 and the Treasury Regulations promulgated thereunder, including the debt replacement rules.

Timing of sale of the Property. Beneficial Owners should not expect a sale within any specified period of time. Although the Trust Agreement allows the Manager to sell the Property at any time that, in the Manager's discretion, a sale is appropriate, it is currently anticipated that the Trust will hold the Property for at least two years. The decision to sell the Property will be made at the sole discretion of the Manager, and the Beneficial Owners will not have any right to participate in the decision to sell the Property.

Operation as a limited liability company after a Transfer Distribution. If a Transfer Distribution occurs and the Property is transferred to the Springing LLC, the manager of the Springing LLC will have exclusive discretion in the management and control of the business and affairs of the Springing LLC. A copy of the limited liability agreement of the Springing LLC is attached to the Trust Agreement as an exhibit. The members of the Springing LLC will not have the right to take part in the management or control of the business or affairs of the Springing LLC. The members are permitted to vote only in a limited number of circumstances and can remove the manager of the Springing LLC only for cause. The Manager has the right to sell the Property at any time that, in the Manager's discretion, a sale is appropriate. Such sale could occur at a time that would be adverse to the interests of any given member either from a financial or tax standpoint. The manager of the Springing LLC, as a holder of membership interests in the Springing LLC, if any, may have conflicts of interest with respect to the Springing LLC and the members. The manager of the Springing LLC is entitled to certain limitations of liability and to indemnity by the Springing LLC against liabilities not attributable to its fraud or gross negligence. Such indemnity and limitation of liability may limit rights that members would otherwise have to seek redress against the manager of the Springing LLC. *See "Summary of Certain Provisions of "Springing LLC" Limited Liability Company Operating Agreement."*

An affiliate of the Manager is expected to serve as the manager of the Springing LLC and will be a newly-formed entity with limited financial resources. It will have no obligation to invest in or otherwise provide capital to the Springing LLC. Thus, the Springing LLC may not be able to satisfy its financial obligations, which could negatively impact the Beneficial Owners who, upon the occurrence of a Transfer Distribution, would become members of the Springing LLC. A member may become liable to the Springing LLC and to its creditors for and to the extent of any distribution made to such member if, after giving effect to such distribution, the remaining assets of the Springing LLC are not sufficient to pay its outstanding liabilities (other than liabilities to the members on account of their

membership interests in the Springing LLC). It is not expected that there will be any market for membership interests in the Springing LLC. Thus, members may not be able to liquidate their investments in the event of an emergency or for any other reason.

No minimum Offering contingency. There is no minimum amount of Offering proceeds that must be raised or minimum number of Purchasers required in connection with this Offering. Accordingly, if the Sponsor is unable to sell all of the Interests, the Depositor will retain Class 2 Beneficial Interests. The ownership of beneficial interests in the Trust by the Depositor, an affiliate of the Sponsor, involves certain risks that potential Purchasers should consider, including, but not limited to, the fact that there may be conflicts of interest between the objectives of the Purchasers and that of the Sponsor, or, if the Offering is not fully subscribed, that a significant amount of the Trust's beneficial interests will not have been acquired by disinterested Purchasers after an assessment of the merits of the Offering.

Exchange Right. The Manager may require that the Purchasers exchange their Interests for the Units in one or more Exchange Entities. A Purchaser may, however, elect to have any such Exchange Entity purchase its Interests for cash in an amount equal to the then fair market value of the Purchaser's Interests. If a Purchaser does not so elect, it will receive Units in an amount equal to the then fair market value of the Purchaser's Interests in the Trust. The fair market value of a Purchaser's interests will be determined by multiplying: (i) such Purchaser's percentage of Interests in the Trust by (ii) the fair market value of the Property, as determined by an independent appraisal firm selected by the Manager in its sole discretion.

Should the Manager exercise the Exchange Right, any Purchaser who accepts Units will no longer have a direct interest in the Trust. Once a Purchaser becomes a holder of Units, such Units will be subject to the terms of the applicable Exchange Entity's operating agreement (each, an "**Operating Agreement**"). It is anticipated that, pursuant to the operating agreement of the applicable Exchange Entity, a holder of Units may have the right to exchange its Units for shares in a REIT, provided however, that such exchange will be governed by the terms of any applicable offering materials for such entity at the time of such exchange. In addition, if and after the Exchange Right is exercised, a Purchaser will not be able to engage in a subsequent, individual Section 1031 Exchange. Furthermore, a Purchaser's ability to sell its Units or shares in a REIT may be impacted due to the general volatility of the capital markets, the risks associated with the market, and the limited market for Units. *See "Summary of the Trust Agreement."*

Purchasers may have to file state income tax returns in multiple states. If the Exchange Right is exercised and the Beneficial Owners own Units, unless the applicable Exchange Entity or Exchange Entities file returns on a consolidated basis, the Beneficial Owners will be required to file state tax returns in each of the states in which the applicable Exchange Entity or Exchange Entities own properties. In such case, there may be significant costs to the Beneficial Owners.

Tax Risks

General. There are substantial risks associated with the federal income tax aspects of a purchase of an Interest, especially if the purchase is part of an exchange designed to qualify as a Section 1031 Exchange. The following paragraphs summarize some of these tax risks to a Purchaser with respect to the purchase of an Interest. A further discussion of the tax aspects (including other tax risks) of a purchase of an Interest is set forth under *"Federal Income Tax Consequences."* Because the tax aspects of this Offering are complex and certain of the tax consequences may differ depending on individual tax circumstances, each prospective Purchaser is strongly encouraged to and should consult with and rely on his, her or its own tax advisor about this Offering's tax aspects in light of such Purchaser's 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 a Purchaser and there can be no assurance that the IRS will not challenge any such treatment.

THIS SECTION WAS WRITTEN TO SUPPORT THE PROMOTION OR MARKETING OF THE TRANSACTIONS CONTEMPLATED BY AND DESCRIBED IN THIS MEMORANDUM. EACH PROSPECTIVE PURCHASER 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.

Acquisition of the Interests may not qualify as a Section 1031 Exchange. An Interest may not qualify under Code Section 1031 for tax-deferred exchange treatment, and even if it does, a portion of the proceeds from a Purchaser's sale of his, her or its real property to be relinquished (each, a "**Relinquished Property**") could constitute taxable "boot." Whether any particular acquisition of an Interest will qualify as a tax-deferred exchange under Code 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 (each, a "**Replacement Property**"). Neither the Sponsor nor its affiliates, counsel or agents are examining or analyzing any prospective Purchaser's circumstances to determine whether such Purchaser'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 Purchaser's transaction will qualify under Code Section 1031. Such examinations or analyses are the sole responsibility of each prospective Purchaser, who must consult with his or her own legal, tax, accounting and financial advisors before purchasing an Interest.** If the factors surrounding a prospective Purchaser's disposition of the Relinquished Property and his, her or its acquisition of the Interests do not meet the requirements of Code 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. Also, merely designating an Interest in connection with a Purchaser's Section 1031 Exchange does not assure the Purchaser that there will be Interests available to purchase when the Purchaser executes the Purchase Agreement and actually causes his, her or its qualified intermediary to transfer funds to complete the purchase of the Interests.

Form of ownership. On July 20, 2004, the IRS issued Revenue Ruling 2004-86, 2004-33 I.R.B. 191, which held that, assuming the other requirements of Code Section 1031 are satisfied, a taxpayer's exchange of real property for an interest in the DST described in the ruling satisfies the requirements of Code Section 1031. The IRS based its holding on the following conclusions: (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 interests in real property held by the DST. There are no authorities that directly address the tax treatment of the Trust other than Revenue Ruling 2004-86. It is possible that the IRS could revoke Revenue Ruling 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 Regulations Section 301.7701-4) likely would have a significant adverse impact on the Beneficial Owners. Because the holding of Revenue Ruling 2004-86 is based on certain factual assumptions regarding the DST, not all of which apply to the Trust, and because there are provisions in the Trust Agreement which 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. For example, the facts in the ruling neither expressly permit nor prohibit: (i) conversion of the DST to a limited liability company; or (ii) the fact that the Signatory Trustee is related to the Depositor.

Classification for purposes of Code Section 1031; no ruling. We believe the Offering described in this Memorandum is structured in a manner that the Interests should be treated for federal income tax purposes as direct ownership interests in real property and not as interests in a partnership. If the Interests were to be treated by the IRS or a court as interests in a partnership, then no Purchaser 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.

We have 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 Regulations Section 301.7701-4(c) that is classified as a "trust" under Treasury Regulations Section 301.7701-4(a); (ii) the Beneficial Owners should be treated as "grantors" of the Trust; (iii) as "grantors," the Beneficial Owners should be treated as owning an undivided fractional interest in the Property 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 Beneficial Owners, via their Interests in the Trust, should be treated as true owners of the Property rather than lessees for federal income tax purposes; (ix) the discussions of the federal income tax consequences contained in this Memorandum are correct in all material respects; and (x) 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 statutory, administrative or case law. The opinion is 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 Purchasers described in the opinion and in this Memorandum could change. *See "Federal Income Tax Consequences."*

Identification. Treasury Regulations Section 1.1031(k)-1(c)(4) permits taxpayers to identify alternative and multiple Replacement Properties under Code Section 1031. All properties acquired within 45 days of the sale of the Relinquished Property are deemed to have been properly identified. 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 Code Section 1031. A taxpayer also may identify any number of properties if it acquires at least 95% of the identified properties (the "**95% rule**"). The identification rules of Code Section 1031 are strictly construed, and a Purchaser's exchange will not qualify for deferral of gain under Code Section 1031 if too many properties are identified or if the deadlines for identification are not met.

For purposes of both the 200% rule and the 95% rule, "fair market value" means the fair market value of the 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 the Replacement 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 identification rules of Code Section 1031 are strictly construed, and a Purchaser'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.

Funds from a Section 1031 Exchange may not be used for certain costs associated with the Property; possible adverse tax treatment for closing costs and reserves. Each Purchaser of an Interest will be obligated to pay its *pro rata* share of closing costs, financing expenses, reserves and other costs of the Offering. A portion of the proceeds of the Offering will be used to pay each Purchaser's *pro rata* share of such costs. 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 Trust rather than for real estate. Under certain conditions, these costs, as well as reserves relating to the Property, may not constitute property that is like-kind to real estate for purposes of Code Section 1031. You may elect to pay these costs with personal funds separate from your Section 1031 Exchange funds. 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 Purchasers who purchase their Interests as part of a Section 1031 Exchange. Therefore, each prospective Purchaser should seek the advice of a qualified tax advisor as to the proper treatment of such items.

Any amounts treated as "boot" will be taxable to the Purchasers. If, in a Section 1031 Exchange, money is received or deemed received in addition to the like-kind property (referred to as "boot"), then gain on the Relinquished Property is recognized up to the amount of boot. Although there is no direct authority on point (other than certain potentially favorable authority that allows taxpayers to treat certain transaction expenses as reducing amounts otherwise taxable as boot in a Section 1031 Exchange), prospective Purchasers should be aware that the IRS may take the position that certain costs paid or deemed paid from money received from the sale of the Relinquished Property are boot and, therefore, income to the Purchasers.

The use of certain exchange proceeds may result in taxable "boot." Any personal property that may be part of the Property, amounts used to establish reserves, and impositions or other items that are not attributable to the purchase of real property will not be treated as an interest in real property and may be treated as "boot." It is possible that such amounts, if sufficient additional funds are borrowed by the Purchasers in excess of the indebtedness of a Purchaser's prior investment, will not be treated as boot. It is also possible that the Supplemental Trust Reserve and any other reserves funded from a combination of Offering proceeds and Loan proceeds will be treated as cash boot. In addition, the IRS could take the position that the increase in the purchase price of the Property paid by the Purchasers would not be considered as an interest in real property and may be treated as "boot." In addition, to the extent that the portion of the debt acquired with the purchase of an Interest in the Property is less than the Purchaser's debt on the Relinquished Property, such difference will constitute "boot" and may be taxable depending on the Purchaser's basis

in the Relinquished Property. In the event any item is determined to be "boot," the taxpayer will have current income for any such "boot" up to the amount of gain on the exchange of the real 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. Prospective Purchasers must consult their own independent tax advisor regarding these items.

Potential significant tax costs if Interests were deemed to be interests in a partnership. If Purchasers are treated for federal income tax purposes as having purchased interests in a partnership, the Purchasers who purchased their Interests as part of a Section 1031 Exchange would not qualify for deferral of gain under Code Section 1031, and each Purchaser who had relied on deferral of such Purchaser'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 Purchaser had purchased his, her or its Interest, such Purchaser may have no cash from the disposition of its original interest in real 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, a Purchaser will have to use funds from other sources to satisfy this tax liability.

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. Therefore, each Purchaser must consult his, her or its own tax advisor as to the qualification of a transaction for deferral of gain under state law. *See "Federal Income Tax Consequences."*

Transfer Distribution to the Springing LLC. If a Transfer Distribution occurs, the Property will be transferred from the Trust to the Springing LLC and the membership interests in the Springing LLC will be proportionally distributed to the Beneficial Owners. It is anticipated that the Manager or its affiliate will serve as the manager of the Springing LLC. The Springing LLC will be treated as a partnership for federal income tax purposes. A Transfer Distribution may 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, such a transfer should not be subject to federal income tax pursuant to Code Section 721. The transfer could be subject, however, to state or local income, transfer or other taxes. In addition, there can be no assurances that such transfer will not be taxable under the federal income or other tax laws in effect at the time the transfer occurs. Because a Transfer Distribution could occur in several situations, it is not possible to determine all of the tax consequences to the Beneficial Owners in the event of a Transfer Distribution. **Prospective Purchasers should consult their own tax advisors regarding the tax consequences of a Transfer Distribution and the effect of the Property being held by the Springing LLC rather than the Trust.**

Likely lack of deferral of tax upon sale of Springing LLC membership interests. Unlike Interests in the Trust, membership interests in the Springing 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 the Trust transfers the Property to the Springing LLC in a Transfer Distribution, it is unlikely that any of the Beneficial Owners who receive membership interests in the Springing LLC will thereafter be able to defer the recognition of gain under Code Section 1031 upon a subsequent disposition of the Property or their membership interests in the Springing LLC.

Delayed closing; inability to close. Prospective Purchasers who are completing a Section 1031 Exchange should be aware that closing on their Replacement Property must occur before the earlier of (i) the day which is 180 days after the date on which the taxpayer transferred the property relinquished in the exchange or (ii) the due date (determined with regard to extension) for the transferor'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. Prospective Purchasers are strongly encouraged to "identify" the maximum number of alternative Replacement Properties and not to identify only the Property in this Offering.

Compliance with Revenue Ruling 2004-86. Tax Counsel believes that the powers and authority granted to the Trustees, the Manager, the Beneficial Owners and the Trust in the Trust Agreement fall within the limited scope of the powers and authority that may be exercised by a trustee of an "investment trust." The Trust Agreement authorizes the Trust to own the Property, receive distributions from the Property, and make distributions thereof, enter into any agreements with qualified intermediaries for purposes of a Beneficial Owner's acquisition of an Interest pursuant to Code 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 take actions that would

cause the Trust to cease to constitute an investment trust within the meaning of Treasury Regulations Section 301.7701-4(c). Furthermore, the Trust Agreement expressly prohibits the Trustees, the Independent Trustee, the Manager, the Beneficial 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 Revenue Ruling 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. 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 property, and Purchasers would not be able to use their acquisition of Interests as part of a Section 1031 Exchange to defer gain under Code Section 1031. For a complete discussion of the Trust in comparison to the arrangement described in Revenue Ruling 2004-86, please see the attached opinion of Tax Counsel.

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. 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 sale of the Property, then a Purchaser would be unable to treat the acquired Interest as qualified Replacement Property in a Section 1031 Exchange in that the Interest would constitute an interest in real property that the Purchaser would not hold for investment. That is, the Purchaser would be treated as having immediately sold the acquired interest in the Property to the Master Tenant with the Master Tenant being treated as purchasing the Property (and all of the interests therein) from the Purchasers in exchange for an installment note for federal income tax purposes. As a result, Purchasers attempting to participate in Section 1031 Exchanges would not be treated as having received qualified Replacement Property when they acquired their Interest because the Purchaser would be treated as having made a loan to the Master Tenant. As the owner of the Property for federal income tax purposes, the Master Tenant 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 Purchasers and would not be deductible by the Master Tenant, as applicable. All of these consequences could have a significant impact on the tax consequences of an investment in an Interest.

Revenue Procedure 2001-28, 2001-1 C.B. 1156 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 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, 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. We will receive an opinion of Tax Counsel that Tax Counsel believes the Master Lease satisfies most of the pertinent material conditions set forth in Revenue Procedure 2001-28 and that the Master Lease should be treated as a true lease rather than as a financing for federal income tax purposes and, therefore, the Purchasers (via their Interests in the Trust) should be treated as the true owners of the Property for federal income tax purposes. Similarly, if the Master Tenant were treated as a mere agent of the Trust rather than as a lessee, the power of the Master Tenant to make improvements to the Property and to re-lease the Property could be attributed to the Trust, and the Trust could be deemed to have powers prohibited under Revenue Ruling 2004-86. We have considered the issue and, after having consulted with Tax Counsel, have concluded that the Master Tenant 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 was written to support the promotion or marketing of this transaction, and each Purchaser should seek advice based on the Purchaser's particular circumstances from an independent tax advisor. Any discussion of the tax consequences of an investment in the Trust is not intended or written by the Sponsor or its counsel to be used, and cannot be used, by any person for the purpose of avoiding tax penalties that may be imposed under the Code.

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 only be used to offset 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 any rental activity. The Purchaser's income and loss from the Trust will 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 – Other Tax Consequences – Limitations on Losses and Credits from Passive Activities."*

Limitation on excess business losses. Excess business losses of a taxpayer other than a corporation are not allowed for the taxable year. 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 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.

A Purchaser may be required to make an election if the Purchaser wishes to avoid the limit on business interest deductions. Code Section 163(j) provides interest deductions for taxpayers with average annual gross receipts in excess of $31 million (for taxable years beginning in 2025 and subject to annual inflation adjustments). Such deductions are generally deferred to the extent that annual business interest expense exceeds business interest income plus 30% of taxable income, subject to certain adjustments. The adjusted taxable income of a taxpayer means taxable income computed without regard to any item not properly allocable to a trade or business, any business interest income or expense, any net operating loss deduction, any deduction allowable for depreciation, amortization, or depletion, and certain other items ("**ATI**").

A real estate trade or business, however, may elect out of the deferral regime, in which case the business must depreciate certain types of real property by the straight-line method over slightly longer recovery periods under the alternative depreciation system (the "**ADS**") (i.e., 40 years for nonresidential property, 30 years for residential rental property, and 20 years for qualified interior improvements). While Purchasers may be eligible to make this election, there is considerable uncertainty as to the application of the new rules, which may depend in part upon a Purchaser's specific circumstances.

Prospective Purchasers should consult their own tax advisors as to the applicability of the new rules to them with respect to their particular circumstances and as to their ability to make such election. *See "Federal Income Tax Consequences – Limit on Business Interest Deductions."*

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

If Property debt were to be cancelled without an accompanying foreclosure of the Property, then a Purchaser 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 Purchaser's reduction of tax attributes – including tax basis), which would be taxed as ordinary income, for federal income tax purposes. Also, the Purchaser would not be able to offset any such cancellation of debt income with any loss recognized by a Purchaser that would constitute a capital loss for federal income tax purposes (including any loss recognized by a Purchaser from the sale of his, her or its Interest in the likely event that the Interest could not be considered Section 1231 Real Property (as defined herein)).

Limitation on losses under the at-risk rules. A Purchaser 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 Purchaser 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. The rules regarding the applicability of the at risk rules to a particular Purchaser are complex and vary with the facts and circumstances particular to each Purchaser. Prospective Purchasers should consult their tax advisors with respect to the tax consequences to them of the rules described herein. *See "Federal Income Tax Consequences."*

No decision rights regarding sale requirements for the Property. The Purchasers will not have any vote or decision-making authority with respect to the sale of the Property. If the Manager determines, in its sole discretion, that the sale of the Property is reasonable, then the Trust may sell the Property. This sale will occur without regard to the tax position, preferences or desires of any of the Purchasers, and the Purchasers will have no right to approve (or disapprove) of the sale of the Property. A Purchaser may or may not be able to defer the recognition of gain for federal, state or local income tax purposes when this sale occurs. Additionally, pursuant to the Exchange Right, the Exchange Entity may require that the Beneficial Owners exchange their Interests for Exchange Entity Units or cash after all Beneficial Owners have held their Interests for at least two years.

Tax liability in excess of cash distributions. It is possible that a Purchaser's tax liability resulting from its Interest will exceed its share of cash distributions from the Trust. This may occur because cash flow from the Property may be used to fund non-deductible operating or capital expenses of the Property. Thus, there may be years in which a Purchaser's tax liability exceeds its share of cash distributions from the Trust. The same tax 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, a Purchaser would have to use funds from other sources to satisfy his, her or its tax liability. *See "Federal Income Tax Consequences – Other Tax Consequences."*

Risk of audit. An audit of the tax returns of a Beneficial Owner 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 of the qualification of a Section 1031 Exchange, in the event of either an audit or any litigation resulting from an audit. An audit of a Purchaser's tax returns could arise as a result of an examination by the IRS or any state or local taxing authority or any other taxing authority of tax returns filed by the Sponsor or its affiliates, or a Beneficial Owner or any information returns filed by the Trust.

Purchasers' tax liquidity. It is possible that a Purchaser's taxable income resulting from his, her or its Interest will exceed any distribution of cash attributable thereto. This may occur because cash flow from the Property may be used to fund non-deductible operating or capital expenses of the Property, including reserves and payments of principal on the Loan. Thus, there may be years in which a Purchaser's tax liability exceeds his, her or its share of cash from the Property. In addition, a sale or exchange of the Property at an economic loss without a Section 1031 Exchange could result in ordinary income, depreciation recapture or capital gain to a Purchaser without any accompanying net cash proceeds from the sale or disposition of the Property to pay income taxes on such items. This is a particular risk for certain Purchasers, such as persons acquiring an Interest in a Section 1031 Exchange, whose income tax basis in an Interest may be substantially lower than his, her or its cash investment in the Property. If this were to occur, a Purchaser would have to use funds from other sources to satisfy his, her or its tax liability.

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 Purchasers should be aware that new administrative, legislative or judicial action could significantly change the tax aspects of an investment in an Interest. Specifically, the U.S. Congress has proposed certain limitations on the deferral of gain for Section 1031 Exchanges that could, if enacted, 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. Additionally, 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. 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 the Treasury (the "**Treasury**"), resulting in revisions of resolutions and revised interpretations of established concepts as well as statutory changes. In particular, the "One Big Beautiful Bill Act" ("**OB3**") enacted on July 4, 2025, made many significant changes to the U.S. federal income

tax laws. To date, only limited guidance exists 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 laws 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 the U.S. Congress in the near future.

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 a Purchaser's exit strategy.

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. Reportable transactions include transactions that generate losses under Code Section 165 and may include certain large like-kind exchanges entered into by corporations. The Sponsor and Tax Counsel have concluded that the sale of an Interest should not constitute a reportable transaction. Accordingly, the Trust 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 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 Purchaser should consider the state and local tax consequences of an investment in an Interest. Such taxes may include, without limitation, income, franchise and excise taxes. Prospective Purchasers must consult with their own tax advisors concerning the applicability and impact of any state and local tax laws, including any potential transfer taxes that may apply in the event that the Exchange Right is exercised. Purchasers may be required to file state tax returns in the state where the Property is located in connection with the ownership of an Interest and any potential sale or other disposition of the Property. Additionally, if the Beneficial Owners acquire Units, the Beneficial Owners may be required to file state income tax returns in all of the states where the applicable Exchange Entity or Exchange Entities own properties.

Accuracy-related penalties and interest. In the event of an audit that disallows a Purchaser's deductions or disqualifies a Purchaser's Section 1031 Exchange, Purchasers 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, (iii) any substantial valuation misstatement or (iv) transactions lacking economic substance. A substantial valuation misstatement occurs if the value of any property or the adjusted basis of such property is 150% or more of the amount determined to be the proper valuation or adjusted basis. This penalty generally doubles if the property's valuation or the adjusted basis is overstated by 200% or more. In addition to these provisions, 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 $5,000 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. *See "Federal Income Tax Consequences – Other Tax Consequences – Accuracy-Related Penalties and Penalties for the Failure to Disclose."*

Alternative minimum tax. The alternative minimum tax applies to designated items of tax preference. The limitations on the deduction of passive losses also apply for purposes of computing alternative minimum taxable income. Prospective Purchasers should consult with their own tax advisors concerning the applicability of the alternative minimum tax.

The Medicare Tax. Income and gain from passive activities may be subject to the "Medicare Tax." Certain Purchasers who are U.S. individuals are subject to the Medicare Tax, an additional 3.8% tax on their "net investment income" and certain estates and trusts are subject to an additional 3.8% tax on their undistributed "net investment income." Among other items, "net investment income" generally includes passive investment income, such as rent

and net gain from the disposition of investment property, less certain deductions. Prospective Purchasers should consult their tax advisors with respect to the tax consequences to them of the rules described above.

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ESTIMATED USE OF PROCEEDS

This table addresses the estimated use of proceeds from this Offering toward the costs, fees and expenses that have been incurred or may be incurred in connection with this Offering, including the selection and acquisition of the Property and procuring the related financing. The Trust is offering a maximum of $46,170,900 of Interests, which, if sold in full, will represent 100% of the outstanding beneficial ownership interests in the Trust if the Maximum Offering Amount is sold. Proceeds raised from Purchasers in this Offering will be used to redeem the Class 2 Beneficial Interests held by the Depositor in order to reimburse it for the costs, fees and expenses it has incurred as described below. *See "Summary of the Offering – The Trust."* This table does not address the allocation for federal income tax purposes of the amount paid by a Purchaser for its Interest. Potential Purchasers should discuss with their own tax advisors the tax treatment of the purchase of an Interest.

The following table sets forth the estimated use of proceeds from the Offering:

	Total Proceeds (Offering Proceeds + Loan Proceeds)	**Amount from Loan Proceeds**	**Amount from Offering Proceeds**	**Percentage of Maximum Offering Amount**
Sources				
Offering Proceeds	$46,170,900		$46,170,900	100.00%
Loan Proceeds	$47,189,000	$47,189,000		0.00%
Total Sources	**$93,359,900**	**$47,189,000**	**$46,170,900**	**100.00%**
Application				
Selling Commissions and Fees				
Selling Commissions (1)	$2,769,774		$2,769,774	6.00%
Managing Broker-Dealer Fee (2)	$923,258		$923,258	2.00%
Maintenance Fee (3)	$469,629		$469,629	1.02%
Marketing/Due Diligence Expense Allowances (4)	$577,036		$577,036	1.25%
Organizational and Offering Expenses (5)	$822,500		$822,500	1.78%
Total (6)	**$5,562,197**		**$5,562,197**	**12.05%**
Costs of Acquisition				
Real Estate Acquisition Cost	$81,500,000	$44,945,653	$36,554,347	79.17%
Acquisition Fee (7)	$2,241,250		$2,241,250	4.85%
Lender Escrows (8)	$205,151	$205,151		0.00%
Supplemental Trust Reserve (9)	$646,735	$646,735		0.00%
Financing Closing Costs (10)	$3,204,567	$1,391,461	$1,813,106	3.93%
Total	**$87,797,703**	**$47,189,000**	**$40,608,703**	**87.95%**
Total Application	**$93,359,900**	**$47,189,000**	**$46,170,900**	**100.00%**

(1) The Managing Broker-Dealer and the Participating Dealers will make offers and sales of Interests on a "best efforts" basis. Orchard Securities, LLC as Managing Broker-Dealer will receive sales commissions of up to 6.00% of Total Sales, which it will re-allow to the Participating Dealers; provided, however, in the event a commission rate lower than 6.00% is negotiated with a Participating Dealer, the commission rate will be the lower agreed upon rate.

(2) The Managing Broker-Dealer will receive the Managing Broker-Dealer Fee of up to 2.00% of Total Sales, which it may, in its sole discretion, partially re-allow to the Participating Dealers for non-accountable marketing expenses in addition to any other allowances.

(3) The Managing Broker-Dealer will receive the Maintenance Fee of up to 1.02% of Total Sales.

(4) The Managing Broker-Dealer will receive Marketing/Due Diligence Expense Allowances, on a non-accountable basis and will re-allow to the Participating Dealers on a non-accountable basis, which are allowances for marketing and due diligence expenses, of up to 1.25% of Total Sales.

(5) The Sponsor and its affiliates will be entitled to reimbursement for expenses incurred in connection with the Offering, on an accountable basis, of 1.78% of the Maximum Offering Amount, including, but not limited to, the costs of organizing the Trust and other entities, estimated marketing, legal, finance, accounting and printing fees and expenses incurred in connection with this Offering. *See "Compensation and Fees."*

(6) The aggregate of Sales Commissions and Expenses. The Trust may, in its discretion, accept purchases of Interests net of all or a portion of the Sales Commissions otherwise payable from Purchasers purchasing through an RIA with whom the Purchaser has agreed to pay a fee for investment advisory services in lieu of commissions, and affiliates of the Sponsor may purchase the Interests net of Sales Commissions and Marketing/Due Diligence Expense Allowances. *See "Plan of Distribution."*

(7) The Sponsor earned the Acquisition Fee of $2,241,250, which equals 2.75% of the purchase price in connection with the Closing, for its and its management team's services in the identification, negotiation, diligence and acquisition of the Property.

(8) The Lender deducted and escrowed from the Loan proceeds a total of $205,151 for Lender escrows.

(9) The Trust used Loan proceeds to fund the Supplemental Trust Reserve, which is Trust-directed.

(10) "Financing Closing Costs" include closing and due diligence costs paid to the Lender, its agents, the Depositor and the Sponsor, including reimbursement of costs in connection with the Closing, as well as carry costs in connection with the Equity Financing, which is a fixed cost. *See "Compensation and Fees."*

For a description of the fees the Sponsor and its affiliates will receive in connection with the Offering, *see "Compensation and Fees."*

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COMPENSATION AND FEES

The Sponsor, the Managing Broker-Dealer, the Manager, the Master Tenant, the Property Manager and their respective affiliates will earn fees in connection with the sourcing, due diligence and completion of the acquisition of the Property, and in connection with the offering and sale of Interests and the management, financing, leasing, operation and sale of the Property and receive reimbursement of expenses incurred by such parties in the Offering. The following table sets forth estimates of such compensation, fees, reimbursements and other compensation. Actual amounts may vary depending upon the timing and amount of Interests sold, the performance of the Property and the timing of and proceeds from any sale of the Property.

Type of Compensation or Reimbursement	Method of Computation
Offering	
Organization and Offering Expenses	The Sponsor will be entitled to reimbursement for organization and offering expenses, on an accountable basis, estimated at $822,500 or 1.78% of the Maximum Offering Amount.
Sales Commissions	The Managing Broker-Dealer will receive Sales Commissions up to 6.0% of the purchase price of Total Sales, which it will re-allow to the Participating Dealers; provided, however, in the event a lower commission rate is negotiated with a Participating Dealer, the commission rate will be the lower agreed upon rate. Assuming all Interests are sold, total Sales Commissions are estimated to be $2,769,774.
Marketing/Due Diligence Expense Allowances; Managing Broker-Dealer Fee	The Managing Broker-Dealer will receive, on a non-accountable basis and will re-allow to the Participating Dealers on a non-accountable basis, allowances for marketing and due diligence expenses of up to 1.25% of Total Sales. The Managing Broker-Dealer will also receive the Managing Broker-Dealer Fee of up to 2.0% of Total Sales, which it may, in its sole discretion, partially re-allow to the Participating Dealers for non-accountable marketing expenses in addition to any other allowances. The Managing Broker-Dealer will also receive the Maintenance Fee of up to 1.02% of Total Sales. The total Marketing/Due Diligence Expense Allowances, the Managing Broker-Dealer Fee and the Maintenance Fee are estimated to be $1,969,923.
Acquisition Fee	The Sponsor will receive the Acquisition Fee of $2,241,250 (representing 2.75% of the purchase price of the Property) for its services in the identification, negotiation, diligence and acquisition of the Property.
Financing Closing Costs	The Financing Closing Costs are $3,204,567 including (i) closing and due diligence costs of $565,086, (ii) loan closing costs of $1,391,461 and (iii) carrying costs of $1,248,020.
Redemption of Class 2 Beneficial Interests held by the Depositor; Other Costs and Reimbursements	The Trust will redeem all of the Class 2 Beneficial Interests held by the Depositor as provided in the Trust Agreement. In addition, the Trust is responsible for funding the Acquisition Fee, the Lender Reserves, the Supplemental Trust Reserve and paying certain costs including: (i) Sales Commissions estimated at $2,769,774, (ii) the Managing Broker-Dealer Fee, the Maintenance Fee and Marketing/Due Diligence Expense Allowances estimated at $1,969,923, (iii) Organization and Offering Expenses estimated at $822,500, and (iv) Financing Closing Costs estimated at $3,204,567.
Other Closing Costs	The Depositor will be entitled to reimbursement for its other legal and closing costs actually incurred in connection with the due diligence and acquisition of the Property. Such costs include, if applicable, transfer taxes, title charges,

	escrow fees, document preparation fees, legal fees (other than Lender legal fees), third-party costs, recording fees, entity formation costs and other related costs.
Operations	
Distributions	The Depositor will receive its proportionate share of distributions by the Trust proportionate to its Class 2 Beneficial Interests (i.e., the unsold Class 1 Beneficial Interests).
Master Lease Operating Profit	The Master Tenant will retain net operating revenues from the Property that exceed the total rent payable to the Trust under the Master Lease.
Asset Management Fee	The Trust will be obligated under a separate "Asset Management Agreement" to pay the Manager an annual Asset Management Fee for supervising the services of the Property Manager. The Trust will pay the Manager an Asset Management Fee in an amount equal to $35,000 and such amount will be paid monthly in arrears (the "**Asset Management Fee**"). The Manager may waive or defer the Asset Management Fee charged to Purchasers, in whole or in part, in the Manager's sole and absolute discretion. The Manager intends to waive the Asset Management Fee for Year 1. The Asset Management Fee will be paid on a *pro rata* basis, monthly in arrears, and if the Asset Management Agreement terminates during any calendar year, will be pro-rated for any such partial year. The Asset Management Fee will be paid to the Manager, which is an affiliated entity of the Sponsor. The Asset Management Fee is subordinate in all respects in lien and payment to the lien and payment of the Loan.
Disposition Fee	The Manager will receive a disposition fee from the Trust equal to 3.0% of the gross proceeds of such sale (the "**Disposition Fee**"). The Managing Broker-Dealer will receive a fee equal to 7.5% of the Disposition Fee.
Property Management Fee	The Property Manager will receive a Property Management Fee in an amount equal to the greater of $10,000, or 2.5% of the monthly Gross Receipts received from the Property. All property management fees will be paid solely by the Master Tenant.

To the extent that the actual Sales Commissions and Expenses are below the amounts projected or estimated for any particular line item, any such savings may be retained by the Sponsor. If, however, the actual Sales Commissions and Expenses exceed the amounts projected or estimated, then any such shortfall may be funded by the Sponsor.

The Sponsor, the Master Tenant, the Manager, the Delaware Trustee, the Property Manager and their respective affiliates will receive additional compensation for any additional services performed on behalf of the Trust or Beneficial Owners so long as such services are provided on terms and conditions no less favorable to the Trust and Beneficial Owners than could be obtained from independent third-parties for comparable services in the same location.

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THE PROPERTY

Overview

The Property, commonly known as "The Vivian" is a mid-rise style multifamily apartment community located at 1246 Allene Avenue Southwest, Atlanta, Georgia 30310. Built in 2023, the Property is situated on 8.471 acres and contains 264,136 square feet of net leasable floor area and 325 apartment units comprised of studios, one and two-bedroom floor plans averaging 813 square feet.

Property Name	"The Vivian"
Property Address	1246 Allene Avenue Southwest Atlanta, Georgia 30310
Year Built	2023
Site Area	Approximately 8.471 acres
Rentable Building Area	The Property consists of 325 studio, one- and two-bedroom apartments comprising 264,136 residential rentable square feet in three three-, four- and five-story apartment buildings.
Gross Building Area	In addition to the 264,136 square foot residential rentable area, the clubhouse brings the gross building area to 271,846 square feet.
Unit Sizes / Floor Plans	The Property offers 37 studio units (11.4%), 209 one-bedroom units (64.3%) and 79 two-bedroom units (24.3%). The units average 813 square feet.

Unit Mix			
Type	**Number**	**Average SF**	**Total SF**
Studio x 1 Bath	**37**	**646**	**23,902**
1 Bed x 1 Bath	**209**	**733**	**153,189**
2 Bed x 2 Bath	**79**	**1,102**	**87,045**
Total / Average	**325**	**813**	**264,136**

Parking	The Property has a total of 378 parking spaces (13 handicap spaces, 56 compact spaces, 6 electric vehicle spaces and 303 regular spaces).
Property Amenities	Property amenities include: o Swimming Pool o Fitness Center o Grilling Area o Coffee Shop o Dog Park o EV Charging o Meeting Space and Lounge o Yoga room o Clubhouse o Atlanta "Beltline" access
Individual Unit Amenities	Unit features include: o Central air-conditioning o Granite Countertops

- Shaker-style cabinetry
- Washer/Dryer in-unit
- Patio/Balcony

Construction Specifications

Exterior	Brick and fiber cement
Interior	Painted drywall
Foundation	Concrete slab-on-grade
Roof	Pre-manufactured wood trusses supporting plywood or OSB roof sheathing
Structural Frame	Wood frame with brick and fiber cement siding
HVAC	Central air
Water Heater	40-gallon electric water heaters within each unit.
Countertops	Granite
Cabinets	Shaker
Flooring	Carpet and vinyl
Appliances	Refrigerator, range, microwave, dishwasher, and washer and dryer set in all units.

Anticipated Improvements

The Sponsor plans to make improvements to the Property as set forth in the section of the Memorandum entitled, *"Business Plan."*

Appraisal

In connection with the Loan, the Trust received the Appraisal for the Property prepared by the Appraiser dated August 5, 2025, reflecting a market value, "As Is," for the Property of $81,600,000 as of June 30, 2025.

Property Condition Assessment

Blew issued the PCA dated July 8, 2025. The general conclusion of the PCA is that the condition of the Property is considered category 1, indicating a new or like new condition.

The PCA estimated physical needs over 12 years of $480,240 (uninflated) (or approximately $123 per unit, per year). With 3.0% inflation, this amount is $623,575 (or approximately $160 per unit, per year). The physical needs over 12 years provided for in the PCA include establishing repair contingencies for: (1) asphalt seal coating and striping, (2) exterior painting, (3) resurface of swimming pool and replacement of filtration equipment (4) individual water heater replacement, (5) split system condensing unit replacement, (6) vinyl flooring replacement, (7) individual unit mechanical and appliance repairs and replacements.

At your request, the Sponsor will provide you with a copy of the PCA.

Wind Zones

The PCA indicates, that according to FEMA's Map of Wind Zones in the United States, the Property is located in Wind Zone III (Design Wind Speed of 200 mph). According to the PCA, the Property is not located in a "Hurricane Susceptible Region," or a "Special Wind Region."

Tornado Zone

The PCA indicates that the Property is considered to be in a "tornado-prone region."

Environmental Site Assessment

The Property has been evaluated for environmental hazards on behalf of the Lender pursuant to a Phase I Report prepared by Blew, dated July 14, 2025. The Phase I Report, which consisted of a walk-through observation of the accessible areas and interviews with facility personnel and local agency

	representatives, limited observations of surrounding properties, and a records review including regulatory databases and historical use information was performed in compliance with the standards of ASTM Practice E-1527-13. The Phase I Report revealed no evidence of RECs, historical RECs or *de minimis* environmental conditions in connection with the Property. The assessment revealed four CRECS and one BER in connection with the Property. Blew did not observe any friable or damaged suspect ACMs at the Property. All suspect ACM should be handled with due caution and in accordance with applicable regulations. At your request, Sponsor will provide you with a copy of the Phase I Report.
Zoning	According to zoning report prepared for the Lender by Global Zoning dated July 14, 2025, the Property is zoned MR-4A-C Multi-Family Residential District within Beltline Overlay District with Conditional Zoning, and the Property is Legal Conforming in use. In addition, the zoning report provides that there are no outstanding violations at the Property.

Agreements and Other Matters Affecting the Property

The Property is subject to various easements, declarations, restrictions, encroachments and other agreements of record with neighboring landowners, and local governmental entities, none of which we believe are material to or noteworthy in connection with an investment decision, other than as identified below.

LURA

The Property is subject to the LURA. Pursuant to the LURA, the owner of the Property is required to actively market 15% of the total residential units of the Property to households which have an income that does not exceed 80% of the area median income (as calculated and published annually by the U.S. Department of Housing and Urban Development) for the Atlanta-Sandy Springs-Marietta Metro Fair Market Rent Area ("**Workforce Residents**"). To "actively market" a residential unit, the owner of the Property must coordinate with the City of Atlanta to develop an approved marketing plan to locate and place Workforce Residents in available residential units that comply with the affordability requirements of the LURA ("**Affordable Units**"). If the owner of the Property coordinates in writing and in a commercially reasonable manner with the City of Atlanta Office of Housing and Community Development for a period of 60 days with respect to any Affordable Unit from the completion of such Affordable Unit or the vacation of such Affordable Unit by a Workforce Resident but, despite such coordination, the Affordable Unit has not been leased to a Workforce Resident, then such Affordable Unit will nonetheless count towards the 15% requirement mentioned above.

Georgia Brownfield Program

According to a potential purchaser environmental summary letter prepared by United Consulting dated July 3, 2025, the Property was historically occupied by a lead-acid battery manufacturing and distribution facility from the late 1940's through 2000. Operations at the Property included lead casting, plate formation, acid filling, and battery charging, resulting in releases of hazardous substances to the environment, including lead and other heavy metals.

In 2003, Exide Technologies ("**Exide**") voluntarily entered into an Administrative Order on Consent for Removal Action (the "**AOC**") with the U.S. Environmental Protection Agency (the "**EPA**") under the Comprehensive Environmental Response, Compensation, and Liability Act ("**CERCLA**"). The AOC provided for the performance of a removal action by Exide and addressed only removal activities on the Property.

In 2004, the Georgia Environmental Protection Division (the "**GA EPD**") determined that a release exceeding a reportable quantity had occurred at the Property. The GA EPD listed the Property on the Hazardous Site Inventory (the "**HSI**") as HSI No. 10778 due to the documented presence of hazardous constituents above reportable quantities. From 2004 to 2014, Exide and a subsequent owner of the Property conducted significant soil delineation which culminated in EPA-directed removal actions in 2017, including excavation and off-site disposal of lead-impacted near

surface soils. Following confirmation sampling, the EPA issued a Notice of Completion in 2018. These actions addressed the requirements under the AOC and allowed for subsequent actions under the GA EPD.

Following completion of the EPA-directed removal actions and additional sampling requested by the GA EPD, a prior owner of the Property elected to enroll the Property into the Georgia Voluntary Remediation Program (the "**VRP Program**") in December 2019. The VRP Program provides a risk-based framework for investigating and remediating contaminated properties, and successful participation can result in a property's removal from the HSI. Removal from the HSI in turn enhances marketability and allows for redevelopment.

The prior owner of the Property proposed the following actions as part of its enrollment of the Property into the VRP Program: (i) additional soil removal to achieve a site-specific, non-residential Risk Reductions Standards ("**RRS**") for lead; (ii) further sampling and remediation of the on-site building; and (iii) implementation of a Uniform Environmental Covenant ("**UEC**") restricting groundwater use, limiting exposure to soils deeper than two feet, and prohibiting residential use of the Property. The Property was accepted into the VRP Program in April 2020.

To comply with the VRP Program, additional soil sampling and removal actions were conducted. Further, groundwater was evaluated through multiple phases of investigation. At the time of these investigations, the Seller initiated diligence in consideration of the acquiring the Property under the purview of the Georgia Brownfield Program (the "**Brownfield Program**"). The prior owner of the Property, the Seller, and the GA EPD coordinated to amend the UEC to allow for residential use of the Property. In December 2020, the Property was accepted into the Brownfield Program by submission of a Prospective Purchaser Correction Action Plan (the "**PPCAP**"). The VRP Program culminated with the submission of a Compliance Submission Report, which supported the Property's delisting from the HSI as of June 1, 2021. The initial PPCAP was approved by the GA EPD in January 2021, as amended in August 2021.

To address the presence of residual metals in soil exceeding residential RRS, a "Type 5" RRS approach was implemented. This approach used a combination of engineering and institutional controls to prevent exposure post-redevelopment. Impacted soils were either removed or isolated beneath site-wide engineered barriers, including hardscapes and a minimum one-foot layer of environmentally tested clean soil underlain by an orange demarcation geotextile. A vegetated buffer area along the southern boundary, designated as the "Non-Accessible Area," was certified to a non-residential Type 5 RRS and maintained under permanent fencing to prevent access and ensure long-term control.

In response to soil gas detections during site investigations, a preemptive Vapor Intrusion Mitigation System ("**VIMS**") was installed beneath each of the occupied structures of the Property to address potential vapor intrusion for Property occupants. The system included a chemically resistant barrier, sub-slab venting layers, and vertical discharge pipes extending above rooflines. VIMS components are subject to annual inspection and long-term maintenance requirements.

Institutional controls were formally established through a UEC recorded in April 2021 under the VRP Program. The UEC prohibits the use of groundwater, restricts intrusive activities, and mandated the preservation of engineering controls. These controls are further governed by a site-specific Monitoring and Maintenance Plan (the "**MMP**") which outlines requirements for annual inspections, soil barrier maintenance, documentation of intrusive work, VIMS oversight, and reporting to the GA EPD.

The Brownfield Program assists prospective purchasers of property in the redevelopment of potentially contaminated sites by offering liability protections and financial incentives. Participants which did not contribute to the contamination of the property can receive a limitation of liability for existing environmental issues, including protection from third-party claims and groundwater cleanup requirements. These protections are awarded to future owners of the property provided continued compliance with Brownfield Program endpoints.

Additionally, in the state of Georgia, properties that participate in the Brownfield Program under Georgia law and receive a certification required for a Brownfield property from the GA EPD are eligible for a real estate tax abatement, valued up to the amount of the certified costs of remediating the property. For Brownfield properties with certified remediation costs, the tax abatement program in Georgia freezes the taxable base value of the property at the

lesser of: (i) the acquisition cost of the property; or (ii) the fair market value as recorded in the county tax digest at the time the Brownfield Program application was made to the GA EPD.

In order to comply with the requirements of the Brownfield Program, the Trust, the Master Tenant, and each occupant of the Property will be required to comply with the UEC and the MMP. These controls must be maintained in perpetuity unless formally modified or terminated with approval from the GA EPD. These controls include the following obligations: (i) use or extraction of groundwater beneath the Property is strictly prohibited, and may not be used for drinking water or any other purposes without prior written approval from the GA EPD; (ii) the southern portion of the site of the Property consisting of the "Non-Accessible Area" must remain fenced and inaccessible to the public, while land use across the remainder of the Property must remain consistent with the Type 5 RRS remedy; (iii) the engineering controls installed to isolate impacted subsurface soils must remain in place and be maintained in good condition; (iv) intrusive activities that breach surface barriers must be conducted in accordance with the MMP, which includes pre-approval by the property owner, implementation of health and safety procedures, potential waste characterization, documentation of barrier repair or replacement, and potential off-site disposal of disturbed soils at a permitted landfill; (v) maintenance of each VIMS system, with any modifications or repairs using approved materials, following GA EPD guidelines, and overseen by qualified environmental professionals; (vi) maintenance and preservation of four permanent markers notifying individuals of the presence of excavation restrictions; (vii) maintenance of fencing around the Non-Accessible Area; (viii) annual inspections must be performed to verify the integrity of engineering controls, VIMS systems, fencing, groundwater use restrictions, and overall compliance with the MMP, and the results of such reports must be submitted to the GA EPD by December 15 of each year; and (ix) breaches or failures of engineering controls must be reported immediately to the property owner and documented in the annual report to the GA EPD, with repairs being completed within 30 days of discovery. If the Trust, the Master Tenant, or any of the tenants fails to comply with the foregoing Brownfield requirements, the financial performance of the Trust could be materially impacted.

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BUSINESS PLAN

General

The investment objectives for the Property will be to (i) preserve the Purchasers' capital investment, (ii) make monthly distributions estimated to start at 5.31% annualized for Year 1 and projected to range from 4.44% to 5.96% annualized from Year 1 through Year 10, which may be partially tax-deferred as a result of depreciation and amortization expenses, and (iii) sell the Property at a profit within approximately five to ten years.

Strategy

The Sponsor will seek to maintain a mid-90% occupancy range while maximizing rents organically based on the strength and desirability of the submarket and the Property. Additionally, an institutional quality property manager with a known track record of efficiently controlling costs while driving top-line revenue performance will manage the Property.

Proposed capital improvements to the Property are budgeted at $465,396 and will include:

- $200,000 of total common area allowance.
- $200,000 of deferred maintenance.
- $65,396 of other routine capital allowances including TIs and LCs.

The Sponsor and the Property Manager will attempt to:

- Continue to maintain the strong retention ratio and operate the Property with occupancy levels in the mid 90% range.
- Seek to narrow Loss-to-Lease by appropriately pricing units to market as units roll.
- Continue to operate the Property at the current level of rent collections.
- Maintain the luxury standards of the Property.
- Seek to reduce operating expenses to be more consistent with long-term ownership objectives.

The Appraisal indicated an "As Is" value of $81,600,000. The initial purchase price of the Property was $81,500,000, which includes a $250,000 credit negotiated with the Seller to cover potential concessions. With professional on-site management and implementation of a well-developed business and marketing plan, there is an opportunity to maximize rental revenues by applying programmatic increases to rental rates, charging premiums for unit locations and preferred / private views, and improving upon ancillary services such as valet trash, market pet fees and tailored data and connectivity plans for residents.

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MARKET AND LOCATION OVERVIEW

The following is a brief summary of the real estate market in which the Property is located. Unless otherwise indicated, the information in this section has been taken from third party reports or sources. Neither the Trust nor the Sponsor has independently verified the information obtained from these sources and they cannot assure you of the accuracy or completeness of the data. Forecasts and other forward-looking information are subject to the same qualifications and the additional uncertainties as any other forward-looking statements in this Memorandum.

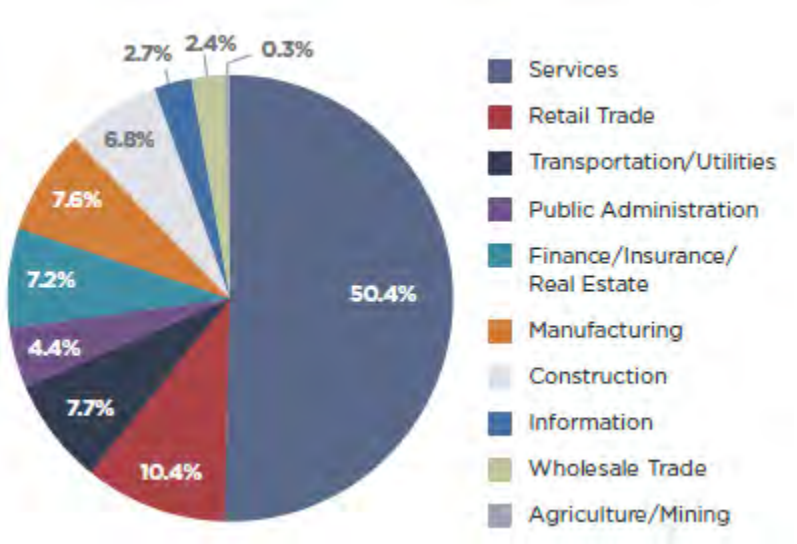
Certain information is excerpted from the Appraisal prepared by the Appraiser. The Appraisal was compiled using data and information obtained from various third-party services. Appraisals, the data used to compile them, and the results that they predict, are by definition subjective and may be subject to various interpretations. In addition, the Sponsor has not independently verified any of the data included in the Appraisal.

Based upon the foregoing, the following information may not accurately reflect or predict all information relevant to the Atlanta-Sandy Springs-Roswell Metropolitan Statistical Area (the "**Atlanta MSA**") or the Property. Moreover, the Sponsor has revised portions of the Appraisal included in this "*Market and Location Overview*" section to eliminate typographical errors, to eliminate duplicative language and to conform to the definitions contained in this Memorandum.

The Property is located within the Capitol View submarket of Atlanta, Georgia, which is located in the Atlanta MSA. The Property benefits from convenient access to numerous employment, entertainment, education and shopping locations throughout the Atlanta region. Additionally, the Property is located on the fully completed Southwest trail of Atlanta's "Beltline," offering unmatched connectivity to over 400k SF of retail and restaurants.

The Economy and Demographics

Atlanta has a diversified economy spanning logistics, fintech, healthcare, film production, and higher education. The Atlanta MSA has a gross domestic product of approximately $571 billion in 2023, making it one of the largest regional economies in the United States. The percentage of employees by industry sector is portrayed in the chart below.



Logistics and transportation are foundational industries thanks to Atlanta's strategic location at the crossroads of the Southeast and Hartsfield-Jackson Atlanta International Airport, which has ranked for decades as the world's busiest airport by passenger volume. The city is also a growing hub for technology and innovation, as well as TV and film production.

Tourism is a major economic driver, with approximately 50 million visitors annually generating an economic impact of $18 billion in 2023. Key attractions include the Georgia Aquarium, World of Coca-Cola, Atlanta "Beltline," Martin Luther King Jr. National Historical Park, Piedmont Park, and a vibrant culinary and music scene. The Georgia

World Congress Center Authority complex hosts more than 500 events annually, drawing over 3 million visitors each year.

Atlanta is home to 17 Fortune 500 company headquarters, including The Coca-Cola Company, Delta Air Lines, Home Depot, UPS, and Southern Company, underscoring its status as a leading business and financial center for the Southeastern U.S. In addition, the city has a strong film and entertainment production industry, often referred to as the "Hollywood of the South," thanks to generous state tax incentives and robust production infrastructure.

MAJOR EMPLOYERS

EMPLOYER	EMPLOYMENT
Delta Air Lines	42,090
Northside Hospital	32,000
Piedmont Healthcare	29,646
Publix Super Markets Inc.	23,660
Wellstar Health System	21,020
The Home Depot	19,576
United Parcel Service Inc.	17,037
Emory University	13,500
Children's Healthcare of Atlanta	10,489
UPS Supply Chain Solutions	10,121

Atlanta's metro area also supports a significant higher education and research ecosystem, anchored by institutions such as Georgia Tech, Emory University, Georgia State University, and Morehouse College. The city is recognized for its role in civil rights history and leadership, with major cultural institutions and museums dedicated to the legacy of Dr. Martin Luther King Jr. and the broader American civil rights movement.

The following table summarizes population, household, income, and labor force trends within the Atlanta MSA and the Unites States:

DEMOGRAPHIC TRENDS

	REGION	2024	2025	PROJECTED 2030	CAGR % 2025-2030
POPULATION	Atlanta Metro	6,385,753	6,443,225	6,738,436	0.9%
	United States	339,675,025	342,052,750	348,948,753	0.4%
HOUSEHOLDS	Atlanta Metro	2,380,105	2,403,906	2,526,529	1.0%
	United States	133,413,566	134,480,875	137,876,686	0.5%
HH INCOME	Atlanta Metro	$88,774	$91,082	$110,283	3.9%
	United States	$79,410	$81,236	$84,404	3.9%
LABOR FORCE	Atlanta Metro	3,266,091	3,295,486	3,395,544	0.6%
	United States	168,289,978	170,814,328	173,391,962	0.3%

Adair Park

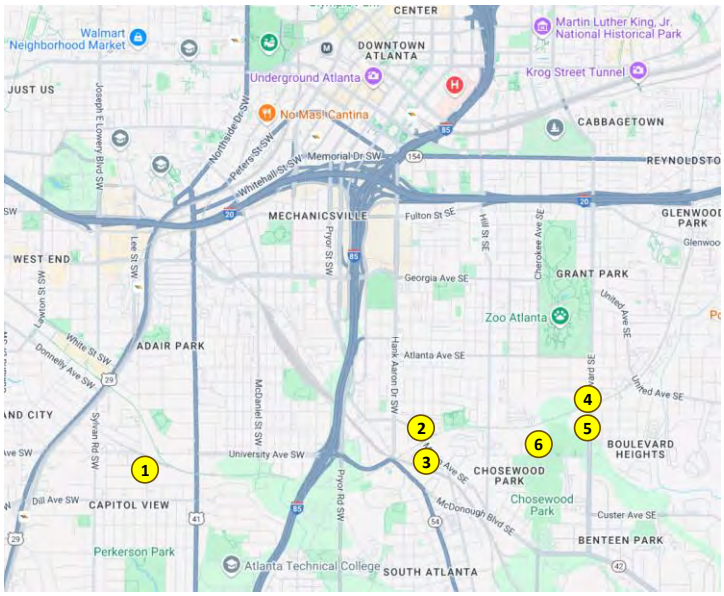
Adair Park is a neighborhood situated in Southwest Atlanta between Downtown and Hartsfield-Jackson International Airport. Adair Park is a historic neighborhood, established in the early 20th century, known for its charming bungalow-style homes and rich history. The area reflects the stories of its long-standing residents while undergoing significant transformation due to urban renewal and development projects. Recent initiatives include the construction of modern townhomes and mixed-use developments that enhance the neighborhood's appeal without compromising its unique character and have resulted in average home values in excess of $400k. The major amenity driver near Adair Park is the Southwest trail of Atlanta's "Beltline" that has recently been fully completed. Numerous breweries, restaurants, coffee shops, coworking spaces, and entertainment venues have been opening along the Beltline catering to the younger and wealthier residents.

Comparable Rents

The Sponsor examined five apartment communities that are most comparable in the submarket in order to help formulate an asset-level strategy to identify opportunities to maximize revenue growth. Pursuant to the LURA, at least 15% of the total units at the Property must be actively marketed as affordable to households which have incomes that do not exceed 80% of the area median income ("**AMI**"). This affordability requirement will remain in place for a period of 20 years following the issuance of the certificate of occupancy for the Property. These affordable units are only modestly discounted from prevailing market rents. The analysis below details the rental rates for the fair market ("**FM**") units of the competitive set on a quantitative and qualitative basis.

The following is a map of the locations of the comparable properties in the submarket.

Map of Comparable Properties



Studio FM units account for 11.3% of the FM unit mix and are an average of 646 square feet. The monthly rent for the FM studios in the submarket is $1,560 per month on average. Currently, the average monthly rent at the Property for a FM studio unit is 9.2% below the average market rate.

The following analysis shows the market for studios.

Comparable Rent Summary – Studio

Property Name	Year Built	Unit Type	# of Units	Avg. Unit SF	Avg. Rent per Unit	Avg. Rent per SF
The Maverick Flats	2021	0 BR	80	525	$1,453	$2.77
Verge	2022	0 BR	34	628	1,445	2.30
The Boulevard at Grant Park	2023	0 BR	140	535	1,460	2.73
Skylark	2020	0 BR	48	580	2,137	3.68
The Upton	2025	0 BR	36	527	1,525	2.89
		Wtd. Avg	**68**	**548**	**$1,560**	**$2.85**
		Median	**48**	**535**	**$1,460**	**$2.77**
The Vivian	**2023**	**0 BR**	**31**	**646**	**$1,417**	**$2.19**

Note: Table shows comparison of FM units at the Property versus FM units at comparable properties

One-bedroom FM units account for 64.4% of the FM unit mix and range from 699 to 806 square feet. The monthly rent for the FM one-bedrooms in the submarket is $1,640 per month on average. Currently, the average monthly rent at the Property for a FM one-bedroom unit is 0.6% below the average market rate.

The following analysis shows the market for one-bedrooms.

Comparable Rent Summary – One-Bedroom

Property Name	Year Built	Unit Type	# of Units	Avg. Unit SF	Avg. Rent per Unit	Avg. Rent per SF
The Maverick Flats	2021	1 BR	148	747	$1,544	$2.07
Verge	2022	1 BR	171	803	1,666	2.07
The Boulevard at Grant Park	2023	1 BR	129	738	1,830	2.48
Skylark	2020	1 BR	177	738	1,450	1.96
The Upton	2025	1 BR	177	737	1,749	2.37
		Wtd. Avg	**160**	**753**	**$1,640**	**$2.18**
		Median	**171**	**738**	**$1,666**	**$2.07**
The Vivian	**2023**	**1 BR**	**177**	**735**	**$1,631**	**$2.22**

Note: Table shows comparison of FM units at the Property versus FM units at comparable properties

Two-bedroom FM units account for 24.4% of the FM unit mix and range from 1,065 to 1,183 square feet. The monthly rent for the FM two-bedrooms in the submarket is $2,276 per month on average. Currently, the average monthly rent at the Property for a FM two-bedroom unit is 5.8% below the average market rate.

The following analysis shows the market for two-bedrooms.

Comparable Rent Summary – Two-Bedrooms

Property Name	Year Built	Unit Type	# of Units	Avg. Unit SF	Avg. Rent per Unit	Avg. Rent per SF
The Maverick Flats	2021	2 BR	92	1,087	$1,953	$1.80
Verge	2022	2 BR	115	1,207	2,394	1.98
The Boulevard at Grant Park	2023	2 BR	54	1,179	2,337	1.98
Skylark	2020	2 BR	88	1,291	2,190	1.70
The Upton	2025	2 BR	126	1,089	2,436	2.24
		Wtd. Avg	**95**	**1165**	**$2,276**	**$1.95**
		Median	**92**	**1179**	**$2,337**	**$1.98**
The Vivian	**2023**	**2 BR**	**67**	**1,106**	**$2,143**	**$1.94**

Note: Table shows comparison of FM units at the Property versus FM units at comparable properties

As is evidenced above, the Property rents trail the submarket in all unit categories. The Sponsor will focus on increasing the rents more aggressively given the recently stabilized nature of the Property. The Sponsor believes that it will be able to surpass the average rent of its market competitors due to the Property's direct access to the "Beltline."

Comparable Transactions

The Sponsor conducted an analysis of comparable multi-family sales in the market to determine the attractiveness of the purchase price on a price-per-unit basis. The Sponsor identified 9 transactions between August 2023 and March 2025 to be comparable enough to warrant further analysis: all possessed relatively similar characteristics in terms of market characteristics, location, size, asset quality and age. The median price-per-unit for the identified comparable sales is $281,513, which is significantly above the price-per-unit of the Property ($250,769 per unit). Additionally, with the confidence in continued market momentum due to the barriers to entry and the high-income demographics, the Sponsor believes the purchase price is an attractive entry point off which to execute the business plan.

Comparable Transactions Summary

Property Name	City	Building Type	Year Built	# of Units	Date Sold	Sale Price ($mm)	Sale Price per Unit	Cap Rate
Block Lofts	Atlanta	Mid-Rise	2005	244	Mar-25	69.5	$284,836	4.7%
WILLIS Avondale Estates	Decatur	Mid-Rise	2018	197	Dec-24	48.6	246,701	4.6%
Bexley Chamblee	Chamblee	Mid-Rise	2023	318	Nov-24	103.4	325,000	4.5%
Centra at North Druid Hills	Atlanta	Mid-Rise	2016	310	Oct-24	83.5	269,355	4.5%
Reserve Decatur	Decatur	Mid-Rise	2016	298	Aug-24	80.3	269,295	4.6%
The Mill at Westside	Atlanta	Mid-Rise	2017	282	Jul-24	70.5	250,000	4.4%
Lumen Grant Park	Atlanta	Mid-Rise	2018	238	Dec-23	67.0	281,513	5.3%
Bexley Summerhill	Atlanta	Mid-Rise	2022	315	Oct-23	94.0	298,413	4.5%
The Baxter	Decatur	Mid-Rise	2019	290	Aug-23	93.0	320,690	4.7%
						Mean	**$282,867**	**4.7%**
						Median	**$281,513**	**4.6%**
The Vivian	**Atlanta, GA**	**Mid-Rise**	**2023**	**325**	**Aug-25**	**$81.5**	**$250,769**	**6.2%**

ACQUISITION OF THE PROPERTY AND FINANCING TERMS

On August 21, 2025, the Trust completed the Closing with proceeds derived from (i) the Equity Financing facilitated by the Depositor, and (ii) proceeds from the Loan from the Lender. At the time of the Closing, the Trust incurred the obligation to pay the Sponsor the Acquisition Fee. In connection with the formation of the Trust and the foregoing transactions, the Trust issued to the Depositor all of the Class 2 Beneficial Interests. Through the proceeds derived from the syndication of Interests pursuant to this Offering, the Trust intends to redeem the Class 2 Beneficial Interests issued to the Depositor.

Contemporaneously with the Closing, the Trust acquired its rights in the Property in compliance with the requirements of the Bond Program, taking an assignment from the Seller of its rights under the Bond Lease and of its rights under the Bonds.

Financing

The Lender obtained the Appraisal for the Property prepared by the Appraiser, dated August 5, 2025, reflecting a market value, "As Is," for the Property of $81,600,000.

Contemporaneously with the Closing, the Trust obtained the Loan in the original principal amount of $47,189,000 from the Lender under the Fannie Mae DUS program. The Loan Documents executed concurrently with the Closing and the funding of the Loan provide for a $47,189,000 Loan with a 10-year term, and a fixed interest rate equal to 5.30% per annum. For the first seven years of the Loan term, the Trust is required to make interest-only payments. Beginning on October 1, 2032, and continuing for the final three years of the Loan term, the Trust will be required to make regularized payments on the Loan consisting of both principal and interest.

The Property is subject to a first-priority mortgage and other standard collateral rights granted in favor of the Lender, to secure the Trust's obligations under the Loan. The Loan is "non-recourse" to the Trust except for standard non-recourse carve outs contained within the Loan Documents.

As Beneficial Owners in the Trust, the Purchasers are not required to execute personal guarantees for any portion of the Loan or an environmental indemnity agreement in favor of the Lender, and will not incur any personal liability with respect to the operation of the Property or under the Loan Documents, including liability for environmental claims. However, since the Property secures the Trust's obligations under the Loan, Beneficial Owners could lose their entire Interests if the Trust were to default on the Loan and Lender were to foreclose on the Property. *See "Risk Factors – Risks Relating to Financing of the Property."*

Summary of Loan Terms

Principal Amount	$47,189,000
Term; Maturity Date	10 years, maturing September 1, 2035
Interest Rate	5.30% per annum
Amortization	Monthly, interest-only payments until September 1, 2032; regularized payments consisting of both principal and interest continuing thereafter until September 1, 2035.
Late Charges	For any payment not timely made, the Trust will pay to the Lender, immediately without demand by the Lender, an amount equal to the delinquent amount then due under the Loan Documents multiplied by 5.0%. Late charges are paid in addition to (and not in lieu of) any interest payable at the default rate.
Repayment	Up to and including September 1, 2032, the Loan will be interest-only, resulting in debt service payments until such time of approximately $2,535,753 per year. Thereafter, the Trust will be required to make regularized payments on the Loan consisting of both principal and interest until September 1, 2035.

Additional Reserves from Loan Proceeds	The Loan Documents provide for two lender-controlled reserve accounts with respect to the Loan: the Replacement Reserve Account. The Trust used $130,000 of Loan proceeds to fund its initial contribution to the Replacement Reserve Account, as required under the Loan Documents. In addition to the Lender Reserves and various other reserves established in connection with the Loan, the Trust has established (and directs) the Supplemental Trust Reserve. The Supplemental Trust Reserve was funded from Loan proceeds, in the aggregate amount of $646,735.
Assumption	The Lender has agreed not to unreasonably withhold consent to the transfer of the Property and the assumption of the Loan if certain conditions are met. The Lender is entitled to receive any reasonable out-of-pocket costs and expenses, including reasonable attorney fees, incurred by the Lender in connection with such a transfer and may also be entitled to a transfer fee and a review fee plus processing and administrative fees associated with the transfer.
Collateral	The Loan is secured by (i) a first priority lien, deed of trust or deed to secure debt (the "**Mortgage**") and other security instruments in or related to the Property, (ii) a valid and perfected security interest in all personal property owned by the Trust located on or used in connection with the Property and any improvements thereon, and (iii) the Bonds pursuant to the Bond Pledge Agreement (as defined herein). The Master Tenant has entered into a separate Subordination Agreement (the "**Subordination Agreement**") pursuant to which the Master Lease will be subordinated to the Loan and the Master Tenant's interest in the Property and tenant leases has been assigned to the Lender as additional collateral.
Prepayment	Prepayment in full is permitted on the day prior to any scheduled payment date provided that a prepayment premium accompanies such payment. The prepayment premium will be the greater of the amount calculated using the Fannie Mae Yield Maintenance Prepayment formula described in the Loan Documents, or 1.0%. From the sixth month to the fourth month prior to loan maturity, the prepayment premium shall be 1.0% and there shall be no prepayment premium during the last three months of the loan term.
Impositions	The Trust is required to make monthly deposits into an imposition account for payment of property taxes, assessments, insurance premiums and other similar charges affecting the Property, in amounts established by the Lender in its discretion. The Master Tenant is required to fund these deposits as part of Rent under the Master Lease.
Insurance	The following insurance coverages are required under the Loan Documents, among others: • keep the Improvements (as defined in the Loan Documents) insured at all times against any hazards, which insurance shall include coverage against loss by fire and all other perils insured by the "special causes of loss" coverage form, general boiler and machinery coverage, business income coverage, and flood (if any of the

Improvements are located in an area identified by the Federal Emergency Management Agency (or any successor) as an area having special flood hazards and to the extent flood insurance is available in that area), and may include sinkhole insurance, mine subsidence insurance, earthquake insurance, terrorism insurance, windstorm insurance and, if the Property does not conform to applicable building, zoning, or land use laws, ordinance and law coverage;

- maintain at all times commercial general liability insurance, workmen's compensation insurance, and such other liability, errors and omissions, and fidelity insurance coverage; and
- maintain builder's risk and public liability insurance, and other insurance in connection with completing the Repairs or Replacements (as defined in the Loan Documents), as applicable.

Events of Default

The "Events of Default" under the Loan Documents include the following, among others:

- Any failure by the Trust to pay or deposit when due any amount required by the Loan Documents;
- Any failure to maintain the insurance coverage required by any Loan Document;
- Any failure by the Trust to comply with the provisions of the Loan Documents relating to its single asset status;
- If any warranty, representation, certification, or statement of the Trust or Guarantor (as defined herein) in the Loan Documents is false, inaccurate, or misleading in any material respect when made;
- Fraud, gross negligence, willful misconduct, or material misrepresentation or material omission by or on behalf of the Trust, Master Tenant, Guarantor, or Key Principal (as defined in the Loan Documents) or any of their officers, directors, trustees, partners, members, or managers;
- The occurrence of any transfer not permitted by the Loan Documents;
- The occurrence of a Bankruptcy Event (as defined in the Loan Documents);
- The commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Property or otherwise materially impair the lien created by the Loan Documents or Lender's interest in the Property;
- If the Trust, Master Tenant, Guarantor, or Key Principal is a trust, or if control of the Trust, Master Tenant, Guarantor, or Key Principal is transferred or if a Restricted Ownership Interest (as defined in the Loan Documents) in the Trust, Master Tenant, Guarantor, or Key Principal would be transferred due to the termination or revocation of a trust, the termination or revocation of such trust, except as set forth in the Loan Documents;
- Any failure by the Trust to complete any repair related to fire, life, or safety issues in accordance with the terms of the Loan Documents within the completion period (or such

other date set forth on the required repair schedule or otherwise required by Lender in writing for such repair);
- Any exercise by the holder of any other debt instrument secured by a mortgage, deed of trust, or deed to secure debt on the Property or any interest therein of a right to declare all amounts due under that debt instrument immediately due and payable;
- A termination, amendment, or modification of any Master Lease document not permitted by the Loan Documents;
- A default by the Trust or the Master Tenant which continues beyond any applicable cure period under the Subordination Agreement, the Master Lease, the Property Level Assignment of Leases and Rents, or any other Master Lease Documents (as defined in the Loan Documents);
- Any failure by Borrower, Guarantor, Key Principal, any Borrower Affiliate (as defined in the Loan Documents), or any Affiliated Master Lessee (as defined in the Loan Documents) to perform any of its obligations under the Loan Agreement or any Loan Document as and when required;
- Any default, event of default, or breach (however such terms may be defined) under the Grant;
- Any failure by Borrower to comply with Section 16.02 of the Loan Agreement relating to Borrower's compliance with the Grant and the Tax Reimbursement (as defined in the Loan Documents); and
- Any transfer of the Property, any interest in the Property, or any interest in the Borrower that would cause the Tax Reimbursement (as defined in the Loan Documents) to terminate or be substantially reduced.

Remedies

In addition, other events of noncompliance with the terms and conditions of the Loan Documents will become events of default subject to applicable cure periods.

Upon the occurrence of an Event of Default, the Lender may exercise all remedies available under the Loan Documents at law or in equity, including but not limited to:

- accelerating the Loan;
- collecting rent;
- foreclosing on the Property and applying the proceeds from a sale of the Property;
- proceeding by lawsuit to enforce the payment of any debt under the Loan Documents;
- exercising any other right available to the Lender under the Loan Documents; and
- applying amounts held in any reserve accounts and all cash proceeds from the operation of the Property.

Indemnification

The Trust will generally indemnify the Lender and its affiliates against losses incurred in connection with the Loan, the security arrangements or the Replacement Reserve Account. In addition, the Trust executed an Environmental Indemnity Agreement, pursuant to which the Trust will generally indemnify the Lender and its affiliates against environmental liabilities arising from

ownership and operation of the Property. Purchasers are not directly subject to any such indemnification obligations.

Limited Recourse

The Loan is non-recourse, meaning that the Lender may only seek recovery against the Trust from the liquidation of the collateral for any amounts that remain due under the Loan after a default. However, the Loan contains certain events of default that would allow the Lender, in addition to foreclosing on the Property and the personal property of the Trust related thereto, to proceed against the Trust itself (but not against Purchasers) to repay losses incurred by the Lender or, in some instances, the full amount of the Loan (i.e., certain non-recourse carve outs). Thus, defaults for nonrecourse carve out items may trigger "springing" liability to the Trust in an amount equal, in certain instances, to the full amount of the Loan.

Purchasers may request copies of the Loan Documents from the Sponsor for further review and details concerning these potential obligations.

Limited Guaranty

Samuel Jesselson and Jason Warsavsky (each a "**Guarantor**"), each an indirect owner of the Sponsor, have executed a guaranty under which they will each be responsible for losses, claims, damages or liabilities incurred by the Lender as a result of certain non-recourse carve out events over which each Guarantor and their affiliates exercise relative control. Purchasers will not be required to execute a personal guaranty.

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THE MANAGER

Manager and Officers of the Manager

The Manager of the Trust will be relying on senior members of the Sponsor's and JWCM's (an affiliate of the Sponsor) management teams whose biographical information is described in detail below. The Sponsor's officers and the directors of JWCM are set forth below.

Name	Age	Position and Office
Samuel Jesselson	40	Chief Executive Officer of the Sponsor / New York
Jason Warsavsky	40	President of the Sponsor / New York
Jason Wasserman	42	Managing Director of JWCM / New York
Zach Thorson	35	Vice President of JWCM / New York

JWCM Leadership Team

Samuel Jesselson - Chief Executive Officer

Samuel Jesselson is Chief Executive Officer ("**CEO**") of the Sponsor. Mr. Jesselson has a strong record of leadership in real estate investment, with more than 20 years of industry expertise. As CEO of the Sponsor, Mr. Jesselson guides the firm's strategies for growth. Mr. Jesselson is also Managing Partner and Founder of JWCM, an affiliate of the Sponsor, since 2014. Previously, Mr. Jesselson was an investment professional at C-III Capital Partners ("**C-III**") from 2010 to 2013 and its parent Island Capital Group ("**Island**") from 2008 to 2010. At C-III, he executed over $1.0 billion of transactions across various asset classes throughout the United States. At Island, Mr. Jesselson was intimately involved with their acquisition of Centerline's debt fund management and servicing business for $110 million. Prior to C-III and Island, Mr. Jesselson was an investment banker with Lehman Brothers from 2007 to 2008, where he focused on M&A transactions in the Healthcare sector. Mr. Jesselson received a B.A. in History from the University of Pennsylvania in 2007 and a M.B.A. from Oxford University in 2017.

Jason Warsavsky - President

Jason Warsavsky is President of the Sponsor. Mr. Warsavsky is a seasoned industry expert with over 20 years of experience. As President of the Sponsor, Mr. Warsavsky is responsible for the growth of the firm and for overseeing operations. Mr. Warsavsky is also Managing Partner and Founder of JWCM since 2014. Before founding JWCM, Mr. Warsavsky was a Vice President at Pegasus Capital Advisors from 2013 to 2014, where he oversaw investments in the real estate and lodging industries. Previously, Mr. Warsavsky was an investment banker at Moelis & Company from 2008 to 2013, where he executed over $15 billion of transactions in the real estate, gaming and lodging sectors. Prior to Moelis & Company, Mr. Warsavsky was an investment professional in the Real Estate Private Equity Group at Lehman Brothers from 2007 to 2008, where he focused on equity and debt investments across various asset classes. Mr. Warsavsky received a B.S. in Economics, with concentrations in Real Estate and Finance, from the Wharton School of the University of Pennsylvania in 2007. In 2006, he received the Herbert Z. Gold prize at Wharton for demonstrating excellence in real estate analysis.

Jason Wasserman – Managing Director

Jason Wasserman is a real estate finance and management expert with more than 20 years of experience. As Managing Director of JWCM, Mr. Wasserman is responsible for asset management of portfolio investments and overseeing portfolio dispositions. Most recently, Mr. Wasserman was the Senior Director of Asset Management at Atlas Capital Group, where he oversaw the asset management and leasing of their New York City portfolio. Prior to Atlas, Mr. Wasserman was a First Vice President of Asset Management at RXR. At RXR, he oversaw over $5 billion of assets and executed over $10 billion of transactions across various sectors. Mr. Wasserman received both his M.B.A and B.S. in Finance from New York University's Stern School of Business, with a focus in Real Estate. He remains active within the Stern Real Estate community, and has returned to Stern on several occasions to speak to students about his professional experience.

Zach Thorson – Vice President

Zach Thorson is a Vice President of the Sponsor. Mr. Thorson has over 8 years of commercial real estate experience underwriting, structuring, and transacting across both private equity and corporate advisory roles. Most

recently, he was responsible for real estate equity investments at Two Sigma Real Estate, the real estate arm of Two Sigma, a $60 billion quantitative hedge fund. Prior to Two Sigma, Mr. Thorson was an Associate in the Real Estate Mergers & Acquisitions Advisory group at Evercore, where he supported financial analysis and deal execution across a range of strategic real estate transactions. Mr. Thorson holds a B.S. in Mechanical Engineering from the University of St. Thomas and an M.B.A. from Columbia University.

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PRIOR PERFORMANCE OF THE SPONSOR AND AFFILIATES

The information presented in this section represents the historical experience of real estate programs for which the Sponsor or an affiliate is or was the sponsor. A prospective Purchaser should not assume that he, she, or it will experience returns, if any, comparable to those experienced by such prior real estate programs. This Memorandum does not include prior performance tables.

CAUTIONARY NOTE: JWCM Vivian, DST is the third Delaware Statutory Trust program sponsored by JWCM Exchange. Prospective Purchasers will not acquire any interest in any of the previously acquired properties. IT SHOULD NOT BE ASSUMED THAT PURCHASERS ACQUIRING INTERESTS WILL EXPERIENCE RETURNS COMPARABLE TO THOSE EXPERIENCED BY PRIOR INVESTORS.

Experience and Background of the Sponsor

The Sponsor, JWCM Exchange I, LLC, was formed in 2022. The principal business of JWCM Exchange is the acquisition and management of investment properties. The Sponsor is managed by JWCM. JWCM is a real estate investment firm that was formed by Samuel Jesselson and Jason Warsavsky in 2014 and is headquartered in New York City. The firm employs a situationally-opportunistic investment approach that has generated consistent returns irrespective of broader economic cycles. JWCM engages in a broad range of real estate related activities including asset management and principal investing in debt and equity securities, real property and real estate operating companies.

Since its founding, JWCM has raised more than $350 million in equity from over 200 investors. Currently, JWCM has over 3,000 multifamily units under management or in development.

Sponsor's Core Building Blocks for Success

Contemplate the Downside – Before contemplating the economics and upside, JWCM focuses on the downside as a tool to hopefully identify all scenarios that could impair an investment. This allows JWCM to attempt to understand and structure protection around the risks of any potential investment.

Immersive Management – JWCM seeks to foster collaboration and consistent involvement with all partners and third parties involved in an investment. JWCM believes such a hands-on approach ensures efficient operations by allowing JWCM to capitalize on potential opportunities and respond to any issues in a timely manner should problems arise.

Communication and Trust – Communication and trust are paramount to success. JWCM believes good communication results in the proper execution of an investment's business plan and ensures long-term solutions instead of short-term fixes. Additionally, it is not only important that JWCM trusts its counterparties, but also that JWCM's counterparties, investors, and partners have trust in JWCM.

Unique Backgrounds – JWCM believes that fostering a team from unique backgrounds provides a deep reservoir of experience upon which to draw. Leadership has experience across various sectors of commercial real estate including principal investing, special servicing of defaulted commercial real estate loans, high-yield CMBS investments, and advisory services.

Relationships – Relationships and people matter. JWCM nurtures and cares about each relationship, and seeks the best individual or company for any situation. Whether a property manager or a contractor, JWCM strives to engage those with proven results, an eye for detail, and policies and procedures in place to control expenses and deliver outperformance.

IN CONSIDERING THE PRIOR PERFORMANCE INFORMATION CONTAINED HEREIN, PROSPECTIVE PURCHASERS SHOULD BEAR IN MIND THAT PAST PERFORMANCE IS NOT INDICATIVE OF FUTURE RESULTS, AND THERE CAN BE NO ASSURANCE THAT COMPARABLE RESULTS WILL BE ACHIEVED IN THE FUTURE.

IT IS ANTICIPATED THAT THE OPERATING RESULTS OF THE TRUST WILL BE SIGNIFICANTLY DIFFERENT THAN THOSE OF THE SPONSOR'S PRIOR PROGRAMS.

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LIMITED FIDUCIARY AND OTHER DUTIES

Delaware law permits the trust agreement of a DST to expand or restrict the duties (including fiduciary duties) of Trustees, managers or other persons managing the business and affairs of a DST owed by the Trustees to the trust or its beneficial owners or owed by such managers or other persons to the trust, its beneficial owners or its Trustees, other than the implied covenant of good faith and fair dealing.

In the present case, the Trust Agreement provides that the Trustees' and the Manager's duties, including fiduciary duties, and liabilities relating thereto to the Trust and the Beneficial Owners are limited to those duties (including fiduciary duties) expressly set forth in the Trust Agreement and the liabilities relating thereto. Further, as a measure of protection for purposes of the contemplated Section 1031 Exchanges, the Trust Agreement provides that the Beneficial Owners do not have any power to give direction to the Trustees, the Manager or any other person, and that any attempt to exercise power will not cause such Beneficial Owner to have duties (including fiduciary duties) or liabilities relating thereto, to the Trust or to any other Beneficial Owner. As provided in the Trust Agreement, these duties may be less than are applicable to other investments, such as a partnership, limited liability company or corporation.

The Trust Agreement further provides that neither the Trustees nor the Manager will be liable to the Beneficial Owners for certain acts or omissions performed or omitted by it except for acts or omissions arising out of willful misconduct, bad faith, fraud or gross negligence, and that the Beneficial Owners will indemnify the Trustees and the Manager 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 "Summary of the Trust Agreement."* Accordingly, the Beneficial Owners may have a more limited right of action than would otherwise be the case, absent such provisions.

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CONFLICTS OF INTEREST

The structure and proposed method of operation with respect to this Offering creates certain inherent conflicts of interest between the Trust, the Beneficial Owners, the Sponsor and its affiliates. Certain restrictions have been provided in the Trust Agreement that are designed to protect the interests of the Beneficial Owners in this regard. Notwithstanding the foregoing, the Sponsor and its affiliates will be subject to various conflicts of interest arising out of their relationships with the Trust and Beneficial Owners.

Acquisition Fee

The Sponsor earned an Acquisition Fee of $2,241,250 in connection with the Trust's acquisition of the Property for its services in the identification, negotiation, diligence and acquisition of the Property.

Competition with Affiliates

The Sponsor and its affiliates are involved in the acquisition, development and management of real property and are facilitators of Section 1031 Exchanges. Any affiliated entity, whether or not currently existing, could compete with the Trust and the Beneficial Owners in the sale or operation of the Property. In addition, the Sponsor or its affiliates may in the future own, finance or represent other properties in the same market as the Property, which will similarly compete for tenants with respect to the Property.

Competition with the Commonly-Managed Properties

The Property Manager currently manages the Commonly-Managed Properties within a five mile radius of the Property, and may in the future manage additional real estate assets in the same relative vicinity. As a result, the Property Manager will experience a conflict of interest when attending to leasing apartment units to residents and prospective residents. The Property Manager may divert existing or replacement residents away from the Property and, instead, toward leasing an apartment unit at another property managed by the Property Manager, including Commonly-Managed Properties. Under certain circumstances, a Resident of the Property could terminate its lease and the Property Manager could direct them away from the Property and toward leasing a Commonly-Managed Properties.

Competition with the Property

The Sponsor or its affiliates may own or operate additional properties that compete with the Property. As a result, the Sponsor will experience a conflict of interest when managing the Property. The Sponsor or its affiliates may divert capital improvement funds and efforts from the Property and, instead, toward another property. Under certain circumstances, a Resident of the Property could terminate its lease and the Sponsor or its affiliates could direct them away from the Property and toward another property of owned, operated or managed by the Sponsor or its affiliates.

Provision by Affiliates of Services to the Trust or to Persons Dealing with the Trust

Neither the Sponsor nor any of its affiliates will be prohibited from providing services to, or otherwise dealing or doing business with, the Trust or Beneficial Owners or persons that deal with the Trust or Beneficial Owners, although no such services or activities (other than the services and activities disclosed in this Memorandum) are contemplated and any such services (if provided) must be at market terms.

Competition for Sponsor's Management Services

The Sponsor believes that it will have sufficient time to discharge fully its responsibilities to the Trust and Beneficial Owners and to other business activities in which it is or may become involved. However, the Sponsor and its affiliates are engaged in substantial other activities apart from their responsibilities under the Trust Agreement. Accordingly, the Sponsor and its affiliates will devote only so much of their time to the business of the Trust as is reasonably required in their judgment. The Sponsor and its affiliates will have conflicts of interest in allocating management time, services and functions among the properties held through this or any other program they may sponsor, as well as with other business ventures in which they are or may become involved.

Exercise of the Exchange Right by the Manager

The Manager may, in its sole and absolute discretion, require that the Purchasers exchange their Interests for Units in one or more Exchange Entities or otherwise have their Interests exchanged for a cash amount equal to the then current fair market value of the Interests. *See "Summary of Trust Agreement."* The Exchange Entity(ies) may share officers with the Sponsor and the Manager.

Compensation and Reimbursements Irrespective of Property Profitability

The Sponsor and its affiliates will receive certain compensation from the Trust for services rendered regardless of whether rent is paid to the Trust. *See "Estimated Use of Proceeds"* and *"Compensation and Fees"* in this Memorandum.

Sale of the Property

If the Manager decides to sell the Property, the Sponsor or its affiliates may be paid the Disposition Fee or other fees and compensation on the sale of the Property. The right to receive or participate in the Disposition Fee or other fees and compensation may provide the Sponsor with an incentive to encourage a sale of the Property at a time that is not optimal for, or on terms that are not advantageous to, the Trust or the Beneficial Owners.

Ownership of Interests

The Sponsor or its affiliates may elect to acquire or retain a portion of the Interests or to sell or transfer Interests to persons who are related to it, including employees or persons who have other relationships with it or its affiliates. In such event, although the rights of Beneficial Owners are extremely limited under the terms of the Trust Agreement, the interests of the Sponsor and its affiliates (or other closely connected parties) as Beneficial Owners may not be aligned with those of the Trust or other Beneficial Owners. Further, in the event of a Transfer Distribution, Beneficial Owners who were affiliates of the Sponsor could control the Springing LLC as members.

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SUMMARY OF THE MASTER LEASE

The Property will be leased by the Trust to the Master Tenant, JWCM Vivian Master Tenant, LLC, pursuant to the Master Lease. A copy of the Master Lease is attached to this Memorandum as **Exhibit A**. The Master Lease is, with certain exceptions regarding Landlord Costs, an "absolute net" lease allocating to the Master Tenant all expenses and debt service associated with the operation of the Property. The Master Tenant operates the Property and will be entitled to retain any positive difference between the Property's operating cash flow and the Master Lease payments, which include but are not limited to the payments due on behalf of the Trust under the Loan Documents. Likewise, the Master Tenant will bear the risk of any cash shortfalls between the net operating cash flow, after certain mandatory payments, and the payments required under the Master Lease, provided it may defer a portion of the monthly Additional Rent and annual Supplemental Rent as further described below. The following is merely a summary of some of the significant provisions of the Master Lease and is qualified in its entirety by the full text thereof.

Term

The Master Lease commenced on the date of the Closing, and will continue for a base term expiring three months and one day after the maturity date of the Loan, unless sooner terminated pursuant to the terms of the Master Lease.

Base Rent, Additional Rent and Supplemental Rent

The following Rent is due under the Master Lease on a monthly basis: (1) Base Rent in an amount equal to certain debt service payments including principal and interest payments; (2) Additional Rent in an amount equal to the amount by which the gross revenues exceed the Additional Rent Breakpoint up to a maximum annual ceiling; and (3) when Base Rent and Additional Rent have been fully paid, an amount equal to 90% of the amount by which annual gross revenues exceed the Supplemental Rent Breakpoint. The difference between the Base Rent and the Additional Rent Breakpoint for the Property for a given month, if any, after taking into account any expenses of the Property, will inure to the benefit of the Master Tenant and will not be available for distributions to the Trust or the Purchasers.

Additionally, the Master Lease sets forth projections for certain uncontrollable costs with respect to the Property; in the event that (a) the Projected Uncontrollable Costs for any calendar year exceed the actual uncontrollable costs, the Master Tenant is required to pay the Trust the amount of such excess; and (b) the actual uncontrollable costs for any calendar year exceed the Projected Uncontrollable Costs, the Master Tenant is responsible for the payment of such excess, but is entitled to a reimbursement by offsetting such amount against Additional Rent and (if necessary) Supplemental Rent.

The annual Base Rent and breakpoints and ceilings for the calculation of monthly Additional Rent and Supplemental Rent are specified in **Exhibit A** to the Master Lease, replicated below. Not depicted in the following table, Rent for the final three months of the term of the Master Lease will be at the same rate as Year 10.

Lease Period	Base Rent	Gross Revenue Additional Rent Breakpoint	Additional Rent Annual Maximum	Gross Revenue Supplemental Rent Breakpoint
Year 1	$2,730,546	$4,751,400	$1,884,300	$6,635,700
Year 2	$2,888,145	$4,903,200	$1,884,300	$6,787,500
Year 3	$2,902,403	$4,979,000	$1,884,300	$6,863,300
Year 4	$3,209,814	$5,349,900	$1,884,300	$7,234,200
Year 5	$3,707,452	$5,912,900	$1,884,300	$7,797,200
Year 6	$3,926,083	$6,197,700	$1,884,300	$8,082,000
Year 7	$4,005,080	$6,344,800	$1,884,300	$8,229,100
Year 8	$4,679,500	$7,089,400	$1,884,300	$8,973,700
Year 9	$4,752,676	$7,234,900	$1,884,300	$9,119,200
Year 10	$4,785,215	$7,341,800	$1,884,300	$9,226,100

If the Property's operating cash flow for a period is insufficient to pay all of the associated expenses of the Property (not including the Asset Management Fee) and the full monthly Base Rent (as defined in the Master Lease), then in such event, the Master Tenant may defer the payment of a portion of the monthly Additional Rent and monthly Supplemental Rent due under the Master Lease until cash flow becomes available to pay such shortfall amounts or upon disposition of the Property. In such event, interest will accrue on the deferred rent, if any, in accordance with the terms of the Master Lease, and payment of the Asset Management Fee will be deferred. Any deferred and accrued Asset Management Fees will be due and payable in full upon a disposition of the Property from the proceeds of the

sale thereof. Deferral of rent may cause the Beneficial Owners to recognize taxable income prior to the time rent is actually paid to them. *See "Federal Income Tax Consequences – Code Section 467 Rent Allocation."*

Impositions

Under the Master Lease, the Master Tenant is required to pay certain ancillary fees and costs related to the Mortgage (excluding certain fees and costs) and all taxes (including all real property taxes and personal property taxes), assessments, utilities not paid for by the tenants of the Property, excises, levies, license and permit fees and other government impositions and charges attributable to or assessed against the Property (collectively, the "**Impositions**").

Maintenance and Repair; Alterations

The Trust is responsible for any expenses incurred to make repairs to maintain the Property and for capital expenditures (as determined under generally accepted accounting principles) with respect to (i) repairs and replacements of the structure, foundations, roofs, exterior walls, parking lots and improvements to meet the needs of tenants; (ii) leasing commissions; (iii) certain hazardous substances costs; (iv) any repairs identified in the PCA, or similar engineering report, performed in connection with the acquisition of the Property (including minor deferred maintenance or immediate needs for repairs); and (v) other improvements or replacements to the Property that would be considered capital expenditures or are required by law. Other than the Landlord Costs as defined in the Master Lease, the Master Tenant is solely responsible for all other costs and expenses associated with the management and operation of the Property.

The Master Tenant may make structural and non-structural alterations to the Property in its sole discretion and at its sole cost and expense (other than Landlord Costs, which will be at the Trust's expense), provided that (i) all permits and authorizations of all municipal departments and subdivisions have been obtained; (ii) the alterations do not materially decrease the value of the Property, result in a material change in the usefulness of the Property for its intended use or violate the terms of a lease with a tenant of the Property; (iii) the alterations are made promptly and in a good workmanlike manner in compliance with all permits and authorizations; (iv) the cost of the alterations will be promptly paid by the Master Tenant so that the Property is at all times free and clear of any liens and/or encumbrances; (v) the alterations will be and become the property of the Trust upon termination of the Master Lease; (vi) the alterations will comply with the terms of the Loan; and (vii) certain levels of insurance will be obtained in connection with the alterations.

If the Master Tenant makes any changes or alterations to the Property that constitute more than minor, non-structural modifications, the Master Tenant must, prior to making such changes or alterations, (i) provide 30 days' advance written notice to the Trust setting forth the details of such alterations so that the Trust may effectuate a Transfer Distribution, if necessary, or (ii) execute an agreement with the Trust to the effect that, at the end of the Master Lease term, the Master Tenant will restore the Property to a condition substantially the same as the condition of the Property at the beginning of the Master Lease term.

Damage or Destruction; Condemnation

The Master Tenant is obligated to repair any material casualty to the Property, at the Master Tenant's expense and, subject to the Loan Documents, is entitled to receive any insurance proceeds made available for such repair of the Property. If the proceeds from any casualty insurance are insufficient to complete the repairs, the Master Tenant is obliged to fund any excess required to complete such repairs (other than capital improvements that are Landlord Costs and certain costs (i) attributable to the negligence or willful misconduct of the Trust or its agents; (ii) incurred when the Trust or its agents have taken control or possession of the Property; or (iii) incurred after the expiration of the Master Lease (collectively, the "**Trust Costs**")). To the extent the proceeds from any casualty insurance exceed the cost to complete the repairs, the Master Tenant is entitled to retain the difference, less any funds attributable to Trust Costs. If a casualty occurs within the last 12 months of the term of the Master Lease, and the casualty affects more than 50% of the Property, the Master Tenant may elect to terminate the Master Lease and not restore the Property, unless otherwise prohibited by the Loan. If the Master Lease is terminated pursuant to a casualty, then rent will be pro-rated to the date of termination. If some or all of the Property cannot be restored, but the Master Tenant does not terminate the Master Lease, the Additional Rent and Supplemental Rent will be reduced by an amount reasonably determined by the Trust and the Master Tenant.

Upon a total taking of the Property through a condemnation, the Master Lease will terminate and the rent will be apportioned and paid to the date of the taking. In the case of a taking of less than all of the Property, the Trust

(subject to the Loan Documents) will be entitled to receive the entire award for such taking. Upon a taking of less than all of the Property, the Master Tenant may terminate the Master Lease if the Master Tenant determines the taking renders the remaining portion of the Property unsuitable for the Master Tenant's use or the Master Tenant determines that it cannot complete a restoration for an amount that is less than or equal to the proceeds of the taking (provided, however, that if there are at least 12 months remaining on the term of the Master Lease, the Trust may agree to pay the excess expenses of restoration and, in turn, the Master Lease will not terminate and the Master Tenant will undertake such restoration). If the Master Lease is not terminated, the Master Tenant must proceed to restore the Property, provided, that the Trust must make any condemnation award proceeds available to the Master Tenant. If the Master Lease is not terminated and restoration has been undertaken by the Master Tenant, the Additional Rent and Supplemental Rent are required to be reduced by an amount reasonably determined by the Trust and the Master Tenant commencing from the date of the taking.

Termination Rights

Other than the termination rights discussed above in connection with a casualty or a taking, the Master Lease will terminate in the event that all or substantially all of the Property is sold or transferred by the Trust in one transaction. Such termination will occur immediately after the sale. The Master Lease will survive, however, in the event of a Transfer Distribution.

Assignment and Subletting

The Master Tenant may not sell, assign, transfer, mortgage, pledge or otherwise dispose of the Master Lease or any interest of the Master Tenant in the Master Lease, except with the prior written consent of the Trust. The Master Tenant may sublet the whole or any portion of the Property without the necessity of obtaining the prior consent of the Trust; provided, however, that no such sublease will be valid unless it complies with the provisions set forth in the Master Lease. An assignment or sublease will not release the Master Tenant from its obligations under the Master Lease. Notwithstanding the foregoing, the Master Lease allows and permits the Master Tenant to enter into sublease arrangements with end-user tenants at the Property.

Subordination Agreement

In connection with the Loan Documents, the Lender required the Trust and the Master Tenant to enter into the Subordination Agreement, pursuant to which the Trust and the Master Tenant subordinated their rights in and to the Master Lease to the Mortgage provide for collateral assignment to the Lender of all of the underlying leases, rents and occupancy rights. In addition, a default under the Master Lease will constitute a default under the Loan Documents.

Default / Remedies

The Master Tenant will default under the Master Lease, subject to certain applicable cure rights, in the event of: (i) the Master Tenant's failure to pay any installment of Base Rent or Additional Rent (subject to its right to defer payment of Additional Rent and Supplemental Rent); (ii) the Master Tenant's failure to comply with or observe any other term or condition of the Master Lease or any breach of a material representation or warranty made by the Master Tenant; (iii) a taking of the Master Tenant's leasehold interest or other process of law; (iv) the filing of a voluntary petition in bankruptcy by the Master Tenant, the adjudication of its bankruptcy or insolvency, the filing by the Master Tenant of a petition in bankruptcy or its acquiescence to the appointment of a trustee or a receiver for it; (v) the levy on the Master Lease or any estate of the Master Tenant under the Master Lease under any attachment or execution; (vi) the institution of a proceeding, or entrance of a final court order, for the Master Tenant's dissolution; (vii) the Master Tenant makes a general assignment, or takes other action, for the benefit of creditors; or (viii) the Master Tenant violates the Loan Documents.

If the Master Tenant defaults under the Master Lease, past all applicable cure periods, the Trust may (i) terminate the Master Lease (with 10 days' notice); (ii) with 10 days' notice, but without terminating the Master Lease, terminate the Master Tenant's right to occupy the Property and re-enter and take possession of the Property; (iii) enter the Property and take any action required of the Master Tenant under the Master Lease, for which the Master Tenant is required to reimburse the Trust for its expenses; (iv) upon termination of the Master Lease, if the Master Tenant has not vacated, treat the Master Tenant as a holdover, month-to-month tenant for which Master Tenant is required to pay 125% rent; and (v) exercise all other remedies available at law or in equity.

Indemnification

The Master Tenant will indemnify the Trust and its shareholders, officers, directors and employees against any and all claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs and expenses (including reasonable attorneys' fees) incurred or asserted against the Trust by reason of the gross negligence, willful misconduct, or fraud of the Master Tenant or its agents or employees. The Master Tenant will also indemnify the Trust for all losses, damages, expenses, costs and liabilities actually suffered or incurred by the Trust in connection with anything and everything arising out of (i) any injury, illness or death to any person or damage to any property from any cause occurring in or upon or in any other way relating to the Property, (ii) the occupancy of the Property or any part thereof by, through or under the Master Tenant, and (iii) any failure on the Master Tenant's part to comply with any of the covenants, terms, conditions, representations or warranties contained in the Master Lease; provided, that the foregoing indemnity shall not apply to the negligence or willful misconduct of the Trust or its agents, employees, officers and directors. Further, the Master Tenant will indemnify the Trust to the extent the Trust must make indemnification payments upon certain "nonrecourse carve-outs" specified in the Loan Documents that are the direct result of (i) the Master Tenant's fraud, willful misconduct or misappropriation, (ii) the Master Tenant's commission of a criminal act, (iii) the misapplication by the Master Tenant of any funds derived from the Property and received by the Master Tenant (including any failure to apply such proceeds in accordance with loan requirements), or (iv) damage or destruction to the Property caused by acts of the Master Tenant that are grossly negligent. Moreover, the Master Tenant will indemnify and hold the Trust and its directors, officers, shareholders, partners, members, employees and agents harmless from any and all claims, actions, administrative proceedings, judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlement of claims), losses (including reasonable attorneys' fees), consultant fees, and expert fees that arise directly or indirectly from the presence or release of a hazardous substance at, on, under, over, or within the Property as a result of the Master Tenant's gross negligence.

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SUMMARY OF THE TRUST AGREEMENT

General

The Trust is the owner of the Property. The Purchasers will acquire their Interests in the Trust subject to the Trust Agreement and will thereupon become Beneficial Owners of the Trust. The rights and obligations of the Beneficial Owners will be governed by the Trust Agreement.

The following is a summary of some of the significant provisions of the Trust Agreement and of the Springing LLC's Limited Liability Company Operating Agreement. This summary is qualified in its entirety by reference to the full text of such agreements. Each prospective Purchaser should carefully review the entire Trust Agreement before investing. A copy of the Trust Agreement is attached as **Exhibit B** of this Memorandum.

SUMMARY OF CERTAIN PROVISIONS OF THE TRUST AGREEMENT

Purchasers as Beneficial Owners; Trust's Use of Proceeds

Pursuant to this Offering, the Trust is offering Class 1 Beneficial Interests for sale to prospective Purchasers. As Class 1 Beneficial Interests are sold to Purchasers, up to 100% of the Depositor's Class 2 Beneficial Interests will be redeemed by the Trust on a one-for-one basis until the Maximum Offering Amount has been achieved and all Class 1 Beneficial Interests have been sold.

The Trust may and will retain and utilize any net proceeds derived from the offering of Interests to fund any reimbursements, compensation and fees owed to the Sponsor and/or its affiliates in connection with the Offering, including reimbursement of amounts made available by the Depositor in connection with the Acquisition Fee, if applicable. With regard to the above, the "net proceeds" from the sale of Class 1 Beneficial Interests will be equal to the purchase price of each Class 1 Beneficial Interest, less the Sales Commissions and Expenses allocable to each such sale. *See "Estimated Use of Proceeds" and "Compensation and Fees."*

Term

The Trust will terminate upon the first to occur of (i) a sale of the Property or (ii) a Transfer Distribution of the Property. The death, incapacity, dissolution, termination or bankruptcy of the Delaware Trustee, the Independent Trustee, the Manager or any Beneficial Owner will not result in the termination or dissolution of the Trust.

The Delaware Trustee, the Independent Trustee and the Signatory Trustee

The Delaware Trustee serves the Trust solely to fulfill the Trust's obligation pursuant to Section 3807(a) of the DST Act to have at least one trustee who has its principal place of business in the State of Delaware. The Corporation Trust Company has been appointed as the Delaware Trustee of the Trust.

The Manager has appointed itself as the initial Signatory Trustee of the Trust. The Signatory Trustee is appointed to serve with the Delaware Trustee and holds the power, acting alone, to sign documents on behalf of the Trust. The Manager may appoint additional Signatory Trustees and replace any Signatory Trustee subject to the requirements of the applicable Loan.

The Independent Trustee serves the Trust solely to fulfill the Trust's obligation pursuant to the Loan Documents to have an "Independent Trustee" as defined in the Loan Documents. The Independent Trustee must not (a) have any fiduciary duties to the Beneficial Owners or any other person bound by the Trust Agreement, and (b) be liable to the Trust, any Beneficial Owner or any other person bound by the Trust Agreement for breach of contract or breach of duties (including fiduciary duties), unless the Independent Trustee acted in bad faith or engaged in willful misconduct. Under no circumstances shall the Independent Trustee, in its individual capacity or in its capacity as the Independent Trustee, (i) 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, (ii) 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 or (iii) have any duty to any person by reason of the transactions contemplated by the Trust Agreement or any other document.

The Trustees hold the Property in trust for the benefit of the Beneficial Owners. The Trustees only have the limited powers and authority specified in the Trust Agreement. The Trustees will take such actions as may be directed in writing by the Manager, provided however, the Trustees are not permitted or required to take any action that is contrary to the Trust Agreement or applicable law. The Trustees have no duty to take any action except as expressly provided for in the Trust Agreement.

The Signatory Trustee will not receive any compensation for its services. The Delaware Trustee will receive compensation for its services under the Trust Agreement and reimbursed for out-of-pocket expenses, fees and disbursements, counsel fees and expenses. The Delaware Trustee may resign at any time by giving at least 60 days' prior written notice to the Manager. The Beneficial Owners will indemnify the Delaware Trustee for all actions taken on behalf of the Trust except for willful misconduct, bad faith, fraud or gross negligence of the Delaware Trustee. The Manager may remove the Delaware Trustee at any time, but only for the willful misconduct, bad faith, or fraud or gross negligence of the Delaware Trustee; provided that the Manager may not remove the Delaware Trustee without the consent of the Lender while the Loan is outstanding.

The Manager

JWCM Vivian Manager, LLC, an affiliate of the Sponsor, will serve as the Manager of the Trust. The Manager has the power and authority to manage the limited investment activities and affairs of the Trust as permitted under the Trust Agreement; provided, that the Manager has no power to engage on behalf of the Trust in activities in which the Trust could not engage directly, and all of the Manager's power and authority is limited to the extent such powers and authority is materially consistent with the powers and authority conferred upon the trustee in Revenue Ruling 2004-86. The Manager has the primary responsibility for performing the administrative actions set forth in the Trust Agreement, including collecting rents and making distributions. The Manager is authorized to execute and deliver, and cause the Trust to perform its obligations under transaction documents to which the Trust becomes a party. The Manager has the sole discretion to determine when it is appropriate to sell the Property.

The Manager may (but is not anticipated to) receive fees for its services under the Trust Agreement. The Manager may resign at any time by giving at least 30 days' prior written notice to the Delaware Trustee. The Trust will indemnify the Manager for all actions taken on behalf of a Trust except for fraud or gross negligence of the Manager. The Manager will not have any liability to any person except for its own fraud or gross negligence. Subject to the next sentence, the Delaware Trustee may either (1) limit the duties of the Manager under the Trust Agreement, or (2) remove the Manager at any time, but only for the fraud or gross negligence of the Manager which causes material damage to, or diminution in value of, the Property. Prior to the Delaware Trustee's removal of the Manager or limitation of the Manager's duties, any such removal or limitation of duties must be first consented to by the Lender (as long as the Loan is outstanding).

Except as expressly provided in the Trust Agreement or other transaction documents contemplated thereby, the Manager does not have any duties or obligations with respect to the Trust, the Trust Agreement or other transactional documents contemplated therein. Notwithstanding the foregoing, following the issuance of a conversion notice, the Delaware Trustee will have no ability to take any action that would cause the Trust to cease to qualify as an investment trust within the meaning of Treasury Regulations Section 301.7701-4(c). The Manager will keep or otherwise engage a third-party recordkeeping service provider to manage the customary and appropriate books and records relating to the Trust and the Property.

Power of Delaware Trustee and Manager

The Trust Agreement expressly prohibits the Delaware Trustee and the Manager from taking a number of actions, including the following: (a) selling, transferring or exchanging the Property except as required or permitted under the Trust Agreement; (b) reinvesting any monies of the Trust, except to make permitted modifications or repairs to the Property or in short-term liquid assets; (c) renegotiating the terms of the Loan or entering into new financing; (d) renegotiating the Master Lease on the Property or entering into new leases, except in the case of the Master Tenant's bankruptcy or insolvency; (e) making modifications to the Property (other than minor non-structural modifications) unless required by law; (f) accepting any capital from a Beneficial Owner (other than capital from a Purchaser that will be used to pay the fees, costs and expenses of the offer and sale of the Class 1 Beneficial Interests, fund initial reserves or repurchase up to 100% of the Depositor's Class 2 Beneficial Interests and thereby reduce the Depositor's ownership interest, as discussed above); or (g) taking any other action that in the reasoned opinion of Tax Counsel to the Trust should 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 applicable tax law.

As a result, the Trust may be required to effectuate a Transfer Distribution in order to take any of the above actions which may be necessary, in the Manager's sole discretion, to preserve and protect the Property. While the Property will remain subject to the Loan after any such Transfer Distribution, the Beneficial Owners will no longer be considered to own, for federal income tax purposes, a direct ownership interest in the Property. Instead, the

Beneficial Owners will become members in the Springing LLC, which will then own the Property. The Manager (or an affiliate of the Manager), will be the manager of the Springing LLC. *See "Summary of Certain Provisions of the "Springing LLC" Limited Liability Company Operating Agreement"* below.

Transfer Rights; Right of First Refusal

The Beneficial Owners' right to transfer or assign their Interests is subject to Section 6.4 of the Trust Agreement. In addition, except in certain limited circumstances, any selling Beneficial Owner must allow the Manager and the other Beneficial Owners the right of first refusal to purchase the Interest it is seeking to sell. Upon receipt by a selling Beneficial Owner (a "**Selling Beneficial Owner**") of a third-party offer to purchase the Interest held by the Selling Beneficial Owner (the "**Offered Interest**") or any right to control the Selling Beneficial Owner, the Selling Beneficial Owner must provide the Manager notice and a copy of the third-party offer (the "**ROFR Notice**"). The Manager will then provide a copy of the ROFR Notice to each of the other Beneficial Owners listed in the Trust ownership records (the "**Non-Selling Beneficial Owners**") within 10 days after the Manager's receipt of the ROFR Notice. The Non-Selling Beneficial Owners will have the right, but not the obligation, within 30 days of the Manager's receipt of the ROFR Notice, to elect to purchase the Offered Interest for the price and upon the terms and conditions contained in the third-party offer, reduced by any broker's fees or commissions payable in connection with a sale pursuant to the third-party offer. The Offered Interest will be sold to participating Non-Selling Beneficial Owners on a *pro rata* basis according to their ownership interest. If no Non-Selling Beneficial Owners elect to participate, then the Manager or its designee will have a further 10 business days to elect to purchase the Offered Interest, and if it does not, the Selling Beneficial Owner may sell pursuant to the third-party offer. If the person who made the third-party offer does not purchase the Offered Interest, then the Offered Interest may not be sold unless and until the Non-Selling Beneficial Owners have been given a new opportunity to accept any new or revised third-party offer (in accordance with the procedure described above). Any sale or conveyance of an Offered Interest that fails to comply with these provisions will be null, void and ineffectual, and will not bind the Trust or any other Beneficial Owners with respect to a purported transferee. Further, in connection with any transfer that violates the right of first refusal, the Trust may enforce the right of first refusal by injunction, specific performance or other equitable relief, and both the Selling Beneficial Owner and the purported transferee will be jointly and severally responsible to reimburse the Trust, the Manager and the Delaware Trustee for all of their attorney fees and other costs and expenses incurred in connection with enforcing the right of first refusal or any such remedial action or legal proceeding.

Any transferee will take such Interest subject to the Trust Agreement, and will become a Beneficial Owner only upon written acceptance and adoption of the Trust Agreement. Each Beneficial Owner will be responsible for compliance with applicable securities laws with respect to any sale of his or her Interest.

Waivers

Except as expressly provided in the Trust Agreement, no Beneficial Owner (i) has an interest in the Property or (ii) will have any right to demand and receive from the Trust an in-kind distribution of the Property or any portion thereof. Each Beneficial Owner expressly waives any right, if any, under the DST Act to seek a judicial dissolution of the Trust, to terminate the Trust or, to the fullest extent permitted by law, to partition the Property. In addition, each Beneficial Owner expressly waives any right, to the fullest extent permitted by law, to file a petition in bankruptcy on behalf of the Trust or take any action that consents to, aides, supports, solicits or otherwise cooperates in the filing of an involuntary bankruptcy proceeding involving the Trust.

Distributions

The Manager will distribute all available cash to the Beneficial Owners on a monthly basis, after paying or reimbursing the Manager for any reasonable fees or expenses paid by the Manager on behalf of the Trust and reserving and retaining such additional amounts as the Manager determines are necessary to pay anticipated ordinary current and future Trust expenses. The Trust's reserves, to the extent they are controlled by the Trust, will 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 banks or trust companies. The Manager will furnish reports annually to the Beneficial Owners as to the receipts, expenses and reserves of the Trust.

Termination of the Trust to Protect the Property; Transfer Distribution

Subject to the terms and conditions of the Loan Documents, if the Manager determines that (a) the Master Tenant is insolvent or has failed to timely pay the full rent due under the Master Lease after the expiration of any applicable notice and cure provisions in the Master Lease (not including any permitted deferral of rent due pursuant

to Section 4.2 of the Master Lease), (b) the Trust Estate is in jeopardy of being lost due to a default or imminent default on the Loan, and in either case the Manager is prohibited from acting pursuant to Section 3.3 of the Trust Agreement, (c) the Master Tenant 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 Property would need to be utilized to pay down the principal and interest on the Loan, (e) the Trust is otherwise terminated in violation of Section 3.3 of the Trust Agreement, (f) the Manager needs to take, but is precluded from taking, one of the actions enumerated in Section 3.3 of the Trust Agreement and the Manager determines in writing that dissolution of the Trust is necessary and appropriate to preserve and protect the Trust Estate for the benefit of the Beneficial Owners, or (g) the Trust is otherwise terminated or dissolved without the consent of Lender, then, in any such case, the Manager will transfer title to the assets comprising the Trust Estate to the Springing LLC, a newly-formed Delaware limited liability company that has a limited liability company operating agreement substantially similar to the form thereof attached to the Trust Agreement (which is **Exhibit B** to this Memorandum). As part of the Transfer Distribution, the Manager will cause the membership interests in the Springing LLC to be distributed to all beneficial owners of the Trust in proportion to their ownership interests immediately prior to the dissolution of the Trust, in complete satisfaction of their beneficial interests and their beneficial ownership certificates, in order to consummate the dissolution of the Trust.

If a determination has been made to make a Transfer Distribution, the Manager may, in its discretion and upon advice of counsel, utilize such other form of transaction (including, without limitation, a conversion of the Trust into a limited liability company if then permitted by applicable law) to accomplish the transaction contemplated by the Manager pursuant to the Transfer Distribution (which other form of transaction will only require the approval of the Manager and will not require the approval of any Beneficial Owners or the Delaware Trustee), provided that such alternative form of transaction is entered into to preserve and protect the Trust Estate for the benefit of the Beneficial Owners and is otherwise in compliance with the DST Act. *See below "Summary of Certain Provisions of "Springing LLC" Limited Liability Company Operating Agreement"*.

Sale of the Property

Pursuant to Section 2806(b)(3) of the DST Act, the Manager will sell the Trust Estate upon its determination (in its sole discretion) that a sale of the Trust Estate is appropriate. However, absent unusual circumstances, it is anticipated that the Trust will hold the Trust Estate for at least two years. The Manager will be responsible for (i) determining the fair market value of the Property, (ii) providing notice to the Delaware Trustee of the sale of the Trust Estate and (iii) conducting the sale of the Trust Estate on behalf of the Trust under commercially reasonable terms and executing such documents and instruments required to be executed by the Trust to affect such sale (the Manager will also provide to the Delaware Trustee in execution form any documents and instruments required to be executed by the Delaware Trustee to affect such sale). The Manager (and the Trustee, if necessary) will take all reasonable action that would seek to enable the sale to qualify, with respect to each Beneficial Owner, as a like-kind exchange within the meaning of Code Section 1031. After paying all amounts due to the Delaware Trustee and the Lender, if any, the Manager will distribute the balance of the proceeds (net of any closing costs payable by the Trust including any fee due to the Manager) to the Beneficial Owners. The Manager will receive a fee from the Trust equal to 3.0% of the gross proceeds of such sale of the Trust Estate. *See "Summary of Asset Management Agreement."*

Exchange Right

The Manager has the right, but not the obligation, to require that each Purchaser exchange its Interests for Units in a transaction intended to qualify as a tax-deferred exchange under Code Section 721. *See "Risk Factors."* The Manager will exercise this right, if at all, only after the Purchasers have held their Interests for two years. Each Purchaser will receive an amount of Units with an aggregate value equal to the then fair market value of such Purchaser's Interests as of the date the Exchange Right is exercised. In order to exercise the Exchange Right, the Manager will provide each Purchaser with a Notice of Exchange, the form of which is attached as an exhibit to the Trust Agreement.

Should any Purchaser not wish to exchange its Interests for Units, such Purchaser ("**Dissenting Purchaser**") may elect to have any such Exchange Entity acquire the Purchaser's Interests for cash rather than exchange such interest for Units. The purchase price for a Dissenting Purchaser's Interests ("**Cash Amount**") will be the then fair market value of the Dissenting Purchaser's Interests as of the date the Exchange Right is exercised. If a Dissenting Purchaser elects to exercise its right to have an Exchange Entity purchase its Interests, it is required to notify the Manager and Exchange Entity in writing within 20 business days after the date on which the Manager mails the Notice of Exchange to the Purchaser (the "**Dissenting Notice**"). If any Purchaser does not provide a Dissenting Notice to the

Manager within 20 business days after the mailing date of the Notice of Exchange, such Purchaser will be deemed to have agreed to the exercise of the Exchange Right by the Manager.

The fair market value of a Purchaser's Interests will be determined by multiplying: (i) your percentage of Interests in the Trust by (ii) the fair market value of the Property as determined by an independent appraisal firm selected by the Manager in its sole discretion. No discounts for lack of liquidity or minority interests will be considered in determining the value of the Interests.

Each Purchaser will be required to execute such documents and provide such signatures as the Manager may reasonably require in connection with the exercise of the Exchange Right or the cash purchase, described above. For a Purchaser that is not a Dissenting Purchaser but is subject to the Exchange Right (a "**Contributing Purchaser**"), the Manager may, but is not obligated to, provide a tax protection agreement (a "**Tax Protection Agreement**") in which the Manager: (i) will agree not to directly or indirectly sell, exchange, transfer, or otherwise dispose of the Property or any interest therein (without regard to whether such disposition is voluntary or involuntary) in a transaction within two years of the date of the Exchange Right that would cause a Contributing Purchaser to recognize any gain under Code Section 704(c) (such transaction, a "**Triggering Event**"), and (ii) for a period of two years following the occurrence of a Triggering Event, will agree to pay a Contributing Purchaser's damages equal to the aggregate federal, state and local income taxes incurred by such Contributing Purchaser in connection with such Triggering Event. Upon receipt of any and all documents and signatures required by the Manager, (the date of final receipt, the "**Receipt Date**"), the Manager will distribute (i) to any Purchaser that is not a Dissenting Purchaser the Units within 60 business days of the Receipt Date and (ii) to any Dissenting Purchaser the Cash Amount within 180 days of the Receipt Date.

Restriction of Certain Rights

Beneficiaries of a DST have rights to certain information from the Trust under the DST Act. In prior investment programs of the Sponsor, including prior DST programs, small minority investors have attempted to use certain of these statutory information rights to seek to 'greenmail' the Trust and to otherwise adversely affect the interests of legitimate investors in the investment program. Therefore, the Sponsor has determined it to be in the best interest of the program to eliminate the statutory information rights in favor of the following:

- The Manager will furnish annual reports to investors regarding rent received from the Master Tenant, Trust expenses, the amount of Trust reserves and the amount of distributions made by the Trust to Beneficial Owners;
- Beneficial Owners may, on written demand to the Manager, once a quarter receive a copy of the Trust Agreement (with all Beneficial Owner identifying information redacted) and a copy of the Certificate of Trust; and
- Beneficial Owners have no further informational rights, including no right to receive any list of the other Beneficial Owners or any of their contact information.

In addition, the Trust Agreement eliminates certain liabilities and duties of the Manager except as expressly set forth in the Trust Agreement; provided, however, no provision in the Trust Agreement is intended to or will operate to eliminate the implied covenant of good faith and fair dealing.

Tax Status of the Trust

The Trust Agreement provides that the Trust is intended to qualify as an "investment trust" and a "grantor trust" for federal income tax purposes, and not as a partnership or other business entity. Thus, although the Trust is respected as a separate entity for state law purposes, each Purchaser should be treated as owning a direct interest in the Property for purposes of Code Section 1031. *See "Federal Income Tax Consequences."* Each Purchaser will be required to report his, her or its Interests in the Trust in a manner that is consistent with the foregoing.

SUMMARY OF CERTAIN PROVISIONS OF "SPRINGING LLC" LIMITED LIABILITY COMPANY OPERATING AGREEMENT

The following is a summary of some of the more significant provisions of the Limited Liability Company Operating Agreement of the Springing LLC (the "**Springing LLC Operating Agreement**") to be entered into upon a Transfer Distribution. A form of the Springing LLC Operating Agreement is attached to the Trust Agreement (which is **Exhibit B** to this Memorandum) and should be referred to for a complete statement of the rights and obligations of its members. The following is merely a summary of the terms of the Springing LLC Operating Agreement and is qualified in its entirety by the full text thereof. Prospective Purchasers should carefully review the Springing LLC Operating Agreement before subscribing for Interests.

Management. The Manager or its affiliate will become the manager of the Springing LLC upon a Transfer Distribution. The manager of the Springing LLC will have exclusive discretion in the management and control of the business and affairs of the Springing LLC. The Springing LLC Operating Agreement will grant to the manager broad authority in the exercise of the management and control of the Springing LLC. The manager of the Springing LLC will have complete power to do all things necessary or incident to the management and conduct of the Springing LLC's business.

Rights of the Members of the Springing LLC. The Beneficial Owners will become members (each, a "**Member**") in the Springing LLC. The members of the Springing LLC will not have the right to take part in the management or control of the business or affairs of the Springing LLC, to transact any business for the Springing LLC, or to sign for or bind the Springing LLC. The members, however, will have the right to receive information required for federal income tax reporting and certain other financial information and to inspect certain records of the Springing LLC. Upon the requisite vote of the members, the members will have the right to: (i) amend the Springing LLC Operating Agreement, subject to certain limitations specified in the Springing LLC Operating Agreement, with the consent of the manager, (ii) remove the manager for cause (as defined in the Springing LLC Operating Agreement), (iii) elect a successor manager, with the consent of the manager, (iv) elect a successor tax matters partner, with the consent of the manager, and (v) elect to continue the Springing LLC after a dissolution event, with the consent of the manager. The exercise of the foregoing specific rights will require the affirmative vote of the owners of record of more than 50% of the membership interests held by members in each case.

Exchange Right. The Manager has the right, but not the obligation, to require that each Member exchange its membership interests in the Springing LLC for Units in a transaction intended to qualify as a tax-deferred exchange under Code Section 721 (the "**Springing LLC Exchange Right**"). Each Member will receive an amount of Units with an aggregate value equal to the then fair market value of such Member's membership interests in the Springing LLC as of the date the Springing LLC Exchange Right is exercised. In order to exercise the Springing LLC Exchange Right, the Manager will provide each Member with a Notice of Exchange, the form of which is attached as an exhibit to the Springing LLC Operating Agreement.

Should any Member not wish to exchange its membership interests in the Springing LLC for Units, such Member ("**Dissenting Member**") may elect to have any such Exchange Entity acquire the Member's membership interests in the Springing LLC for cash rather than exchange such interest for Units. The purchase price for a Dissenting Member's membership interests in the Springing LLC ("**Cash Amount**") will be the then fair market value of the Dissenting Member's membership interests in the Springing LLC as of the date the Springing LLC Exchange Right is exercised. If a Dissenting Member elects to exercise its right to have an Exchange Entity purchase its membership interests in the Springing LLC, it is required to notify the Manager and Exchange Entity in writing within 20 business days after the date on which the Manager mails the Notice of Exchange to the Member (the "**Dissenting Notice**"). If any Member does not provide a Dissenting Notice to the Manager within 20 business days after the mailing date of the Notice of Exchange, such Member will be deemed to have agreed to the exercise of the Springing LLC Exchange Right by the Manager.

The fair market value of a Member's membership interests in the Springing LLC will be determined by multiplying: (i) the Member's percentage of membership interests in the Springing LLC by (ii) the fair market value of the Property as determined by an independent appraisal firm selected by the Manager in its sole discretion. No discounts for lack of liquidity or minority interests will be considered in determining the value of the membership interests in the Springing LLC.

Each Member will be required to execute such documents and provide such signatures as the Manager may reasonably require in connection with the exercise of the Springing LLC Exchange Right or the cash purchase, described above. For a Member that is not a Dissenting Member but is subject to the Springing LLC Exchange Right (a "**Contributing Member**"), the Manager may, but is not obligated to, provide a tax protection agreement (a "**Tax Protection Agreement**") in which the Manager: (i) will agree not to directly or indirectly sell, exchange, transfer, or otherwise dispose of the Property or any interest therein (without regard to whether such disposition is voluntary or involuntary) in a transaction within two years of the date of the Springing LLC Exchange Right that would cause a Contributing Member to recognize any gain under Code Section 704(c) (such transaction, a "**Triggering Event**"), and (ii) for a period of two years following the occurrence of a Triggering Event, will agree to pay a Contributing Member's damages equal to the aggregate federal, state and local income taxes incurred by such Contributing Member in connection with such Triggering Event. Upon receipt of any and all documents and signatures required by the Manager, (the date of final receipt, the "**Receipt Date**"), the Manager will distribute (i) to any Member that is not a

Dissenting Member the Units within 60 business days of the Receipt Date and (ii) to any Dissenting Member the Cash Amount within 180 days of the Receipt Date.

Limited Liability. Except as described below, no member or manager will be liable for the Springing LLC's debts or other obligations, except to the extent of such member or manager's share of undistributed profits, if any, and the amount of any distributions made to such member or manager by the Springing LLC constituting a return of such member or manager's capital contribution, unless such member or manager takes part in the control of the Springing LLC's business, which is not permitted under the Springing LLC Operating Agreement.

Transfer of Membership Interests. No transfer of a membership interest in the Springing LLC may be made unless the manager of the Springing LLC, in its sole discretion, has consented to such transfer. In addition, no transfer may be made if the effect of such transfer would be for the Springing LLC to be classified as a publicly traded limited partnership for federal income tax purposes. Further, no assignment of any membership interest may be made if the membership interests to be assigned, when added to the total of all other membership interests assigned within the 13 immediately preceding months, would, in the opinion of counsel for the Springing LLC, result in the termination of the Springing LLC under the Code. The manager may require an opinion of counsel that is acceptable to the manager that such transfer will not violate any federal or state securities laws or any provisions of any underlying loan agreements. Moreover, any transfer of a membership interest will be subject to a right of first refusal, similar to that which is applicable under the Trust Agreement with respect to transfers of Interests, discussed above. A person to whom a transfer is to be made will not become a substituted member in the Springing LLC unless (i) the manager, in its sole discretion, has consented to such substitution, (ii) the person to whom the transfer is to be made has assumed any and all of the obligations under the Springing LLC Operating Agreement with respect to the membership interests to which the transfer relates, (iii) all reasonable expenses required in connection with the transfer have been paid by or for the account of the person to whom the transfer is to be made, 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 manager deems necessary to make the person to whom the transfer is to be made a substituted member in the Springing LLC and to preserve the Springing LLC's status.

Additional Voluntary Capital Contributions. The manager may request at any time that the members make additional capital contributions to the Springing LLC on a *pro rata* basis in proportion to each member's membership interest. The members are not required to comply with any such request. The manager will adjust the members' capital contributions and membership interests to equitably reflect any additional capital contributions made by members.

Termination and Winding Up. The Springing LLC will be dissolved upon the occurrence of any of the following events:

(i) The manager of the Springing LLC determines to terminate the Springing LLC;
(ii) The sale, exchange or other disposition of the Property;
(iii) The occurrence of any event of dissolution in the Springing LLC's Certificate of Formation; or
(iv) The death, insanity, withdrawal, retirement, resignation, expulsion, insolvency or dissolution of the manager unless members holding more than 50% of the membership units of the Springing LLC consent to continue the business of the Springing LLC.

However, for so long as the Springing LLC's obligations under the Loan Documents remain outstanding, the Springing LLC may not be terminated without the prior written consent of the Lender.

The bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency of a member will not cause the termination or dissolution of the Springing LLC and the business of the Springing LLC will continue.

In the event of the Springing LLC's dissolution, (a) the Springing LLC's affairs will be terminated and wound up, (b) an accounting will be made, (c) the Springing LLC's liabilities will be paid or adequately provided for, (d) a reserve will be established to satisfy any legal requirements, and (e) the Springing LLC's remaining assets will be distributed to the members as provided for in proportion to their membership interests.

Meetings and Voting. A meeting of the members may be called at any time by the manager. The manager will call for a meeting following receipt of a written request of members holding more than 10% of the membership units of the Springing LLC. At a meeting of the members, the presence of members holding more than 50% of the membership interests, in person or by proxy, will constitute a quorum. A member may vote either in person or by written proxy signed by the member or by his, her or its duly authorized attorney in fact. Persons present by telephone

will be deemed to be present "in person" for purposes thereof. Matters may also be brought on for action and implemented by the manager by Majority Vote (as defined in the Springing LLC operating agreement).

However, notwithstanding these provisions, as long as the Loan is outstanding the members will be conclusively deemed to have elected to continue the existence of the Springing LLC.

Removal or Withdrawal of Manager and Election of Successor Manager. The manager of the Springing LLC can be removed and its successor chosen by the members holding more than 50% of the membership interests. However, at any time the Loan is outstanding, consent of the Lender will also be required for removal of the manager and appointment of a successor manager.

Fees and Compensation to the Manager and its Affiliates. The manager of the Springing LLC, its affiliates, and affiliates of officers of the manager will be entitled to receive an administrative fee and additional compensation for any additional service performed on behalf of the Springing LLC equal to the then-prevailing market rates for similar services performed in the area where the Property is located. In addition, the manager will receive a refinancing fee equal to 1.0% of the gross proceeds from any refinancing of the Property, and a disposition fee equal to 3.0% of the gross price of the Property upon its sale, exchange or other disposition (and any sales commissions or mortgage brokerage fees due to outside brokers will not be paid from these fees). In addition, the Trust will pay the Manager an amount equal to the amount, if any, of deferred and unpaid Asset Management Fee under the terms of the Property Management Agreement.

Books and Records. The Springing LLC Operating Agreement will require the manager to distribute to each member, promptly following the close of the Springing LLC's fiscal year on December 31, annual information necessary for tax purposes.

Indemnification. Subject to certain conditions, the Springing LLC will indemnify the manager against certain claims or lawsuits arising out of the Springing LLC's activities or operations.

Power of Attorney. The manager of the Springing LLC will not be liable to any member of the Springing LLC or to the Springing LLC for honest mistakes of judgment, or for action or inaction, taken reasonably and in good faith for a purpose that was reasonably believed to be in the best interests of the Springing LLC, or for losses due to such mistakes, action or inaction, or for the negligence, dishonesty or bad faith of any employee, broker or other agent of the Springing LLC. However, this provision will not relieve the manager from liability attributable to fraud or gross negligence or to the extent (but only to the extent) that such liability may not be waived, modified or limited under applicable law.

Restriction of Information Rights. The rights of members of the Springing LLC to information may be restricted similarly to how the rights of Beneficial Owners have been restricted as summarized above.

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SUMMARY OF PROPERTY MANAGEMENT AGREEMENT

The Property Manager and the Master Tenant entered into the Property Management Agreement with respect to the Property. The Property Management Agreement governs the rights and obligations regarding the management of the Property and the compensation to be paid to the Property Manager, which as of the date hereof is RangeWater Residential, LLC.

The following is a summary of some of the significant provisions of the Property Management Agreement. This summary is qualified in its entirety by reference to the full text of the agreement, a copy of which is attached as **Exhibit C** of this Memorandum.

Term	The Property Management Agreement has an initial term of one year, but will be automatically renewed for one-year periods thereafter unless terminated by one of the parties.
Rights and Duties of the Property Manager	In general, the Property Manager will manage, operate and maintain the Property and will manage the performance of everything reasonably necessary for the proper operation of the Property.
Compensation	Property Management Fee The Property Management Fee payable under the Property Management Agreement will be an amount equal to the greater of $10,000, or 2.5% of the monthly Gross Receipts (as defined in the Property Management Agreement) received from the Property. In addition, the Property Manager will be reimbursed for its expenses. Construction Supervision Fee The Construction Supervision Fee payable under the Property Management Agreement will be an amount equal to 3.0% of hard costs incurred if construction costs are in excess of $37,500. The term and scope of construction supervision fees, along with the corresponding Construction Supervision Fee, shall be agreed upon by the Master Tenant and the Property Manager prior to the commencement of any construction supervision services. Fees for Additional Services The Master Tenant will also pay the Property Manager: (1) a one-time incentive fee equal to 10% of the Excess NOI Amount (as defined in the Property Management Agreement), but only if actual Controllable NOI (as defined in the Property Management Agreement) exceeds the budgeted Controllable NOI of $5,685,385 by 3.0% or more; and (2) if the Master Tenant requests the Property Manager provide accounting services more than 90 days following the termination of the Property Management Agreement, a post disposition accounting fee equal to $1,500 per month or portion thereof beyond the 90-day period following the termination of the Property Management Agreement for which accounting services are requested.
Indemnification	The Master Tenant will hold the Property Manager, their members, and their respective stockholders, directors, members, partners, officers, trustees, employees and agents against all Damages (as defined in the Property Management Agreement), to the extent such Damages arise out of or result from (i) the acts or omissions of the Property Manager and any such other indemnified party in connection with the performance of the Property Manager's duties, obligations, powers, or authority hereunder, and (ii) the acts or omissions of the Master Tenant and its directors, officers, employees, agents, and previous managers, except that with respect to both items (i) and (ii), such indemnification shall not apply for any acts or omissions for which the Property

Manager is obligated to indemnify the Master Tenant under the Property Management Agreement.

Budget The Property Manager will prepare and deliver each year to the Master Tenant an annual operating budget for the Property for the Master Tenant's approval.

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SUMMARY OF THE PURCHASE AGREEMENT

General

Each prospective Purchaser must execute a Purchase Agreement. Prospective Purchasers should review the entire Purchase Agreement with their own independent legal counsel before submitting an offer to buy an Interest. The following is merely a summary of some of the significant provisions of the Purchase Agreement, and is qualified in its entirety by the full text thereof, a copy of which is attached to this Memorandum as **Exhibit E**.

Submission of Offer to Purchase

A summary of the procedures for the offer and purchase of an Interest is set forth under *"Method of Purchase."*

Closing

Prior to closing, each prospective Purchaser is required to deliver to the Trust (i) the Purchase Agreement, (ii) an executed signature page or joinder to the Trust Agreement, and (iii) such other documents as may reasonably be requested by the Trust and/or its escrow agent, as applicable. At the closing of its purchase of an Interest, each Purchaser will receive an Interest in the Trust.

Limited Representations

The Trust provides limited representations or warranties in the Purchase Agreement, including with respect to the ownership and condition of the Property. Consequently, each Purchaser must rely on his, her or its own investigations and analysis of the Property and is encouraged to seek the advice of his, her or its own independent legal counsel, accountants and real estate advisors.

Indemnity

The Purchase Agreement contains an indemnity provision whereby each Purchaser will be required to indemnify, defend and hold the Trust, the Sponsor and their affiliates harmless from any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) that they may incur by reason of the untruth or inaccuracy of any of the representations, warranties, covenants or agreements contained in the Purchase Agreement or in any other document the Purchaser has furnished to them.

No Tax Advice

Purchasers also will acquire their Interests without any representations from the Trust, the Sponsor, the Depositor or the Manager regarding tax implications of the transaction. The Trust received an opinion of Tax Counsel on which each Purchaser may rely, but only concerning the matters specifically addressed therein. Notwithstanding the preceding sentence, the opinion of Tax Counsel is not intended or written to be used, and it cannot be used, by any Purchaser for the purpose of avoiding penalties that may be imposed under the Code. The Tax Opinion was written to support the promotion or marketing of a particular transaction, and each Purchaser should seek advice based on the Purchaser's particular circumstances from an independent tax advisor. A copy of the Tax Opinion is attached to this Memorandum as **Exhibit D**.

Each Purchaser should consult his own independent legal counsel and other tax advisors regarding the tax implications of an investment in an Interest, including whether or not such investment will qualify for deferral of gain under Code Section 1031, if so contemplated. *See "Federal Income Tax Consequences"* below.

Dispute Resolution

Each Purchaser agrees that any dispute arising out of the Purchase Agreement must be brought in a court of competent jurisdiction located in New York County, New York, and voluntarily waives any right he, she or it may have to a jury trial in such proceeding.

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SUMMARY OF ASSET MANAGEMENT AGREEMENT

Concurrently with the acquisition of the Property, the Manager and the Trust entered into the Asset Management Agreement with respect to the Property. The Asset Management Agreement will govern the rights and obligations regarding the management services provided with respect to the Property as well as oversight of the Property Manager.

The following is a summary of some of the significant provisions of the Asset Management Agreement. This summary is qualified in its entirety by reference to the full text of the agreement. A copy of the Asset Management Agreement is attached as **Exhibit F** of this Memorandum.

***Term**:*	The Asset Management Agreement commenced on the date of the Closing and will continue until (i) termination by one of the parties or (ii) the Trust's sale of the Property or its leasehold interest in the Property.
Rights and Duties of the Manager	In general, the Manager will provide management services to the Trust with respect to the Property, will arrange for financing of the Property, implement all decisions and policies of the Trust and will oversee and supervise the provision of services by the Property Manager to ensure that the Property Manager is performing in a manner consistent with the terms of the Property Management Agreement.
Compensation	Asset Management Fee As compensation for its asset management services, the Manager will receive an annual fee equal to $35,000 and such amount will be paid monthly in arrears. The Manager may waive or defer the Asset Management Fee charged to Purchasers, in whole or in part, in the Manager's sole and absolute discretion. The Manager intends to waive the Asset Management Fee for Year 1. In addition, the Manager will be reimbursed for its reasonable expenses. The Asset Management Fee will be paid on a *pro rata* basis, monthly in arrears. If the Asset Management Agreement is terminated during any calendar year, the Asset Management Fee owed thereunder will be pro-rated for such partial year. The Asset Management Fee payable to the Manager will be payable solely by the Trust out of the income it receives from the Property. The Asset Management Fee is subordinate in all respects in lien and payment to the lien and payment of the Loan. Disposition Fee In addition, the Manager will receive a Disposition Fee from the Trust equal to 3.0% of the gross proceeds of such sale. The Managing Broker-Dealer will receive a fee equal to 7.5% of the Disposition Fee.
Indemnification	The Trust will hold the Manager harmless from claims arising directly or indirectly out of any action taken by the Manager within the scope of its authority, excluding only those liabilities which arise as a result of the gross negligence or fraudulent, criminal or willful misconduct of the Manager. This indemnity extends to and protects the agents, officers, directors, shareholders, affiliated companies and employees of the Manager. The Manager will agree to indemnify the Trust and hold it harmless from all claims arising directly or indirectly out of any action taken by the Manager that is not within the scope of its authority under the Asset Management Agreement.

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SUMMARY OF THE BOND PROGRAM, THE BOND LEASE AND RELATED DOCUMENTS

The Property has the benefit of a significant long-term property tax abatement through participation in the Bond Program. The purpose of the Bond Program is to encourage economic development within Fulton County, Georgia, by facilitating real estate tax abatement for qualifying projects. For qualifying projects, the tax abatement benefits are provided on a sliding scale, providing 50% savings in the first year, and then reduced by 5% over each of the next succeeding nine years (i.e., 50% savings the first year, 45% savings the second year, 40% savings the third year, 35% savings the fourth year and so on) of the Bond Lease term. With respect to the Property, the Seller was the building developer and, pursuant to the Bond Program, won approval of the project. In exchange for fee title to the Property, the Development Authority issued the Bonds to the Seller pursuant to that certain Bond Purchase Agreement between the Seller and the Development Authority dated November 1, 2023 (the "**Bond Purchase Agreement**") and that certain Lease Agreement between the Seller and the Development Authority dated November 1, 2023 (the "**Bond Lease**"). The Bonds are the subject of that certain Indenture of Trust (the "**Bond Indenture**") dated November 1, 2023, between the Development Authority and Synovus Bank, in its capacity as indenture trustee with respect to the Bonds (the "**Bond Trustee**"). The Trust acquired all of the Seller's rights under the Bond Program by taking an assignment from the Seller of its rights under the Bond Lease and the Bonds, to thereby succeed to the full real estate tax abatement benefits available to the Property under the Bond Program, beginning in 2025.

In regard to the Property, the Development Authority issued the Bonds to the Seller after considering and approving the project's development costs. Under the Bond Indenture, the Development Authority's interest in the Bond Lease and the rents, revenues, and receipts to be derived by the Development Authority were assigned and pledged to the Bond Trustee as security for the payment of the Bonds. The Bonds are also the subject of that certain Home Office Payment Agreement between the Trust (in its capacity as the holder of the Bonds), the Bond Trustee, and the Development Authority, pursuant to which rent payments under the Bond Lease are offset against the payment due under the Bonds (the "**Home Office Payment Agreement**" and, collectively with the Bond Purchase Agreement, the Bond Lease, and the Bond Indenture, the "**Bond Documents**").

Under the Bond Documents, the Trust is required to make rental payments to the Development Authority and the Development Authority is required to make payments to the Trust in an amount equal to the rental payments under the Bond Lease. These payments are structured to exactly offset for the duration of the term of the Bond Lease and the Bonds so that, pursuant to the Home Office Payment Agreement, the payments offset each other. Upon the expiration of the Bond Lease, the Trust is obligated to purchase the fee simple interest in the Property from the Development Authority for a nominal purchase price. As provided in the opinion of Tax Counsel, attached as **Exhibit D** hereto, the Beneficial Owners, and not the Development Authority, should be treated as the true owners of the Property for federal income tax purposes.

FEDERAL INCOME TAX CONSEQUENCES

The following discussion applies only if a Purchaser 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 because 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 (e.g., if you are a non-resident alien or a tax-exempt entity). For example, special rules not discussed here may apply to you if you are: a broker-dealer or a dealer in securities or currencies; an S corporation; a bank, thrift or other financial institution; a regulated investment company or a real estate investment trust; an insurance company; a tax-exempt organization; subject to any of the alternative minimum tax provisions of the Code; holding the Interests as part of a hedge, straddle, conversion, integrated or other risk reduction or constructive sale transaction; a U.S. person whose "functional currency" is not the U.S. dollar; or a U.S. expatriate or former long-term resident. Except where otherwise noted, this discussion addresses only federal income tax aspects of an investment in an Interest and does not address or discuss aspects of state and local taxation relating to such an investment. Each prospective Purchaser should consult his, her or its own tax advisor about the specific tax consequences to him, her or it before investing.

The following discussion of federal income tax consequences is based on laws and regulations presently in effect and, except where noted, does not address state, local, foreign, or other tax laws, including gift and estate 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 OB3 recently made revisions to 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 may 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 OB3. 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 your acquisition of an Interest pursuant to this Offering will enable you to defer the recognition of gain on your disposition of Relinquished Property pursuant to Code Section 1031, and you are relying on such advice;

(ii) understand that neither the Trust, the Sponsor, the Trustees, the Manager nor any of their affiliates have obtained a ruling from the IRS that an Interest will be treated as an undivided interest in real property, as opposed to an interest in a partnership, a security or a certificate of trust or beneficial interest;

(iii) understand that the federal income tax consequences of an investment in an Interest, especially the treatment of the transaction under Code Section 1031 and the related Section 1031 Exchange rules, are complex and vary with the facts and circumstances of each individual Purchaser, and

(iv) understand that the opinion of Tax Counsel is only Tax Counsel's view of the anticipated federal income 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 a Purchaser acquiring an Interest will be treated for Code Section 1031 purposes as acquiring an interest in real property and not either an interest in a partnership, a security or a certificate of trust or beneficial interest. If an Interest were to be treated as an interest in a partnership, a security or a certificate of trust or beneficial interest, then a Purchaser of an

Interest would be unable to use its acquisition of an Interest as part of a transaction to defer gain under Code Section 1031.

The Trust has obtained an opinion from Tax Counsel that: (i) the Trust should be treated as an investment trust described in Treasury Regulations Section 301.7701-4(c) that is classified as a "trust" under Treasury Regulations Section 301.7701-4(a); (ii) the Beneficial Owners should be treated as "grantors" of the Trust; (iii) as "grantors," the Beneficial Owners should be treated as owning an undivided fractional interest in the Property 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 Beneficial Owners, via their Interests in the Trust, should be treated as true owners of the Property rather than lessees for federal income tax purposes; (ix) the discussions of the federal income tax consequences contained in this Memorandum are correct in all material respects; and (x) 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 statutory, administrative or case law.

A Purchaser who is acquiring an Interest as Replacement Property in a Section 1031 Exchange for an interest in real property must be aware that in order to qualify any of his, her or its gain realized in such exchange for tax deferral under Code Section 1031, the Interest must be treated as an interest in real property.

Tax Counsel's opinion is based upon existing cases and rulings, and in particular the analysis in Revenue Ruling 2004-86, 2004-2 C.B. 191. Revenue Ruling 2004-86 sets forth the limited circumstances under which a DST may be classified as an "investment trust" for federal income tax purposes rather than as a business entity taxable as a corporation or partnership. Revenue Ruling 2004-86 concludes that, because the owners of an "investment trust" are "grantors" that are considered to own undivided fractional interests in the trust assets attributable to such interest for federal income tax purposes, the exchange of real property for an interest in an "investment trust" that holds only real property is treated as an exchange of real property for an interest in real property, and not the exchange of real property for a certificate of trust or beneficial interest under Code Section 1031.

Tax Counsel's opinion that the Beneficial Owners should be treated as grantors of the Trust means that a Beneficial Owner is required to take into account, in computing his, her or its federal income tax liability, his, her or its proportionate share of all items of income, gain, loss, deduction and credit 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 of the Trust in proportion to their Interests.

A Beneficial Owner should be treated as a grantor of the Trust because the Beneficial Owner conveyed cash to the Trust in exchange for an Interest. In addition, each Beneficial Owner will have a reversionary interest in the Trust's corpus and will be automatically entitled to receive his, her or its proportionate share of the income of the Trust. Therefore, the Beneficial Owners should be treated, for federal income tax purposes, as if they own their respective fractional interests in the Property that is 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 Tax Cuts and Jobs Act of 2017 (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 Trust and the Sponsor have not received and will not request a private letter ruling from the IRS regarding the federal income tax classification of the Trust. After examining the relevant cases, Treasury Regulations and rulings (and, in particular, Revenue Ruling 2004-86 and Treasury Regulations Section 301.7701-4(c)), however, Tax Counsel has concluded that the Trust should be treated as an "investment trust" for federal income tax purposes because the powers and authority granted to the Trustees, Manager, Beneficial Owners and the Trust in the Trust Agreement do not exceed the powers and authority of the "investment trust" described in Revenue Ruling 2004-86. Tax Counsel has also concluded that the Beneficial Owners should be treated as grantors of the Trust. Tax Counsel further believes that these conclusions are consistent with the underlying cases, Treasury Regulations and rulings that govern whether a DST is classified for federal income tax purposes as an "investment trust" rather than as a business entity taxable as a corporation or partnership.

There is always a risk that the IRS may not agree with such opinion. The opinion of Tax Counsel is 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 a court of law or an administrative agency 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 and other related arrangements have been structured to be substantially similar to the trust and other related arrangements described in Revenue Ruling 2004-86. There are several possible distinctions, however, including, but not limited to: (i) the ongoing role of the Manager; (ii) the potential termination of the Trust as a result of a Transfer Distribution; and (iii) providing the Manager with discretion to cause a sale of the Property. Tax Counsel has concluded that all of these provisions are consistent with the analysis in Revenue Ruling 2004-86 and the underlying cases and rulings, but no ruling will be obtained from the IRS in this regard.

THE ABOVE IS A SUMMARY OF THE OPINION FROM TAX COUNSEL. PURCHASERS SHOULD REVIEW THE ATTACHED OPINION IN ITS ENTIRETY.

Potential significant tax costs if Interests were classified as interests in a partnership, securities or certificates of trust or beneficial interests. If the Purchasers were to be treated for tax purposes as purchasing interests in a partnership, securities or certificates of trust or beneficial interests, the Purchasers would not qualify for deferral of gain under Code Section 1031, and each Purchaser who had relied on deferral of his, her or its 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 Purchaser had purchased his, her or its Interest, such Purchaser would have no cash from the disposition of his, her or its original interests in real 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 a case, a Purchaser would have to use funds from other sources to satisfy his, her or its tax liabilities.

Code Section 1031 Non-Recognition Treatment

Identification. The Treasury Regulations under Code Section 1031 require that a taxpayer identify Replacement Property during the period that begins on the date that the taxpayer transfers his, her or its Relinquished Property and ends at midnight on the 45th day thereafter (the "**Identification Period**") (although if, as part of the same deferred exchange, the taxpayer transfers more than one Relinquished Property and the Relinquished Properties are transferred on different dates, then the Identification Period is determined by reference to the earliest date on which any of the properties are transferred). Also, any Replacement Property that is received by a taxpayer before the end of the Identification Period is in all events treated as identified before the end of the Identification Period.

Taxpayers are permitted to identify three properties without regard to the fair market value of the properties or multiple properties with a total fair market value not in excess of 200% of the value of the Relinquished Property. A taxpayer also may identify any number of properties if it acquires at least 95% of the aggregate fair market value of all the identified properties.

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.

After consulting with Tax Counsel, the Sponsor believes that the Property should constitute a single property for purposes of the identification rules, including the three property rule, although since there can be no assurance that a Purchaser's offer to acquire an Interest will be accepted, a Purchaser should not identify only the Property. In general, the identification rules of Code Section 1031 are strictly construed, and a Purchaser's exchange will not qualify for deferral of gain under Code Section 1031 if too many properties are identified or if the deadlines for identification are not met. Prospective Purchasers should seek the advice of their tax advisors prior to subscribing for the Interests or making an identification.

Tax Counsel will not render an opinion on identification matters and prospective Purchasers should seek the advice of their own tax advisors prior to subscribing for the Interests or identifying the Property as Replacement Property for a Section 1031 Exchange.

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 Purchasers 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 Purchasers should also 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 Purchasers wishing to engage in a "reverse" or "parking" exchange should consult Revenue Procedure 2000-37, 2002-2 C.B. 308, which establishes a safe harbor for such exchanges. Each prospective Purchaser will have to determine with his, her or its own tax advisors whether an exchange to be engaged in by the prospective Purchaser satisfies the requirements of Code Section 1031.

Receipt of identified property. In addition to satisfying the identification rules, a taxpayer seeking to complete a Section 1031 Exchange must actually receive identified Replacement Property by no later than midnight on the earlier of the 180th day after the date that the taxpayer transfers the Relinquished Property or the due date (including extensions) for the taxpayer's income tax return for the taxable year in which the transfer of the Relinquished Property occurs.

"Real Property" for purposes of Code Section 1031. As discussed above, Section 1031 Exchanges only apply to "real property." Thus, tangible personal property and intangible property (even if associated with the real property) are not eligible for Section 1031 Exchanges. Property is classified as real property for purposes of Code Section 1031 if the property is (i) classified as real property under the law of the state or local jurisdiction in which the property is located (subject to certain exceptions), (ii) specifically listed as real property in the Section 1031 Regulations, such as land, improvements to land, unsevered natural products of land, water and air space superjacent to land, and certain intangible interests in real property, or (iii) considered real property based on all the facts and circumstances under the various factors provided in the Section 1031 Regulations. The Section 1031 Regulations have also provided guidance for taxpayers receiving incidental personal property or paying for incidental personal property with funds being held by a qualified intermediary during a Section 1031 Exchange. Paying for or receiving personal property during a Section 1031 Exchange will not disqualify the entire transaction as long as the personal property is considered "incidental." Personal property will be considered "incidental" to real property acquired in a Section 1031 Exchange if, (i) in standard commercial transactions, the personal property is typically transferred together with the real property, and (ii) the aggregate fair market value of the incidental personal property transferred with the real property does not exceed 15% of the aggregate fair market value of the replacement property. Each prospective Purchaser will have to determine with his, her, or its own tax advisors whether an exchange engaged in by the prospective Purchaser satisfies the requirements of Code Section 1031. Amounts used to establish reserves, including the Supplemental Trust Reserve, if applicable, will not be treated as an interest in real estate and will be treated as "boot," which may be taxable to prospective Purchasers.

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.

Changes to the Section 1031 Exchange rules could have negative implications. 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 a Purchaser's exit strategy.

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. 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 sale of the Property, then a Purchaser would be unable to treat the acquired Interest as qualified Replacement Property in a Section 1031 Exchange in that the Interest would constitute an interest in real property that the Purchaser would not hold for investment. That is, the Purchaser would be treated as having immediately sold the acquired interest in the Property to the Master Tenant with the Master Tenant being treated as purchasing the Property (and all of the interests therein) from the Purchasers in exchange for an installment note for federal income tax purposes. As a result, Purchasers attempting to participate in Section 1031 Exchanges would not be treated as having received qualified Replacement Property when they acquired their Interest because the Purchaser would be treated as having made a loan to the Master Tenant. As the owner of the Property for federal income tax purposes, the Master Tenant 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 Purchasers and would not be deductible by the Master Tenant, as applicable. All of these consequences could have a significant impact on the tax consequences of an investment in an Interest.

Revenue Procedure 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 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, 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. We will receive an opinion of Tax Counsel that Tax Counsel believes the Master Lease satisfies most of the pertinent material conditions set forth in Revenue Procedure 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 Tenant were treated as a mere agent of the Trust rather than as a lessee, the power of the Master Tenant to make improvements to the Property and to re-lease the Property could be attributed to the Trust, and the Trust could be deemed to have powers prohibited under Revenue Ruling 2004-86. We have considered the issue and, after having consulted with Tax Counsel, have concluded that the Master Tenant should not be treated as an agent of the Trust. However, there is no assurance that the IRS would agree with these positions.

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 Purchasers should consult with their own tax advisors regarding the possible implications of the Medicare Tax in light of their individual circumstances.

20% passthrough deduction. Certain taxpayers that are not corporations may be able to deduct up to 20% of "qualified business income." 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" must have sufficient amounts of W-2 wages paid or a combined sufficient amount of wages plus the unadjusted basis of certain property (including buildings, but not land).

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 Code 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 Code 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. On September 24, 2019, the IRS issued Revenue Procedure 2019-38, 2019-42 I.R.B. 942 and reaffirmed that real estate rented or leased under a triple net lease may not be included in a "rental real estate enterprise." Further, in Revenue Procedure 2019-38, the IRS defined a "triple net lease" as "a lease agreement that requires the tenant or lessee to pay taxes, fees, and insurance, and to pay for maintenance activities for a property in addition to rent and utilities." The definition of a triple net lease for the purpose of Revenue Procedure 2019-38 may overlap significantly with the Master Lease.

Prospective Purchasers 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 has opined that the Trust should be classified as an "investment trust" treated as a "trust" for federal income tax purposes and, further, that the Beneficial Owners should be treated as "grantors" of the Trust. Accordingly, the Trust should not be subject to federal income tax and each Beneficial Owner should be subject to federal income taxation as if he, she or it owned directly the portion of the Property proportionate to the Interest owned by the Beneficial Owner and as if he, she or it paid directly his, her or 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.

Code Section 467 rent allocation. Under the Master Lease, if the Property's cash flow is insufficient to support all operating expenses and Base Rent and other payments, the Master Tenant may defer on a month-to-month basis a portion of the Additional Rent or Supplemental Rent payments, but only so long as the amount of Base Rent paid to or on behalf of the Trust is sufficient to fully service the Trust's payment obligations under the Loan Documents. Although the issue is not completely settled under existing law, under Section 467 of the Code, if the Master Tenant were to defer payment of rent, the Beneficial Owners may still be required to report and pay tax on rent in accordance with the schedule set forth on **Exhibit A** to the Master Lease. As a result, Beneficial 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, Beneficial Owners may have to recognize imputed interest income on such deferred amounts.

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, including the liabilities to which the Property is subject, are in excess of the fair market value of the Property, a Purchaser will not be entitled to take depreciation deductions to the extent deductions are derived from such excess. The amount of depreciation a Purchaser will be entitled to claim with respect to the Property will depend on the Purchaser's adjusted basis in depreciable assets that are part of the Property. A Purchaser who acquires an Interest as part of a Section 1031 Exchange generally will have a "carryover" basis equal to such Purchaser's basis in his, her or 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 (e.g., taxable "boot") and decreased by the amount of loss recognized by the Purchaser in such Section 1031 Exchange. In addition, the Purchaser's basis must be allocated among the depreciable and non-depreciable assets that are part of the 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 Purchaser will have to compute his, her or its own cost basis in the Property for tax purposes, including any adjustment to basis as may be required if a Purchaser is buying an Interest in the Trust in order to take advantage of the rules deferring the recognition of gain on real property under Code Section 1031, when computing depreciation allowed with respect to the Property.

Allocation of liabilities. Any liabilities incurred by the Trust will be allocated, for federal income tax purposes, to the Beneficial Owners *pro rata* in proportion to their Interests. For purposes of determining the purchase price of Replacement Property in a Section 1031 Exchange, each Purchaser should be able to include his, her or its proportionate share of the liabilities that encumber the Property at the time of the acquisition of an Interest.

Payments to the Sponsor and its affiliates. The 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 Purchaser should be treated for federal income tax purposes as buying an undivided interest in the Property, it is possible the IRS may take the view that the amount by which the price of an undivided interest exceeds the *pro rata* share of the price paid by the Trust for the Property is not to be treated as a sale of real property, but instead as a non-deductible capitalized item.

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

Possible adverse tax treatment for closing costs and reserves. A portion of the proceeds of the Offering will be used to pay each Purchaser'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 property. 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 Purchasers who purchase their Interests as part of a Section 1031 Exchange. Therefore, each prospective Purchaser should seek the advice of a qualified tax advisor as to the proper treatment of such items.

Receipt of boot. In a Section 1031 Exchange, money received or deemed received in addition to the like-kind property is referred to as "boot." Gain realized on the Relinquished Property transaction is recognized up to the amount of "boot" received or deemed received. Generally, personal property, amounts used to establish reserves and impounds or other similar items, as well as seller credits, funded out of Relinquished Property proceeds may not be treated as an interest in real property in connection with acquiring Replacement Property and may be treated as "boot." Prospective Purchasers should be aware that the IRS may take the position that certain costs, escrows, reserves and impounds, as well as seller credits, paid in connection with the sale of Relinquished Property and purchase of Replacement Property may be deemed "boot" and be taxable income to such prospective Purchasers. However, the IRS has provided guidance in Revenue Ruling 72-456, 1972-2 C.B. 468 regarding transactional costs paid by the taxpayer with exchange proceeds. In such ruling the IRS indicated that transactional costs paid by the taxpayer, such as brokerage commissions, can be deducted against transactional costs paid out in connection with the exchange. It is also possible that some of these items considered "boot" and not treated as like-kind amounts may be offset by similar items from a taxpayer's Relinquished Property transaction, thereby reducing taxable gain recognition.

No opinion of Tax Counsel will be provided with respect to the amount of "boot" in the transaction and no representation or warranty of any kind is made with respect to the tax consequences of a Section 1031 Exchange. Any amounts that are not treated as a like-kind interest in real property will also result in taxable income to a Purchaser to the extent of such Purchaser's gain. Loan fees, points, loan application fees, mortgage insurance, lender's title insurance, assurance, assumption fees, and other costs related to the acquisition of a loan for the Replacement Property, such as appraisals, are most likely not exchange expenses and do not reduce realized or recognized gain. These costs generally are treated as part of the costs of obtaining a loan as opposed to costs in obtaining the property. Thus, if these costs are paid with exchange funds, they have the effect of potentially causing taxable "boot" to the Purchaser. Similarly, it is possible that any reserves that are funded from Offering proceeds may cause a Purchaser to recognize "boot." Thus, it is possible that the Supplemental Trust Reserve and any other reserves funded from Offering Proceeds may cause a Purchaser to recognize "boot." Each prospective Purchaser should seek the advice of a qualified tax advisor as to the proper treatment and impact of such items.

Deductibility of Trust's fees and expenses. In computing his, her or its federal income tax liability, a Purchaser may be entitled to deduct, consistent with his, her or its method of accounting, the Purchaser's share of reasonable administrative fees, trustee fees and other fees, if any, paid or incurred by the Trust as provided in Code Sections 162 or 212, which may be subject to the limitations applicable to miscellaneous itemized deductions. All miscellaneous itemized deductions (except "educator expenses") are suspended. As such, a Beneficial Owner will not be able to deduct his, her or its share of such fees paid by the Trust during this period. However, if a Beneficial Owner owns an Interest in connection with a trade or business, Trust fees and expenses may be deductible under Code Section 162. Beneficial Owners should seek the advice of a qualified tax advisor as to the proper treatment of such items.

Transfer to the Springing LLC. If a Transfer Distribution occurs, the Property will be transferred from the Trust to the Springing LLC and the membership interests in the Springing LLC will be distributed to the Beneficial Owners. It is anticipated that the Manager or its affiliate will serve as the manager of the Springing LLC. The Springing

LLC will be treated as a partnership for federal income tax purposes. A Transfer Distribution may 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, such a transfer should not be subject to federal income tax pursuant to Code Section 721. The transfer could be subject, however, to state or local income, transfer or other taxes. In addition, there can be no assurance that such transfer will not be taxable under the federal income or other tax laws in effect at the time the transfer occurs. Because a Transfer Distribution could occur in several situations, it is not possible to determine all of the tax consequences to the Beneficial Owners in the event of a Transfer Distribution. PROSPECTIVE PURCHASERS SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE TAX CONSEQUENCES OF A TRANSFER DISTRIBUTION AND THE EFFECT OF THE PROPERTY BEING HELD BY THE SPRINGING LLC RATHER THAN THE TRUST.

Likely lack of deferral of tax upon sale of Springing LLC membership interests. Unlike interests in the Trust, membership interests in the Springing LLC will not be treated as direct ownership interests in real property for federal income tax purposes (including for purposes of a like-kind exchange under Code Section 1031). **THUS, IF THE TRUST TRANSFERS THE PROPERTY TO THE SPRINGING LLC IN A TRANSFER DISTRIBUTION, IT IS UNLIKELY THAT ANY OF THE BENEFICIAL OWNERS WHO RECEIVE MEMBERSHIP INTERESTS IN THE SPRINGING LLC WOULD THEREAFTER BE ABLE TO DEFER THE RECOGNITION OF GAIN UNDER CODE SECTION 1031 ON A SUBSEQUENT DISPOSITION OF THEIR MEMBERSHIP INTERESTS IN THE SPRINGING LLC OR DISPOSITION OF THE PROPERTY BY THE SPRINGING 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. Losses from passive activities may generally be used only to offset income from passive activities. Interest deductions attributable to passive activities are treated as a component of 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. Credits from passive activities generally are limited to the tax attributable to the income from passive activities. Passive activities include: (i) trade or business activities in which the taxpayer does not materially participate, and (ii) rental activities. Thus, a Purchaser's share of the Property's income and loss will, in all likelihood, constitute income and loss from passive activities and will likely be subject to passive loss limitation.

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 an activity, except for certain dispositions to related parties, are allowed in full when the taxpayer disposes of his, her or its entire interest in the 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 provided below with respect to "real estate professionals," Purchasers will not, in all likelihood, be actively participating in the Property's rental real estate activities, and therefore will not be able to deduct any loss against their portfolio or active business income. Moreover, even if a Purchaser 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 a Purchaser's adjusted gross income exceeds $100,000. Therefore, if a Purchaser's adjusted gross income is $150,000 or more for any given year, he, she or it 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, (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 and (iii) the taxpayer elects to treat all interest in rental real estate as a single activity. 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, her or its 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. Purchasers should consult with their own tax advisors to determine if this rule applies to them.

Net income and loss of each Purchaser. Each Purchaser will be required to determine his, her or its own net income or loss from the Property and the Trust for income tax purposes. Each Purchaser will be required to pay his, her or its share of expenses of the Property and the Trust, and will be entitled to his, her or its share of income therefrom. Certain expenses, such as depreciation, will be different for different Purchasers. The Manager will keep or otherwise engage a third-party recordkeeping service provider to manage the records and provide information about expenses and income of the Property and the Trust for each Purchaser. A Purchaser, however, will be required to keep separate records to separately report his, her or its 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. As a general rule, the holding of interests in real property for investment is not the type of activity that would cause a person or entity to be considered a "dealer" in real property. 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 a Purchaser is deemed a "dealer" and his, her or its Interest is not considered either a capital asset or real property held by such Purchaser for more than one year and used by such Purchaser in a trade or business under Code Section 1231 ("**Section 1231 Real Property**") 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 Purchaser 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 a capital asset, any profit or loss realized on its sale or exchange (or the sale of the Property) (except to the extent that such profit represents gain attributable to unrealized receivables or depreciation recapture taxable as ordinary income or at a 25% federal tax rate) will be treated as capital gain or loss under the Code. Any such capital gain 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.

In determining the amount realized on the sale or exchange of an Interest or the Property, a Purchaser must include, among other things, the Purchaser's share of assumed indebtedness on the Property. Therefore, it is possible that the gain realized upon the sale of an Interest or the Property 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 Real Property, gain or loss attributable to such real property would be combined with any other Code Section 1231 gains or losses realized by the Purchaser 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.

Tax impact of sale of the Property. If the Property is sold or otherwise disposed of in a taxable transaction, the Purchasers will likely recognize taxable income. A Purchaser will have taxable income to the extent that the amount realized by such Purchaser exceeds his, her or its tax basis in his, her or its Interests. In addition, the Medicare Tax is likely to apply to any net gain realized on a taxable disposition of the Property.

Taxable income. It is expected that a Purchaser's Interests will generate annual taxable income in excess of the cash distributable to such Purchaser. Although such taxable income can be offset by depreciation deductions, the amounts of such depreciation deductions may be limited since the tax basis of such property received in a Section 1031 Exchange is generally the same as the tax basis of the property exchanged. Therefore, if a Purchaser has a low tax basis in the Relinquished Property exchanged in a proposed Section 1031 Exchange, such Purchaser will have a low tax basis in his, her or its Interests, and his, her or its depreciation deductions will be less than a purchase not structured as a Section 1031 Exchange.

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 a charitable contribution) of an Interest is made at a time when the Purchaser's share of the Property's non-recourse indebtedness exceeds the adjusted basis of the Purchaser in its Interest, the Purchaser may recognize gain for 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 / Cancellation of debt income. In the event of a foreclosure of a mortgage or deed of trust on the Property, a Purchaser would realize gain, if any, in an amount equal to the excess of the Purchaser's share of the outstanding mortgage over its adjusted tax basis in the Property, even though the Purchaser might realize an economic loss upon such a foreclosure. In addition, the Purchaser could be required to pay income taxes with respect to such gain even though the Purchaser may receive no cash distributions as a result of such foreclosure.

If Property debt were to be cancelled without an accompanying foreclosure of the Property, then a Purchaser 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 Purchaser's reduction of tax attributes – including tax basis), which would be taxed as ordinary income, for federal income tax purposes. Also, the Purchaser would not be able to offset any such cancellation of debt income with any loss recognized by a Purchaser that would constitute a capital loss for federal income tax purposes (including any loss recognized by a Purchaser from the sale of his, her or its Interest in the likely event that the Interest could not be considered real property held by Purchaser for more than one year and used by Purchaser in a trade or business under Code Section 1231).

Tax elections. The Sponsor will attempt to structure the Interests so that they will be treated as interests in an investment trust and not as interests in a partnership. As a result, the Purchasers, rather than the Trust, will be required to make any applicable tax elections. However, if the Purchasers were treated as partners in a partnership, applicable elections would have to be made by the partnership. No mechanism is provided for the Trust to make any such elections.

Method of accounting. A Purchaser will be required to report income under the Purchaser's applicable accounting method.

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

The Medicare Tax. Income and gain from passive activities may be subject to the Medicare Tax. Certain Purchasers who are U.S. individuals are subject to the Medicare Tax, an additional 3.8% tax on their "net investment income" and certain estates and trusts are subject to an additional 3.8% tax on their undistributed "net investment income." Among other items, "net investment income" generally includes passive investment income, such as rent and net gain from the disposition of investment property, less certain deductions. Prospective Purchasers should consult their tax advisors with respect to the tax consequences to them of the rules described above.

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 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 a Purchaser to conclude that the Purchaser can realize a profit from an investment in an Interest as a result of cash flow and appreciation of the Property, there can be no assurance that a Purchaser 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. A Purchaser that is an individual or closely held corporation will be unable to deduct losses from the Property, if any, to the extent such losses exceed the amount such Purchaser is "at risk." A Purchaser's initial amount at risk will generally equal the sum of (i) the amount of cash paid for the Interest, (ii) the amount, if any, of recourse financing obtained by the Purchaser to acquire his, her or its Interest and (iii) the amount of any qualified non-recourse indebtedness encumbering the Property. A Purchaser's amount at risk will be reduced by the amount of any cash flow to such Purchaser and the amount of the Purchaser's loss, and will be increased by the amount of the Purchaser'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.

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 Purchaser's purpose for acquiring an Interest. Thus, Code Section 265(a)(2) might be applied to a Purchaser whose purpose for investing in an Interest rather than in a non-leveraged investment is to enable such Purchaser 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 a Purchaser if the Purchaser does not himself, herself or itself 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 Purchaser.

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*.** Excess business losses of a taxpayer other than a corporation are not allowed for the taxable year. 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 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.

***Limit on business interest deductions*.** Code Section 163(j) limits annual deductions for "business interest" expense to the sum of business interest income plus 30% of "adjusted taxable income" (plus certain floor plan financing interest of the taxpayer relating to financing the acquisition of motor vehicles held for sale or lease). Business interest in excess of the allowed current deduction may be carried forward indefinitely. The adjusted taxable income of a taxpayer means taxable income computed without regard to any item not properly allocable to a trade or business, any business interest income or expense, any net operating loss deduction, and certain other items.

Certain small businesses (in general, where the average annual gross receipts of the taxpayer for the three-year period ending with the prior taxable year do not exceed $31 million) are exempt from the foregoing rule. In the case of a partnership, the rule is applied at the partnership level. The 2021 Final 163(j) Regulations clarified how taxpayers determine their ATI. Taxpayers generally determine their ATI by starting with "tentative taxable income" and applying additions and subtractions as specified in the existing Treasury Regulations consistent with the statute. The DD&A adjustment is no longer taken into account for purposes of calculating ATI in taxable years beginning on or after January 1, 2022, thereby reducing the amount of allowable business interest deductions. The 2021 Final 163(j) Regulations are complex and their application varies with the facts and circumstances particular to each Purchaser. Thus, each prospective Purchaser should consult with his, her or its tax advisor concerning as to the application of the 2021 Final 163(j) Regulations to an investment in an Interest.

Business interest means any interest paid or accrued on indebtedness properly allocable to a trade or business, provided that investment interest (within the meaning of Code Section 163(d)) does not constitute business interest. For this purpose, a trade or business does not include the trade or business of performing services as an employee or any electing real property trade or business (or any electing farming business or certain regulated utility businesses). 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.

To take advantage of this exception, a taxpayer must make an irrevocable election to be excluded from Code Section 163(j) and forego or limit certain other tax benefits. An electing real property trade or business is required to use the ADS for any non-residential real property (which would then be depreciable by the straight-line method over 40 years) or residential rental property (which would then be depreciable by the straight-line method over 30 years), or for certain improvements to an interior portion of a building which is non-residential real property (which would then be depreciable by the straight-line method over 20 years). Each prospective Purchaser should consult with his, her or its tax advisor concerning the possible application of Code Section 163(j) to his, her or its particular circumstances.

In 2018, the Treasury and the IRS released an extensive set of proposed regulations under Code Section 163(j) which provide some guidance on certain open issues under Code Section 163(j) as revised by the TCJA. For example, the definition of "interest" was expanded to include income and deductions from many items that have time-value components not treated as interest with respect to domestic taxpayers in the past (such as swaps). Further, adjusted taxable income is determined at the partnership level and to the extent the partnership has excess taxable income, the excess taxable income is allocated to the partners and used in determining each partner's adjusted taxable income. Finally, proposed regulations include proposed amendments to provide rules relating to the definition of a "real property trade or business" under Code Section 469(c)(7)(C) that is eligible to make the election discussed above. The proposed regulations define terms such as "real property," "real property operation," and "real property management," but reserve on the other categories of businesses that qualify as real property trades or businesses under Code Section 469(c)(7)(C). The preamble to the proposed regulations indicates that the categories of real property trades or businesses under Code Section 469(c)(7)(C) may be defined to not include trades or businesses that generally do not play a significant role in the creation, acquisition or management of rental real estate.

In 2020, the Treasury and the IRS finalized the 2018 proposed regulations with some changes and released a new set of proposed regulations under Code Section 163(j). The final regulations, among other things, (i) provide that the amount of any depreciation, amortization or depletion that is capitalized into inventory under Code Section 263A during taxable years beginning before January 2022 is added back to tentative taxable income when calculating ATI for that taxable year, regardless of the period in which the capitalized amount is recovered through cost of goods sold; and (ii) remove certain items from the definition of "interest" such as debt issuance costs, guaranteed payments for the use of capital, hedging income and expense, commitment fees and other fees paid in connection with lending transactions. In addition, the new proposed regulations define terms such as "real property development" and "real property redevelopment" for purposes of Code Section 469(c)(7)(C). The final regulations were effective on July 28, 2020. Each prospective Purchaser should consult with his, her or its tax advisor concerning whether the retroactive application of the proposed regulations would be advantageous to his, her or its particular circumstances. Further, each prospective Purchaser should be aware that the proposed regulations under Code Section 163(j) are subject to comment and change until finalized.

Tax liability in excess of cash distributions. It is possible that a Purchaser's tax liability resulting from its Interest will exceed its share of cash distributions from the Trust. This may occur, for example, because cash flow from the Property may be used to fund non-deductible operating or capital expenses of the Property or reserves. In addition, as discussed above, in the event the Master Tenant elects to defer payments of rent, Purchasers may be required to recognize rental income in a year prior to the year in which such rental income is actually paid, in addition to imputed interest income on such amounts. *See "Section 467 Rent Allocation"* above. Thus, there may be years in which a Purchaser's tax liability exceeds his, her or its share of cash distributions from the Trust, in which case a Purchaser would have to use funds from other sources to satisfy his, her or its tax liability. The same tax consequences may result from a sale or transfer of an Interest, whether voluntary or involuntary, that gives rise to ordinary income or capital gain.

Accuracy-related penalties and penalties for the failure to disclose. The Code provides for penalties relating to the accuracy of tax returns equal to 20% of the portion of the understatement to which the penalty applies. 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. The penalty is increased to 40% in the case of an understatement which is attributable to one or more "nondisclosed noneconomic substance" transactions or a misstatement in the value of any property (or its adjusted basis) of 200% or more (a "**Gross 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 $5,000 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.

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 5.0% 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 doubles if the property's valuation is misstated 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. The reasonable cause exception does not apply to any portion of an underpayment that is attributable to one or more transactions that lack "economic substance." Economic substance is deemed to exist where a transaction changes in a meaningful way (apart from federal income tax effects) a taxpayer's economic position and the taxpayer has a substantial purpose (apart from federal income tax effects) for entering into such transaction.

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. 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.

Codification of economic substance doctrine (Code Section 7701(o)). 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 and determination of whether the economic substance doctrine is relevant to a transaction will 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 (i) the transaction changes in a meaningful way (apart from federal income tax effects) the taxpayer's economic position and (ii) the taxpayer has a substantial purpose (apart from federal income tax effects) for entering into such transaction. In rendering its opinion, Tax Counsel has concluded that the economic substance doctrine should not apply and should not alter the tax consequences described in this 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 prospective Purchaser should consider the state tax consequences of an investment in an Interest. A Purchaser's share of income or loss generally will be required to be included in determining its reportable income for state and local tax purposes. For 2025, individual or married filers cannot deduct more than $40,000 of combined state and local income and property taxes. Taxes attributable to income earned from the Interests should count towards the $10,000 limitation. This deduction is subject to phase-outs that decrease its value for filers that exceed certain income thresholds. For each year after 2025, the maximum deductible state and local income and property taxes increases by 1%. The maximum deductible state and local income and property taxes decreases to $10,000 for any taxable year beginning

after 2029. If the Beneficial Owners acquire Units, the Beneficial Owners may be required to file state income tax returns in all of the states where the applicable Exchange Entity or Exchange Entities own properties. A prospective Purchaser must seek the advice of its own independent tax advisor as to state and local tax issues.

Prospective Purchasers 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, 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 Purchaser must consult his, her or its own tax counsel about the tax consequences of an investment in an Interest.

The opinion and discussion are written to support the promotion or marketing of a particular transaction, and each Purchaser should seek advice based on the Purchaser's particular circumstances from an independent tax advisor.

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 Purchasers 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 Treasury, resulting in revisions of resolutions and revised interpretations of established concepts as well as statutory changes. In particular, the OB3 made 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. It is highly likely that technical corrections legislation will be needed to clarify certain aspects of the new laws 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.

Prospective Purchasers 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, 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, with possibly retroactive effect. Each Purchaser must consult his, her or its own tax counsel about the tax consequences of an investment in an Interest.

The opinion and discussion are written to support the promotion or marketing of a particular transaction, and each Purchaser should seek advice based on the Purchaser's particular circumstances from an independent tax advisor.

Role of Baker & McKenzie LLP as Tax Counsel. Baker & McKenzie LLP, Tax Counsel, has acted solely as federal income tax counsel, securities counsel and finance co-counsel with respect to the Offering, and has not acted as real estate counsel or in any other capacity with respect to the Offering. Tax Counsel's tax opinion and advice to the Sponsor relates solely to 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. Tax Counsel does not represent the prospective Purchasers. Prospective Purchasers 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.

Please note that any discussions of federal income tax matters set forth in this Memorandum have been written solely to support the marketing of the Interests. All prospective Purchasers must consult their own independent legal, tax, accounting and financial advisors regarding the federal income tax consequences of investing in the Interests in the context of their own particular circumstances, and must represent that they have done so as a condition to investing in the Interests.

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PLAN OF DISTRIBUTION

General

Subject to the terms and conditions set forth in this Memorandum and the Trust Agreement, the Trust is offering a maximum of $46,170,900 of Interests (i.e., the Maximum Offering Amount), which, if sold in full, will represent 100% of the outstanding beneficial ownership interests in the Trust. Each Purchaser must pay cash for its Interests. The Interests may be purchased only by prospective Purchasers who satisfy the investor suitability requirements. *See "Who May Invest."*

Marketing of Interests

The Trust will offer the Interests on a "best efforts" basis through the Managing Broker-Dealer and through other Participating Dealers. The Managing Broker-Dealer will use commercially reasonable efforts to engage and retain Participating Dealers to offer and sell the Class 1 Beneficial Interests. The Class 1 Beneficial Interests will be offered and sold only by the Managing Broker-Dealer and the Participating Dealers the Managing Broker-Dealer may retain; provided, however, that (i) each Participating Dealer whom the Managing Broker-Dealer retains will represent to the Managing Broker-Dealer that it is (a) duly registered as a broker-dealer pursuant to the provisions of the Exchange Act and a member of FINRA in good standing and (b) duly licensed or registered by the regulatory authorities in the jurisdictions in which they will offer and sell the Class 1 Beneficial Interests, as set forth in an executed Soliciting Dealer Agreement between such Participating Dealer and the Managing Broker-Dealer and (ii) all such engagements of Participating Dealers are evidenced by written agreements, the terms and conditions of which substantially conform to the Soliciting Dealer Agreement, subject to any reasonable adjustments as determined in the sole discretion of the Managing Broker-Dealer.

The Managing Broker-Dealer will receive Sales Commissions of up to 6.00% of Total Sales, which it will re-allow to the Participating Dealers; provided, however, in the event a commission rate lower than 6.00% is negotiated with a Participating Dealer, the commission rate will be the lower agreed upon rate. In addition, the Managing Broker-Dealer will receive, on a non-accountable basis and will re-allow to the Participating Dealers on a non-accountable basis, allowances for marketing and due diligence expenses of up to 1.25% of Total Sales. The Managing Broker-Dealer will also receive (i) a Managing Broker-Dealer Fee of up to 2.00% of Total Sales, which it may at its sole discretion partially re-allow to the Participating Dealers for non-accountable marketing expenses in addition to any other allowances, and (ii) a Maintenance Fee of up to 1.02% of Total Sales. The Trust and, therefore, each Purchaser holding Class 1 Beneficial Interests, will be responsible for its pro-rata share of the Trust's Organization and Offering Expenses on an accountable basis of approximately 1.78% of the Offering proceeds. The total aggregate amount of Sales Commissions and Expenses will not exceed 12.05% of the Total Sales. *See "Estimated Use of Proceeds."*

The Trust may, in its discretion, accept purchases of Interests net of all or a portion of the Sales Commissions otherwise payable from Purchasers purchasing through a RIA with whom the Purchaser has agreed to pay a fee for investment advisory services in lieu of commissions, and affiliates of the Trust, including the Sponsor, may purchase the Interests net of Sales Commissions and the Marketing/Due Diligence Expense Allowances.

The Trust, the Sponsor, or other persons related to or affiliated with them, or other broker-dealers may purchase Interests on the same terms and conditions as any other Purchaser. Any such Purchaser may subsequently transfer Interests so acquired by them on the same terms and conditions as any other Purchaser.

The Trust and each broker-dealer participating in an Offering will agree to indemnify each other against certain liabilities including liabilities under the Securities Act or the Exchange Act, as amended, and state securities laws.

The Trust reserves the unconditional right to cancel or modify the Offering, to reject purchases of Interests in whole or in part, to waive conditions to the purchase of Interests and to allow purchases of less than the minimum purchase amount.

Subscription Period

The Trust may hold closings at any time after subscriptions for Interests have been accepted by the Trust. Interests will continue to be sold and closings may from time to time be conducted with respect to additional Interests sold until the Maximum Offering Amount of Interests is sold or, if earlier, until September 14, 2026. The Offering Termination Date may be extended at the Manager's discretion for one additional period of up to 12 months. The

Trust may, however, extend the Offering in its absolute and sole discretion. There is no assurance that all of the Interests will be sold.

Broker-Dealer Disqualifying Events

The Interests will be offered and sold pursuant to an exemption from the registration requirements of the Securities Act, in accordance with Rule 506(c) of Regulation D, and in compliance with any applicable state securities laws. 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 you if the broker-dealers selling 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.

The Managing Broker-Dealer utilizes a group of market participants, including brokers (each, a "**Selling Broker**") and investment advisers to place and advise on the Interests. Selling Brokers are third parties and not engaged to act as an agent of the Trust. These persons and entities are compensated by the Managing Broker-Dealer, who has been compensated by the Trust. Certain of the Selling Brokers that may sell Interests in this Offering have informed the Trust and the Managing Broker-Dealer that they have been subject to certain of the ″disqualifying events ″ under Rule 506, as set forth below. The Trust is required to provide this same information to you. As of the date of this Memorandum, the Sponsor is not aware of any broker/dealers selling Interests in this Offering who have experienced certain specified "disqualifying events" under Rule 506 of Regulation D. In the event that the Sponsor receives information about "disqualifying events" under Rule 506 affecting any broker/dealers selling Interests we will provide this information to you.

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WHO MAY INVEST

We will offer and sell the Interests in reliance on an exemption from the registration requirements of the Securities Act and state securities laws. Accordingly, distribution of this Memorandum has been strictly limited to persons who meet the requirements and make the representations set forth below. We reserve the right, in our sole discretion, to reject any subscription based on any information that may become known or available to us about the suitability of a prospective Purchaser or for any other reason.

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 this investment. Only Purchasers who (i) purchase the minimum Interest amount as set forth in this Memorandum, and (ii) represent in writing that they meet the investor suitability requirements set by us and as may be required under federal or state law, may acquire Interests. The written representations you make will be reviewed to determine your suitability.

The investor suitability requirements stated below represent minimum suitability requirements established by the Sponsor for Purchasers of the Interests. However, your satisfaction of these requirements will not necessarily mean that the Interests are a suitable investment for you, or that we will accept you as a Purchaser of Interests. Furthermore, we may modify such requirements in our sole discretion, and such modifications may raise the suitability requirements for Purchasers.

You must represent in writing that you meet, among others, all of the following requirements:

(a) 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;

(b) 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 those risks discussed in the *"Risk Factors"* section of this Memorandum;

(c) 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;

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

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

(f) 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;

(g) 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;

(h) You are an "accredited investor" as defined in Rule 501(a) of Regulation D under the Securities Act; and

(i) Neither you nor any subsidiary, affiliate, owner, shareholder, partner, member, indemnitor, guarantor or related person or entity:

  (i) is a Sanctioned Person (as defined herein);
  (ii) has more than 15% of its assets in Sanctioned Countries (as defined herein); or
  (iii) derives more than 15% of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Countries.

For purposes of the foregoing, a "Sanctioned Person" means:

(X) a person named on the list of "specially designated nationals" or "blocked persons" maintained by the U.S. Office of Foreign Assets Control ("**OFAC**") at http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx, or as otherwise published from time to time, or

(Y) (i) an agency of the government of a Sanctioned Country, (ii) an organization controlled by a Sanctioned Country, or (iii) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC.

For purposes of the foregoing, a "**Sanctioned Country**" will mean a country subject to a sanctions program identified on the list maintained by OFAC and available at http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx, or as otherwise published from time to time.

For purposes of calculating your net worth, "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 a person's primary home) over total liabilities. Total liabilities exclude any mortgage on the primary home in an amount of up to the home's estimated fair market value as long as the mortgage was incurred more than 60 days before the securities were purchased, but includes (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 securities for the purpose of investing in the securities. 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.

Investment Not Suitable for Certain Persons and Entities

Interests are not suitable investments for (i) an employee benefit plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974 ("ERISA") that is subject to the fiduciary responsibility provisions of Title I of ERISA (a "plan"), or a plan within the meaning of Code Section 4975(e)(1) that is subject to Code Section 4975 (also, a "plan"), including a qualified plan (any pension, profit sharing or stock bonus plan that is qualified under Code Section 401(a)) or an individual retirement account, (ii) any person that is directly or indirectly acquiring the Interest on behalf of, as investment manager of, as fiduciary of, as trustee of, or with assets of a plan (including any insurance company using assets in its general or separate account that may constitute assets of a plan), (iii) any other tax-exempt entity, or (iv) a foreign person. Therefore, this Memorandum does not discuss the risks that may be associated with an investment in an Interest by such plans, accounts, persons, entities or by a foreign person.

IF YOU DO NOT MEET THE REQUIREMENTS DESCRIBED ABOVE, IMMEDIATELY RETURN THIS MEMORANDUM TO US OR THE APPLICABLE PARTICIPATING DEALER. IN THE EVENT YOU DO NOT MEET SUCH REQUIREMENTS, THIS MEMORANDUM WILL NOT CONSTITUTE AN OFFER TO SELL INTERESTS TO YOU.

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METHOD OF PURCHASE

If you are an "accredited investor" and, after carefully reading the entire Memorandum, would like to purchase an Interest, you must follow the procedures described below and in the Purchase Agreement.

To purchase an Interest, you must initially complete, execute and deliver to the Managing Broker-Dealer or your broker-dealer the investor questionnaire and purchase agreement attached hereto as **Exhibit E** (the "**Purchase Agreement**"), and other documents described in the Purchase Agreement. You will also be asked to confirm the availability of funds to you in the full amount of the purchase price for your Interests.

Upon receipt of the signed Purchase Agreement and verification of your investment qualifications, the Trust will decide whether to accept your investment. If, after review of your suitability, the Trust accepts your offer to purchase Interests, the Trust will send you various due diligence documents and closing documents for your review and/or execution.

A prospective Purchaser's Purchase Agreement will be terminated and his, her or its check or wired funds, if any, will be fully refunded by the Trust if (i) the conditions to closing set forth in the Purchase Agreement are not satisfied, or (ii) a prospective Purchaser is not accepted by the Trust. The Trust may accept or reject a prospective Purchaser's Purchase Agreement in its sole discretion. If the Trust does not accept a Purchase Agreement within 30 days of its submission then it will be deemed rejected. In the event your Purchase Agreement is rejected, the full amount of any check or wired funds you have sent will be returned to you.

LITIGATION

There are no legal actions pending against the Trust nor, to the knowledge of the Trust and Sponsor, are any such actions contemplated that would have a material effect on the Trust's business, financial condition or operations.

OTHER DOCUMENTS

Copies of the documents referred to in this Memorandum or otherwise related to the Offering may be inspected at our office as set forth on the cover page hereof or upon your written request. The Purchase Agreement and the Trust Agreement as delivered are incorporated herein by reference.

REPORTS

The Manager will prepare and furnish unaudited reports to each of the Beneficial Owners on a quarterly and annual basis; such quarterly and annual unaudited reports will include the amounts of rent received from the Master Tenant, the expenses incurred by the Trust with respect to the Property, the amount of any reserves and the amount of the distributions made by the Trust to the Beneficial Owners. In addition, the Trust will send to each Beneficial Owner such tax information as may be necessary for the preparation of the Beneficial Owner's tax returns.

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EXHIBIT A

MASTER LEASE

[ATTACHED]

MASTER LEASE AGREEMENT BETWEEN
JWCM VIVIAN, DST,
a Delaware Statutory Trust

AS LANDLORD, AND

JWCM VIVIAN MASTER TENANT, LLC
a Delaware Limited Liability Company

AS MASTER TENANT

DATED AS OF AUGUST 21, 2025

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MASTER LEASE AGREEMENT

THIS MASTER LEASE AGREEMENT, made as of August 21, 2025 ("**Agreement**"), by and between JWCM Vivian, DST, a Delaware statutory trust ("**Landlord**"), and JWCM Vivian Master Tenant, LLC, a Delaware limited liability company ("**Master Tenant**").

1. Definitions.

"**Additional Rent**" shall have the meaning set forth in Section 4.1.2.

"**Additional Rent Breakpoint**" shall be the amounts as set forth on **Exhibit A** hereto under the heading Gross Revenue Additional Rent Breakpoint.

"**Agreement**" shall mean this Master Lease Agreement, as amended.

"**Annual Note Payments**" shall have the meaning set forth on **Exhibit A** hereto.

"**Asset Management Fee**" means the Asset Management Fee under the Management Agreement.

"**Bankruptcy Code**" has the meaning set forth in Section 19.9.

"**Base Rent**" shall have the meaning set forth in Section 4.1.1.

"**Base Term**" means a term beginning on the Commencement Date and expiring three (3) months and one day after the Maturity Date, as such term is defined in the Loan Documents.

"**Capital Expenditures**" means any improvements, replacements or material repairs with respect to or relating to the Project which are properly capitalized (rather than expensed) in accordance with generally accepted accounting principles ("**GAAP**").

"**Capital Improvements**" mean the Capital Expenditures, but excluding Landlord Capital Improvements.

"**Commencement Date**" means the date of this Agreement.

"**Condemnation Proceeding**" means any action or proceeding brought by competent authority for the purpose of any taking of the fee of the Project, including the Improvements, or any part thereof or estate therein as a result of the exercise of the power of eminent domain, including, but not limited to, a voluntary conveyance to such authority either under threat of or in lieu of condemnation or while such action or proceeding is pending.

"**Damages**" has the meaning set forth in Section 16.1.

"**Default**" has the meaning set forth in Section 20.1, after giving effect to all applicable notice and cure periods.

"**Default Rate**" means the lesser of (i) 5% per annum, or (ii) the highest interest rate per annum, permitted under the laws of the state in which the Project is located, or under federal law, to the extent applicable.

"**DST**" shall mean (i) a Delaware statutory trust as such term is defined under Delaware law, and (ii) an "investment trust" as defined in Treas. Reg. §301.7701-4(c).

"**Excess Uncontrollable Costs**" has the meaning set forth in Section 4.5.

"**Existing Obligations**" has the meaning set forth in Section 3.3.

"**Gross Revenues**" shall mean the entire gross receipts of every kind and nature from rentals and services made in, upon, or from the Project, whether upon credit or for cash, in every department operating in the Project.

"**Hazardous Substances**" has the meaning set forth in Section 21.1.

"**Hazardous Substances Costs**" has the meaning set forth in Section 21.4.

"**Imposition Payment**" has the meaning set forth in Section 5.1.

"**Impositions**" means all ancillary fees and costs related to the Permitted Mortgage (excluding fees and costs attributable to a Landlord default under the Permitted Mortgage or other Landlord costs and expenses), and all taxes, assessments, charges for utilities not paid for by subtenants, excises, levies, license and permit fees and other governmental impositions and charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature whatsoever, which are imposed, levied upon or assessed against or which arise with respect to the Project (or any portion thereof) or any rights or obligations of Master Tenant under this Agreement during the Term of this Agreement, including, but not limited to, any sums payable hereunder.

"**Improvements**" means all buildings, structures and other improvements of any and every kind or nature now or hereafter located on the Land. Such term shall include, without limitation, all fixtures now or hereafter attached or affixed, actually or constructively thereto, including, without limitation all pipes, engines, wiring, heating, ventilating and air-conditioning equipment and systems, plumbing and lighting fixtures, and other equipment or machinery used in or about or for the maintenance or operation of the Project. Such term shall not include any property owned by a Sublessee.

"**Intangible Property**" has the meaning set forth in Section 3.3.

"**Land**" means all of the tracts or parcels of land described in **Exhibit B**, together with all rights, ways and easements appurtenant thereto.

"**Landlord**" means JWCM Vivian, DST, a Delaware statutory trust and its successors or assigns.

"**Landlord Capital Improvements**" means expenditures with respect to (1) repairs and replacements of the structure, foundations, roofs, exterior walls, parking lots and improvements to meet the needs of tenants; (2) leasing commissions; (3) certain Hazardous Substances Costs; (4) any repairs identified in the property condition assessment report, or similar engineering report, performed in connection with the acquisition of the Project; and (5) other improvements or replacements to the Project that would be considered Capital Expenditures or that are required by law.

"**Landlord Casualty Costs**" has the meaning set forth in Section 17.2.

"**Landlord Costs**" means Landlord Capital Improvements, as well as the costs to make repairs to maintain the Project.

"**Landlord Environmental Costs**" has the meaning given such term in Section 21.4.

"**Lender**" shall have the meaning set forth in Section 29.

"**Lender Requirements**" means all requirements set forth in the Loan Documents relating to Landlord, Master Tenant or the operation of the Project.

"**Loan Documents**" means all loan documentation executed and delivered by or on behalf of Landlord or Master Tenant to the holder of a Permitted Mortgage.

"**LURA**" means that certain Land Use Restriction Agreement by and between 1246 Allene Owner, LP, a Delaware limited partnership, and the City of Atlanta, a municipal corporation of the State of Georgia, dated October 14, 2022.

"**Management Agreement**" means an agreement for the management of the Project.

"**Master Tenant**" means JWCM Vivian Master Tenant, LLC, a Delaware limited liability company, and its successor or assigns.

"**Master Tenant Capital Reserve Account**" has the meaning set forth in Section 6.4.1.

"**Operating Costs**" means all costs and expenses (and taxes, if any, thereon) paid or incurred in respect of the operations, maintenance, management and security of the Project which, in accordance with generally accepted accounting principles are properly chargeable to the operation, maintenance, management and security of the Project, such as the cost of electricity, gas, oil, steam, water, air conditioning and other fuel and utilities, property management fees, asset management fees, reasonable attorneys' fees and disbursements and auditing, management and other professional fees and expenses. For the avoidance of doubt, Operating Costs does not include Rent.

"**PCB**" has the meaning set forth in Section 21.2.

"**Permitted Mortgage**" means any mortgage, deed of trust or other similar document placed on the Project by Landlord in compliance with the terms of this Agreement.

"**Premium Payment**" has the meaning set forth in Section 8.11.

"**Project**" means the Land and the Improvements.

"**Projected Uncontrollable Costs**" shall mean the projected Uncontrollable Costs as set forth on the Projections.

"**Projections**" shall mean the financial forecast for the Project attached as **Exhibit C** hereto.

"**Remedial Work**" has the meaning set forth in Section 21.5.

"**Rent**" shall mean, collectively, Base Rent, Additional Rent, Supplemental Rent and any other amounts payable by Master Tenant to (or on behalf of) Landlord hereunder.

"**Requirements**" means all requirements relating to the Project, including without limitation, planning, zoning, subdivision, environmental, toxic and hazardous waste, health, fire safety, handicapped access and any other applicable federal, state and local statutes, laws, ordinances, rules and regulations, as well as any and all encumbrances, covenants, conditions, and restrictions, foreseen or unforeseen, ordinary as well as extraordinary, which may affect the design, construction, existence or use or manner of use of the Project or any portion thereof, including the LURA.

"**Restoration**" means the restoration, repair, replacement, rebuilding or alteration of the Project following a casualty or a partial Taking (including, without limitation, the cost of all temporary repairs for the protection of property pending the completion of permanent restoration, repair, replacement, rebuilding or alterations), to a complete architectural unit of as nearly as possible the same value, condition and character that existed immediately prior to such casualty or Taking, to the extent permissible under applicable Requirements, including, without limitation, all zoning and use requirements and regulations.

"**Service Contracts**" has the meaning set forth in Section 3.3.

"**Springing LLC**" shall mean the limited liability company participating in the Transfer Distribution as such term is defined in the certain Trust Agreement of JWCM Vivian, DST, as amended and restated from time to time, by and among JWCM Vivian Manager, LLC, JWCM Vivian Depositor, LLC, and The Corporation Trust Company.

"**Sublease**" means any sublease of any or all of the Project permitted pursuant to the terms of this Agreement including, but not limited to, the Existing Obligations.

"**Sublessee**" means any sublessee of the Project under a Sublease.

"**Successor Landlord**" has the meaning set forth in Section 19.10.

"**Supplemental Rent**" shall have the meaning set forth in Section 4.1.3.

"**Supplemental Rent Breakpoint**" shall be the amounts as set forth on **Exhibit A** hereto under the heading Gross Revenue Supplemental Rent Breakpoint.

"**Supplemental Trust Reserve**" has the meaning set forth in Section 6.4.2.

"**Surplus**" has the meaning set forth in Section 18.2.3.

"**Taking**" means the event of vesting of title to the Project or any part thereof or estate therein in the condemning authority as the result of any Condemnation Proceeding.

"**Term**" means the Base Term.

"**Uncontrollable Costs**" means real estate taxes, personal property taxes, franchise taxes, insurance costs, the cost of utility service provided to the Project, snow and ice removal, other unusual weather-related costs (such as costs related to flood, hurricane, tornado, etc.), the costs of complying with governmental requirements, and increased costs due to unionization.

"**Use**" means use as a residential apartment project.

"**Vesting Date**" means the date of any Taking.

2. Lease. Landlord hereby leases to Master Tenant and Master Tenant hereby leases from Landlord subject to the terms set forth in this Agreement, the Project together with all Improvements, all appurtenances pertaining to the Project and all rights of ingress and egress. Landlord shall deliver possession of the Project to Master Tenant on the Commencement Date.

3. Project and Term of Agreement.

3.1 The Term of this Agreement shall be for the Base Term unless sooner terminated pursuant to the terms of this Agreement.

3.2 Master Tenant hereby accepts the Project without any representation or warranty by Landlord, express or implied in fact or by law, and expressly without recourse to Landlord as to title to the Project, the nature, the physical condition, suitability or usability thereof. Master Tenant shall take the Project in an "As Is" condition and subject to the LURA as of the Commencement Date.

3.3 The parties hereto acknowledge that the Project or portions thereof are presently the subject of i) leases, subleases, tenancies, licenses, easements, occupancies and rights of others, including without limitation the LURA, other than those established hereby, which relate to the use of the Project or any portion thereof (collectively, the "**Existing Obligations**") and ii) service contracts, which relate to the Project (collectively, the "**Service Contracts**"). Landlord hereby assigns and transfers to Master Tenant, to the extent transferable, as of the Commencement Date and for the Term of this Agreement, all of Landlord's

rights, duties and obligations under the Existing Obligations and the Service Contracts, including, without limitation, the right to collect rents and other charges under the Existing Obligations and to enforce the terms of the Existing Obligations and the Service Contracts, and all of Landlord's rights and interest in and to any intangible property relating to the Project, including, without limitation, all trade names and trademarks (collectively, the "**Intangible Property**"). Master Tenant does hereby undertake, covenant and agree for and during the Term of this Agreement, to do, perform and discharge any and all rights, duties and obligations in connection with matters affecting the Existing Obligations, the Service Contracts, the Intangible Property, the possession of the Project or the title thereto which Landlord might otherwise have incurred during the Term of this Agreement by reason of the Existing Obligations, the Service Contracts, the Intangible Property or the ownership of an interest the Project by Landlord, subject, nevertheless to the terms of this Agreement. Subject to the express terms, provisions and limitations set forth in this Agreement, Master Tenant shall indemnify, protect, defend and hold Landlord harmless from and against any and all liability, damage, loss, cost or expense (including reasonable attorneys' fees and expenses) actually suffered or incurred by Landlord in direct connection with any or all of the Existing Obligations, the Service Contracts, the Intangible Property or the ownership of an interest in the Project arising or first accruing during the Term of this Agreement; provided, however, that such indemnity shall not be applicable with respect to any liability, damage, loss, cost or expense suffered or incurred by Landlord as a result of, or due to, any negligent or willful act or omission of Landlord or its owners, agents, employees, officers, directors, managers, members and partners. Master Tenant's obligations under this Section shall, as to matters arising, or accruing from facts arising, prior to the termination or expiration of this Agreement, survive the termination of this Agreement. To the extent Landlord is required by the purchase agreement applicable to the acquisition of the Project to remit any rent to the seller, then Master Tenant shall remit such rents to the seller and Master Tenant shall be entitled to any remittances from the seller to Landlord.

3.4 Landlord makes no warranty or representation, express or implied with respect to the Project or the condition thereof, it being agreed that all risks incident thereto are to be borne by Master Tenant. To the extent assignable, Landlord hereby assigns to Master Tenant during the Term of this Agreement all representations and warranties obtained by Landlord upon acquisition of an interest in the Project, and any indemnities, third party warranties, guaranties (environmental or otherwise) or rights to receive payment in favor of Landlord, or transferred to Landlord regarding the Project obtained by Landlord upon acquisition of an interest in the Project, to the extent such representations, warranties, indemnities, third party warranties, guaranties and rights to receive payment survive the closing of the purchase of the Project, and to the extent the same survive the closing, but are not assignable by Landlord, Landlord hereby agrees, at Master Tenant's request and at Master Tenant's sole cost and expense, to promptly raise and diligently pursue (in a manner and pursuant to a strategy directed by Master Tenant) claims against the seller of the Project or any other applicable party regarding such representations, warranties, indemnities, third party warranties, guaranties and rights to receive payment. In the event that Master Tenant fails to pursue or enforce any right or remedy available to Master Tenant under the purchase agreement, Landlord may, following written notice to Master Tenant, pursue any such claims at its own expense.

3.5 This Agreement is intended to be and shall be construed as an absolute net lease, pursuant to which Landlord shall not be expected or required to make any payment of any kind or be under any obligation or liability except for Landlord Costs or as otherwise expressly set forth herein. Landlord and Master Tenant agree that this Agreement is a true lease and does not represent a financing arrangement, joint venture, management arrangement, or any arrangement other than a true lease. Each party shall reflect the transactions represented by this Lease in all applicable books, records and reports (including, without limitation, income tax filings) in a manner consistent with "true lease" treatment. Notwithstanding any law to the contrary, and except as otherwise expressly set forth herein: i) this Agreement shall not be terminable by Master Tenant and Master Tenant waives all rights, if any, conferred upon Master Tenant by any statute, decree, order or otherwise to terminate or surrender this Agreement; ii) Master Tenant shall not be entitled to accept and waives all rights, if any, conferred upon Master Tenant by any statute, decree, order or

otherwise to any abatement, deferral, reduction, set-off, counterclaim (other than mandatory counterclaims), defense or deduction with respect to any Rent, and iii) Master Tenant's obligations under this Agreement including, but not limited to, Master Tenant's obligation to pay the full Rent due hereunder, shall not be affected by reason of: (a) any damage to or destruction of the Project except as set forth in Section 17, (b) any taking of the Project (or any part) by Condemnation or otherwise except as set forth in Section 18, or (c) any other cause whether similar or dissimilar to the foregoing.

3.6 Landlord shall transfer all security deposits to Master Tenant in compliance with applicable law including, if applicable, any requirement that security deposits be maintained in separate accounts. Master Tenant will indemnify Landlord from and against any or all losses, damages, costs and liabilities suffered or injured by Landlord in connection with any such security deposits so transferred, but only to the extent caused by or due to the gross negligence or willful misconduct of Master Tenant or Master Tenant's members, managers, shareholders, partners, agents, employees, officers, directors or authorized representatives.

3.7 Upon the termination of this Agreement, Master Tenant's rights and obligations in and under all current Subleases shall automatically vest in Landlord and Landlord shall be deemed, without further action required, to have assumed all of Master Tenant's obligations under the Subleases from and after the effective date of the termination. Landlord also shall indemnify and hold Master Tenant harmless from and against any and all liabilities, claims, damages, losses, charges and expenses (including, without limitation, attorneys' fees and expenses) arising out of or pursuant to any Sublease, which relate to facts occurring from or after the effective date of the termination of this Agreement.

3.8 This Agreement shall terminate in the event that all or substantially all of the Project is sold or transferred by Landlord in one transaction. Such termination shall occur simultaneously with the sale. The transfer of the Project to the Springing LLC from Landlord, however, shall not cause a termination, but rather in such event this Agreement shall be automatically assumed by the Springing LLC, which shall be thereupon considered the Successor Landlord (as defined below) for all purposes under this Agreement.

4. Rent.

4.1 Master Tenant covenants to pay to Landlord, in lawful money of the United States of America, without notice or demand and without any set-off, deduction or abatement whatsoever (except as otherwise set forth herein), the Rent as follows:

4.1.1 Master Tenant shall pay the annual amount as set forth and identified as "Base Rent" on **Exhibit A** hereto ("**Base Rent**"), payable in arrears on the 10th day of each calendar month during the Term of this Agreement, or, if earlier, no later than such other day as may be required by the holder of a Permitted Mortgage under its applicable Loan Documents. Notwithstanding the foregoing, as an administrative convenience to Landlord, Landlord hereby irrevocably directs Master Tenant to pay such Base Rent directly to the holder of any Permitted Mortgage, or otherwise in accordance with any Permitted Mortgage, on or before the due date thereunder. Landlord will, for purposes of this Section, keep Master Tenant informed of any changes to such obligations;

4.1.2 Master Tenant shall pay the amount that Gross Revenues for a year exceeds the Additional Rent Breakpoint up to a maximum annual ceiling as set forth on **Exhibit A** hereto ("**Additional Rent**"). Additional Rent shall be calculated on a calendar year basis (prorated for any partial year) and shall be payable in monthly installments on the last day of each calendar month during the Term of this Agreement. Prorated monthly payments of Additional Rent shall be made if the Term of this Agreement begins on a date other than the first day of a month or ends on a date other than the last day of a month. Such installment payments shall be based on Master

Tenant's good faith estimates, and Master Tenant and Landlord shall reconcile Additional Rent within ninety (90) days after the end of each calendar year; and

4.1.3 Master Tenant shall pay an annual amount equal to 90% of the amount by which annual Gross Revenues exceed the Supplemental Rent Breakpoint for such year ("**Supplemental Rent**"). Supplemental Rent shall be payable in arrears on or before the 15th day of each month at the office of Landlord (or such other address as Landlord may specify in writing). Supplemental Rent shall only be paid after Base Rent and Additional Rent have been fully paid. Supplemental Rent shall be calculated on a calendar year basis (prorated for any partial year) and shall be paid in arrears by Master Tenant to the Landlord within ninety (90) days after the end of each calendar year.

4.2 Notwithstanding the provisions of Section 20.1.1 below (but only with respect to failure to fully and timely pay Additional Rent and/or Supplemental Rent), it shall not be a Default so long as, after providing for payment of Base Rent, Operating Costs, all Impositions and all other obligations required for operation of the Project and any fees, costs or expenses under the Management Agreement except the Asset Management Fee (collectively, the "**Mandatory Expenses**"), all of Master Tenant's revenues after Mandatory Expenses ("**Cash Flow**") shall be allocated and paid first toward Additional Rent and then toward Supplemental Rent. The shortfall if any shall be accrued (the "**Accrued Rent**") and paid as follows:

4.2.1 The Accrued Rent shall bear interest at the Default Rate until paid;

4.2.2 The Accrued Rent plus interest thereon shall be paid on the next succeeding due date of Additional Rent and/or Supplemental Rent, as applicable, hereunder, to the extent of available Cash Flow;

4.2.3 All of the Accrued Rent plus interest thereon shall be due and payable in full upon sale of the Project.

4.3 Any Additional Rent or Supplemental Rent not paid when due, including any deferred payment pursuant to Section 4.2, shall bear interest from the due date at the Default Rate until paid in full.

4.4 Master Tenant shall be entitled to reduce Additional Rent or Supplemental Rent (but not Base Rent), if required, to comply with any income tax withholding law.

4.5 In the event that the Projected Uncontrollable Costs for any calendar year (or stub period thereof, in the event that a lease year begins after January 1 of a calendar year or ends before December 31 of a calendar year) exceed the actual Uncontrollable Costs for such calendar year or stub period thereof, Master Tenant shall pay to Landlord, as additional Rent hereunder, the amount of such excess, within ninety (90) days following the end of the applicable calendar year (or stub period thereof). If, however, the actual Uncontrollable Costs for any calendar year (or stub period thereof) exceed the Projected Uncontrollable Costs for such calendar year (or stub period thereof) (such amount the "**Excess Uncontrollable Costs**"), then Master Tenant shall be responsible for payment of such Excess Uncontrollable Costs, but shall be entitled to reimbursement of such Excess Uncontrollable Costs by offsetting such amount against Rent payable to the Landlord pursuant to Section 4.1.2 and (if necessary) Section 4.1.3 beginning with the first lease month that begins on or after ninety (90) days following the end of such calendar year (or stub period thereof), and against such amounts payable to Landlord in later months, if and as needed, until the full amount of the Excess Uncontrollable Costs incurred for such calendar year (or stub period thereof) have been reimbursed to the Master Tenant. Notwithstanding the foregoing, so long as a Permitted Mortgage is outstanding, Master Tenant shall not abate any Base Rent or Impositions.

4.6 To the extent that monthly escrows are required by a holder of a Permitted Mortgage, Master Tenant shall deposit monthly with Landlord (or Landlord's designee), simultaneously with its

payment of Base Rent, one-twelfth (1/12) of the Impositions and premiums for insurance required under Section 8 hereof, which amounts may be adjusted from time to time depending on such Impositions and insurance premiums from time to time, in amounts sufficient to pay the same when due.

5. Impositions.

5.1 Master Tenant shall pay (except as provided in Section 5.5), before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the non-payment thereof, all Impositions which at any time during the Term of this Agreement may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or become a lien on a) the Project or any part thereof or b) any use or occupation of the Project. If Landlord receives any bills for such Impositions, Landlord shall promptly deliver such bills to Master Tenant. To the extent that Master Tenant has paid as additional Rent the amount of any Imposition or anticipated Imposition into any reserve or impound account established by the holder of a Permitted Mortgage (an "**Imposition Payment**"), Master Tenant shall be entitled to demand and receive funds directly from such reserve or impound account from the holder of a Permitted Mortgage for the payment of the applicable Imposition(s), in each case, subject to the provisions of a Permitted Mortgage. Upon the funding of any Imposition Payment, Master Tenant's obligation to pay the Imposition corresponding to the Imposition Payment shall be satisfied to the extent of the amount deposited. To the extent any Permitted Mortgage requires an Imposition to be paid into an impound or reserve, Master Tenant shall make such payment.

5.2 If at any time during the Term of this Agreement the methods of taxation prevailing at the Commencement Date shall be altered so as to cause the whole or any part of the Impositions now levied, assessed or imposed on real estate and the improvements thereon to be levied, assessed and imposed wholly or partially as a capital levy or otherwise, on the rents received therefrom, or if as a result of any such alteration of the methods of taxation, any gross receipts or franchise tax (other than income taxes), assessment, levy or other tax or charge shall be measured by or be based, in whole or in part, upon the Project and shall be imposed upon Landlord then all such taxes, assessments, levies or charges so measured or based, shall be deemed to be included within the term "Impositions" for the purposes hereof, and Master Tenant shall pay and discharge the same as herein provided in respect of the payment of Impositions. Each such tax, assessment, levy or charge shall be deemed to be an item of additional Rent hereunder.

5.3 In the case of assessments for local improvements or betterments which may by law be payable in installments, Master Tenant (subject to Section 5.7) shall only be obligated to pay such installments which are currently due or such installments as fall due during the Term of this Agreement, together with interest on deferred payments, provided that Master Tenant shall take such steps as may be prescribed by law to convert the payment of the assessment into installment payments, and Landlord hereby agrees to cooperate with Master Tenant to effect the same. Such payments of installments and any interest thereon shall be made before any fine, penalty, interest or cost may be added thereto for non-payment of any installment.

5.4 Subject to Section 5.5, in any suit or proceeding arising out of the failure of Master Tenant to keep any covenant in the provisions of this Section 5, the certificate or receipt of the department, officer or bureau charged with collection of the Impositions, showing that the Impositions are due and payable or have been paid, shall be prima facie evidence that such Impositions were due and payable as a lien or charge against the Project or that the same have been paid as such by Landlord.

5.5 Master Tenant shall have the right, after prior written notice to Landlord and with Landlord's consent, to contest or review by appropriate legal proceedings or in such manner as Master Tenant in Master Tenant's opinion shall deem advisable (which proceedings or other steps taken by Master Tenant if instituted shall be conducted diligently and solely at Master Tenant's own expense) any and all Impositions levied, assessed or imposed against the Project or taxes in lieu thereof required to be paid by

Master Tenant, provided that such contest shall not operate to prevent or in any way impair or delay a sale of the Project by Landlord or result in a tax sale of the Project or any portion thereof. Landlord, at the request of Master Tenant, will join in any such contest or proceeding and will execute any agreement in form and substance satisfactory to Landlord in settlement of any of those contests or proceedings and any documents in implementation thereof if it is necessary to do so in order to prosecute such proceeding, but Master Tenant in those circumstances must defend and hold Landlord harmless from and against any and all liability, loss, cost and expense (including without limitation, reasonable attorneys' fees and expenses) suffered or incurred by Landlord in connection therewith. All payments required to be made by Landlord pursuant to any Impositions shall be reimbursed to Landlord by Master Tenant within thirty (30) days. In any event, no such contest shall defer or suspend Master Tenant's obligations to pay the Impositions as herein provided, but if by law it is necessary that such payment be suspended to preserve or perfect Master Tenant's contest, then the contest shall not be undertaken without there being first furnished to Landlord security in form reasonably satisfactory to Landlord, and in an amount sufficient to pay such Impositions, together with all interest and penalties thereon upon conclusion of the contest and all costs thereof that may be imposed upon Landlord or the Project, and Master Tenant shall defend and hold Landlord harmless from and against any and all liability, loss, cost and expense suffered or incurred by Landlord in connection therewith. Nothing in this Section 5.5 shall be in derogation of Landlord's right to contest or review any Impositions by legal proceedings or in such other manner as may be available to Landlord upon ten (10) days prior written notice to Master Tenant.

5.6 At Landlord's written request, Master Tenant shall deliver to Landlord copies of all paid bills or other evidence of payment for Impositions prior to the date any fine, interest or cost may be imposed for the nonpayment thereof.

5.7 Any Impositions relating to a fiscal period of the taxing authority occurring at the beginning or end of the Term of this Agreement, only a part of which fiscal period is within the Term of this Agreement (whether or not such Impositions are assessed, levied, imposed or become a lien or shall become payable, during the Term of this Agreement) shall be apportioned and adjusted between Landlord and Master Tenant so that Landlord shall only be responsible in respect to that portion of such Impositions which bear the same ratio to the full Impositions that the part of the fiscal period which falls outside the Term of this Agreement bears to the entire fiscal period. Master Tenant shall be responsible for the Impositions that fall within the Term of this Agreement.

5.8 Landlord hereby designates Master Tenant to act on its behalf, and, during the Term of this Agreement, assigns to Master Tenant Landlord's rights and interest, subject in all cases to the terms and conditions of the Loan Documents then in effect: (a) to complete, terminate or settle any appeal proceedings pending on the Commencement Date with respect to real estate tax assessments of the Project for periods prior to the Commencement Date, (b) to determine the need to initiate an appeal of any real estate tax assessment of the Project with respect to periods prior to or after the Commencement Date, and to complete, terminate or settle any such appeals, and (c) to engage legal counsel in connection with the foregoing, provided, however, that any refunds or settlement monies resulting from such appeals shall be applied as follows: (i) first, to the payment of all attorneys' fees and costs attendant to such appeals, (ii) second, to any subtenants to the extent such subtenants are entitled to a portion of such refunds or monies under their respective subleases, and (iii) third, so long as Master Tenant is not in Default hereunder, to Master Tenant. Master Tenant shall pay all costs, including attorneys' fees and costs, attendant to such appeals (to the extent not covered by the application of any refunds or settlement monies) and Landlord shall have no obligation to pay the same. At Master Tenant's sole cost and expense, Landlord shall cooperate with Master Tenant to the extent Landlord's participation is necessary to initiate, settle, terminate, extend or amend such appeals or to otherwise secure any refunds.

6. Repairs and Maintenance of the Project.

6.1 Except for Landlord Costs, throughout the Term of this Agreement, Master Tenant, at Master Tenant's sole cost and expense, shall take good care of the Project and shall put, keep and maintain the same and every part thereof in a condition substantially the same as the condition of the Project on the Commencement Date (ordinary wear and tear excepted), and shall make all necessary repairs thereto of whatsoever nature or kind, interior and exterior, structural and nonstructural, ordinary and extraordinary and whether now foreseeable or not foreseeable, and including, without limitation, any repairs or other work required (i) by contract or Requirements under all Existing Obligations affecting all or any part of the Project or (ii) subject to any contrary terms of Sections 17 or 18, following a Taking or a casualty. Other than responsibility for Landlord Costs, and subject to any contrary provisions of Sections 17 and 18, Master Tenant (and not Landlord) shall have full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Project.

6.2 To the extent there are reserves established under the Permitted Mortgage that are applicable to any maintenance, repairs or replacements, the monthly deposits which will be paid by Master Tenant together with other Impositions escrow deposits, Master Tenant shall have access to such reserves to fund some or all of any such costs to the same extent as Landlord would have such access under the Loan Documents. If any reserve is established under the Loan Documents for or permitted for the payment of Landlord Costs, or if any portion of any monthly payments or reserves required under the Loan Documents is reasonably attributable to Landlord Costs, Landlord, and not Master Tenant, shall be responsible for payment of all related contributions to such reserve(s), and Master Tenant shall have access to such reserves to pay for the work for which the reserves were set aside.

6.3 In addition to the foregoing, during the existence of a Permitted Mortgage, Master Tenant shall further maintain and repair the Project in accordance with any Lender Requirements.

6.4 Reserve Accounts.

6.4.1 Master Tenant shall be responsible to perform all Capital Improvements that, in Master Tenant's reasonable discretion, are necessary to properly maintain the Project in accordance with its Use. Master Tenant may in its discretion establish a reserve account to fund and pay for Capital Improvements for which it is responsible to fund (the "**Master Tenant Capital Reserve Account**"). If the Master Tenant Capital Reserve Account, if established, does not contain sufficient funds to fully reimburse Master Tenant, Master Tenant shall be obligated to separately fund such costs, but in all instances excluding Landlord Costs, which shall remain the responsibility of and shall be funded by Landlord. Landlord, however, shall not be obligated to pay for any Landlord Costs required (i) due to the gross negligence or willful misconduct of Master Tenant or Master Tenant's members, managers, shareholders, partners, agents, employees, officers, directors or authorized representatives or (ii) that arise directly or indirectly from or in connection with the presence or release of any Hazardous Substance (as defined in Section 21.1) in or into the air, soil, surface, water, groundwater or soil vapor at, on, under, over or within the Project, or any portion thereof from and after the Commencement Date and otherwise during the Term, in either of which event such Landlord Capital Improvements shall be the responsibility of Master Tenant. Any funds held in the Master Tenant Capital Reserve Account shall belong to Master Tenant and shall be transferred to Master Tenant upon termination of this Agreement.

6.4.2 Landlord shall establish a "Supplemental Trust Reserve" for the benefit of Landlord and the Project to pay for Landlord Costs and other Project costs, expenses and fees, including but not limited to repairs and renovations and the Asset Management Fee. Master Tenant may in its sole discretion draw upon these reserves to satisfy Landlord Costs, and for other Project costs and expenses including without limitation the payment of the Asset Management Fee. Landlord shall deposit into the Supplemental Trust Reserve a portion of the loan proceeds in an amount equal to $646,735. All funds held in such Supplemental Trust Reserve shall belong to

Landlord and, subject to any contrary terms of any Loan Documents, and to the extent that any funds remain they shall be transferred to Landlord upon termination of this Agreement.

6.4.3 Master Tenant may draw upon the Supplemental Trust Reserve (and any such other reserves available under the Loan Documents) for Capital Improvements (including Landlord Cost items) with a useful life beyond the term of this Agreement.

6.5 Master Tenant may satisfy its funding obligations for any Capital Improvements to the extent, if any, that insurance proceeds are made available to Master Tenant's or Landlord's insurance carrier and such proceeds are used to perform the Capital Improvements.

6.6 Throughout the Term of this Agreement, Master Tenant shall not intentionally cause any waste, damage, disfigurement or injury to the Project or any part thereof.

6.7 Master Tenant may enter into a Management Agreement for the management and operation of the Project as contemplated hereunder. Landlord shall not have any rights or obligations under the Management Agreement; provided that at all times the Management Agreement shall be subject and subordinate to this Agreement.

7. Compliance with Requirements.

7.1 Throughout the Term of this Agreement, Master Tenant, at Master Tenant's sole cost and expense (except for Landlord Capital Improvements which shall be at Landlord's expense) and in all material respects, shall promptly comply with all present and future Requirements whether or not such Requirements shall necessitate structural changes or improvements or interfere with the use and enjoyment of the Project, or any part thereof. If Landlord receives any notices regarding Requirements, Landlord shall promptly deliver the same to Master Tenant.

7.2 Master Tenant shall have the right, after prior notice to Landlord, solely at Master Tenant's own expense, without cost or expense to Landlord, to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Master Tenant, the validity or application of any Requirements, provided, however, that Master Tenant may delay compliance therewith until the final determination of such proceeding only if by the terms of any such Requirements, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurrence of, or the risk of incurring, any fine, lien, charge or liability of any kind against the Project or Master Tenant's leasehold interest therein and without subjecting Master Tenant or Landlord to the risk of any liability, civil or criminal, for failure so to comply therewith. To the extent reasonably required and at Master Tenant's request and sole cost and expense, Landlord hereby agrees to cooperate with and assist Master Tenant with such contests.

8. Insurance.

8.1 Master Tenant shall, at Master Tenant's sole cost and expense, at all times throughout the Term of this Agreement, maintain the insurance below enumerated on the Project, or cause such insurance to be maintained, for the mutual benefit of Landlord and Master Tenant:

8.1.1 All risks property insurance on the Improvements in an amount not less than 100% of the full replacement costs of the Improvements with a Replacement Cost Endorsement. "Full replacement cost" as used herein means the cost of replacing the Improvements (exclusive of the cost of excavations, foundation and footings below the lowest basement floor) without deduction for physical depreciation thereof;

8.1.2 Boiler and machinery insurance as may reasonably be required to cover physical damage to the Improvements and to the major components of any central heating, air-conditioning or ventilation systems;

8.1.3 Provided that if the Project, or any portion thereof, is located in an area designated as a flood prone area participating in the National Flood Insurance Program, and provided further that the Lender so requires a flood insurance policy with coverage in an amount equal to the full replacement cost or the maximum amount then available, unless neither the Project, nor any portion thereof, is located within a 100 year flood plain as determined by the Federal Insurance Administration; and

8.1.4 During any changes or alterations of the Project or any part thereof and during any Restoration following a Taking or a casualty, all risk builder's risk insurance in an amount not less than 100% of the full replacement cost of the Improvements.

8.2 Master Tenant shall also maintain, at Master Tenant's sole cost and expense, or cause to be maintained by its Sublessee and at all times throughout the Term of this Agreement, the following insurance:

8.2.1 insurance against loss of profits or rental under a business interruption insurance policy or under a rental value insurance policy covering risk of loss due to the occurrence of any of the hazards covered by the policies described in Sections 8.1.1, 8.1.2 and 8.1.3, and (to the extent insurance covering such hazards is generally obtainable) in Section 8.1.4 in an amount not less than the aggregate requirements for the period of twelve (12) months following the occurrence of the insured casualty for: (i) Base Rent, estimated Additional Rent and estimated Supplemental Rent, or, if such amounts exceed the Base Rent, estimated Additional Rent and estimated Supplemental Rent, the rental payments due Master Tenant under the Subleases, (ii) Impositions and (iii) premiums on insurance required to be carried pursuant to this Section;

8.2.2 comprehensive general liability insurance including contractual liability insurance specifically covering the indemnification obligations of Master Tenant under this Agreement (including, without limitation, the obligations referred to in Section 16.1), on an occurrence basis against claims for personal injury, (including, without limitation, elevators and/or escalators) and the sidewalks, driveways and curbs adjacent thereto with limits not less than $1,000,000 combined single limit and $2,000,000 in the annual aggregate in the event of bodily injury or death to any number of persons in any accident; and

8.2.3 any other insurance or coverages applicable to the Project which are required to be maintained by the owner or operator of the Project pursuant to the terms of any Permitted Mortgage; provided that such insurance shall only be required to be maintained by Master Tenant during the term of the Permitted Mortgage.

8.3 All insurance provided for under this Agreement shall be effected under valid enforceable policies issued by insurers of responsibility and licensed to do business in the State where the Project is located. The original policies under Section 8.1 and the certificates for the policies under Section 8.2 shall be delivered to Landlord within five (5) days of Master Tenant's receipt of Landlord's written request therefor. Prior to the expiration date of any policy required pursuant to this Section, the original renewal policy (or the certificate as concerns the insurance required pursuant to Section 8.2) for such insurance shall be delivered by Master Tenant to Landlord, together with satisfactory evidence of payment of the premium on such policy. To the extent obtainable, all such policies shall contain agreements by the insurers that (i) no act or omission by Master Tenant shall impair or affect the rights of the insured to receive and collect the proceeds under the policies; (ii) such policies shall not be cancelled except upon not less than ten (10)

days prior written notice to each named insured and loss payee; and (iii) the coverage afforded thereby shall not be affected by the performance of any work in or about the Project.

8.4 The rental value policy referred to in Section 8.2.1 shall name Landlord as loss payee. To the extent Master Tenant is in Default under this Agreement, Landlord shall retain and apply the proceeds, if any, of such rental value insurance first towards the payment of Base Rent, second to the payment of Impositions, third to payment of the Additional Rent, fourth to the portion of Accrued Rent consisting of amounts of Additional Rent accrued pursuant to Section 4.2, fifth to payment of Supplemental Rent, and sixth to the balance of Accrued Rent consisting of amounts of Supplemental Rent accrued pursuant to Section 4.2. Any balance of such portion of the total proceeds remaining after such Default has been cured shall be paid to Master Tenant, unless Master Tenant is again in Default under this Agreement, in which case said proceeds shall be retained by Landlord.

8.5 Except as provided in Section 8.4, all policies of insurance shall name Master Tenant as the insured and Landlord (and Master Tenant, if applicable) as an additional insured, as their respective interests may appear. Subject to the terms of any loan documents evidencing a Permitted Mortgage, the loss, if any, under said policies referred to in Section 8.1 shall be adjusted with the insurance companies solely by Master Tenant, except that in case of any particular casualty occurring during the last year of the Term of this Agreement and resulting in damage or destruction exceeding $3,000,000, no adjustment shall be made with the insurance companies without the prior written approval of Landlord.

8.6 The loss, if any, under all policies of insurance of the kind referred to in Section 8.1 shall be payable to Master Tenant, unless the casualty results in Master Tenant's termination of this Agreement pursuant to the provisions of Section 17, in which event the loss shall be payable to Landlord. All policies of insurance of the kind aforesaid shall expressly provide that all losses thereunder shall be adjusted and paid as provided in Sections 8.5 and 8.6.

8.7 Nothing contained in the foregoing provisions of this Section shall prevent Master Tenant from taking out insurance of the kind and in the amount provided for under Sections 8.1 or 8.2 under a blanket insurance policy or policies which cover the properties owned or operated by Master Tenant or its affiliates as well as the Project; provided, however, if such insurance is provided pursuant to a blanket policy, Master Tenant shall obtain an "Agreed Value Endorsement" applicable to the Project.

8.8 All policies under Section 8.1 and Section 8.2 shall contain endorsements that the rights of the insured to receive and collect the proceeds shall not be diminished because of any additional insurance carried by Master Tenant on Master Tenant's own account.

8.9 The requirements of this Section shall not be deemed or construed to negate or modify Master Tenant's obligations to defend and indemnify Landlord pursuant to the provisions of this Agreement, or to negate or modify Master Tenant's obligations to restore the Project following a Taking or casualty pursuant to the provisions of this Agreement.

8.10 Notwithstanding anything herein to the contrary, to the extent required in any Permitted Mortgage the holder of the Permitted Mortgage shall be named an additional insured under any liability policies and proceeds under such other policies shall be payable to holder as a mortgagee under a standard mortgagee clause in favor of, and acceptable to, such holder. Master Tenant's obligations hereunder to deliver certificates of insurance or original insurance policies to Landlord shall, during the time any Permitted Mortgage is in existence, include delivery of such items to such lender in addition to (or where necessary in lieu of) delivery of such items to Landlord. To the extent that any insurance proceeds are paid to the lender under a Permitted Mortgage in accordance with the requirements of the Permitted Mortgage, such payment (and, as applicable, the use of any such proceeds by Master Tenant to repair any related damage in accordance with the terms of the Permitted Mortgage), will be deemed to satisfy Master Tenant's obligations under this Agreement, including Section 17, where such proceeds would, without such

Permitted Mortgage, be available to Master Tenant to perform its repair obligations under this Agreement. Master Tenant's and Landlord's rights in and to any insurance proceeds are subject to the rights of the holder of a Permitted Mortgage under the Permitted Mortgage.

8.11 To the extent that Master Tenant has paid as Base Rent any amount for the payment of any insurance premium or anticipated insurance premium into any reserve or impound account established by the holder of a Permitted Mortgage (a "**Premium Payment**"), Master Tenant shall be entitled to demand and receive funds directly from such reserve or impound account from the holder of the Permitted Mortgage for the payment of the applicable insurance premium(s) in each case, in accordance with the terms and conditions of the Permitted Mortgage. Upon the funding of any Premium Payment, Master Tenant's obligation to maintain the insurance corresponding to the Premium Payment shall be satisfied in full for the applicable period. To the extent any Permitted Mortgage requires a Premium Payment to be paid into an impound or reserve, Master Tenant shall make such payment.

9. Surrender at End of Term.

9.1 Upon termination of this Agreement, Master Tenant shall quit and surrender the entire Project (including, without limitation the Improvements) to Landlord, without payment or off-set, in a condition substantially similar to the condition of the Project on the Commencement Date, reasonable wear and tear and Capital Improvements excepted, free and clear of all leases and occupancies other than (a) the Existing Obligations (to the extent the same have not expired or have since been terminated), (b) Subleases and (c) any other leases and occupancies which Landlord has expressly agreed in writing shall survive the expiration or sooner termination of this Agreement, and free and clear of all liens and encumbrances other than those, if any, created by Landlord and any Permitted Mortgage. Upon termination of this Agreement, Master Tenant shall assign the items set forth in (a), (b) and (c) above to Landlord.

9.2 Any personal property of Master Tenant, any subtenant, any space tenant, any occupant, any business invitee or any licensee, which shall remain upon the Project after the expiration or sooner termination of this Agreement and the removal of Master Tenant, such subtenant, such space tenant, such occupant, such business invitee or such licensee from the Project, or the abandonment or vacation of the Project by Master Tenant or such subtenant, space tenant, occupant, business invitee or licensee, may, at the option of Landlord, be deemed to have been abandoned and either may be retained by Landlord as Landlord's property or may be disposed of, without accountability, in such manner as Landlord may see fit, and Master Tenant agrees to defend, indemnify and hold Landlord harmless from and against any and all liabilities, claims, damages, losses, charges and expenses (including, without limitation, attorneys' fees and expenses) arising in any way from such retention or disposition.

9.3 If Master Tenant does not vacate the Project upon expiration or sooner termination of this Agreement, then Landlord shall have the option to treat Master Tenant as a month-to-month tenant, subject to all of the provisions of this Agreement, except that: (i) the term shall be month-to-month and (ii) the rent (excluding Impositions which will also be payable) shall be an amount equal to 125% of the prior monthly installment of Rent.

9.4 Landlord shall not be responsible for any loss or damage occurring to any property owned by Master Tenant, any subtenant, any space tenant, any occupant, any business invitee or any licensee.

9.5 The terms, covenants, provisions and conditions of this Section 9 shall survive the expiration or sooner termination of this Agreement.

10. Landlord's Right to Perform Master Tenant's Covenants.

10.1 If Master Tenant shall at any time fail to (i) pay any Impositions in accordance with the provisions of Section 5, (ii) maintain any of the insurance policies provided for in Section 8, (iii) discharge

any lien or other encumbrance that Section 12 requires Master Tenant to discharge, (iv) comply with the provisions of Section 21, or (v) make any other payment or perform any other act on Master Tenant's part to be made or performed pursuant to this Agreement, then, after twenty (20) days prior written notice to Master Tenant or without notice in case of an emergency (which shall include, but shall not be limited to, danger to person or property or the imposition of a monetary fine or penalty on Landlord or Landlord's exposure to possible liability or where the due date for such payment or performance shall have passed or shall occur within such twenty (20) day period) and without waiving, or releasing Master Tenant from any obligation of Master Tenant contained in this Agreement, Landlord may (but shall be under no obligation to):

10.1.1 pay all Impositions payable by Master Tenant pursuant to the provisions of Section 5;

10.1.2 take out, pay for and maintain any of the insurance policies provided for in Section 8;

10.1.3 discharge such lien or encumbrance for Master Tenant's account;

10.1.4 make any payment and perform any action on Master Tenant's behalf to be made or performed pursuant to Section 21, and enter upon the Project for that purpose and take all such action thereon as may be necessary therefor; and/or

10.1.5 make any other payment or perform any act on Master Tenant's behalf to be made or performed hereunder as provided in this Agreement, and enter upon the Project for that purpose and take all such action thereon as may be necessary therefor.

10.2 All sums so paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the Default Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost and expense, shall constitute additional Rent payable by Master Tenant under this Agreement and shall be paid by Master Tenant to Landlord on demand. Landlord shall not be limited in the proof of any damages which Landlord may claim against Master Tenant arising out of or by reason of Master Tenant's failure to provide and keep in force insurance which Master Tenant is required to keep in force under this Agreement. Landlord shall also be entitled to recover, as damages for such breach, the uninsured amount of any loss to the extent of any deficiency in the insurance required by the provisions of this Agreement, damages, costs and expenses of suit suffered or incurred by reason of damage to, or destruction of, the Project, or any part thereof, occurring during any period when Master Tenant shall have failed or neglected to provide insurance as aforesaid.

10.3 Master Tenant's obligations under this Section 10 shall, as to matters arising prior to the expiration or sooner termination of this Agreement, survive for one (1) year following the expiration or sooner termination of this Agreement.

11. Changes and/or Alterations by Master Tenant.

11.1 Subject to the Loan Documents and Section 11.3 below, Master Tenant shall have the right at any time and from time to time during the Term of this Agreement to make, at Master Tenant's sole cost and expense (provided that any Landlord Costs shall be at Landlord's expense) and in its sole discretion, structural and nonstructural changes and alterations in or to the Improvements without Landlord's consent, subject however, in all cases to the following:

11.1.1 No change or alteration shall be undertaken until Master Tenant shall have procured and paid for, so far as the same may be required, from time to time, all permits and authorizations of all municipal departments and governmental subdivisions having jurisdiction.

Landlord shall join in the application for such permits and authorizations whenever such action is necessary; provided that Landlord shall not incur or be subject to any liability or expense as a result of joining in said application.

11.1.2 No change or alteration shall be made that could materially reduce the value of the Project below its value immediately before such change or alteration, result in a material change in the usefulness of the Project from its intended Use, or that would violate the terms of any Sublease.

11.1.3 Any change or alteration shall be made promptly and in a good and workmanlike manner and in compliance with all applicable permits and authorizations, and all Requirements shall be completed at least three (3) months prior to the end of the Term of this Agreement.

11.1.4 The cost of any such change or alteration shall be promptly paid by Master Tenant (or from the Master Tenant Capital Reserve Account, if any, in the event of a Capital Improvement other than disputed items) so that the Project shall at all times be free and clear of liens and/or encumbrances for labor and materials supplied or claimed to have been supplied to the Project.

11.1.5 All changes and alterations to the Improvements made by or on behalf of Master Tenant shall be and become the property of Landlord upon termination of this Agreement and for purposes of this Agreement shall be deemed to be a part of the Improvements. Master Tenant shall diligently prosecute to completion all such changes and alterations once commenced, and Master Tenant's obligation to complete the same pursuant to the terms of this Agreement shall survive the expiration or sooner termination of this Agreement.

11.1.6 Any such changes and alterations provided for in this Section 11 shall be performed by Master Tenant in full compliance with the Lender Requirements.

11.1.7 Worker's compensation insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against Landlord, Master Tenant or the Project, and general liability insurance for the mutual benefit of Master Tenant and Landlord with a combined single limit of not less than $1,000,000 "per occurrence" against all claims for personal injury, bodily injury, death and property damage and all risk builder's risk as provided in Section 8.1.4 shall be maintained by Master Tenant, at Master Tenant's sole cost and expense, at all times when any work is in process in connection with any change or alteration. All such insurance shall be provided by a company or companies of recognized responsibility, and all policies or certificates therefor issued by the respective insurers, bearing notations evidencing the payment of premiums or accompanied by other evidence of such payment, shall be delivered to Landlord prior to the commencement of any work in connection therewith.

11.2 Master Tenant covenants that in performing any work or repairs to, or restoration, replacement or rebuilding of, any portion of the Improvements required or permitted to be performed by Master Tenant pursuant to this Agreement, Master Tenant shall, to the extent applicable, comply with the provisions set forth in this Section 11.

11.3 Notwithstanding anything in this Agreement or in the Loan Documents, to the extent that Master Tenant makes any changes or alterations to the Project that constitute more than minor, non-structural modifications, Master Tenant must, prior to making any such changes or alterations, (a) provide thirty (30) days' advance written notice to Landlord setting forth the details of such alterations so that Landlord, to the extent it is a DST, may effectuate a transfer of the Project if necessary to a newly-formed Delaware limited liability company and in accordance with the trust agreement of Landlord, or (b) execute an agreement with Landlord to the effect that at the end of the Term of this Agreement, Master Tenant shall restore the Project to a condition substantially the same as the condition of the Project on the Commencement Date. Notwithstanding anything else in this Agreement, at any time that Landlord is a

DST, Landlord shall not have the right, power or ability to make more than minor non-structural modifications to the Project (in accordance with Revenue Ruling 2004-86).

12. Discharge of Liens.

12.1 Master Tenant covenants and agrees that Master Tenant shall not create or permit to be created or to remain, and shall discharge, any lien, encumbrance or charge which might be or become a lien, encumbrance or charge upon the Project or any part thereof or the income therefrom, and Master Tenant shall not suffer any other imposition whereby the estate, right and interest of Master Tenant in the Project or any part thereof might be impaired, provided that any Impositions may, after the same become a lien on the Project, be paid or contested in accordance with Section 5, and any mechanic's, laborer's or materialman's lien may be discharged in accordance with Section 12.2.

12.2 If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Project or any part thereof, Master Tenant, within thirty (30) days after notice of the filing thereof, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If Master Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy available to Landlord hereunder, at law or in equity and including those set forth in Section 20, Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. Any amount so paid by Landlord and all costs and expenses incurred by Landlord in connection therewith, including, without limitation, amounts paid in good faith settlement of such lien and attorneys' fees and expenses, together with interest thereon at the Default Rate from the respective dates of Landlord's making the payment or incurring the cost and expense to the date Landlord is in actual receipt of such amount from Master Tenant, shall constitute additional Rent payable by Master Tenant under this Agreement and shall be paid by Master Tenant to Landlord on demand. In the event that any mechanic's, laborer's or materialmen's lien cured by Master Tenant relates to any Landlord Capital Improvement expense that is the responsibility of Landlord, Master Tenant shall be reimbursed therefor in the manner described in Section 6.

NOTICE IS HEREBY GIVEN THAT LANDLORD WILL NOT BE LIABLE FOR ANY LABOR, SERVICES OR MATERIALS FURNISHED OR TO BE FURNISHED TO MASTER TENANT, OR TO ANYONE HOLDING AN INTEREST IN THE PROJECT (OR ANY PART THEREOF) THROUGH OR UNDER MASTER TENANT, AND THAT NO MECHANIC'S OR OTHER LIENS OR ANY SUCH LABOR, SERVICE OR MATERIALS SHALL ATTACH TO OR AFFECT THE INTEREST OF LANDLORD IN THE PROJECT.

13. Use of Project.

13.1 Master Tenant shall use the Project for the Use and for no other purpose, and hereby covenants to use and operate the Project for the Use at all times during the Term of this Agreement. Master Tenant hereby covenants and agrees to act in compliance with all laws, ordinances, rules, regulations and guidelines relating to operation of the Project, including the LURA.

13.2 Master Tenant shall not use or allow the Project or any part thereof to be used or occupied for any unlawful purpose or in material violation of any certificate of occupancy or certificate of compliance or of any other material certificate, permit, law, statute, ordinance, rule or regulation or any of the other Requirements, or any lease, mortgage, easement, restriction or other material agreement covering or affecting the use of the Project or any part thereof, and shall not suffer any act to be done or any condition to exist on the Project or any part thereof, which may be dangerous, unless safeguarded as required by law, or which may constitute a nuisance, public or private, or which may make void or voidable, or cause the revocation of, any certificate of occupancy or certificate of compliance or any other material certificate or permit or any insurance then in force with respect thereto.

13.3 Master Tenant shall not suffer or permit the Project, or any portion thereof, to be used by any other party, including the public, as such, without restriction or in such manner as might reasonably tend to impair Landlord's title to the Project or any portion thereof, or in such manner as might reasonably make a possible claim or claims of adverse usage or adverse possession by such party or the public, as such, or of implied dedication of the Project or any portion thereof.

13.4 Master Tenant shall not use or allow the Project or any part thereof to be used or occupied in a manner that would result in the violation of the Lender Requirements. Master Tenant shall further perform during the Term of this Agreement, the Lender Requirements that relate to this Agreement or the Project. Such covenants and obligations shall be performed by Master Tenant in such a manner as to not constitute a default under the Permitted Mortgage. Notwithstanding the above, Master Tenant shall remain entitled to reimbursement by Landlord for any Landlord Capital Improvements incurred by Master Tenant in performing its obligations under this Agreement.

13.5 Landlord agrees that in the event Landlord refinances a Permitted Mortgage, the Lender Requirements and other obligations imposed by the new lender shall not be greater than those existing under the Permitted Mortgage existing as of the Commencement Date and shall not affect operations of the Project or the leasing of the Project by Master Tenant.

14. **Entry to Project by Landlord**. Master Tenant shall permit Landlord, and any of Landlord's authorized representatives to enter the Project at reasonable times upon reasonable notice, and at any time in case of an emergency for the purpose of (a) inspecting the same, and showing the same to any prospective purchaser of Landlord's interest or, within six (6) months prior to the expiration of the Term of this Agreement, any prospective tenants, or (b) making any necessary repairs thereto and performing any work therein that may be necessary by reason of Master Tenant's failure to commence (and diligently pursue the completion of) any such repairs within twenty (20) days after prior written notice from Landlord, or (c) to perform any work related to any Landlord Capital Improvements if not performed by Master Tenant. Nothing herein shall imply any duty upon the part of Landlord to do any such work, (other than any work related to any Landlord Capital Improvements, which shall (subject to the performance thereof by Master Tenant as set forth in Section 6.4) be Landlord's responsibility), and performance thereof by Landlord shall not constitute a waiver of Master Tenant's default in failure to perform the same.

15. **Waiver of Subrogation Right**. Landlord and Master Tenant hereby each release the other party, and such other party's owners, members, managers, shareholders, beneficial interest holders, partners, agents, employees, officers, directors and authorized representatives, from any claims such releasing party may have for damage to the Project, personal property, improvements and alterations of such party in or about the Project to the extent the same is covered by a policy of insurance insuring such party; provided, however, that this waiver shall be ineffective unless consented to by the insurance company or companies issuing the insurance policies required to be maintained by Master Tenant under this Agreement and shall be ineffective as to any such damage not covered by insurance required to be carried hereunder or, if greater in amount, insurance actually carried. Master Tenant shall cause each fire or other casualty insurance policy maintained by Master Tenant with respect to the Project or any portion thereof to provide that the insurance company waives all right to recovery of paid insured claims by way of subrogation against the other party in connection with any matter covered by such policy, to the extent such waiver is available.

16. **Indemnification and Waiver**.

16.1 Master Tenant shall indemnify, defend and hold Landlord harmless from and against any and all losses, damages, expenses, costs and liabilities actually suffered or incurred by Landlord (collectively, "**Damages**") in connection with anything and everything whatsoever directly arising from or out of (i) any injury, illness or death to any person or damage to any property from any cause occurring in or upon or in any other way relating to the Project, (ii) the occupancy of the Project or any part thereof by,

through or under Master Tenant, and/or (iii) any failure on Master Tenant's part to comply with any of the covenants, terms, conditions, representations or warranties contained in this Agreement; provided, however, that in no event shall the foregoing indemnity apply to any damages arising out of, or because of, the negligence or willful misconduct of Landlord or its agents, employees, officers and directors. This indemnity extends to liability for expenses (including, without limitation, reasonable attorneys' fees and out-of-pocket expenses at both trial and appellate levels) actually incurred by Landlord in defending any action or proceeding (a) instituted against Landlord by a third party, or in which Landlord intervenes, or against Master Tenant in which Landlord is made a party or appears and (b) to which the foregoing indemnity would apply.

16.2 Landlord shall not be liable to Master Tenant and Master Tenant hereby waives all claims against Landlord for any injury, illness or death of any person or damage to any property in or about the Project unless caused by the negligence or willful misconduct of Landlord or its agents, contractors, employees, officers and directors.

16.3 In the event Master Tenant is obligated to pay or pays any obligations of Landlord under a Permitted Mortgage out of Master Tenant's own funds that is not otherwise an obligation of Master Tenant under this Agreement, Landlord shall be severally liable to Master Tenant for the reimbursement of such Landlord's share of such amount paid. Landlord shall reimburse Master Tenant for any such amount within thirty (30) days of a demand for reimbursement from Master Tenant. Master Tenant may deduct an amount equal to the reimbursement from any Rent due under this Agreement, including any Accrued Rent. Notwithstanding the foregoing, so long as a Permitted Mortgage is outstanding, Master Tenant shall not abate any Base Rent or Impositions and any obligation of Landlord to indemnify any party as set forth in this Agreement shall be fully subordinate to all obligations of Landlord under the Loan Documents and will not constitute a claim against Landlord to the extent cash flow in excess of the amount required to pay all debt service and fees under the Loan Documents is insufficient to pay such obligations.

16.4 The terms, covenants, provisions and conditions of this Section 16 shall survive the termination of this Agreement.

17. Damage or Destruction.

17.1 In the event of any material casualty to the Project, Master Tenant shall promptly give written notice to Landlord thereof. Subject to the terms of Sections 17.2 and 17.3, Master Tenant shall be responsible for the Restoration of the Project and Master Tenant shall be entitled to the use of all available proceeds from any insurance for purposes of completing the Restoration. In such event this Agreement shall continue in full force and effect, without any reduction of Rent, unless otherwise set forth below.

17.2 If the proceeds from any casualty insurance are insufficient to complete the Restoration, Master Tenant shall fund any excess required to complete the Restoration, except for funds attributed to Landlord Capital Improvements and to costs (i) attributable to the negligence or willful misconduct of Landlord or its agents, (ii) incurred when Landlord or its agents have taken control or possession of the Project; or (iii) incurred after the expiration of the Master Lease ("**Landlord Casualty Costs**"). Subject to the terms of the Loan Documents then in effect, any casualty proceeds in excess of the cost of Restoration shall be payable to, and retained by, Master Tenant except for any excess funds attributable to Landlord Casualty Costs which shall be retained by Landlord. Landlord shall provide Master Tenant with the funds necessary to fund any costs to complete the Restoration for Landlord Capital Improvements. Absent receipt of Landlord's agreement to fund such excess amounts within fifteen (15) days, Master Tenant may elect to terminate this Agreement upon notice to Landlord within twenty (20) days after the expiration of the foregoing fifteen (15) day period.

17.3 If the casualty occurs within the last twelve (12) months of the Term, and the casualty affects more than 50% of the Project, Master Tenant may elect to terminate this Agreement, rather than

undertake and complete the Restoration, without regard to the availability of proceeds from insurance or from Landlord. Notwithstanding the foregoing, Master Tenant may not elect to terminate this Agreement pursuant to the preceding sentence if such termination would constitute a default under any Permitted Mortgage and, in the event such termination would constitute a default under a Permitted Mortgage, or if Restoration is otherwise required by the Permitted Mortgage, Master Tenant shall complete the Restoration in accordance with the terms of this Section.

17.4 In the event that this Agreement is terminated pursuant to this Section 17, then the Rent shall be prorated to the date of termination. In the event that some or all of the Project cannot be restored, and Landlord and Master Tenant elect not to terminate this Agreement, then the Additional Rent and Supplemental Rent shall be reduced (and Master Tenant shall be credited for prior overpayments) by an amount reasonably determined by Landlord and Master Tenant.

17.5 Except as provided herein, no destruction of or damage to the Project or any part thereof by fire or any other casualty shall permit Master Tenant to surrender this Agreement or shall relieve Master Tenant from Master Tenant's liability to pay the full Rent under this Agreement or from any of Master Tenant's other obligations under this Agreement. Master Tenant waives any rights now or hereafter conferred upon Master Tenant by statute or otherwise to quit or surrender this Agreement or the Project or any part thereof, or to any suspension, diminution, abatement or reduction of rent on account of any such destruction or damage except as expressly set forth herein.

18. Condemnation.

18.1 Subject to any Loan Documents, in case of a Taking of all of the Project, this Agreement shall terminate and expire as of the Vesting Date and the Rent under this Agreement shall be apportioned and paid to the Vesting Date.

18.2 Subject to any Loan Documents, in case of a Taking of less than all of the Project, Landlord shall receive the entire award for the Taking and, except as specifically set forth in this Section, no claim or demand of any kind shall be made by Master Tenant against Landlord or any other party who could, by virtue of a claim against it, make a claim against Landlord by reason of such Taking.

18.2.1 In the case of a Taking of a portion, but less than all, of the Project, Master Tenant shall determine, in Master Tenant's reasonable discretion, whether the remaining Project (after Restoration referred to in Section 18.2.3) (i) can be used for the Use and (ii) will allow Master Tenant to complete the Restoration for an amount not to exceed the proceeds from the Taking. If it is determined by Master Tenant that the remaining Project cannot be used for the Use, then and in such event this Agreement shall terminate as of the Vesting Date and the Rent shall be apportioned and paid to the date of termination and no other claim or demand of any kind shall be made by Landlord against Master Tenant by reason of such termination. If it is determined that Master Tenant cannot complete the Restoration for an amount that is less than or equal to the proceeds from the Taking then and in such event Master Tenant can elect to terminate this Agreement as of the Vesting Date, subject to the Loan Documents, and the Rent shall be apportioned and paid to the date of termination and no other claim or demand of any kind shall be made by Landlord against Master Tenant by reason of such termination; provided, however, that if there is at least twelve (12) months remaining in the Term, Landlord may agree to pay the excess Restoration expenses in which case this Agreement shall not terminate and Master Tenant shall undertake the Restoration of the Project in accordance with the terms of Section 18.2.3. Anything in this Agreement to the contrary notwithstanding, this Agreement will not terminate and Base Rent and the obligation to pay Impositions and other escrows required under the Loan Documents will not abate while any Permitted Mortgage is outstanding.

18.2.2 If, in the case of a Taking of less than all of the Project, this Agreement is not terminated in accordance with the provisions of Section 18.2.1, this Agreement shall continue in full force and effect as to the remaining portion of the Project without any reduction in the Rent, except as expressly provided in Section 18.3. No such partial Taking shall operate as or be deemed an eviction of Master Tenant from that portion of the Project not affected by such partial Taking or in any way terminate, diminish, suspend, abate or impair the obligation of Master Tenant to observe and perform fully all the covenants of this Agreement on the part of Master Tenant to be performed with respect to the remainder of the Project unaffected by the partial Taking, except as to any reduction (if any) in the Rent as expressly provided in Section 18.3.

18.2.3 If, in the case of a Taking of less than all of the Project, this Agreement is not terminated in accordance with the provisions of Section 18.2.1, Master Tenant shall, prior to the expiration of the Term of this Agreement, commence and proceed with reasonable diligence to complete the Restoration provided, however, that Landlord shall, in this case, make the award in the Condemnation Proceedings and, in the case of Section 18.2.1, such award plus any excess funds due from Landlord, available to Master Tenant to be utilized for Restoration of the Project. Landlord shall be entitled to receive and retain the remainder of the award not needed to complete the Restoration (the "**Surplus**").

18.3 In case of a Taking of less than all of the Project and if (i) this Agreement shall not terminate as provided in Section 18.2.1, and (ii) Restoration has been undertaken by Master Tenant pursuant to the provisions of Section 18.2.3, then commencing as of the Vesting Date, the amount of the Additional Rent and Supplemental Rent payable by Master Tenant under this Agreement shall be reduced (and Master Tenant shall be credited for prior overpayments) by an amount reasonably determined by Landlord and Master Tenant. The new Additional Rent and Supplemental Rent shall be established to provide Master Tenant and Landlord with the same economic return that each were entitled prior to the Taking.

18.4 Each of Landlord and Master Tenant shall promptly deliver to the other any notices it receives with respect to a Condemnation Proceeding or threatened Condemnation Proceeding.

18.5 Notwithstanding anything herein to the contrary, Master Tenant's and Landlord's rights and obligations in and to any condemnation proceeding or related proceeds derived therefrom shall, in all cases, be subject to the rights of the holder of any Permitted Mortgage under the Loan Documents.

19. Assignment, Subletting and Mortgaging.

19.1 Master Tenant may not sell, assign, transfer, mortgage, pledge or otherwise dispose of this Agreement or any interest of Master Tenant in this Agreement, except with Landlord's and Lender's prior written consent in their sole and absolute discretion (Master Tenant understands and acknowledges that Landlord will not approve any such transfer in the event that Landlord is a DST).

19.2 If an assignment is consented to by Landlord, no such assignment shall be valid unless (i) such permitted assignment complies with the provisions of this Agreement, and (ii) there shall be delivered to Landlord in proper form for recording on the date of assignment (a) a duplicate original of the instrument of assignment, and (b) other than an assignment accomplished in conjunction with a Permitted Mortgage as additional collateral, an instrument of assumption by the transferee of all of Master Tenant's obligations under this Agreement, including, without limitation, any unperformed obligations which have accrued as of the date of the assumption. Any such permitted assignee shall thereafter have all of the power, authority, rights, duties, obligations and liabilities of Master Tenant hereunder. The new Master Tenant shall be liable for the payment of all Rent due hereunder and the performance of all terms, covenants and conditions to be performed by Master Tenant under this Agreement, and Master Tenant shall reaffirm the same to Landlord in writing, in recordable form acceptable to Landlord, prior to such transfer. Any single consent

given by Landlord hereunder shall not be deemed a waiver of Landlord's right to future requests for consent under this Section. If Landlord is requested to approve a proposed assignment or sublease, Master Tenant shall be responsible for paying the fees and expenses of Landlord's counsel for reviewing and/or preparing the appropriate materials and documents.

19.3 Without limiting in any way the rights and remedies of Landlord hereunder, at law or in equity, but in addition thereto, any purported assignment, transfer, mortgage, pledge, disposition or encumbrance in contravention of the provisions of this Section shall be null and void and of no force and effect, but this shall not impair any remedy of Landlord because of Master Tenant having engaged in any act prohibited by, or in contravention of, the terms hereof.

19.4 Notwithstanding the above, Master Tenant may sublet the whole or any portion of the Project without the necessity of obtaining Landlord's prior consent; provided, however, that no such subletting shall be valid unless such permitted subletting complies with the provisions herein set forth and with the Loan Documents. Without in any way limiting the rights and remedies of Landlord hereunder, but in addition thereto, any purported subletting in contravention hereof shall be null and void and of no force and effect and not thereby impair any right or remedy available to Landlord as the result of Master Tenant's having engaged in an act prohibited by, or in contravention of, the terms hereof, nor shall such permitted subletting relieve Master Tenant of any of Master Tenant's obligations hereunder and Master Tenant assumes and shall be responsible for and shall be liable to Landlord for all acts on the part of any present or future Sublessee, which, if done by Master Tenant would constitute a Default hereunder. Notwithstanding anything contained herein to the contrary, in the event that Landlord is a DST, Master Tenant shall not have the right to enter into Subleases that extend beyond the Term of this Agreement. Notwithstanding anything contained herein to the contrary, in the event that Landlord is not a DST, Master Tenant shall have the right to enter into Subleases that extend beyond the Term of this Agreement without receiving the prior consent of Landlord so long as such Subleases comply with the following provisions:

19.4.1 Each Sublease shall be deemed by law subject and subordinate to this Agreement;

19.4.2 Each Sublease shall be with a bona-fide arm's length Sublessee;

19.4.3 No Sublease shall contain any rental concessions or other concessions which are not then customary and reasonable for similar properties and leases in the market area of the Project as reasonably determined by Master Tenant;

19.4.4 The rental rate for each Sublease shall be at least at the market rate then prevailing for similar properties and leases in the market areas of the Project as reasonably determined by Master Tenant;

19.4.5 No Sublease shall have the rent paid thereunder calculated based on the net income of the subtenant; provided, however, that the rent may be calculated based on gross income of the subtenant; and

19.4.6 Each Sublessee under the Sublease demonstrates sufficient credit worthiness to support the Sublease payments as reasonably determined by Master Tenant or the Sublessee provides for (i) a sufficient security deposit or (ii) guarantee, all as reasonably determined by Master Tenant.

For proposed Subleases with terms that exceed the Term of this Agreement and do not comply with the above provisions, Master Tenant must obtain Landlord's prior approval.

19.5 Any such Sublease shall be accomplished in accordance with the Lender Requirements and, if a desired Sublease does not meet the terms of such requirements, Master Tenant shall not finalize such

Sublease without obtaining, whether directly or indirectly through Landlord, the necessary consent to the form of such Sublease from the holder of the Permitted Mortgage.

19.6 Any application by Master Tenant for Landlord's written consent under any paragraph of this Section 19 shall be made in writing to Landlord.

19.7 Master Tenant hereby assigns to Landlord all rents due or to become due from any present or future Sublessee, provided that so long as Master Tenant is not in Default hereunder, Master Tenant shall have the right to collect and receive such rents for Master Tenant's own uses and purposes. The effective date of Landlord's right to collect rents shall be the date of the happening of a Default under Section 20. Upon a Default, Landlord shall apply any net amount collected by Landlord from Sublessees to the Rent due under this Agreement. No collection of rent by Landlord from an assignee of this Agreement or from a Sublessee shall constitute a waiver of any of the provisions of this Section or an acceptance of the assignee or Sublessee as a tenant or a release of Master Tenant from performance by Master Tenant of Master Tenant's obligations under this Agreement. Master Tenant without the prior consent of Landlord in writing, shall not directly or indirectly collect or accept any payment of subrent (exclusive of security deposits) under any sublease more than 1 month in advance of the date when the same shall become due.

19.8 Any attempted sublease or assignment in violation of the requirements of this Section 19 shall be null and void and, at the option of Landlord, shall constitute a Default by Master Tenant under this Agreement. To the extent consent is required, the giving of consent by Landlord in one instance shall not preclude the need for Master Tenant to obtain Landlord's consent to further sublettings or assignments under this Section 19. If Landlord's approval is required and obtained, Master Tenant or the prospective sublessee or assignee shall be responsible for preparing the appropriate documentation and shall reimburse Landlord for Landlord's reasonable costs and expenses in reviewing and approving the Sublease or assignment and related documentation.

19.9 If Master Tenant is in Default hereunder pursuant to Section 20.1.1 and Master Tenant elects to assume this Agreement and then proposes to assign the same pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. Section 10.1 et seq. (the "**Bankruptcy Code**") to any person or entity who shall have made a bona fide offer to accept an assignment of this Agreement on terms acceptable to Master Tenant then notice of such proposed assignment, setting forth (i) the name and address of such person, (ii) all the terms and conditions of such offer, and (iii) the adequate assurances to be provided to Landlord to ensure such person's future performance under this Agreement, including, without limitation, the assurances referred to in Section 365(b)(d) of the Bankruptcy Code, shall be given to Landlord by Master Tenant no later than twenty (20) days after receipt thereof by Master Tenant, but in any event no later than ten (10) days prior to the date that Master Tenant shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment and assumption, and Landlord shall thereupon have the prior right and option to be exercised by notice to Master Tenant given at any time prior to the effective date of such proposed assignment, to accept an assignment of this Agreement upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such person less any brokerage commissions which may be payable out of the consideration to be paid by such person for the assignment of this Agreement. Any and all monies or other consideration constituting Landlord's property under the preceding sentence not paid or delivered to Landlord shall be held in trust for the benefit of Landlord and shall be promptly paid to or turned over to Landlord. Any person or entity to which this Agreement is assigned pursuant to the provisions of the Bankruptcy Code shall be deemed without further act or deed to have assumed all of the obligations arising under this Agreement on and after the date of such assignment. Any such assignee shall upon demand execute and deliver to Landlord an instrument in form, scope and substance acceptable to Landlord, confirming such assumption.

19.10 Landlord may assign its rights under this Agreement to the Springing LLC without consent or approval of Master Tenant ("**Successor Landlord**"). The Successor Landlord shall take such

interest subject to this Agreement, and the assigning Landlord and Successor Landlord shall execute an agreement whereby (a) the assigning Landlord assigns to the Successor Landlord all of its right, title and interest in and to this Agreement; and (b) the Successor Landlord assumes and agrees to perform faithfully and to be bound by all of the terms, covenants, conditions, provisions and agreements of this Agreement with respect to the interest to be transferred. Upon execution of such assignment and assumption agreement, the assigning Landlord shall be relieved of all liability accruing after the effective date of the assignment with respect to the interest so assigned and, without further action by any party, the Successor Landlord shall become a party to this Agreement.

19.11 Every assignee and Sublessee hereunder, if not a natural person, shall be formed and existing under the laws of a state, district or commonwealth of the United States of America.

19.12 Master Tenant shall not mortgage or otherwise encumber Master Tenant's interest in this Agreement without the consent of Landlord and the Lender.

20. Events of Default and Landlord's Remedies.

20.1 Each of the following shall be deemed a "Default" by Master Tenant, and after the occurrence of any of the following, Master Tenant shall be "in Default" under this Agreement:

20.1.1 A failure on the part of Master Tenant to pay any installment of Base Rent or Additional Rent on the date such Base Rent or Additional Rent becomes due (subject to Master Tenant's right to defer payment of Additional Rent and Supplemental Rent pursuant to Section 4.2), which failure is not cured within ten (10) days after Landlord delivers written notice of such failure to Master Tenant;

20.1.2 A failure (i) on the part of Master Tenant, whether by action or inaction, to observe or perform any of the other terms, covenants or conditions of this Agreement, or (ii) of any material representation or warranty made by Master Tenant in this Agreement to be accurate in all material respects, which failure to observe or perform or to be accurate (or, in the case of an inaccurate representation or warranty, the adverse effect therefrom) is not cured within thirty (30) days after Landlord delivers written notice of such failure to Master Tenant, provided, however, that if such failure (or, if applicable, adverse effect) is subject to cure but cannot be cured within such 30 day period, Master Tenant shall not be in Default hereunder if it promptly commences, and diligently pursues, the curing of such failure or adverse effect; provided further, however, that if such cure period shall exceed ninety (90) days, and such Default is not the result of an affirmative act by Master Tenant, then Master Tenant shall thereafter be provided additional time to cure such Default. In the event that Master Tenant satisfies the standards for such additional time then Master Tenant shall provide Landlord with written notice advising Landlord of Master Tenant's reasonable estimate of the necessary cure period and Master Tenant shall thereafter provide Landlord, by way of monthly reports, the status of such cure. If Master Tenant fails to cure the failure within the originally estimated curative period, without reasonable cause, such failure shall constitute a "Default" hereunder. Notwithstanding the foregoing, Landlord, by written notice to Master Tenant, may limit the aggregate cure period to not more than one hundred and twenty (120) days;

20.1.3 The leasehold hereunder demised is taken on execution or other process of law in any action against Master Tenant;

20.1.4 If Master Tenant files a voluntary petition in bankruptcy or is adjudicated bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or any future applicable federal, state or other statute or law relative to bankruptcy, insolvency, or other relief for debtors, or seeks or consents to or acquiesces in the appointment of any trustee, receiver,

conservator or liquidator of Master Tenant or of all or any substantial part of Master Tenant's properties or Master Tenant's interest in this Agreement; (the term "acquiesce" as used in this Section 20.1.4 includes, without limitation, the failure to file a petition or motion to vacate or discharge any order, judgment or decree within five (5) days after entry of such order, judgment or decree); or a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Master Tenant seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future federal bankruptcy act, or any other present or future applicable federal, state or other statute or law relating to bankruptcy, insolvency or other relief for debtors, and Master Tenant acquiesces in the entry of such order, judgment or decree or such order, judgment or decree remains unvacated and unstayed for an aggregate of one hundred and twenty (120) days (whether or not consecutive) from the date of entry thereof, or any trustee, receiver, conservator or liquidator of Master Tenant or of all or any substantial part of Master Tenant's property or Master Tenant's interest in this Agreement shall be appointed without the consent or acquiescence of Master Tenant and such appointment remains unvacated and unstayed for an aggregate of one hundred and twenty (120) days (whether or not consecutive);

20.1.5 If this Agreement or any estate of Master Tenant hereunder shall be levied upon under any attachment or execution and such attachment or execution is not vacated within one hundred and twenty (120) days;

20.1.6 Master Tenant or Master Tenant's general partner or manager shall cause or institute any proceeding, or a final and non-appealable court order shall be issued, for the dissolution or termination of Master Tenant or Master Tenant's general partner or manager;

20.1.7 If Master Tenant makes a general assignment for the benefit of creditors or takes any other similar action for the protection or benefit of credits; or

20.1.8 If Master Tenant takes or fails to take any action which is in violation of the Lender Requirements and (i) such violation is not cured within any applicable cure periods under the Permitted Mortgage, and (ii) the obligation secured by any Permitted Mortgage is accelerated by reason thereof.

20.2 In the event of any Default by Master Tenant as hereinabove provided in this Section, Landlord shall have the option to pursue any one or more of the following remedies without any notice (except as otherwise specifically set forth herein) or demand for possession whatsoever: (i) with ten (10) days prior written notice, terminate this Agreement, in which event Master Tenant shall immediately surrender the Project to Landlord; (ii) with ten (10) days prior written notice, terminate Master Tenant's right to occupy and possess the Project and reenter and take possession of the Project (without terminating this Agreement); (iii) enter the Project and do whatever Master Tenant is obligated to do under the terms of this Agreement and Master Tenant agrees to reimburse Landlord on demand for any expenses which Landlord may incur in effecting compliance with Master Tenant's obligations under this Agreement, and Master Tenant further agrees that Landlord shall not be liable for any damages resulting to Master Tenant from such action; (iv) exercise its rights under Section 9.3 of this Agreement; and (v) exercise all other remedies available to Landlord at law or in equity, including, without limitation, injunctive relief of all varieties.

20.2.1 In the event that Landlord elects to terminate this Agreement, then, notwithstanding such termination, Master Tenant shall be liable for and shall pay to Landlord the sum of all Rent accrued to the date of such termination. In the event that Landlord elects to take possession of the Project and terminate Master Tenant's right to occupy the Project without terminating this Agreement, Landlord shall have the right to enforce all its rights and remedies

under this Agreement, including the right to recover all Rent as it becomes due under this Agreement. In addition, Master Tenant shall be liable for and shall pay to Landlord on demand, an amount equal to (i) the reasonable and documented out-of-pocket costs of recovering possession of the Project, (ii) the reasonable and documented out-of-pocket costs of removing and storing Master Tenant's and any other occupant's (except for all permitted Sublessees) property located therein, (iii) the reasonable and documented out-of-pocket costs of repairs to the Project accruing only during the period in which Master Tenant occupied the Project, and (iv) the reasonable and documented out-of-pocket costs of collecting any of the foregoing amounts from Master Tenant. Notwithstanding the foregoing, Landlord shall use reasonable efforts to mitigate all damages and costs resulting from any actions taken under this Agreement.

20.2.2 In the event Landlord elects to re-enter or take possession of the Project after Master Tenant's Default, Master Tenant hereby waives notice of such re-entry or repossession and of Landlord's intent to re-enter or retake possession. Landlord may, without prejudice to any other remedy which Landlord may have, expel or remove Master Tenant and any other person who may be occupying said Project or any part thereof (other than any Sublessee under a Sublease). All of Landlord's remedies shall be cumulative and not exclusive. Forbearance by Landlord to enforce one or more of the remedies herein provided upon an event of Default shall not be deemed or construed to constitute a waiver of such Default.

20.2.3 This Section shall be enforceable to the maximum extent not prohibited by applicable law, and the unenforceability of any portion thereof shall not thereby render unenforceable any other portion. No act by Landlord or Landlord's agents during the Term of this Agreement shall be deemed an acceptance of an attempted surrender of the Project, and no agreement to accept a surrender of the Project shall be valid unless made in writing and signed by Landlord. No re-entry or taking of possession of the Project by Landlord shall be construed as an election on Landlord's part to terminate this Agreement unless a written notice of such termination is given to Master Tenant.

20.2.4 Damages under this Section 20.2 shall be the following:

(i) the amount of any rent deficiency, to the extent that the payment of rent by the Sublessees is deficient to pay the Base Rent and Additional Rent, all reasonable and documented legal expenses and other related reasonable and documented out-of-pocket costs incurred by Landlord following Master Tenant's Default,

(ii) all reasonable and documented out-of-pocket costs incurred by Landlord in restoring the Project to good order and condition; and

(iii) any other damages available to Landlord under applicable law.

20.3 If Landlord shall enter into and repossess the Project by reason of the Default of Master Tenant in the performance of any of the terms, covenants or conditions herein contained, then in that event Master Tenant hereby covenants and agrees that Master Tenant shall not claim the right to redeem or re-enter the Project or restore the operation of this Agreement, and Master Tenant hereby waives any right to such redemption and re-entry under any present or future law, and does hereby further, for any party claiming through or under Master Tenant, expressly waive its right, if any, to make payment of any sum or sums of rent, or otherwise, of which Master Tenant shall have been in Default under any of the covenants of this Agreement, and to claim any subrogation to the rights of Master Tenant under this Agreement, or any of the covenants thereof, by reason of such payment.

20.4 No receipt of monies by Landlord from Master Tenant after the termination or cancellation of this Agreement in any lawful manner shall reinstate, continue or extend the Term of this Agreement, or

affect any notice given to Master Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Base Rent or Additional Rent then due, or operate as a waiver of the right of Landlord to recover possession of the Project by proper suit, action, proceeding or remedy: it being agreed that, after the service of notice to terminate or cancel this Agreement, or the commencement of suit, action or summary proceedings, or any other remedy, or after a final order or judgment for the possession of the Project, Landlord may demand, receive and collect any monies due, without in any manner affecting such notice, proceeding, suit, action, order or judgment; and any and all such monies collected shall be deemed to be payment on account of the use and occupation or Master Tenant's liability hereunder.

20.5 The failure of Landlord to insist in any one or more instances upon a strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall not be construed as a waiver of or relinquishment for the future of the performance of such a covenant, or the right to exercise such option, but the same shall continue and remain in full force and effect. The receipt by Landlord of Base Rent or Additional Rent, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision hereof shall be deemed to have been made unless expressed in writing and signed by Landlord.

20.6 All the rights and remedies herein given to Landlord for the recovery of the Project because of the Default by Master Tenant in the payment of any sums which may be payable pursuant to the terms of this Agreement, or the right to re-enter and take possession of the Project upon the happening of any event of Default, or the right to maintain any action for rent or damages and all other rights and remedies allowed at law or in equity, are hereby reserved and conferred upon Landlord as distinct, separate and cumulative rights and remedies, and no one of them, whether exercised by Landlord or not, shall be deemed to be in exclusion of any of the others.

21. Hazardous Substances.

21.1 Master Tenant hereby represents, warrants, covenants and agrees to and with Landlord that all operations or activities upon, or any use or occupancy of the Project, or any portion thereof, by Master Tenant, and any tenant, subtenant or occupant of the Project, or any portion thereof, shall throughout the Term of this Agreement be in all material respects in compliance with all existing and future federal, state and local laws and regulations governing, or in any way relating to the generation, handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal of any hazardous or toxic substances, materials or wastes ("**Hazardous Substances**"), including, but not limited to, those substances, materials, or wastes now or hereafter listed in the United States Department of Transportation Hazardous Materials Table at Section 49 CFR 172.101 or by the Environmental Protection Agency in Section 40 CFR Part 332 and amendments thereto, or such substances, materials or wastes otherwise now or hereafter regulated under any applicable federal, state or local law; provided, however, household chemicals or cleaning chemicals that are customary or commonly used in the area of the Project shall not be treated as Hazardous Substances.

21.2 For the purposes of this Section, "PCB" shall include all substances included under the definition of PCB in 40 CFR Section 761.3. Master Tenant hereby represents, warrants, covenants and agrees to and with Landlord that, to the best of Master Tenant's knowledge, (i) there is not present upon the Project, or any portion thereof, or contained in any transformers or other equipment thereon, any PCB's, and (ii) Master Tenant shall throughout the Term of this Agreement not permit to be present upon the Project, or any portion thereof, or contained in any transformers or other equipment thereon, any PCB's.

21.3 Master Tenant hereby represents, warrants, covenants and agrees to and with Landlord that, to the best of Master Tenant's knowledge and except as disclosed to Landlord prior to the date hereof, (i) there is not present upon the Project, or any portion thereof, any asbestos or any structures, fixtures, equipment or other objects or materials containing asbestos, and (ii) Master Tenant shall throughout the

Term of this Agreement not permit to be present upon the Project, or any portion thereof, any asbestos or any structures, fixtures, equipment or other objects or materials containing asbestos.

21.4 Master Tenant agrees to indemnify, protect, defend (with counsel approved by Landlord) and hold Landlord, and the directors, officers, shareholders, partners, members, employees and agents of Landlord, harmless from and against any and all claims (including, without limitation, third party claims for personal injury or real or personal property damage), actions, administrative proceedings (including, without limitation, informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including, without limitation, sums paid in settlement of claims), losses, including, without limitation, reasonable attorneys' fees and expenses (including, without limitation, any such fees and expenses incurred in enforcing this Agreement or collecting any sums due hereunder), consultant fees and expert fees, together with all other costs and expenses of any kind or nature (collectively, the "**Hazardous Substances Costs**") that arise directly or indirectly from or in connection with the presence or release of any Hazardous Substances in or into the air, soil, surface water, groundwater or soil vapor at, on, under, over or within the Project, or any portion thereof from and after the Commencement Date and otherwise during the Term as a result of Master Tenant's gross negligence. In the event Landlord shall suffer or incur any such Hazardous Substances Costs, Master Tenant shall pay to Landlord the total of all such Hazardous Substances Costs suffered or incurred by Landlord upon demand therefor by Landlord. Without limiting the generality of the foregoing, the indemnification provided by this Section shall specifically cover all Hazardous Substances Costs, including, without limitation, capital, operating and maintenance costs, incurred in connection with any investigation or monitoring of site conditions, any clean-up, containment, remedial, removal or restoration work required or performed by any federal, state or local governmental agency or political subdivision or performed by any nongovernmental entity or person because of the presence or release of any Hazardous Substances in or into the air, soil, groundwater, surface water or soil vapor at, on, under, over or within the Project (or any portion thereof), as well as any claims of third parties for loss or damage due to such Hazardous Substances. In addition, the indemnification provided by this Section shall include, without limitation, all liability, loss and damage sustained by Landlord due to any Hazardous Substances that migrate, flow, percolate, diffuse or in any way move onto, into or under the air, soil, groundwater, surface water or soil vapor at, on, under, over or within the Project (or any portion thereof) after the date of this Agreement, provided, however, that the provisions of this Section shall not apply to Hazardous Substances Costs associated with the release, discharge, disposal, dumping, spilling or leaking onto the Project of Hazardous Substances occurring (i) as a result of the negligence or willful misconduct of any or all of Landlord and its agents, contractors, employees, officers or directors, (ii) at any time when Landlord or its agent is in control, or has taken possession of, the Project or (iii) after the expiration of this Agreement (collectively, "**Landlord Environmental Costs**"). Landlord agrees to indemnify, protect, defend (with counsel approved by Master Tenant) and hold Master Tenant, and the directors, officers, shareholders, partners, members, employees and agents of Master Tenant, harmless from and against any and all Landlord Environmental Costs.

21.5 In the event any investigation or monitoring of site conditions or any clean-up, containment, restoration, removal or other remedial work (collectively the "**Remedial Work**") is required under any applicable federal, state or local law or regulation, by any judicial order, or by any governmental entity, Master Tenant shall perform or cause to be performed the Remedial Work in compliance with such law, regulation, order or agreement. All Remedial Work shall be performed by one or more contractors all of whom shall have all necessary licenses and expertise to perform such work. The contractor or contractors (selected by Master Tenant) shall perform the Remedial Work under the supervision of an environmental consulting engineer, selected by Master Tenant and approved in advance in writing by Landlord. All costs and expenses of such Remedial Work shall be paid by Master Tenant to the extent arising during the Term or from facts occurring during the Term or, if otherwise, by Landlord, including, without limitation, the charges of such contractor(s) and/or the environmental consulting engineer (excluding specifically, however, Landlord's attorneys' fees and expenses incurred in connection with monitoring or review of such

Remedial Work). In the event Master Tenant shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion, such Remedial Work, Landlord may, but shall not be required to, cause such Remedial Work to be performed, and all costs and expenses thereof, or incurred in connection therewith, shall be Hazardous Substances Costs within the meaning this Section. All such Hazardous Substances Costs shall be due and payable upon demand therefor by Landlord.

21.6 Landlord reserves the right, to be exercised from time to time during the Term of this Agreement, to inspect or cause Landlord's contractors and/or environmental consulting engineers to inspect the Project in order to confirm that no Hazardous Substances are located on, in or under any portion of the Project, provided, however, that Landlord or its contractor or engineer, as applicable, shall have provided evidence of insurance satisfactory to Master Tenant with respect to any actions taken on the Project. The fees and expenses incurred by Landlord with respect to said inspections shall be paid by Landlord. If any Hazardous Substances are discovered by said inspection to be located on, in or under the Project, Master Tenant shall, at Master Tenant's sole cost and expense if they arise during the Term or from facts occurring during the Term or otherwise at Landlord's sole cost and expense, (and in addition to Master Tenant's other obligations and liabilities under this Section): (i) forthwith have all such Hazardous Substances removed from the Project if and to the extent required by applicable laws, ordinances, rules and regulations, (ii) dispose of all Hazardous Substances so required to be removed in accordance with all applicable laws, ordinances, rules and regulations, and (iii) restore the Project, provided, however, that the provisions of this Section shall not apply to release, discharge, disposal, dumping, spilling or leaking onto the Project of Hazardous Substances occurring (i) as a result of the negligence or willful misconduct of any or all of Landlord and its agents, contractors, employees, officers or directors, (ii) at any time when Landlord or its agent is in control, or has taken possession of, the Project or (iii) after the expiration of this Agreement, all of which shall be the responsibility of Landlord. Nothing contained in this Section 21.6 shall be deemed or construed to amend, modify or replace any other obligation of Master Tenant set forth in this Section 21.

21.7 Each of the covenants, agreements, obligations, representations and warranties of Master Tenant set forth in this Section shall survive the expiration or sooner termination of this Agreement.

22. Subordination.

22.1 Master Tenant and Landlord agree that this Agreement shall be subject and subordinate at all times to the terms and conditions and provisions of the Loan Documents and the lien of any Permitted Mortgage. In the event that Lender forecloses Landlord's interest in the Project or accepts a deed in lieu of foreclosure from Landlord as a result of Landlord's default, then, at Lender's election, this Agreement shall be terminated and Master Tenant shall not be deemed to, or have any right to, attorn to Lender.

22.2 Master Tenant acknowledges and agrees that its leasehold rights created by this Agreement are intended to be subject and subordinate to, and constitute an integral component of, the financing that is secured by a Permitted Mortgage. Master Tenant agrees, in consideration of Landlord's commitment to enter into this Agreement, and the grant of the related rights to Master Tenant hereunder, to execute certain of the Loan Documents comprising, and to subordinate its interest in certain of its assets to the interest of Lender under a Permitted Mortgage. Landlord and Master Tenant agree that Master Tenant shall subordinate its interests in such assets, as described in the applicable Loan Documents, to any of the foreclosure rights held by Lender under a Permitted Mortgage arising in, from and under such Loan Documents, whether or not such foreclosure arises from any default caused by Master Tenant's actions or inactions, it being the express understanding of Landlord and Master Tenant, after due negotiation, to have Master Tenant's interest in such assets subordinated to the rights of Lender under the Permitted Mortgage for all purposes. Master Tenant acknowledges and agrees that Lender (and its assignee or nominee) may transfer the Landlord's interest in this Agreement without notice to or consent of Master Tenant following a foreclosure under the Security Instrument (as defined in the Loan Documents) (or a deed in lieu of foreclosure or any other comparable exercise of remedies). Master Tenant acknowledges and agrees that

Lender's exercise of remedies under the Loan Documents shall not be affected or impaired by the terms of this Agreement, or by whether a default under this Agreement has occurred. In furtherance of the foregoing, Master Tenant acknowledges and agrees, and further consents to, the assignment by Landlord of Landlord's interest in and to this Agreement pursuant to the Loan Documents, including the rights of Landlord to enforce the provisions of this Section.

23. General Provisions.

23.1 This Agreement shall not be affected by any laws, ordinances or regulations, whether federal, state, county, city, municipal or otherwise, which may be enacted or become effective from and after the date of this Agreement affecting or regulating or attempting to affect or regulate the Rent herein reserved or continuing in occupancy Master Tenant or any Sublessees or assignees of Master Tenant's interest in the Project beyond the dates of termination of their respective leases, or otherwise.

23.2 Title headings are inserted for convenience only, and do not define or limit, and shall not be used to construe, any Section or section to which they relate.

23.3 The acceptance by Landlord of a check or checks drawn by other than the Master Tenant shall in no way affect Master Tenant's liability hereunder nor shall it be deemed an approval of any assignment of this Agreement or any sublease of all or a part of the Project not consented to by Landlord or an approval of Master Tenant not complying with any covenant of this Agreement.

23.4 This Agreement (including the attached Exhibits) contains the entire agreement between the parties regarding the subject matter hereof, and any agreement hereafter made shall not operate to change, modify or discharge this Agreement in whole or in part unless such agreement is in writing and signed by the party sought to be charged therewith.

23.5 Landlord and Master Tenant shall each, without charge, at any time and from time to time, promptly after request by the other party, certify by written instrument, duly executed, acknowledged and delivered, to the other party or any person, firm or corporation specified by the other party:

23.5.1 that this Agreement is unmodified and in full force and effect or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications;

23.5.2 whether or not there are then existing any set-offs or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof and any modifications thereof upon the part of Master Tenant to be performed or complied with, and, if so, specifying the same;

23.5.3 the dates, if any, to which the Rent and other charges hereunder have been paid, and the Rent.

23.6 The term "**Landlord**" as used in this Agreement means only the party(ies) that have executed this Agreement as Landlord as of the date hereof and their respective successors and assigns including but not limited to any Successor Landlord. So long as this Agreement survives any such transfer and Master Tenant's rights and obligations hereunder are not materially adversely affected (or this Agreement terminated pursuant to Section 3.8), Landlord may, subject to any other restrictions under applicable law or other agreements governing the interests of the owners, including any Permitted Mortgage, sell, exchange, assign, mortgage or otherwise encumber, convey or transfer its interest in the Project or some or all of its interest in this Agreement during the term of this Agreement; provided that such assignee shall execute and deliver an instrument providing for an assignment and assumption of this Agreement. Any such successor or assign of Landlord shall be deemed a permitted Successor Landlord.

23.7 Any notice, demand, request or other communication which may be permitted, required or desired to be given in connection herewith shall be given in writing and directed to Landlord and Master Tenant as follows:

Landlord:

JWCM Vivian, DST
c/o Jesselson Warsavsky Capital Management, LLC
445 Park Avenue
Suite 1600
New York, New York 10022
Attn: Jason Warsavsky
Email: jason@jwcmllc.com
Telephone: 646-386-8117

Master Tenant:

JWCM Vivian Master Tenant, LLC
c/o Jesselson Warsavsky Capital Management, LLC
445 Park Avenue
Suite 1600
New York, New York 10022
Attn: Jason Warsavsky
Email: jason@jwcmllc.com
Telephone: 646-386-8117

Notices shall be deemed properly delivered and received (i) the same day when personally delivered; (ii) one business day after timely deposit for delivery the next business day with Federal Express or another nationally recognized commercial overnight courier, charges prepaid; (iii) the same day when sent by confirmed facsimile; or (iv) three (3) business days after deposit in the United States mail, postage prepaid. Any party may change its address for delivery of notices by properly notifying the others pursuant to this Section. The parties hereto hereby authorize their respective attorneys to give notices on their behalf.

23.8 Master Tenant, upon paying the Rent due hereunder and performing the other terms, provisions and covenants of this Agreement on Master Tenant's part to be performed, shall, and may, at all times during the Term of this Agreement peaceably and quietly have, hold and enjoy the Project, subject to the terms hereof.

23.9 In the event of a merger, consolidation, acquisition, sale or other disposition involving Master Tenant or all or substantially all the assets of Master Tenant to one or more other entities, in addition to the other requirements set forth in this Agreement, the surviving entity or transferee of assets, as the case may be, shall: (i) be formed and existing under the laws of a state, district or commonwealth of the United States of America, and (ii) deliver to Landlord an acknowledged instrument in recordable form assuming all obligations, covenants and responsibilities of Master Tenant under this Agreement and under any instrument executed by Master Tenant relating to the Project or this Agreement.

23.10 There shall be no merger of this Agreement or Master Tenant's leasehold estate with the ground leasehold estate in the Project by reason of the fact that the same person acquires or holds, directly or indirectly, this Agreement of the leasehold estate or any interest therein as well as any of the ground leasehold estate in the Project. The initial Landlord and Master Tenant specifically waive and disclaim any merger of the ground leasehold and leasehold estates in the Project, it being their intention to hold separate and independent estates in the Project pursuant to this Agreement.

23.11 There shall be no merger of this Agreement or Master Tenant's leasehold estate with the fee estate in the Project by reason of the fact that the same person acquires or holds, directly or indirectly, this Agreement of the leasehold estate or any interest therein as well as any of the fee estate in the Project. The initial Landlord and Master Tenant specifically waive and disclaim any merger of the fee and leasehold estates in the Project, it being their intention to hold separate and independent estates in the Project pursuant to this Agreement.

23.12 This Agreement may be executed in two or more counterparts, and all such counterparts shall be deemed to constitute but one and the same instrument.

23.13 Any consent granted by a party under this Agreement shall not constitute a waiver of the requirement for consent in subsequent cases. Where Landlord's consent is required, Master Tenant shall be required to obtain further consent in each subsequent instance as if no consent had been given previously and in any event, Landlord's consent shall not be unreasonably withheld, conditioned or delayed.

23.14 Except as otherwise provided herein in the event of any action or proceeding at law or in equity between Landlord and Master Tenant including, without limitation, an action or proceeding between Landlord and the trustee or debtor in a proceeding under the Bankruptcy Code to enforce any provision of this Agreement or to protect or establish any right or remedy of either Landlord or Master Tenant hereunder, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred in such action or proceeding and in any appeal in connection therewith by such prevailing party, whether or not such action, proceeding or appeal is prosecuted to judgment or other final determination, together with all costs of enforcement and/or collection or any judgment or other relief. The term "prevailing party" shall include, without limitation, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought, whether by compromise, settlement or judgment. If such prevailing party shall recover judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees and expenses shall be included in and as a part of such judgment, together with all costs of enforcement and/or collection of any judgment or other relief.

23.15 Each provision of this Agreement shall be separate and independent and the breach of any provision by Landlord shall not discharge or relieve Master Tenant from any of Master Tenant's obligations, except to the extent Master Tenant has duly performed any such obligations of Master Tenant. Each provision shall be valid and shall be enforceable to the extent not prohibited by law. If any provision or its application to any persons or circumstance shall be invalid or unenforceable, the remaining provisions, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected. Subject to Section 23.6, all provisions contained in this Agreement shall be binding upon, inure to the benefit of, and shall be enforceable by the successors and assigns of Landlord to the same extent as if each such successor and assign were named as a party to this Agreement. Subject to Section 19, all provisions contained in this Agreement shall be binding upon the successors and assigns of Master Tenant and shall inure to the benefit of and be enforceable by the successors and assigns of Master Tenant, in each case to the same extent as if each such successor and assign were named as a party.

23.16 The relationship of the parties to this Agreement is landlord and tenant. Landlord is not a partner or joint venturer with Master Tenant in any respect or for any purpose in the conduct of Master Tenant's business or otherwise.

23.17 It is expressly agreed that this Agreement shall not be recorded in any public office, however, at Master Tenant's or Landlord's option, simultaneously with the execution of this Agreement, the parties shall execute and acknowledge a memorandum of this Agreement (together with any affidavit or other instrument required in connection therewith) which shall be recorded. Within ten (10) days

following the expiration or sooner termination of this Agreement, Master Tenant shall execute and deliver to Landlord an instrument, in recordable form, confirming the termination of this Agreement which instrument, at Landlord's option, may be placed of record in the real estate title records in the county in which the Project are located and the cost of recording such instrument shall be shared equally by Landlord and Master Tenant. Master Tenant's obligations under the immediately preceding sentence hereof shall survive the expiration or sooner termination of this Agreement.

23.18 Each person executing this Agreement on behalf of Landlord does hereby represent and warrant that: (a) Landlord is duly organized and in good standing in the State of its organization and, if different, qualified to do business and in good standing in the State in which the Project is located, (b) Landlord has full lawful right and authority to enter into this Agreement and to perform all its obligations hereunder, and (c) each person (and all of the persons if more than one signs) signing this Agreement on behalf of Landlord is duly and validly authorized to do so. Master Tenant may, upon any failure by Landlord, pay directly to the applicable governmental authorities, any recurring organizational expenses and complete any recurring organizational filings, for and on behalf of Landlord which are necessary to maintain the organizational existence of Landlord.

23.19 Each person executing this Agreement on behalf of Master Tenant does hereby represent and warrant that: (a) Master Tenant is duly organized and in good standing in the State of its organization and, if different, qualified to do business and in good standing in the State in which the Project is located, (b) Master Tenant has full lawful right and authority to enter into this Agreement and to perform all of its obligations hereunder, and (c) each person signing this Agreement on behalf of Master Tenant is duly and validly authorized to do so.

23.20 Except with respect to a default or breach under Section 20, Master Tenant shall look solely to Landlord's interest in the Project (including any proceeds from the sale thereof and all insurance proceeds and condemnation awards relating thereto) for the recovery of any judgment against Landlord on account of Landlord's breach of any of Landlord's covenants or obligations under this Agreement. Except with respect to a default or breach under Section 20, Landlord, and the directors, officers, trustees, partners, members, owners, employees and agents of Landlord, shall never have any personal liability for any breach of any covenant or obligation of Landlord under this Agreement and no recourse shall be had or be enforceable against the assets of Landlord other than the interest of Landlord in the Project (including any proceeds from any sale or transfer thereof and all insurance proceeds and condemnation awards relating thereto) for payment of any sums due to Master Tenant or enforcement of any other relief based upon any claim made by Master Tenant for breach of any of Landlord's covenants or obligations under this Agreement. Master Tenant's right to recover for a breach or default under Section 20 shall not be limited or restricted in any way and, with respect to any such breach or default under Section 20, Master Tenant shall have the right to pursue any and all remedies available to Master Tenant against Landlord or its members and managers.

23.21 At least as frequently as at the end of each calendar quarter during the Term of this Agreement, Master Tenant shall deliver to Landlord, (i) an operating statement with respect to the Project for such quarter, (ii) a rent roll as of the last day of such quarter setting forth each Sublease of the Project, the rent payable under each such Sublease and the expiration date of each such Sublease, and (iii) a report describing any structural alterations that have been made to the Project during such quarter. Master Tenant shall also provide to Landlord such other reports with respect to the Project as may be required under any Permitted Mortgage. Landlord agrees that any information provided to it pursuant to this Section shall remain confidential and shall not, except as otherwise required by applicable law or judicial order, be disclosed to anyone except (i) Landlord's employees, attorneys and financial consultants (ii) any potential purchasers of the Project, (iii) any potential lender associated with any possible refinancing of the loan secured by a Permitted Mortgage, and (iv) to the extent required under a Permitted Mortgage, to the holder of the Permitted Mortgage.

23.22 To the extent that the Landlord serves as the "borrower" in connection with any financing encumbering the Project, the Master Tenant hereby waives its rights to claim that this Agreement creates a *de facto* guaranty relationship between the Landlord and the Master Tenant, or entitles the Master Tenant to guarantor protections in connection with such financing.

24. Indemnification by Master Tenant.

24.1 Master Tenant shall indemnify, defend and hold Landlord and its shareholders, officers, directors and employees harmless from any and all claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs and expenses, including reasonable attorneys' fees and court costs, sustained or incurred by or asserted against Landlord by reason of the acts of Master Tenant which arise out of the gross negligence, willful misconduct or fraud of Master Tenant, its agents or employees or Master Tenant's breach of this Agreement. If any person or entity makes a claim or institutes a suit against Landlord on a matter for which Landlord claims the benefit of the foregoing indemnification, then (a) Landlord shall give Master Tenant prompt notice thereof in writing; (b) Master Tenant may defend such a claim or action by counsel of its own choosing provided such counsel is reasonably satisfactory to Landlord; and (c) neither Landlord nor Master Tenant shall settle any claim without the other's written consent.

24.2 Master Tenant acknowledges that Landlord may enter into Loan Documents, which may include provisions for personal liability for Landlord on certain "nonrecourse carve-outs." Master Tenant hereby agrees that to the extent that Landlord is required to make payments on such indemnification as a direct result of i) Master Tenant's fraud, willful misconduct or misappropriation, ii) Master Tenant's commission of a criminal act, iii) the misapplication by Master Tenant of any funds derived from the Project received by Master Tenant, including any failure to apply such proceeds in accordance with Lender Requirements, or iv) damage or destruction to the Project caused by acts of Master Tenant that are grossly negligent, Master Tenant will indemnify Landlord for any such liability that was caused by such actions.

25. Jurisdiction and Venue. This Agreement shall be construed and enforced in accordance with the laws of the state in which the Project is located without regard to any applicable conflicts of laws principles that would require the application of the law of any other jurisdiction. All actions arising out of or relating to this Agreement shall be heard and determined exclusively by a court of competent jurisdiction located in the state in which the Project is located, and each party hereto expressly and irrevocably consents and submits to personal jurisdiction therein.

26. Waiver of Jury Trial. Landlord and Master Tenant hereby each waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Agreement, the relationship of Landlord and Master Tenant, Master Tenant's use or occupancy of said Project, or any claim or injury or damage (to the extent such waiver is enforceable by law in such circumstance), and any emergency statutory or any other statutory remedy.

27. Easements; Estoppels; Attornment.

27.1 Master Tenant agrees that Landlord shall have the right, at one or more times during the Term to grant public utility easements, over, under or across the Project; provided, however, that such grants do not unreasonably interfere with Master Tenant's development or use of the Project, such easements are located in the landscaped area of the Project and are at no additional cost or expense to Master Tenant. The parties shall mutually cooperate in fixing the exact location in the future of such items.

27.1.1 Estoppel Certificates. Master Tenant agrees that within twenty (20) days after request by Landlord, to execute, acknowledge and deliver to and in favor of any proposed Lender or purchaser of the Project, an estoppel certificate stating: (i) whether this Agreement is in full force and effect; (ii) whether this Agreement has been modified or amended and, if so, identifying and

describing any such modification or amendment; (iii) the commencement and expiration dates of this Agreement; (iv) whether Master Tenant is in possession of the Project and open and operating the Project; (v) the date to which rent and any other charges have been paid; (vi) whether Master Tenant or any guarantor of the Lease is presently the subject of any proceeding pursuant to the United States Bankruptcy Code of 1978, as amended; (vii) whether such party knows of any default on the part of the other party or has any claim against the other party and, if so, specifying the nature of such default or claim; (viii) whether Master Tenant is entitled to any credits, reductions, offsets, defenses, free rent, rent concessions or abatements of rent under the Lease or otherwise against the payment of rent or other charges under this Agreement; and (ix) any other reasonable information that may be required in the estoppel.

27.1.2 Attornment by Master Tenant. Master Tenant shall, in the event any proceedings are brought for the foreclosure of, or in the event of the exercise of the power of sale under, any Permitted Mortgage prior in lien to this Agreement made by Landlord, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as Landlord under this Agreement, provided such purchaser assumes in writing Landlord's obligations under this Agreement, subject to the terms of any non-disturbance agreement between Master Tenant and the holders of the Permitted Mortgage.

28. Coordination with Loan Documents. In the event of conflict, this Agreement shall be subordinate to the terms and conditions set forth in the Loan Documents relating to Master Tenant. Notwithstanding anything to the contrary in this Agreement, Master Tenant shall comply with the representations, warranties, covenants and other requirements of the Loan Documents relating to Master Tenant, as set forth in the Loan Documents.

29. Acknowledgement of Current Loan. Master Tenant hereby acknowledges that the Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing given by Landlord, as grantor, for the benefit of KeyBank National Association ("**Lender**"), as beneficiary, dated on or about the date hereof, constitutes a Permitted Mortgage. Master Tenant further acknowledges that Fannie Mae is the holder of a Permitted Mortgage and that Fannie Mae is a third-party beneficiary of those provisions above relating to compliance by Master Tenant with the Permitted Mortgage and Loan Documents. Master Tenant hereby covenants and agrees that, for so long as any obligations under the Lender Permitted Mortgage or Loan Documents remain outstanding, Master Tenant will not enter into any amendment or modification of this Agreement without the prior written consent of Lender.

30. Time is of the Essence. Time is of the essence for each and every provision of this Agreement.

31. Mortgage Provisions.

Notwithstanding anything to the contrary contained in this Agreement, for so long as the Permitted Mortgage remains outstanding, the following provisions shall apply and control:

31.1 Master Tenant shall pay Lender, on Landlord's behalf, any and all payments of any kind required pursuant to the Loan Documents irrespective of "cash flow" from, or revenue with respect to, the Property, and such payments shall not be subject to set off against any rent payments under this Agreement; provided that Master Lessee is not understood or intended to be, and shall not be treated as, a de facto co-borrower, guarantor, agent or similar party for or under the Permitted Mortgage.

31.2 Intentionally deleted.

31.3 Master Tenant shall not take, or fail to take, any action which would result in a violation of the terms of the Loan Documents, including, without limitation, Master Tenant shall operate, maintain,

use or permit the Property to be used in such a manner as to comply with the "Operating Covenants" (as defined in the Loan Documents).

31.4 Intentionally deleted.

31.5 Intentionally deleted.

31.6 Intentionally deleted.

31.7 Master Tenant has executed and delivered an assignment of leases and rents and other documents required by Landlord to secure Master Tenant's obligations under this Agreement, which documents are hereby deemed to be lease documents together with this Agreement.

31.8 Intentionally deleted.

31.9 Intentionally deleted.

31.10 Intentionally deleted.

31.11 Master Tenant shall not remove, sell, or transfer any part of the Property, including personal property, other than obsolete or worn-out personalty that are contemporaneously replaced by unencumbered items of equal or better function and quality or as otherwise expressly permitted by the Loan Documents.

31.12 Master Tenant represents and warrants that all representations and warranties with respect to the Project and Master Tenant set forth in the Loan Documents are true and correct.

31.13 Intentionally deleted.

31.14 Master Tenant acknowledges and agrees that Master Tenant's engagement of a property manager and the amendment and termination of any property management agreement shall comply with the criteria set forth in the Loan Agreement (as defined in the Loan Documents).

31.15 Intentionally deleted.

31.16 Intentionally deleted.

31.17 To the extent that Landlord is obligated to make replacement/repair escrow deposits in this Lease, Master Lessee shall assume such responsibilities and pay any related amounts as part of its rent payment.

31.18 Master Tenant acknowledges and agrees that, notwithstanding anything to the contrary contained in the Master Lease Documents, in the event that an "Event of Default" under the Loan Documents is also a default under the Master Lease Documents, or vice versa, the cure period, if any, for such default shall be the shorter of cure period, if any, set forth in the Master Lease Documents and the cure period, if any, set forth in the Loan Documents.

31.19 Intentionally deleted.

31.20 In no event shall Master Tenant be entitled to special, consequential, or punitive damages and Landlord's liability under this Lease shall be limited to its interest in the Property.

31.21 Intentionally deleted.

31.22 Master Tenant acknowledges and agrees that (a) Landlord's election of one remedy under this Lease shall not impair the exercise of alternate or additional remedies or constitute a waiver thereof, and (b) Landlord shall have no duty to mitigate damages unless required by law.

31.23 Master Tenant hereby irrevocably constitutes and appoints Landlord as Master Tenant's attorney-in-fact to demand, receive and enforce its rights with respect to the provisions set forth in the Master Lease Documents and to do any and all acts in Master Tenant's name or in the name of Landlord with the same force and effect as Master Tenant could do if this power of attorney had not been granted. The foregoing appointment shall be deemed to be coupled with an interest and irrevocable. Master Tenant (a) acknowledges that such power of attorney has been or will be assigned to Lender, (b) consents to such assignment, and (c) agrees to recognize Lender as Landlord's attorney-in-fact.

31.24 Intentionally deleted.

31.25 Intentionally deleted.

31.26 Intentionally deleted.

31.27 Master Tenant acknowledges and agrees that any consent of Landlord required under this Lease shall never be deemed and shall require Landlord's actual written consent.

31.28 Master Tenant acknowledges and agrees that (a) notices under this Lease shall be given in the same manner as set forth in the Loan Agreement, and (b) Landlord is authorized to deliver any notice, request, report, or other communication received from Master Tenant to Lender.

31.29 Master Tenant acknowledges and agrees that Landlord and Lender may disclose all information received from Master Tenant concerning Master Tenant, the Master Lease Documents, or the Mortgaged Property without Master Tenant's consent.

31.30 Master Tenant shall not Divide (as defined in the Loan Documents).

[Signature Page to Follow]

IN WITNESS WHEREOF, Landlord and Master Tenant have hereunto set their respective hands the day and year first above written.

MASTER TENANT:

JWCM VIVIAN MASTER TENANT, LLC

By: _____
Name: Jason Warsavsky
Title: President

LANDLORD:

JWCM VIVIAN, DST

By: JWCM Vivian Manager, LLC, its Manager and Signatory Trustee

By: _____
Name: Jason Warsavsky
Title: President

EXHIBIT A
RENT

Lease Period	**Base Rent**	**Gross Revenue Additional Rent Breakpoint**	**Additional Rent Annual Maximum**	**Gross Revenue Supplemental Rent Breakpoint**
Year 1	$2,730,546	$4,751,400	$1,884,300	$6,635,700
Year 2	$2,888,145	$4,903,200	$1,884,300	$6,787,500
Year 3	$2,902,403	$4,979,000	$1,884,300	$6,863,300
Year 4	$3,209,814	$5,349,900	$1,884,300	$7,234,200
Year 5	$3,707,452	$5,912,900	$1,884,300	$7,797,200
Year 6	$3,926,083	$6,197,700	$1,884,300	$8,082,000
Year 7	$4,005,080	$6,344,800	$1,884,300	$8,229,100
Year 8	$4,679,500	$7,089,400	$1,884,300	$8,973,700
Year 9	$4,752,676	$7,234,900	$1,884,300	$9,119,200
Year 10	$4,785,215	$7,341,800	$1,884,300	$9,226,100

For purposes of the table above "Base Rent" consists of the Annual Note Payments for each year. The term "Annual Note Payments" shall mean the aggregate annual principal and interest payments, and necessary deposits into the all Lender-required reserve funds, falling due during each lease year under the Loan Documents, or under such other mortgage financing to which the Project may be subject, but not including any balloon payments due thereunder. Not depicted in **Exhibit A** above, Rent for the final three months of the Term shall be at the same rate as Year 10.

EXHIBIT B
LAND – LEGAL DESCRIPTION

ALL THAT TRACT OR PARCEL OF LAND LYING, BEING AND SITUATED IN THE CITY OF ATLANTA, IN LAND LOT 105 OF THE 14TH DISTRICT OF FULTON COUNTY, GEORGIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EAST LINE OF ALLENE AVENUE, WHICH POINT IS LOCATED TWO HUNDRED AND TWENTY-EIGHT AND SIX-TENTHS FEET (228.6 FEET) NORTH OF NORTHEAST CORNER OF ALLENE AVENUE AND ERIN STREET, WHICH POINT IS MARKED BY AN IRON PIN; THENCE NORTH ALONG THE EAST SIDE OF ALLENE AVENUE THREE HUNDRED AND TWO-TENTHS (300.2) FEET TO A CONCRETE MONUMENT: THENCE SLIGHTLY NORTHWESTERLY FOLLOWING THE EASTERN LINE OF ALLENE AVENUE ONE HUNDRED AND NINETY-NINE AND EIGHT-TENTHS (199.8) FEET TO AN IRON PIPE LOCATED IN THE EAST LINE OF ALLENE AVENUE, AT A POINT ONE HUNDRED EIGHT AND EIGHTY-FIVE HUNDREDTHS (105.85) FEET SOUTHWESTERLY FROM THE CENTER LINE OF THE ATLANTA AND WEST POINT RAILROAD COMPANY'S EASTBOUND FREIGHT MAIN TRACT; THENCE SOUTHEASTERLY THREE HUNDRED AND ELEVEN AND FIVE-TENTHS (311.5) FEET TO THE INTERSECTION OF A LINE WHICH WOULD BE THE PROJECTION OF THE NORTH SIDE OF HELLENA STREET IF SAID STREET WAS EXTENDED EASTERLY ACROSS ALLENE AVENUE, SAID POINT BEING ONE HUNDRED EIGHT AND THIRTY-FIVE HUNDREDTHS (108.35) FEET SOUTHEASTERLY FROM THE CENTER LINE OF EASTBOUND FREIGHT MAIN TRACK OF THE ATLANTA AND WEST POINT RAILROAD; THENCE EASTERLY ALONG A LINE WHICH WOULD BE THE PROJECTION OF THE NORTH SIDE OF HELLENA STREET ONE HUNDRED FORTY-SIX AND THREE TENTHS (146.3) FEET TO A POINT IN THE SOUTHWEST RIGHT OF WAY LINE OF THE ATLANTA AND WEST POINT RAILROAD, WHICH POINT IS LOCATED FIFTY (50) FEET SOUTHWESTERLY FROM THE CENTER LINE OF THE EASTBOUND FREIGHT MAIN TRACK OF SAID RAILROAD; THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY LINE FIFTY (50) FEET FROM AND PARALLEL TO THE CENTER LINE OF SAID WESTBOUND FREIGHT MAIN LINE ONE THOUSAND ONE HUNDRED AND SIXTEEN (1116) FEET, MORE OR LESS, TO A POINT ON THE WEST SIDE OF STEWART AVENUE, WHICH POINT IS MARKED BY A CONCRETE MONUMENT; THENCE SOUTH ALONG THE WEST SIDE OF STEWART AVENUE FIFTY FOUR AND THREE TENTHS (54.3) FEET TO ANOTHER CONCRETE MONUMENT; THENCE WESTERLY FOLLOWING A LINE OF CONCRETE MONUMENTS FOURTEEN HUNDRED SEVENTY-TWO (1472) FEET, MORE OR LESS, TO POINT OF BEGINNING, ALL AS SHOWN ON PLAT OR SURVEY MADE, BY ATLANTA AND WEST POINT RAILROAD DATED OCTOBER 16, 1948, BEING SURVEY NO. 222/33 ACCORDING TO THE ORIGINAL TRACING ON FILING IN THE OFFICE OF THE CHIEF ENGINEER OF THE ATLANTA AND WEST POINT RAILROAD IN ATLANTA, GEORGIA.

EXCEPTING THEREFROM, HOWEVER ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 105 OF THE 14TH DISTRICT OF FULTON COUNTY, GEORGIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST SIDE OF STEWART AVENUE WHERE THE SOUTH RIGHT OF WAY LINE OF ATLANTA AND WEST POINT RAILROAD INTERSECTS, THE WEST SIDE OF STEWART AVENUE; AND RUNNING THENCE SOUTH 54.3 FEET; THENCE WEST A DISTANCE OF 5 FEET TO THE PROPOSED WEST SIDE OF STEWART AVENUE; THENCE NORTH ALONG THE PROPOSED WEST SIDE OF STEWART AVENUE A DISTANCE OF 54.3 FEET TO THE SOUTH RIGHT OF WAY LINE OF SAID RAILROAD; THENCE EAST ALONG THE SOUTH RIGHT OF WAY LINE OF SAID RAILROAD A DISTANCE OF 5 FEET TO THE POINT OF BEGINNING.

ALSO DESCRIBED AS:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 105 OF THE 14TH DISTRICT OF FULTON COUNTY, CITY OF ATLANTA, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8-INCH REBAR SET 201.59 FEET NORTH OF THE INTERSECTION OF THE NORTHERN RIGHT-OF-WAY OF ERIN AVENUE (50 FOOT RIGHT-OF-WAY) WITH THE WESTERN RIGHT-OF-WAY OF METROPOLITAN PARKWAY (VARIABLE RIGHT-OF-WAY); THENCE LEAVING SAID RIGHT-OF-WAY, NORTH 88 DEGREES 39 MINUTES 47 SECONDS WEST A DISTANCE OF 1466.95 FEET TO A 1-INCH OPEN TOP PIPE FOUND ON THE EASTERN RIGHT-OF-WAY OF ALLENE AVENUE (50 FOOT RIGHT-OF-WAY); THENCE ALONG SAID RIGHT-OF-WAY THE FOLLOWING COURSES AND DISTANCES: NORTH 00 DEGREES 24 MINUTES 41 SECONDS EAST A DISTANCE OF 325.41 FEET TO A POINT; ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 699.00 FEET AND AN ARC LENGTH OF 126.92 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 03 DEGREES 25 MINUTES 33 SECONDS WEST FOR A DISTANCE OF 126.75 FEET TO A 5/8-INCH REBAR SET; NORTH 06 DEGREES 26 MINUTES 55 SECONDS WEST A DISTANCE OF 47.67 FEET TO A 1/2-INCH OPEN TOP PIPE FOUND; THENCE LEAVING SAID RIGHT-OF-WAY, SOUTH 66 DEGREES 03 MINUTES 45 SECONDS EAST A DISTANCE OF 311.50 FEET TO A 5/8-INCH REBAR SET; THENCE SOUTH 89 DEGREES 37 MINUTES 23 SECONDS EAST A DISTANCE OF 146.30 FEET TO A 5/8-INCH REBAR SET; THENCE SOUTH 66 DEGREES 07 MINUTES 03 SECONDS EAST A DISTANCE OF 457.93 FEET TO A 5/8-INCH REBAR SET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2061.00 FEET AND AN ARC LENGTH OF 651.81 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 75 DEGREES 08 MINUTES 25 SECONDS EAST FOR A DISTANCE OF 649.10 FEET TO A PK NAIL SET ON THE WESTERN RIGHT-OF-WAY OF METROPOLITAN PARKWAY; THENCE ALONG SAID RIGHT-OF-WAY, SOUTH 00 DEGREES 01 MINUTES 27 SECONDS EAST A DISTANCE OF 54.30 FEET TO A 5/8-INCH REBAR SET AND THE TRUE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 8.471 ACRES.

EXHIBIT C
PROJECTIONS

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Effective Gross Income	**$7,266,946**	**$7,606,399**	**$7,867,515**	**$8,137,617**	**$8,417,015**	**$8,669,526**	**$8,929,611**	**$9,197,500**	**$9,473,425**	**$9,754,527**
Expenses										
Controllable Expenses	$1,557,912	$1,549,875	$1,597,194	$1,645,962	$1,696,223	$1,747,109	$1,799,523	$1,853,508	$1,909,114	$1,966,310
Non-Controllable Expenses										
Real Estate Taxes	12,143	12,172	12,201	319,059	808,972	1,019,647	1,083,501	1,147,668	1,212,149	1,235,733
Insurance	182,650	242,720	250,001	257,501	265,226	273,183	281,378	289,820	298,514	307,470
Utilities	404,833	404,417	416,550	429,046	441,918	455,175	468,831	482,896	497,382	512,304
	$2,157,538	**$2,209,184**	**$2,275,947**	**$2,651,569**	**$3,212,339**	**$3,495,115**	**$3,633,233**	**$3,773,892**	**$3,917,159**	**$4,021,816**
Net Operating Income	**$5,109,408**	**$5,397,215**	**$5,591,569**	**$5,486,048**	**$5,204,676**	**$5,174,411**	**$5,296,379**	**$5,423,608**	**$5,556,265**	**$5,732,711**

EXHIBIT B

TRUST AGREEMENT

[ATTACHED]

AMENDED AND RESTATED TRUST AGREEMENT OF
JWCM VIVIAN, DST, A DELAWARE STATUTORY TRUST

DATED AS OF AUGUST 21, 2025 BY AND AMONG

JWCM VIVIAN DEPOSITOR, LLC
AS DEPOSITOR,

JWCM VIVIAN MANAGER, LLC
AS MANAGER AND SIGNATORY TRUSTEE,

THE CORPORATION TRUST COMPANY
AS DELAWARE TRUSTEE

AND

RICARDO BEAUSOLEIL
AS INDEPENDENT TRUSTEE

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AMENDED AND RESTATED TRUST AGREEMENT
OF
JWCM VIVIAN, DST
A DELAWARE STATUTORY TRUST

This AMENDED AND RESTATED TRUST AGREEMENT, dated as of August 21, 2025 (as the same may be amended or supplemented from time to time, this "**Trust Agreement**"), is made by and among JWCM Vivian Depositor, LLC (the "**Depositor**"), JWCM Vivian Manager, LLC as manager and signatory trustee (the "**Manager**" or "**Signatory Trustee**"), The Corporation Trust Company ("**CTC**") as co-trustee (the "**Delaware Trustee**") and Ricardo Beausoleil, as Independent Trustee (as defined herein).

RECITALS

A. The Depositor and the Delaware Trustee have formed JWCM Vivian, DST as a Delaware statutory trust (the "**Trust**") in accordance with Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. §3801, *et seq.* (the "**Statutory Trust Act**") pursuant to the trust agreement of the Trust by and between the Depositor and the Delaware Trustee dated as of July 9, 2025 (the "**Initial Trust Agreement**"), and the filing of the Certificate of Trust with the Secretary of State of the State of Delaware on July 9, 2025.

B. The Trust was a party to that certain Purchase and Sale Agreement, dated July 18, 2025, as amended from time to time (the "**Purchase Contract**"), to acquire a leasehold interest in the real estate more particularly described on **Exhibit A**, together with all buildings, structures, fixtures and improvements located thereon, which participates in a bond-lease program offered by the Issuer (as defined herein) (collectively, the "**Real Estate**").

C. The Depositor will facilitate the acquisition of the Real Estate by the Trust, including, without limitation, facilitating the contribution to the Trust of an amount of cash sufficient to enable the Trust to acquire the Real Estate and pay certain fees and costs in connection therewith. When combined with the proceeds of the First Mortgage Loan (as hereinafter defined) and the proceeds from the initial closing of the sale of the Class 1 Beneficial Interests (as hereinafter defined), such amount was advanced by the Depositor to the Trust in exchange for one hundred percent (100.0%) of the Class 2 Beneficial Interests (as hereinafter defined) as reflected by the Class 2 Beneficial Ownership Certificate (as hereinafter defined) to be issued to the Depositor.

D. It is anticipated that certain Persons (as hereinafter defined) will acquire Class 1 Beneficial Interests in the Trust as evidenced by newly-issued Class 1 Beneficial Ownership Certificates (as hereinafter defined) in exchange for payment of money to the Trust and become Class 1 Beneficial Owners (as hereinafter defined) in accordance with the provisions of this Trust Agreement, which money will be distributed to the Depositor in whole or partial redemption of the Beneficial Interests held by the Depositor.

E. Concurrent with the acquisition of the Real Estate by the Trust, the Real Estate will be subject to certain Financing Documents (as hereinafter defined), the Leases (as hereinafter defined) and the Bond Documents (as hereinafter defined).

F. The Trust has appointed the Delaware Trustee to undertake certain actions and perform certain duties pursuant to this Trust Agreement and has appointed JWCM Vivian Manager, LLC as the Manager and the Signatory Trustee of the Trust to undertake certain actions and perform certain duties pursuant to this Agreement.

G. After the issuance of the Conversion Notice (as hereinafter defined), the Trust will issue its Class 1 Beneficial Interests, in exchange for the Depositor's Class 2 Beneficial Interests in the Trust.

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 amend and restate in its entirety the Initial Trust Agreement and agree as follows:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. Capitalized terms used in this Trust Agreement shall have the meanings as set forth below. Capitalized terms not otherwise defined have the meanings set forth in the Loan Agreement.

"**Affiliate**" means, with respect to any specified Person, any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "**control**," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract, or otherwise; and the terms "**controlling**" and "**controlled**" shall have meanings correlative to the foregoing.

"**Asset Management Agreement**" means the separate agreement entered into between the Manager and the Trust governing the rights and obligations regarding the management services provided with respect to the Real Estate.

"**Asset Management Fee**" has the meaning given to such term in Section 9.4(a).

"**Beneficial Interest**" means a beneficial interest in the Trust, as such term is used in the Statutory Trust Act, all of which interests shall be either Class 1 Beneficial Interests 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.

"**Beneficial Ownership Certificate**" means a certificate, stating whether it is a Class 1 Beneficial Ownership Certificate or a Class 2 Beneficial Ownership Certificate, in substantially the form of **Exhibit B-1** or **Exhibit B-2**, respectively, evidencing a Beneficial Interest in the Trust.

"**Bond Documents**" means, collectively, the Bond Purchase Agreement, the Bonds, the Bond Lease and any other agreements assigned to the Trust by 1246 Allene Owner, LP, either separately or collectively, in relation to the Bond Purchase Agreement, the Bonds, and the Bond Lease, together with any and all other documents or instruments evidencing or securing the Bonds.

"**Bond Lease**" means that certain transaction pursuant to which the Issuer issued the Bonds pursuant to a resolution adopted by the Issuer and the Indenture, in order to acquire the Real Estate for lease by Issuer to the Trust pursuant to the Ground Lease.

"**Bond Purchase Agreement**" means that certain agreement with the Issuer, dated November 1, 2023, as assigned to the Trust by 1246 Allene Owner, LP.

"**Bonds**" means those certain Taxable Revenue Bonds (1246 Allene Owner, LP Project), Series 2020, as the same may be modified, amended, restated or replaced from time to time, assigned to the Trust either separately or collectively, by 1246 Allene Owner, LP in relation to the Bond Purchase Agreement, the Bonds, and the Bond Lease.

"**Business Day**" is any day other than on Saturday, Sunday or legal holiday in the State of Delaware.

"**Cash Amount**" has the meaning given to such term in Section 10.2.

"**Certificate of Trust**" means the certificate of trust of the Trust a copy of which is attached as **Exhibit C**.

"**Class 1 Beneficial Interests**" means each of the Beneficial Interests held by the Investors.

"**Class 2 Beneficial Interest**" means the Beneficial Interest held by the Depositor.

"**Class 1 Beneficial Owners**" means the Investors.

"**Class 2 Beneficial Owner**" means the Depositor and any permitted assignee of the Class 2 Beneficial Interest.

"**Class 1 Beneficial Ownership Certificates**" means the Beneficial Ownership Certificates issued to the Investors.

"**Class 2 Beneficial Ownership Certificate**" means the Beneficial Ownership Certificate issued to the Depositor and any permitted assignee of the Class 2 Beneficial Interest, and if, at any time, the Class 2 Beneficial Interest is held by more than one Person, such term in the plural shall mean the Beneficial Ownership Certificates issued to such Persons.

"**Closing Date**" means that date of the first sale of Class 1 Beneficial Interests in the Trust to the Investors.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time.

"**Contributing Investor**" has the meaning given to such term in Section 10.3.

"**Conversion Notice**" means the notice, in substantially the form of **Exhibit H**, issued by the Depositor to the Delaware Trustee and the Manager stating that the provisions of Section 3.3(c) shall become effective upon receipt of the notice by the Delaware Trustee.

"**Divide**" means the filing of a certificate of division, adoption of a plan of division, amending of any organizational documents, or any other actions taken, permitted, or consented to in order to divide a Person into two or more Persons pursuant to a plan of division such as contemplated under the Delaware Limited Liability Company Act or any other similar requirement of law in any jurisdiction.

"**Delaware LLC Act**" shall mean the Delaware Limited Liability Company Act, Title 6, §§18-101. et. seq.

"**Delaware Trustee**" has the meaning given to such term in the introductory paragraph hereof.

"**Depositor**" has the meaning given to such term in the introductory paragraph hereof.

"**Dissenting Investor**" has the meaning given to such term in Section 10.2.

"**Dissenting Notice**" has the meaning given to such term in Section 10.2.

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

"**Exchange Entity**" has the meaning given to such term in Section 10.1.

"**Exchange Right**" has the meaning given to such term in Section 10.1.

"**Exhibit**" means an exhibit attached to this Trust Agreement, unless otherwise specified.

"**Financing Documents**" means the First Mortgage Loan Documents and any other documents or agreements contemplated by any of the foregoing or otherwise required by Lender.

"**First Mortgage**" means the first-priority deed to secure debt securing the First Mortgage Loan.

"**First Mortgage Loan**" means the Lender's mortgage loan in the original principal amount of approximately $47,189,000, secured by the First Mortgage and the First Mortgage Loan Documents.

"**First Mortgage Loan Agreement**" means that certain Multifamily Loan and Security Agreement (Non-Recourse) (Delaware Statutory Trust) dated on or about the date hereof (as the same may be amended, restated and/or modified from time to time), by and between the Trust and Lender.

"**First Mortgage Loan Documents**" means, in connection with the First Mortgage Loan, the First Mortgage and all related assignment of leases and rents, and the other security instruments in or related to the Real Estate.

"**Ground Lease**" means that certain Lease Agreement, dated as of November 1, 2023, by and between the Development Authority of Fulton County and 1246 Allene Owner, LP, as assigned to the Trust pursuant to that certain Assignment and Assumption of Lease, entered into as of August 21, 2025, by and among 1246 Allene Owner, LP, the Trust, and the Development Authority of Fulton County.

"**Independent Trustee**" means the individual named by The Corporation Trust Company as the trustee serving as the Independent Trustee, in compliance with the terms of Section 4.01(a)(3) of the Loan Agreement.

"**Indenture**" means that certain Indenture of Trust, dated as of November 1, 2023, between Issuer and Synovus Bank.

"**Initial Trust Agreement**" has the meaning given to such term in Recital A hereof.

"**Insolvency Event**" means, with respect to the Trust, any of the following: (i) the adjudication by a court of competent jurisdiction as bankrupt or insolvent; (ii) an encumbrancer takes possession of all or any material part of the Trust's property; (iii) if a distress or execution or any similar process is levied or enforced upon or against all or any material part of the Trust's property; (iv) the voluntary taking of any formal proceeding for the rearrangement of its financial affairs by arrangement or compromise with its creditors; or (v) involuntary formal proceedings being taken against it for the rearrangement of its financial affairs by arrangement or compromise with its creditors which remains undismissed for a period of 180 days from filing or which is not dismissed or suspended within such 180-day period pursuant to Section 305 of the United States Bankruptcy Code (or any corresponding provision of any future United States bankruptcy law).

"**Investors**" means the original purchasers of Class 1 Beneficial Interests in the Trust and any permitted assignees of such Class 1 Beneficial Interests.

"**Issuer**" means Development Authority of Fulton County, a development authority and a public body corporate and politic created and existing under the laws of the State of Georgia.

"**Leases**" means (i) the Master Lease and (ii) any subleases relating to the Real Estate.

"**Lender**" means KeyBank National Association, together with its successors, assigns, and transferees.

"**LLC**" has the meaning given to such term in Section 9.2.

"**Loan Agreement**" means that certain Multifamily Loan and Security Agreement dated as of August 21, 2025 between the Trust and Lender, as amended.

"**Manager**" means the Person serving, at the time of determination, as the manager under this Trust Agreement. As of the Effective Date, the Manager is JWCM Vivian Manager, LLC.

"**Manager Covered Expenses**" has the meaning given to such term in Section 5.4.

"**Manager Indemnified Persons**" has the meaning given to such term in Section 5.4.

"**Master Lease**" means that Master Lease Agreement between the Trust, as landlord, and JWCM Vivian Master Tenant, LLC, as master tenant, relating to the Real Estate, together with all amendments, supplements and modifications thereto.

"**Master Tenant**" means JWCM Vivian Master Tenant, LLC, as master tenant under the Master Lease, including all permitted assigns, transferees and successors.

"**Memorandum**" means the Sponsor's Private Placement Memorandum (as supplemented and amended from time to time), through which the Class 1 Beneficial Interests are being syndicated to accredited investors.

"**Notice of Exchange**" has the meaning given to such term in Section 10.1.

"**Offered Interest**" means a Class 1 Beneficial Interest, or portion thereof, that is being offered for sale pursuant to a Third-Party Offer.

"**Offerees**" means, with respect to a Third-Party Offer, the Manager and each Class 1 Beneficial Owner other than the Selling Beneficial Owner.

"**Ownership Records**" means the records maintained by the Manager or a third party recordkeeping services provider, substantially in the form of **Exhibit D**, indicating from time to time the name, mailing address, and Percentage Share of each Beneficial Owner, which records shall initially indicate the Depositor as the sole Beneficial Owner and shall be revised by the Manager contemporaneously to reflect the issuance of Beneficial Interests and Beneficial Ownership Certificates 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 and evidenced by the Beneficial Ownership Certificate held by such Beneficial Owner. For the avoidance of doubt, the sum of (i) the Percentage Share of the Class 1 Beneficial Interests and (ii) the Percentage Share of the Class 2 Beneficial Interests at all times shall be one hundred percent (100.0%).

"**Permitted Equipment Financing**" shall have the meaning given to such term in the First Mortgage Loan Agreement.

"**Permitted Investment**" has the meaning set forth in Section 7.2.

"**Permitted Transfer**" means the transfer of a Class 1 Beneficial Interest (i) by devise, descent or by operation of law upon the death of a Class 1 Beneficial Owner or the member, partner, or stockholder of a Class 1 Beneficial Owner or (ii) for estate planning purposes primarily for the benefit of such Beneficial Owner; provided, however, that the transferee in any such transfer pursuant to items (i) and (ii) must be an accredited investor or acting in a fiduciary capacity for a person meeting such condition.

"**Person**" means a natural person, corporation, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank trust company, land trust, business trust, statutory

trust or other organization, whether or not a legal entity, and a government or agency or political subdivision thereof.

"**Purchase Agreement**" means the agreement to be entered into by the Trust (through the Manager) and each Investor with respect to the acquisition of Class 1 Beneficial Interests by the Investors.

"**Purchase Contract**" has the meaning given to such term in Recital B hereof.

"**Purchase Contract Assignment**" has the meaning given to such term in Recital B hereof.

"**Real Estate**" has the meaning given to such term in Recital B hereof.

"**Receipt Date**" has the meaning given to such term in Section 10.3.

"**Regulations**" means the U.S. Treasury Regulations promulgated under the Code.

"**Replacement Reserve**" means the replacement and immediate repairs reserves funded at closing from the First Mortgage Loan proceeds and controlled by Lender. The Replacement Reserve shall also hold the ongoing monthly deposits from the Real Estate established pursuant to the Financing Documents.

"**Reserves**" has the meaning given to such term in Section 7.2 and includes, without limitation, the Supplemental Trust Reserve, the Replacement Reserve, and any other reserve or escrow account required by Lender under the Financing Documents or by the Trust as elsewhere provided herein.

"**ROFR Notice**" has the meaning given to such term in Section 6.4(a).

"**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.

"**Selling Beneficial Owner**" means a Class 1 Beneficial Owner who receives a Third-Party Offer.

"**Signatory Trustee**" has the meaning given to such term in the introductory paragraph hereof.

"**Sponsor**" means JWCM Exchange I, LLC, a Delaware limited liability company.

"**Statutory Trust Act**" has the meaning given to such term in Recital A hereof.

"**Supplemental Trust Reserve**" means a Manager-controlled reserve account on behalf of and owned by the Trust for costs and expenses associated with the Real Estate.

"**Tax Protection Agreement**" has the meaning given to such term in Section 10.3.

"**Tenant**" means the Person identified as the tenant or lessee in each of the Leases.

"**Third-Party Offer**" means an offer to purchase all or a portion of a Class 1 Beneficial Interest, a controlling ownership interest in the Selling Beneficial Owner or any right to control the Selling Beneficial Owner.

"**Transaction Documents**" means the Trust Agreement, the Purchase Agreement, the Leases, the Bond Documents, and the Financing Documents, together with any other documents to be executed in furtherance of the investment activities of the Trust.

"**Transfer Distribution**" has the meaning given to such term in Section 9.2.

"**Triggering Event**" has the meaning given to such term in Section 10.3.

"**Trust**" means JWCM Vivian, DST, a Delaware statutory trust continued 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 the Leases, the Real Estate, and any and all other property and assets (whether tangible or intangible) in which the Trust, at any time has any right, title or interest.

"**Trustee**" means the Person serving, at the time of determination, as the trustee under this Trust Agreement, in such Person's capacity as Trustee and not in such Person's individual capacity. As of the Effective Date, the Trustees are The Corporation Trust Company, as the Delaware Trustee, Ricardo Beausoleil, as the Independent Trustee, and the Signatory Trustee.

"**Trustee Covered Expenses**" has the meaning given to such term in Section 4.6.

"**Trustee Indemnified Persons**" has the meaning given to such term in Section 4.6.

"**Units**" has the meaning given to such term in Section 10.1.

ARTICLE 2
GENERAL MATTERS

Section 2.1 Organizational Matters.

(a) CTC is hereby appointed as the Delaware Trustee, and CTC hereby accepts such appointments, pursuant and subject to this Trust Agreement.

(b) The Depositor has authorized and directed the Delaware 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**"), which filing has been duly made, and hereby authorizes the Delaware Trustee to execute and file in the office of the Secretary of State such other 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 "JWCM Vivian, DST". The Manager shall have full power and authority, and is hereby authorized, to conduct the activities of the Trust, execute and deliver all documents (including, without limitation, the Transaction Documents to which the Trust is or becomes a party from time to time) for or on behalf of the Trust, and cause the Trust to sue or be sued under its name. 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 Signatory Trustee, the Delaware Trustee or the Manager individually or to the officers, agents or employees of the Trust, the Signatory Trustee, the Delaware Trustee, or the Manager.

(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 at 445 Park Avenue, Suite 1600, New York, New York 10022.

(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 Trust 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," pursuant to the Statutory Trust Act, the Delaware Trustee is a "trustee," the Manager is an "agent" of the Trust, the Signatory Trustee is a co-trustee (subject to the limitations provided for in Section 4.9 hereof), 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, and the Trust has all requisite power, authority and authorization to engage in, the following activities: (i) acquire the Real Estate and enter into, execute, deliver and perform the Leases and the Financing Documents and the other Transaction Documents to which it is or becomes a party from time to time; (ii) hold for investment and eventually dispose of the Real Estate; and (iii) take only such other actions as the Manager deems necessary to carry out the foregoing. Neither the Trustees, the Manager, Investors or Beneficial Owners, nor any of their agents or affiliates, shall provide services related to the Trust or the Real Estate: (a) that are not "customary services" within the meaning of Revenue Ruling 75-374, 1975-2 C.B. 261; (b) the payment for which would not qualify as "rents from real property" within the meaning of Code Section 512(b)(3)(A)(i) and the Regulations thereunder; or (c) the payment for which would not qualify as "rents from real property" within the meaning of Code Sections 856(c)(2)(C) and 856(c)(3)(A) and the Regulations thereunder. The Trust shall conduct no business other than as specifically set forth in this Section 2.3.

Section 2.4 Limitations on Certain Activities. The Trust shall, as long as the First Mortgage Loan remains outstanding, comply with the following:

(1) not acquire, lease, or operate any real property, personal property, or assets other than, pursuant to the Master Lease, the fee or leasehold interest in the Real Estate, as applicable;

(2) not acquire, own, operate, or participate in any business other than, as lessor pursuant to the Master Lease, the leasing, ownership, management, operation, and maintenance of the Real Estate;

(3) not commingle its assets or funds with those of any other Person, unless such assets or funds can easily be segregated and identified in the ordinary course of business from those of any other Person;

(4) maintain its financial statements, accounting records, and other partnership, real estate investment trust, limited liability company, or corporate documents, as the case may be, separate from those of any other Person (unless such entity's assets are included in a consolidated financial statement prepared in accordance with generally accepted accounting principles); provided the beneficial interest holders of the Trust may also include their share of the assets on their personal financial statements;

(5) have no material financial obligation under any indenture, mortgage, deed of trust, deed to secure debt, loan agreement, other agreement or instrument to which it is a party or by which it is otherwise bound, or to which the Real Estate is subject or by which it is otherwise encumbered, other than:

A. Permitted Equipment Financing or unsecured trade payables incurred in the ordinary course of the operation of the Real Estate (exclusive of amounts (A) to be paid out of the Reserves, or (B) for rehabilitation, restoration,

repairs, or replacements of the Real Estate or otherwise approved by Lender) so long as such trade payables (x) are not evidenced by a promissory note, (y) are payable within sixty (60) days of the date incurred, and (z) as of any date, do not exceed, in the aggregate, two percent (2%) of the original principal balance of the First Mortgage Loan; provided, however, that otherwise compliant outstanding trade payables may exceed two percent (2%) up to an aggregate amount of four percent (4%) of the original principal balance of the First Mortgage Loan for a period (beginning on or after the Effective Date) not to exceed ninety (90) consecutive days;

B. if the Security Instrument (as defined in the First Mortgage Loan Documents) grants a lien on a leasehold estate, the Trust's obligations as lessee under the ground lease creating such leasehold estate;

C. obligations under the First Mortgage Loan Documents and obligations secured by the Real Estate to the extent permitted by the First Mortgage Loan Documents; and

D. obligations under the Permitted Encumbrances (as defined in the First Mortgage Loan Documents);

(6) shall not assume, guaranty, or pledge its assets to secure the liabilities or obligations of any other Person (except, with respect to the Trust only, in connection with the First Mortgage Loan or other mortgage loans that have been paid in full or collaterally assigned to Lender, including in connection with any consolidation, extension and modification agreement or similar instrument) or hold out its credit as being available to satisfy the obligations of any other Person;

(7) except for the Bonds, shall not make loans or advances to any other Person;

(8) other than the Master Lease, the Trust shall not enter into, or become a party to, any transaction with any Affiliate, except in the ordinary course of business and on terms which are no more favorable to any such Affiliate than would be obtained in a comparable arm's-length transaction with an unrelated third party, provided that neither the Trust's acquisition of the Real Estate nor the Trust's entry into and performance of its obligations under the Master Lease Documents shall be deemed to breach this covenant;

(9) shall have at all times an Independent Trustee in compliance with the First Mortgage Loan Documents; or

(10) shall not Divide.

ARTICLE 3
PROVISIONS RELATING TO THE FIRST MORTGAGE 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 First Mortgage Loan or intended to achieve the desired treatment of the Trust and Beneficial Interests for 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, for the avoidance of doubt, that nothing in this Article 3 or elsewhere in this Trust Agreement shall limit or impair the Trust's power, authority and authorization (or limit or impair the Manager's power, authority and authorization to cause the Trust) to enter into, execute, deliver, and perform its obligations under, the Transaction Documents to

which it is or becomes a party from time to time, and to do so without the need for the consent or approval of any Beneficial Owner or other Person, 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 Intentionally Omitted.

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 provided in Section 6.11 hereof, are such that the Trust will be characterized at such time as a "business entity" within the meaning of Regulations 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 federal income tax purposes as assets and property of the Depositor.

(b) Upon the issuance of the Conversion Notice, the special rights of the Depositor (as the Class 2 Beneficial Owner) set forth in Section 6.11 will terminate, as set forth in Section 6.12, and the Depositor will have the same rights as any Class 1 Beneficial Owner.

(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 Regulations 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 as if it holds a direct ownership interest in the Real 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 Trustees, the Manager, the Beneficial Owners and/or the Trust shall have 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 with respect to the Trust:

(1) sell, transfer or exchange the Trust's interest in the Real Estate except as required under Article 9;

(2) reinvest any monies of the Trust, except to make modifications or repairs to the Real Estate permitted hereunder or in accordance with Section 7.2;

(3) renegotiate the terms of the First Mortgage Loan or enter into new financing (except in the case of a Master Tenant bankruptcy or insolvency);

(4) renegotiate the Master Lease or enter into new leases (other than the original Master Lease entered into in connection with the acquisition of the Real Estate), except in the case of the Master Tenant's bankruptcy or insolvency;

(5) make modifications to the Real Estate (other than minor non-structural modifications) unless required by law;

(6) accept any capital from a Beneficial Owner (other than capital from an Investor that will be (i) used to pay expenses of the offer and sale of the Class 1 Beneficial Interests, (ii) used to fund Reserves, or (iii) distributed to the Depositor and reduce the Depositor's Percentage Share); or

(7) take any other action which would in the reasoned opinion of tax counsel to the Trust should 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 Tenant. 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 and none of the Trustees, Beneficial Owners, the Manager or 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 this Section 3.3. Without limiting the generality of the foregoing, upon and after issuance of the Conversion Notice, (i) none of the Trustees, 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 (ii) 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 the 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 a "grantor trust" under Subpart E of Part 1, Subchapter J of the Code (Code Sections 671 - 679) and shall not constitute a "business entity."

ARTICLE 4
CONCERNING THE DELAWARE TRUSTEE, INDEPENDENT TRUSTEE AND SIGNATORY TRUSTEE

Section 4.1 Power and Authority. The Delaware Trustee serves the Trust solely to fulfill the Trust's obligation pursuant to Section 3807(a) of the Statutory Trust Act to have at least one trustee who has its principal place of business in the State of Delaware. It is understood and agreed by the parties hereto that the Delaware Trustee shall have none of the duties or liabilities of the Manager. The duties of the Delaware Trustee are limited to (i) accepting legal process served on the Trust in the State of Delaware and (ii) the execution of any certificates required to be filed with the Delaware Secretary of State which the Delaware Trustee is required to execute pursuant to the Statutory Trust Act. The Manager agrees not to instruct the Delaware Trustee to take any action that is contrary to the terms of this Trust Agreement or of any document contemplated hereby to which the Trust or the Delaware Trustee is or becomes party or that is otherwise contrary to law. Other than as expressly provided for in this Trust Agreement, the Delaware Trustee shall have no duty or obligation to take any action for or on behalf of the Trust, including without limitation, to manage or deal with the Trust Estate, or to otherwise take or refrain from taking any action under, or in connection with, any document contemplated hereby to which the Delaware Trustee is a party, except as expressly provided by this Trust Agreement, and no implied duties shall be read herein against the Delaware Trustee, including without limitation, that no action requested of the Delaware Trustee shall require the performance of any investigation, analysis, or other due diligence activities by the Delaware Trustee in respect to such action or the performance of its duties on behalf of the Trust generally. Notwithstanding any provision of this Trust Agreement or any other document to the contrary, under no circumstances shall the Delaware Trustee, in its individual capacity or in its capacity as Delaware Trustee, (i) be liable to the Trust or its beneficiaries for any of its acts or omissions except for acts or omissions constituting bad faith or willful misconduct; and (ii) be liable to any person other than the Trust or a beneficiary of the Trust for any act, omission or obligation of the Trust or any trustee thereof and all persons having any claim against the Delaware 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. Pursuant to Section 3806(c) of the Statutory Trust Act, to the extent that at law or in equity the Delaware Trustee, as trustee, has duties (including fiduciary duties) and liabilities

relating to the Trust or to beneficiaries thereof, the Delaware Trustee's duties and liabilities are hereby eliminated and restricted to the fullest extent allowable under applicable law and the Delaware Trustee shall not be liable to the Trust or to any Beneficial Owner of the Trust for any action taken in good faith reliance on the terms of this Trust Agreement.

Section 4.2 **Intentionally Omitted**.

Section 4.3 **Trustees' Capacities.** In accepting the trust hereby created, the Delaware Trustee acts solely as the Delaware Trustee and the Independent Trustee acts solely as the Independent Trustee hereunder, and not in their respective individual capacities, and all Persons having any claim against the Delaware Trustee or Independent 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 Trustees, in their individual capacities or in their separate capacities as Trustees, (i) 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 its own employees), or (ii) 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 its own employees); provided, however, that this limitation shall not protect the Delaware Trustee or the Independent 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 under this Trust Agreement. Under no circumstances shall the Delaware Trustee or Independent Trustee (i) be personally liable for any representation, warranty, covenant, agreement or indebtedness of the Trust; or (ii) be liable for any punitive, exemplary, consequential, special, indirect or other damages for a breach of this Agreement.

Section 4.4 **Independent Trustee.** The Independent Trustee must not (a) have any fiduciary duties to the beneficial owners or any other Person bound by the Trust Agreement, and (b) be liable to the Trust, any Beneficial Owner or any other Person bound by the Trust Agreement for breach of contract or breach of duties (including fiduciary duties), unless the Independent Trustee acted in bad faith or engaged in willful misconduct. The Independent Trustee serves the Trust solely to fulfill the Trust's obligation pursuant to Section 4.01(a)(3) of the Loan Agreement to have an "Independent Trustee" as defined in the Financing Documents. In accepting the trust hereby created, the Independent Trustee acts solely as the Independent Trustee hereunder and not in its individual capacity, and all Persons having any claim against the Independent 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 Independent Trustee, in its individual capacity or in its capacity as a Independent Trustee, (i) 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, (ii) 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 or (iii) have any duty to any Person by reason of the transactions contemplated by this Trust Agreement, the Transaction Documents, or any other document.

Section 4.5 **Duties.** None of the Delaware Trustee or any successor 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 fiduciary or other duties or obligations shall be read into this Trust Agreement against the Delaware Trustee or any successor trustee. The right of the Delaware 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 Delaware Trustee and any successor trustee (i) shall

have no duties (fiduciary or otherwise) to any Person other than the Trust and the Beneficial Owners, and all such duties (including only those fiduciary duties expressly set forth herein as being fiduciary in nature) shall be restricted to those duties (including fiduciary duties) expressly set forth in this Trust Agreement, and (ii) shall have no liability (including no liability for breach of contract or breach of duty) to any Person other than the Trust and the Beneficial Owners, and all such liability shall be restricted to those liabilities expressly set forth in this Trust Agreement and only those which are due to its willful misconduct, bad faith, fraud or gross negligence in the performance of its duties under this Trust Agreement; provided, however, no provision of this Trust Agreement is intended to or shall eliminate the implied contractual covenant of good faith and fair dealing or limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

Section 4.6 Indemnification. The Beneficial Owners and the Trust, jointly and severally, hereby agree to: (i) reimburse the Persons serving as Delaware Trustee and Independent Trustee and/or any successor 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; (ii) to the fullest extent permitted by law, indemnify, defend and hold harmless the Persons serving as Delaware Trustee and Independent Trustee and/or any successor trustee, and the officers, directors, employees and agents of the Persons serving as Delaware Trustee and Independent Trustee and/or any successor trustee (collectively, including the Trustee and/or any successor trustee in its individual capacity, the "**Trustee Indemnified Persons**") from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including the reasonable fees and expenses of counsel and other professionals), taxes and penalties of any kind and nature whatsoever (collectively, "**Trustee Covered Expenses**"), to the extent that such Trustee Covered Expenses arise out of or are imposed upon or asserted at any time against any 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; provided, however, that the Beneficial Owners or the Trust 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 (iii) to the fullest extent permitted by law, advance to each such Trustee Indemnified Person 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, only upon receipt by any Beneficial Owner 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 4.6. The obligations of the Beneficial Owners and the Trust under this Section 4.6 shall survive the resignation or removal of the Trustees, shall survive the dissolution and termination of the Trust, and shall survive the termination, amendment, supplement, and/or restatement of this Trust Agreement; provided, however, a Beneficial Owner shall be released from and relieved of any and all obligations under this Section 4.6 that relate to any acts or events occurring in their entirety after the date on which such Beneficial Owner no longer owns any Beneficial Interest in the Trust. So long as any obligation evidenced or secured by the Financing Documents is outstanding, no indemnity payment from funds of the Trust (as distinct from funds from other sources, such as insurance) of any indemnity pursuant to this Section 4.6 shall be payable from amounts allocable to the Lender pursuant to the Financing Documents. Any indemnification set forth in this Trust Agreement shall be fully subordinate to the First Mortgage 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. Notwithstanding anything to the contrary in the above, in all cases, the indemnification provided under this Section 4.6 shall be limited to and only paid out of the Trust Estate.

Section 4.7 **Removal; Resignation; Succession.** The Delaware Trustee and Independent Trustee may resign at any time by giving at least sixty (60) days' prior written notice to the Manager. The Manager may at any time remove the Delaware Trustee and Independent Trustee for cause by written notice to the Trustees. Cause shall only result from the willful misconduct, bad faith, or fraud or gross negligence of the Trustees. Such resignation or removal shall be effective upon the acceptance of appointment by a successor trustee as hereinafter provided. In case of the removal or resignation of a trustee, the Manager may appoint a successor by written instrument. If a successor trustee shall not have been appointed within sixty (60) days after the giving of such notice, the Delaware Trustee, the Independent Trustee or any of the Beneficial Owners may apply to any court of competent jurisdiction in the United States to appoint a successor trustee to act until such time, if any, as a successor shall have been appointed as provided above. Any successor so appointed by such court shall immediately and without further act be superseded by any successor appointed as provided above within one year from the date of the appointment by such court. Any successor, however appointed, shall execute and deliver to its predecessor trustee an instrument accepting such appointment, and thereupon such successor, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor trustee in the trusts hereunder with like effect as if originally named the Trustee herein; but upon the written request of such successor, such predecessor shall execute and deliver an instrument transferring to such successor, upon the trusts herein expressed, all the estates, properties, rights, powers, duties and trusts of such predecessor, and such predecessor shall duly assign, transfer, deliver and pay over to such successor all monies or other property then held by such predecessor upon the trusts herein expressed. Any right of the Beneficial Owners against a predecessor trustee in its individual capacity shall survive the resignation or removal of such predecessor, shall survive the dissolution and termination of the Trust, and shall survive the termination, amendment, supplement, and/or restatement of this Trust Agreement.

Any successor Delaware 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 Delaware Trustee or Independent 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 such Delaware Trustee or Independent Trustee shall be a party, or any corporation to which substantially all the corporate trust business of the Delaware Trustee or Independent Trustee may be transferred, shall, subject to the preceding sentence, be the Delaware Trustee or Independent Trustee under this Trust Agreement without further act.

Section 4.8 **Fees and Expenses.** The Delaware Trustee and Independent Trustee shall receive as compensation for its services hereunder such fees as have been separately agreed upon between the Depositor, the Delaware Trustee and the Independent Trustee. The Delaware Trustee and Independent Trustee shall not have any obligation by virtue of this Trust Agreement to spend any of its/their own funds, or to take any action that could result in its/their incurring any cost or expense.

Section 4.9 **Signatory Trustee.** The Manager may appoint in its sole discretion, from time to time, a Signatory Trustee to serve with the Delaware Trustee for the limited purpose of executing any documentation that may require the signature of an authorized representative of the Trust. The Trust hereby grants the Signatory Trustee the power, acting alone, to sign documents on behalf of the Trust pursuant to the terms of this Section 4.9. The Manager may appoint additional Signatory Trustees and replace any Signatory Trustee. The Signatory Trustee shall not receive any compensation for its services. The initial Signatory Trustee shall be the Manager.

ARTICLE 5
CONCERNING THE MANAGER

Section 5.1 **Power and Authority.** The investment activities and affairs of the Trust shall be managed exclusively by or under the direction of the Manager. The Manager shall have the power and authority, and is hereby authorized and empowered, to manage the Trust Estate and the investment activities

and affairs of the Trust, subject to and in accordance with the terms and provisions of this Trust Agreement, provided 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, and further provided that the Manager shall at all times be subject to the terms and provisions of the Trust Agreement. 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 investment activities and affairs of the Trust. Notwithstanding the other provisions of this Section 5.1, the Manager shall have the power and authority to cause the Trust to (i) acquire the Real Estate; and (ii) execute and deliver the Master Lease and Financing Documents in connection with the acquisition of the Real Estate following the issuance of the Conversion Notice (but, except as otherwise provided herein, shall not have the power to renegotiate, amend, or restate the Master Lease and Financing Documents following the issuance of the Conversion Notice). For the avoidance of doubt, the Manager is hereby authorized to approve or disapprove any action or proceeding that would lead to an Insolvency Event in respect 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 its own fraud or gross negligence.

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 potential sale of the Trust Estate set forth in Article 9. The Manager shall have no duty or obligation to comply with any directive from any Beneficial Owner with respect to the Trust Estate. 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, (i) the Manager's duties and liabilities relating thereto to the Trust and the Beneficial Owners shall be restricted to those duties expressly set forth in this Trust Agreement and liabilities relating thereto, and (ii) the Manager has no fiduciary duties whatsoever to the Trust or to Beneficial Owners.

(b) Without limiting the generality of Section 5.3(a) above, upon and after the issuance of the Conversion Notice, the Manager, for and on behalf of the Trust, is hereby authorized and directed to take each of the following actions necessary to conserve and protect the Trust Estate:

(1) acquiring the Real Estate and receiving the cash sufficient to enable the Trust to acquire the Real Estate, pursuant to the Purchase Contract and subject to the Leases and entering into the Master Lease and the First Mortgage Loan;

(2) complying with the terms of the Financing Documents and the Bond Documents;

(3) collecting rents and making distributions in accordance with Article 7;

(4) entering into any agreement for purposes of completing tax-free exchanges of real property with a "qualified intermediary" as defined in Regulation Section 1.1031(k)-1(g)(4);

(5) notifying the relevant parties of any default by them under the Transaction Documents;

(6) take any action which in the reasoned opinion of tax counsel to the Trust, should not have an adverse effect on either the treatment of the Trust as an "investment trust" within the meaning of Regulations Section 301.7701-4(c) or each Beneficial Owner as a "grantor" within the meaning of Code Section 671; and

(7) solely to the extent necessitated by the bankruptcy or insolvency of the Master Tenant or any other Tenant of the Real Estate, if the Trust has not terminated under Section 9.2, entering into a new lease with respect to the Real Estate or renegotiating or refinancing any debt secured by the Real Estate (including, without limitation, the First Mortgage Loan).

The foregoing notwithstanding, from and after the issuance of the Conversion Notice, under no circumstances shall the power or authority of the Manager include the ability to take any actions which would cause the Trust to cease to constitute an "investment trust" within the meaning of Regulation Section 301.7701-4(c). After issuance of the Conversion Notice, the power and authority of the Manager shall be strictly and narrowly construed so as to preserve and protect the status of the Trust as an "investment trust" for Federal income tax purposes.

(c) The Manager or a third party recordkeeping services provider engaged by the Trust shall keep customary and appropriate books and records relating to the Trust and the Trust Estate and shall certify reports regarding the same to the Lender, if required by the Financing Documents or to any party so required under the Bond Documents. The Manager or such third party recordkeeping services provider engaged by the Trust 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 his/her income tax returns regarding the Trust Estate.

(d) The Manager shall promptly furnish to the Beneficial Owners copies of any reports, notices, requests, demands, certificates, financial statements and any other writings that the Financing Documents require that the Manager distribute to the Beneficial Owners (unless the Manager reasonably believes the same have been already sent directly to the Beneficial Owners in which case the Manager shall have no obligation to re-distribute them).

(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 inactions 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) which may result in a manner and form reasonably satisfactory to the Manager.

(f) The Manager shall not, on its own behalf (in contrast to actions that the Manager is required to perform on behalf of the Trust), have any duty to (i) file, record or deposit any document or to maintain any such filing, recording or deposit or to refile, rerecord or redeposit any such document, (ii) obtain or maintain any insurance on the Real Estate, (iii) maintain the Real Estate, (iv) pay or discharge any tax levied against any part of the Trust Estate, (v) 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, or (vi) inspect the Real Estate at any time or to 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 in its discretion, subject to any restrictions or obligations set forth in the Financing Documents or 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 such Person becomes a Beneficial Owner.

(i) The Manager shall provide to the Delaware Trustee a copy of the initial Ownership Records and updated copies contemporaneously with each revision thereto.

Section 5.4 Indemnification. The Class 1 Beneficial Owners and the Trust, jointly and severally, hereby agree to (i) reimburse the Manager 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, (ii) to the fullest extent permitted by law, indemnify, defend and hold harmless the Manager, and the officers, directors, employees and agents of the Manager (collectively, including the Manager, the "**Manager Indemnified Persons**") from and against any and all losses, damages, liabilities, claims, actions, suits, costs, expenses, disbursements (including the reasonable fees and expenses of counsel and other professionals), taxes and penalties of any kind and nature whatsoever (collectively, "**Manager Covered Expenses**"), to the extent that such Manager Covered Expenses arise out of or are imposed upon or asserted at any time against such Manager Indemnified Persons, including without limitation on the basis of ordinary negligence on the part of any such Manager Indemnified Persons, with respect to or in connection with this Trust Agreement, the Trust, or any transaction or document contemplated hereby; provided, however, that the Class 1 Beneficial Owners shall not be required to indemnify a Manager Indemnified Person for Manager Covered Expenses to the extent such Manager Covered Expenses result from the fraud or gross negligence of such Manager Indemnified Person, and (iii) to the fullest extent permitted by law, advance to each such Manager Indemnified Person, Manager Covered Expenses incurred by such Manager 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 any Class 1 Beneficial Owner of an undertaking, by or on behalf of such Manager Indemnified Person, to repay such amount unless a court of competent jurisdiction renders a final, nonappealable judgment that includes a specific finding of fact that such Manager Indemnified Person is not entitled to be indemnified therefor under this Section 5.4. The obligations of the Class 1 Beneficial Owners and the Trust under this Section 5.4 shall survive the resignation or removal of the Manager, shall survive the dissolution and termination of the Trust, and shall survive the termination, amendment, supplement, and/or restatement of this Trust Agreement. So long as any obligation evidenced or secured by the Financing Documents is outstanding, no indemnity payment from funds of the Trust (as distinct from funds from other sources, such as insurance) of any indemnity pursuant to this Section 5.4 shall be payable from amounts allocable to the Lender pursuant to the Financing Documents. Any indemnification set forth in this Trust Agreement shall be fully subordinate to the First Mortgage 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. Notwithstanding anything to the contrary in the above, in all cases, the indemnification obligations of the Class 1 Beneficial Owners under this Section 5.4 shall be limited to and only paid out of the Trust Estate.

Section 5.5 Fees and Expenses. Except as set forth in Section 9.4, the Manager shall receive no compensation for its services as Manager. The Manager 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 5.6 Sale of Trust Estate by Manager Is Binding. Any sale or other conveyance of the Trust Estate or any part thereof by the Manager made for and on behalf of the Trust 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 the Trust Estate.

Section 5.7 Removal/Resignation; Succession. The Manager may resign at any time by giving at least thirty (30) days' prior written notice to the Delaware Trustee. The Delaware Trustee may, (i) at all times prior to the payment in full of the First Mortgage Loan, or (ii) at any time thereafter, either (I) remove the Manager for cause by written notice to the Manager, or (II) limit the duties of the Manager under this Trust Agreement. Further, "cause" sufficient to warrant a vote for removal shall exist only in the event of the fraud or gross negligence of the Manager which causes material damage to, or diminution in value of, the Trust Estate. Such resignation or removal 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, the Trustees, may appoint a successor by written instrument. If a successor Manager shall not have been appointed within fifteen (15) days after the giving of such notice, the Manager or any of the Beneficial Owners may apply to any court of competent jurisdiction in the United States to appoint a successor Manager to act until such time, if any, as a successor shall have been appointed as provided above. Any successor so appointed by such court shall immediately and without further act be superseded by a successor appointed as provided above within one (1) year from the date of the appointment by such court. Any successor, 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 trust hereunder with like effect as if originally named the Manager herein; but upon the written request of such successor, such predecessor shall execute and deliver an instrument transferring to such successor, upon the trust herein expressed, all the rights, powers and duties of such predecessor. Any right of the Beneficial Owners against a predecessor Manager in its individual capacity shall survive the resignation or removal of such predecessor Manager, shall survive the dissolution and termination of the Trust, and shall survive the termination, amendment, supplement, and./or restatement of this Trust Agreement.

ARTICLE 6
BENEFICIAL INTERESTS

Section 6.1 Issuance of Class 1 and Class 2 Beneficial Ownership Certificates.

(a) The Depositor shall contribute an amount of cash sufficient together with the net proceeds of the First Mortgage Loan, cash and the net proceeds as of the Closing Date from the sale of the Class 1 Beneficial Interests (taking into account any reasonable costs, fees, expenses and reserves required to be funded out of such proceeds) to enable the Trust to acquire the Real Estate; and the Trust shall issue a Class 2 Beneficial Ownership Certificate to the Depositor in exchange for such contributions. The Class 2 Beneficial Ownership Certificate, in substantially the form set forth in **Exhibit B-2**, with such appropriate insertions, omissions, substitutions, endorsements and other variations as are required by this Trust Agreement, and with such letters, numbers or other marks of identification and such legends and endorsements placed thereon as may, consistent herewith, be approved by the Manager, shall be issued in registered form and delivered to, and registered in the name of, the Depositor. Each Class 2 Beneficial Ownership Certificate shall be printed and dated the date of its execution. Any portion of any Class 2 Beneficial Ownership Certificate may be set forth on the reverse or subsequent pages thereof. The Class 2 Beneficial Ownership Certificate shall be printed, lithographed, typewritten, mimeographed, photocopied or otherwise produced or may be produced in any other manner as may, consistently herewith, be determined by the Manager. While the Class 2 Beneficial Interests are held by a single Beneficial Owner such Certificate shall represent ownership of the entire Percentage Share from time to time of the Class 2 Beneficial Interests. If, at any time, the Class 2 Beneficial Interests are held by more than one Beneficial Owner, each Class 2 Beneficial Ownership Certificate shall represent ownership of the Percentage Share of the Beneficial Interests to which it corresponds.

(b) Following the issuance of the Conversion Notice, on or after the Closing Date one or more Investors who have executed Purchase Agreement(s) and contributed cash to the Trust shall be issued Class 1 Beneficial Ownership Certificates, in substantially the form set forth in **Exhibit B-1**, with such appropriate insertions, omissions, substitutions and other variations to evidence their investment and as are otherwise required by this Trust Agreement, and with such letters, numbers or other marks of identification and such legends and endorsements placed thereon as may, consistent herewith, be approved by the Manager. Such Class 1 Beneficial Ownership Certificates shall be issued in registered form and delivered to, and registered in the name of, the applicable Investor. Notwithstanding the foregoing, no Class 1 Beneficial Owner, and no assignee or transferee of a Class 1 Beneficial Interest, may own more than a forty-nine percent (49.0%) Percentage Share of the aggregate Class 1 Beneficial Ownership Certificates, and any purported issuance of a Class 1 Beneficial Ownership Certificate in violation of the foregoing shall be null, void and of no effect whatsoever. Each Class 1 Beneficial Ownership Certificate shall be printed and dated the date of its execution. Any portion of any Class 1 Beneficial Ownership Certificate may be set forth on the reverse or subsequent pages thereof. The Class 1 Beneficial Ownership Certificate shall be printed, lithographed, typewritten, mimeographed, photocopied or otherwise produced or may be produced in any other manner as may, consistently herewith, be determined by the Manager.

(c) The Manager is hereby authorized to execute each Beneficial Ownership Certificate for and on behalf of the Trust by the manual signature of any duly authorized officer of the Manager, such execution to constitute the authentication thereof.

(d) Each Beneficial Ownership Certificate bearing the manual signature of any individual who at the time such Beneficial Ownership Certificate was executed was a duly authorized officer of the Manager shall bind the Trust, notwithstanding that any such individual has ceased to hold such office or to be a duly authorized officer of the Manager prior to the delivery of such Beneficial Ownership Certificate or at any time thereafter. No Beneficial Ownership Certificate shall be valid for any purpose unless it is executed on behalf of the Trust by the Manager. The signature of a duly authorized officer of the Manager on any Beneficial Ownership Certificate shall be conclusive evidence that such Beneficial Ownership Certificate has been duly executed and authenticated under this Trust Agreement.

(e) Any Beneficial Owner shall be deemed, by virtue of the acceptance of such Beneficial Ownership Certificate or beneficial interest therein, to have agreed, accepted and become bound by, and subject to, the provisions of this Trust Agreement. Each Beneficial Owner hereby acknowledges and agrees that, in its capacity as a Beneficial Owner, it has no ability either to (i) petition for a partition of the assets of the Trust, (ii) file a petition in bankruptcy on behalf of the Trust, or (iii) take any action that consents to, aids, supports, solicits or otherwise cooperates in the filing of an involuntary bankruptcy proceeding involving the Trust.

(f) Notwithstanding anything to the contrary in this Trust Agreement, any provisions of this Trust Agreement relating to Beneficial Ownership Certificates shall be construed as optional, and it shall be within the Manager's sole discretion as to whether or not the Trust issues Beneficial Ownership Certificates pursuant to the terms and provisions of this Trust Agreement or, in the alternative, determines and evidences the fact of ownership of a Beneficial Interest in the Trust by registration or otherwise as contemplated in Section 3801(a) of the Statutory Trust Act.

Section 6.2 Ownership Records. The Manager shall at all times be the Person at whose office a Beneficial Ownership Certificate 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 Ownership Certificate may be served. The Manager shall keep or otherwise engage a third party recordkeeping service provider to maintain the 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 not prohibited under the terms of this Trust Agreement, the Manager shall issue a new Beneficial Ownership Certificate setting forth the current percentage interest in the Trust held by such new Beneficial Owner, the transferring Beneficial Owner shall surrender its Beneficial Ownership Certificate for cancellation and if applicable the Manager shall issue a new Beneficial Ownership Certificate setting forth the Beneficial Interest retained by any transferring Beneficial Owner. The Beneficial Ownership Certificates may not be negotiated, endorsed or otherwise transferred to a holder in violation of Section 6.4, 6.5 or 6.6.

Section 6.3 Mutilated, Destroyed, Lost or Stolen Beneficial Ownership Certificates. If any Beneficial Ownership Certificate shall become mutilated, destroyed, lost or stolen, the Trust shall, upon the written request of the holder of any Beneficial Ownership Certificate thereof and presentation of the Beneficial Ownership Certificate or satisfactory evidence of destruction, loss or theft thereof to the Manager, issue and deliver in exchange therefor or in replacement thereof, a new Beneficial Ownership Certificate in the name of such Beneficial Owner evidencing the same Beneficial Interest and dated the date of its execution. If the Beneficial Ownership Certificate being replaced has become mutilated, such Beneficial Ownership Certificate shall be surrendered to the Manager. If the Beneficial Ownership Certificate being replaced has been destroyed, lost or stolen, the Beneficial Owner thereof shall furnish to the Trust and the Manager (i) a written indemnity by such Beneficial Owner to the Trust and the Manager which provides for such Person to save the Trust and the Manager harmless; and (ii) evidence satisfactory to the Trust and the Manager of the destruction, loss or theft of such Beneficial Ownership Certificate and of the ownership thereof. The applicable Beneficial Owner shall pay any tax imposed in connection therewith.

Section 6.4 Restrictions on Transfer.

(a) Subject to compliance with applicable securities laws and Sections 6.4, 6.5 and 6.6, 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 Trustees, 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, and no assignee or transferee of a Class 1 Beneficial Interest, may own more than a forty-nine percent (49.0%) Percentage Share of the aggregate Class 1 Beneficial Ownership Certificates, and any purported transfer or assignment of a Class 1 Beneficial Interest in violation of the foregoing shall be null, void and of no effect whatsoever.

(b) **Right of First Refusal.** Upon the receipt of a Third-Party Offer by a Selling Beneficial Owner, such Selling Beneficial Owner shall provide the Manager notice of such Third-Party Offer, together with a term sheet or other document listing: (i) the offer price, (ii) the name and address of the person making such offer, and (iii) all other terms and conditions of the proposed purchase and sale (collectively, the "**ROFR Notice**"). The Manager will provide a copy of the ROFR Notice to each of the Offerees in accordance with the contact details contained in the Ownership Records within ten (10) days after Manager's receipt of the ROFR Notice, indicating the date on which the Manager received such ROFR Notice. The giving of a ROFR Notice by a Selling Beneficial Owner to the Manager shall constitute a representation and warranty by the Selling Beneficial Owner to the Offerees that the Third-Party Offer is bona fide in all respects. The Offerees shall have the right, but not the obligation, within thirty (30) days after Manager's receipt of the ROFR Notice, to elect to purchase the Offered Interest for the price and upon the terms and conditions as are contained in the Third-Party Offer by providing a notice of such election to the Selling Beneficial Owner and the Manager; provided, however, the price that any Offeree shall pay for the Offered Interest shall be reduced by any broker's fees or commissions that would have been payable by any Person under the Third-Party Offer if the Offered Interest had been sold pursuant to the Third-Party Offer. If more than one Offeree elects to exercise its right of first refusal in the Offered Interest, then the Offered Interest will be sold to the participating Offerees on a pro rata basis according to their respective Percentage Shares. If none of the Offerees elect to exercise its right of first refusal in the Offered Interest,

then the Manager or its designee shall have a further ten (10) Business Days to determine whether it wishes to purchase the Offered Interest on the same terms and, if it does not, the Selling Beneficial Owner shall then be free to sell the Offered Interest to the Person who made the Third-Party Offer, but only in accordance with the terms and conditions contained in the ROFR Notice. If after compliance with these provisions, and neither the Offerees nor the Manager or its designees exercise their aforesaid right of first refusal, and the Person who made the Third-Party Offer also fails to purchase the Offered Interest under the terms and conditions of the Third-Party Offer, then the Offered Interest may not be sold unless and until the Offerees have been given a new opportunity to determine whether to accept any new or revised Third-Party Offer (in accordance with the above noticing rights and other terms and conditions of the right of first refusal contained herein). For avoidance of doubt, any Offeree's election not to exercise its right of first refusal hereunder shall not be deemed a waiver of its rights hereunder with respect to any other Third-Party Offers. Any sale or conveyance of an Offered Interest that fails to comply with these provisions shall be null, void and ineffectual, and shall not bind the Trust or any other Beneficial Owners with respect to such purported transferee. Furthermore, in connection with any transfer in violation of this Section 6.4(b), the Trust may enforce this Section 6.4(b) by, without limitation, injunction, specific performance or other equitable relief, and both the Selling Beneficial Owner and its purported transferee shall be jointly and severally responsible to reimburse the Trust, the Manager and the Trustees, as applicable, for all of their attorney fees and other costs and expenses incurred in connection with such enforcement of this Section 6.4. Notwithstanding anything herein to the contrary, the right of first refusal described herein shall not be applicable with respect to a Permitted Transfer.

Section 6.5 Conditions to Admission of New Beneficial Owners. Any assignee or transferee of a Class 1 Beneficial Owner shall become a Class 1 Beneficial Owner only upon such assignee's or transferee's written acceptance and adoption of this Trust Agreement, as manifested by its execution and delivery to the Manager of an executed agreement substantially in the form of **Exhibit E**, plus the issuance by the Trust of a new Class 1 Beneficial Ownership Certificate to such assignee or transferee, copies of which will be provided by the Manager to the Trustees. Any assignee or transferee of a Class 2 Beneficial Owner shall become a Class 2 Beneficial Owner upon the transfer of such Class 2 Beneficial Interests in accordance with Section 6.2 hereof and shall be deemed to have accepted and adopted the terms of this Trust Agreement upon the completion of such transfer.

Section 6.6 Limit on Number of Beneficial Owners. Notwithstanding anything to the contrary in this Trust Agreement, the Trust shall at no time have more than one thousand nine hundred and ninety-nine (1,999) Beneficial Owners. Any transfer that results in a violation of the preceding sentence shall, to the fullest extent permitted by law, be null, void and of no effect whatsoever.

Section 6.7 Representations and Acknowledgments of Beneficial Owners. Each Beneficial Owner hereby represents and warrants that it (i) 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; and (ii) is aware of the restrictions on transfer that are applicable to the Beneficial Interests and will not offer, sell, pledge or otherwise transfer its Beneficial Interest except in compliance with all terms and conditions of this Trust Agreement and applicable securities laws and regulations. Each Beneficial Owner hereby acknowledges that (y) no Beneficial Interest may be sold, transferred or otherwise disposed of unless expressly permitted hereunder and it is registered or qualified under the Securities Act and all other applicable laws of any applicable jurisdiction or an exemption therefrom is available in accordance with all other laws of any applicable jurisdiction; and (z) 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.

Section 6.8 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 on any other Beneficial Owner with respect to the Trust Estate. Neither the power to give direction to the Trustees, 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. For the avoidance of doubt, the Manager has no fiduciary duties to Beneficial Owners.

Section 6.9 No Legal Title to Trust Estate. The Beneficial Owners shall not have legal title to the Trust Estate. The death, incapacity, dissolution, termination, or bankruptcy of any Beneficial Owner, Manager, the Independent Trustee or the Delaware Trustee shall not result in the termination or dissolution of the Trust.

Section 6.10 In-Kind Distributions. Except as expressly provided in Section 9.2, no Beneficial Owner (i) has an interest in specific Trust Estate or (ii) shall have 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 law, to partition the Trust Estate.

Section 6.11 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. The Percentage Share of the Class 2 Beneficial Owner prior to the issuance of any Class 1 Beneficial Interests (pursuant to Section 6.14 hereof) shall be one hundred percent (100.0%).

Section 6.12 Issuance of Conversion Notice. The Class 2 Beneficial Owner may, at any time in its sole discretion, issue the Conversion Notice to the Delaware Trustee and the Manager. 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 6.11. Instead, the Class 2 Beneficial Owner shall have only those rights and powers as apply to a Class 1 Beneficial Owner (as set forth in Section 6.13).

Section 6.13 Rights and Powers of Class 1 Beneficial Owners. The Class 1 Beneficial Owners shall only have the right to receive distributions from the Trust as a result of the operations or sale of the Real Estate. The Class 1 Beneficial Owners shall not have the right or power to direct in any manner the Trust or the Manager in connection with the operation of the Trust or the actions of the Delaware Trustee, the Independent Trustee or the Manager. In addition, the Class 1 Beneficial Owners shall not have the right or power to:

(a) Contribute additional assets to the Trust;

(b) Be involved in any manner in the operation or management of the Trust or its assets;

(c) Cause the Trust to negotiate or re-negotiate loans or leases; or

(d) Cause the Trust to sell its assets and re-invest the proceeds of such sale.

Section 6.14 Contributions by the Class 1 Beneficial Owners; Issuance of Class 1 Beneficial Ownership Certificates; Reduction in Class 2 Beneficial Interests. The Trust shall issue Class 1 Beneficial Ownership Certificates to Investors upon the contribution of cash to the Trust by the Investors in exchange for Class 1 Beneficial Interests. The Trust will issue Class 1 Beneficial Interests equivalent to up to one hundred (100.0%) Percentage Share of the Trust. 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. All cash contributed by Investors in exchange for Class 1 Beneficial Interests shall be used first by the Trust to pay, subject to the Financing Documents, all reasonable and necessary costs of sale to the Investors of the Class 1 Beneficial Interests. In connection with each such sale of Class 1 Beneficial Interests, the Trust shall repurchase a corresponding portion of the Class 2 Beneficial Interest then held by the Depositor. With respect to each contribution by a Class 1 Beneficial Owner and related repurchase of a portion of the Class 2 Beneficial Interest then held by the Depositor, the reduction of the Percentage Share of the Depositor shall be equal to the Percentage Share granted by the Trust to the contributing Class 1 Beneficial Owner. At such time, the Depositor shall surrender its Class 2 Beneficial Ownership Certificate for cancellation and issuance of a new Class 2 Beneficial Ownership Certificate reflecting the Depositor's remaining Percentage Share, if any. Upon the sale of all of the Class 1 Beneficial Interests, the Depositor and any permitted assignee of the Class 2 Beneficial Interests will no longer have any Beneficial Interest in the Trust and no Class 2 Beneficial Interests will remain outstanding. For federal income tax purposes, all funds received by the Trust from the Investors after issuance of the Conversion Notice shall be treated as having been used to acquire the Real Estate and pay the associated costs and expenses in connection therewith. Moreover, all funds received by the Trust from the Investors after issuance of the Conversion Notice shall be used to repurchase a corresponding portion of the Class 2 Beneficial Interest then held by the Depositor, so that in no event may such repurchase result in a net increase or decrease in the corpus of the Trust.

ARTICLE 7
DISTRIBUTIONS AND REPORTS

Section 7.1 Payments From Trust Estate Only. All payments to be made by the Manager under this Trust Agreement shall be from the Trust Estate.

Section 7.2 Distributions in General. The Manager shall distribute all available cash to the Beneficial Owners in accordance with their Percentage Shares on a monthly basis, but only after (i) paying or reimbursing the Delaware Trustee and then the Manager, respectively, for any claims subject to indemnification (including as provided in Sections 4.5 and 5.4, respectively) and for their respective reasonable fees and/or expenses actually incurred on behalf of the Trust, (ii) retaining such additional amounts as the Manager in its discretion determines are necessary to pay anticipated ordinary current and future Trust expenses ("**Reserves**"), and (iii) satisfying debt service and related expenses on the First Mortgage Loan and any other requirements imposed under the Financing Documents. Reserves and any other cash retained pursuant to this paragraph shall be invested by or on behalf of 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 (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 quarter.

Section 7.3 Distribution Upon Dissolution. In the event of the Trust's dissolution in accordance with Article 9 hereof, 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 7.4 Cash and other Accounts; Reports by the Manager. The Manager shall be responsible for receiving all cash from the Master Tenant and placing such cash into one or more accounts as required under the distribution and investment obligations of the Trust under Section 7.2. The Manager shall furnish unaudited quarterly and annual reports to each of the Beneficial Owners as to the amounts of rent received from the Master Tenant, the expenses incurred by the Trust with respect to the Real Estate (if any), the amount of any Reserves and the amount of the distributions made by the Trust to the Beneficial Owners.

Section 7.5 Information. Upon written demand of the Manager made by a Beneficial Owner, which written demand may not be made more than once per calendar quarter, a Beneficial Owner shall have the right to receive a copy of this Trust Agreement and the Certificate of Trust, and any amendments to either of them, provided that such copy shall not contain any identifying information with regard to any other Beneficial Owner. Except as specifically set forth in Sections 7.4 or 7.5, or elsewhere in this Trust Agreement, no Beneficial Owner or group of Beneficial Owners shall have any right to demand or receive any information, report, or document from the Manager or Trustees. Without limiting the foregoing, no Beneficial Owner shall have the right under this Trust Agreement to receive, review, copy or inspect any list of the Beneficial Owners or any identifying information with regard to the Beneficial Owners, whether or not requested, and the Manager shall not have any obligation to provide such information. Notwithstanding anything to the contrary contained herein or the Statutory Trust Act, a Beneficial Owner or group of Beneficial Owners shall not have any of the rights to information or other rights set forth in §3819 of the Statutory Trust Act.

ARTICLE 8
RELIANCE; REPRESENTATIONS; COVENANTS

Section 8.1 Good Faith Reliance. Neither the Delaware Trustee, the Independent Trustee nor the Manager (including in its capacity as Signatory Trustee) 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 Person 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 Delaware Trustee, the Independent 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 Delaware Trustee, the Independent Trustee and the Manager for any action taken or omitted to be taken by them in good faith in reliance thereon, and the Delaware Trustee, the Independent 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 Delaware Trustee, the Independent Trustee and the Manager may (i) 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 (ii) 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 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 Delaware Trustee, the Independent Trustee or the Manager to take any action if such Person shall have been advised by counsel 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 Delaware 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. NEITHER THE DELAWARE TRUSTEE, THE INDEPENDENT TRUSTEE NOR THE MANAGER, EITHER WHEN ACTING HEREUNDER IN ITS CAPACITY AS DELAWARE TRUSTEE, INDEPENDENT TRUSTEE OR MANAGER OR IN ITS OR THEIR INDIVIDUAL CAPACITY, MAKES OR SHALL BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, LOCATION, VALUE, CONDITION, WORKMANSHIP, DESIGN, COMPLIANCE WITH SPECIFICATIONS, CONSTRUCTION, OPERATION, MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE OF THE TRUST ESTATE OR ANY PART THEREOF, AS TO THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, AS TO THE ABSENCE OF ANY INFRINGEMENT OF ANY PATENT, TRADEMARK OR COPYRIGHT, AS TO THE ABSENCE OF OBLIGATIONS BASED ON STRICT LIABILITY IN TORT, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE TRUST ESTATE OR ANY PART THEREOF.

Neither the Delaware Trustee, the Independent Trustee nor the Manager makes any representation or warranty as to (i) the title, value, condition or operation of the Real Estate, and (ii) 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 Delaware Trustee, the Independent Trustee or the Manager in its individual capacity. Each of the Delaware Trustee and the Manager represents and warrants to the Beneficial Owners that it has authorized, executed and delivered the 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 upon the first to occur of a Transfer Distribution or the sale of the Trust 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 7.3; provided, however, that in connection with a sale of the Trust Estate in accordance with Section 7.3, the First Mortgage Loan shall have been defeased, paid in full or assumed in accordance with the terms of the Financing Documents.

Section 9.2 Termination to Protect and Conserve Trust Estate. Subject to the terms and conditions of the Financing Documents, upon the first to occur of (i) a sale of the Trust Estate pursuant to Section 9.3 or (ii) if the Conversion Notice has been issued and the Manager determines that (a) the Master Tenant is insolvent or has failed to timely pay the full rent due under the Master Lease after the expiration of any applicable notice and cure provisions in the Master Lease (not including any permitted deferral of rent due pursuant to Section 4.2 of the Master Lease), (b) the Trust Estate is in jeopardy of being lost due to a default or imminent default on the First Mortgage Loan, and in either case the Manager is prohibited from acting pursuant to Section 3.3 hereof, (c) the Master Tenant 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 First Mortgage Loan will commence hyper-amortization within ninety (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 First Mortgage Loan, (e) the Trust is otherwise terminated in violation of Section 3.3(c), (f) the Manager needs to take, but is precluded from taking, one of the actions enumerated in Section 3.3(c) and the Manager determines in

writing that dissolution of the Trust is necessary and appropriate to preserve and protect the Trust Estate for the benefit of the Beneficial Owners, or (g) the Trust is otherwise terminated or dissolved without the consent of Lender, then, in either case, the Trust shall dissolve and wind up in accordance with Section 3808 of the Statutory Trust Act and each Beneficial Owner's Percentage Share of the Trust Estate shall be distributed to such Beneficial Owner in accordance with this Section 9.2 in full and complete satisfaction and redemption of their Beneficial Ownership Certificates. Subject to the requirements of Section 3808 of the Statutory Trust Act, immediately before any such liquidating distributions, and only in the event that a distribution is to be made to the Beneficial Owners under Section 9.2(ii), the Manager shall transfer title to the assets comprising the Trust Estate to a newly formed Delaware limited liability company (the "**LLC**") that has a limited liability company operating agreement substantially similar to that set forth in **Exhibit F** (the "**Transfer Distribution**"). As part of the Transfer Distribution, the Manager shall cause the membership interests in the LLC to be distributed to the Beneficial Owners in proportion to their Percentage Shares immediately prior to the dissolution of the Trust in complete satisfaction of their Beneficial Interests and their Beneficial Ownership Certificates in order to consummate the dissolution of the Trust. It is the express intent of this Trust Agreement that no distribution be made under this Section 9.2 except in the rare and unexpected situation in which such distribution is necessary to prevent the loss of the Trust Estate. To the fullest extent permitted by applicable law, the Manager shall be fully protected in any such determination made in good faith that a condition under Section 9.2(ii) exists, and shall have no liability to any Person, including without limitation the Beneficial Owners, with respect to any such determination. If a determination has been made to make a Transfer Distribution under Section 9.2(ii), the Manager may, in its discretion and upon advice of counsel, utilize such other form of transaction (including, without limitation, a conversion of the Trust into a limited liability company if then permitted by applicable law) to accomplish the transaction contemplated by the Manager pursuant to the Transfer Distribution (which other form of transaction shall only require the approval of the Manager and shall not require the approval of any Beneficial Owners or the Trustees), provided that such alternative form of transaction is entered into to preserve and protect the Trust Estate for the benefit of the Beneficial Owners and is otherwise in compliance with the Statutory Trust Act. Lender's security interest or pledge on any of the Beneficial Interests shall automatically attach to the replacement membership interests in the LLC (and Manager and such Beneficial Owners agree to execute any documentation as shall be reasonably necessary to perfect Lender's security and pledge in such membership interests). The LLC shall 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, and the LLC shall assume, by operation of law, contract, or otherwise, the Trust's obligations under the Financing Documents and the Master Lease, which assumption shall be evidenced by documents approved in writing by the Lender. The Manager shall take all other actions necessary to complete the termination and winding up of the Trust, the formation of the LLC, and the Transfer Distribution in accordance with applicable Delaware laws relating to the Trust and the Delaware LLC Act. To the fullest extent permitted by applicable law, the Signatory Trustee shall be fully protected in any determinations made under this Section 9.2 made in good faith, and shall have no liability to any Person, including without limitation the Beneficial Owners, with respect thereto.

Section 9.3 Sale of the Trust Estate. Pursuant to Section 3806(b)(3) of the Statutory Trust Act, the Manager shall sell the Trust Estate upon its determination (in its sole discretion) that a sale of the Trust Estate is appropriate; provided, however, that it is the intent of the parties to this Trust Agreement that the Trust Estate will be held by the Trust for at least two (2) years. Any such sale of the Trust Estate shall occur as soon as practicable after the Manager has determined that the sale of the Trust Estate is appropriate. The Manager shall be responsible for (i) determining the fair market value of the Trust Estate, (ii) providing notice to the Trustees of the sale of the Trust Estate and (iii) conducting the sale of the Trust Estate on behalf of the Trust under commercially reasonable terms and executing such documents and instruments required to be executed by the Trust to affect such sale (Manager shall also provide to the Trustees in execution form any documents and instruments required to be executed by the Trustees to affect such sale). The Manager (and the Trustees, if necessary) shall take all reasonable action that would seek to

enable the sale to qualify, with respect to each Beneficial Owner, as a like-kind exchange within the meaning of Code Section 1031. Any sale of the Real Estate shall be on an "as-is, where-is" basis (or on such terms as are deemed commercially reasonable by the Manager) and without any representations or warranties by the Trustees or the Manager (other than representations as to their respective authority to enter into the sale).

Section 9.4 **Manager Fees.**Asset Management Fee. The Manager, in its role as Asset Manager, shall receive a fee from the Trust, as provided pursuant to Section 3.2 of the Asset Management Agreement (the "**Asset Management Fee**"). The Manager may waive or defer the Asset Management Fee charged to Beneficial Owners, in whole or in part, in the Manager's sole and absolute discretion.

(b) Disposition Fee. The Manager shall receive a disposition fee from the Trust, as provided pursuant to Section 3.3 of the Asset Management Agreement. Any sales commissions due to third-party brokers shall not be paid from this amount. The foregoing fee shall be subordinate to the Financing Documents.

Section 9.5 **Loan Paid in Full.** If the Manager determines that the First Mortgage Loan, including all interest, principal and penalties, if any, has been paid in full and the Trust Estate has not been sold pursuant to Section 9.3 then the Manager shall provide written notice to such effect to the Trust, and the Trust shall dissolve and wind up in accordance with the procedures set forth in Section 9.2.

Section 9.6 **Certificate of Cancellation.** Upon the completion of the dissolution and winding up of the Trust, the Certificate of Trust shall be cancelled by the Delaware Trustee who upon direction by the Manager, and at the expense of the Trust, and the Delaware Trustee shall execute and cause a certificate of cancellation to be filed in the office of the Secretary of State.

ARTICLE 10
EXCHANGE RIGHT

Section 10.1 **Exchange Right.** Subject to Sections 10.2 and 10.3, each of the Investors does hereby grant to the Manager, its affiliates, successors or assigns, the right, but not the obligation, to require that each such Investor exchange its interest in the Trust for units of an equal aggregate value (the "**Units**") in one or more entities organized or identified by the Manager (each, an "**Exchange Entity**") in a transaction intended to qualify as a tax-deferred exchange under Code Section 721, pursuant to the terms of this Article 10 (the "**Exchange Right**"). Each Investor shall receive an amount of Units with an aggregate value equal to the then fair market value of such Investor's interest in the Trust as of the date the Exchange Right is exercised. The Exchange Right shall be exercised pursuant to a "Notice of Exchange," a form of which is attached as Exhibit G to this Trust Agreement, delivered to the Investors by the Manager. Notwithstanding anything to the contrary, the Manager may not exercise the Exchange Right until all Investors have held their Beneficial Interests for at least two (2) years.

Section 10.2 **Dissenting Investors.** Notwithstanding the provisions of Section 10.1, an Investor may elect to have any such Exchange Entity acquire the Investor's interest in the Trust for cash rather than exchange such interest for Units (such Investor, a "**Dissenting Investor**"). The purchase price for a Dissenting Investor's interest (the "**Cash Amount**") shall equal the then fair market value of the Dissenting Investor's interest as of the date the Exchange Right is exercised. If a Dissenting Investor elects to exercise its right to have an Exchange Entity purchase its interests in the Trust under this Section 10.2 with respect to a Notice of Exchange, it shall so notify the Manager and Exchange Entity in writing within twenty (20) Business Days after the date on which the Manager mails the Notice of Exchange to the Investor (the "**Dissenting Notice**"). If any Investor does not provide a Dissenting Notice to the Manager within twenty (20) Business Days after the mailing date of the Notice of Exchange, such Investor will be deemed to have agreed to the exercise of the Exchange Right by the Manager.

Section 10.3 **Documentation and Signatures; Delivery.** Each Investor agrees to execute such documents and signatures as the Manager may reasonably require in connection with the exercise of the Exchange Right under Section 10.1 or the cash purchase under Section 10.2. For an Investor that is not a Dissenting Investor but is subject to the Exchange Right (such Investor, a "**Contributing Investor**"), the Manager may, but is not obligated to, provide a tax protection agreement (a "**Tax Protection Agreement**") in which the Manager: (i) will agree not to directly or indirectly sell, exchange, transfer, or otherwise dispose of the Real Estate or any interest therein (without regard to whether such disposition is voluntary or involuntary) in a transaction within two (2) years of the date of the Exchange Right that would cause a Contributing Investor to recognize any gain under Code Section 704(c) (such transaction, a "**Triggering Event**"), and (ii) for a period of two (2) years following the occurrence of a Triggering Event, will agree to pay a Contributing Investor's damages equal to the aggregate federal, state and local income taxes incurred by such Contributing Investor in connection with such Triggering Event. For the avoidance of doubt, the Manager is under no obligation to provide a Tax Protection Agreement and the decision to provide a Tax Protection Agreement and/or to effectuate a Tax Protection Agreement shall be in the sole and absolute discretion of the Manager. Upon receipt of any and all documents and signatures required by the Manager under this Section 10.3 (such date of final receipt, the "**Receipt Date**"), the Manager shall distribute (i) to any Contributing Investor the Units within sixty (60) Business Days of the Receipt Date and (ii) to any Dissenting Investor the Cash Amount within one hundred eighty (180) days of the Receipt Date.

Section 10.4 **Determination of Fair Market Value of Interests in the Trust.** For the purposes of the Exchange Right, the fair market value of an Investor's interests in the Trust to be acquired by the Exchange Entity will be determined by multiplying: (i) the Percentage Share represented by the interests in the Trust to be acquired by the Exchange Entity by (ii) the fair market value of the Real Estate as determined by an independent appraisal firm selected by the Manager in its sole discretion. Such appraisal shall have been completed within one (1) year of the date the Exchange Right is exercised. No discounts for lack of liquidity or minority interests shall be considered in determining the fair market value of such interests in the Trust.

Section 10.5 **Continued Existence of Trust.** Notwithstanding anything to the contrary in this Trust Agreement, the Trust shall survive the exercise of the Exchange Right by the Manager; provided, however, that following the exercise of the Exchange Right and the completion of the distributions under Section 10.3, the Trust shall take any and all necessary actions to cease to be treated as a fixed investment trust under Regulations Section 301.7701-4(c) and instead be treated as a "disregarded entity" under Regulations Section 301.7701-3 for federal income tax purposes.

ARTICLE 11
MISCELLANEOUS

Section 11.1 **Limitations on Rights of Others.** Nothing in this Trust Agreement, whether express or implied, shall give to any Person other than the Depositor, the Trustees, the Manager, the Beneficial Owners, and the Trust any legal or equitable right, remedy or claim hereunder. Notwithstanding the preceding sentence, the Lender, its successors and assigns, shall be explicit third-party beneficiaries of the Special Purpose Provisions of this Trust Agreement with the right to independently enforce the terms of this Trust Agreement.

Section 11.2 **Successors and Assigns.** All covenants and agreements contained herein shall be binding upon and inure to the benefit of the Depositor, the Trustees, 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 11.3 **Usage of Terms.** With respect to all terms in this Trust Agreement, the singular includes the plural and the plural includes the singular; 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; 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; references to Persons include their successors and permitted assigns; and the term "including" means including without limitation.

Section 11.4 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 11.5 Amendments. This Trust Agreement may be supplemented or amended by the Manager as determined solely by the Manager and will not require the consent of the Beneficial Owners; provided, however, that without the written consent of the Delaware Trustee in its or their individual capacity, no such supplement or amendment shall be enforceable against the Delaware Trustee in its or their individual capacity to the extent such supplement or amendment affects the Delaware Trustee in its or their individual capacity. During the period that the First Mortgage Loan is outstanding, this Trust Agreement may not be supplemented or amended, and no term or provision hereof may be waived, discharged, or terminated.

Section 11.6 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) electronic transmission, (ii) overnight courier, or (iii) 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:	JWCM Vivian, DST c/o Jesselson Warsavsky Capital Management, LLC 445 Park Avenue Suite 1600 New York, New York 10022 Attn: Jason Warsavsky Email: jason@jwcmllc.com Telephone: 646-386-8117
If to the Delaware Trustee:	The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, Delaware 19801
If to the Manager:	JWCM Vivian Manager, LLC c/o Jesselson Warsavsky Capital Management, LLC 445 Park Avenue Suite 1600 New York, New York 10022 Attn: Jason Warsavsky Email: jason@jwcmllc.com Telephone: 646-386-8117
If to a Beneficial Owner:	At such Person's address as specified in the most recent Ownership Records.

From time to time the Depositor, Trustees, or 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 11.7 Governing Law; Venue; Jury Trial Waiver. 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, except to the extent otherwise required by the Statutory Trust Act. Any legal proceeding concerning interpretation or enforcement of any provision of this Trust Agreement shall be venued exclusively in New York, New York. Beneficial Owners hereby waive trial by jury in any action, proceeding or counterclaim brought by any of the parties hereto on any matters whatsoever arising out of or in any way connected with this Trust Agreement, or in connection with any emergency statutory or any other statutory remedy.

Section 11.8 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 11.9 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 11.10 Third-Party Beneficiaries. Except as expressly noted herein, this Trust Agreement shall not confer any rights or remedies on any individual other than the parties hereto and their respective successors and permitted assigns.

Section 11.11 Signature of Beneficial Owners. Each Investor will execute the Signature Page for assignee or transferee Beneficial Owners of the Trust in substantially the form set forth in **Exhibit E** hereto (the "**Signature Page**") in connection with their acquisition of a Class 1 Beneficial Ownership Certificate. By executing the Signature Page, each Investor hereby acknowledges and agrees to be bound by the terms of the limited liability company agreement contemplated under Section 9.2 and in the form substantially similar to that set forth in **Exhibit F** hereto (the "**LLC Agreement**") when and if such limited liability company is formed in accordance with the LLC Agreement. In addition, in light of their agreement to this Section 11.11, each Investor hereby acknowledges and agrees that their signature to the LLC Agreement will not be required as of the Transfer Date (as defined in the LLC Agreement).

Section 11.12 Division. The Trust shall not file a certificate of division, adopt a plan of division, amend any of its organizational documents, or take, permit or consent to any other actions in order to divide the Trust into two or more entities pursuant to a plan of division.

[Signature Page to Follow]

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.

DEPOSITOR:

JWCM Vivian Depositor, LLC

By: JWCM Exchange I, LLC, its Sole Member and Manager

By: _____
Name: Jason Warsavsky
Title: President

MANAGER AND SIGNATORY TRUSTEE:

JWCM Vivian Manager, LLC

By: JWCM Exchange I, LLC, its Sole Member and Manager

By: _____
Name: Jason Warsavsky
Title: President

DELAWARE TRUSTEE:

The Corporation Trust Company

By: _____
Name: _____
Title: _____

THE INDEPENDENT TRUSTEE:

_____
Ricardo Beausoleil

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.

DEPOSITOR:

JWCM Vivian Depositor, LLC

By: JWCM Exchange I, LLC, its Sole Member and Manager

By: _____
Name: Jason Warsavsky
Title: President

MANAGER AND SIGNATORY TRUSTEE:

JWCM Vivian Manager, LLC

By: JWCM Exchange I, LLC, its Sole Member and Manager

By: _____
Name: Jason Warsavsky
Title: President

DELAWARE TRUSTEE:

The Corporation Trust Company

By: _____
Name: Jennifer A. Schwartz
Title: Asst. Vice President

THE INDEPENDENT TRUSTEE:

_____
Ricardo Beausoleil

EXHIBIT A
REAL ESTATE

ALL THAT TRACT OR PARCEL OF LAND LYING, BEING AND SITUATED IN THE CITY OF ATLANTA, IN LAND LOT 105 OF THE 14TH DISTRICT OF FULTON COUNTY, GEORGIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EAST LINE OF ALLENE AVENUE, WHICH POINT IS LOCATED TWO HUNDRED AND TWENTY-EIGHT AND SIX-TENTHS FEET (228.6 FEET) NORTH OF NORTHEAST CORNER OF ALLENE AVENUE AND ERIN STREET, WHICH POINT IS MARKED BY AN IRON PIN; THENCE NORTH ALONG THE EAST SIDE OF ALLENE AVENUE THREE HUNDRED AND TWO-TENTHS (300.2) FEET TO A CONCRETE MONUMENT: THENCE SLIGHTLY NORTHWESTERLY FOLLOWING THE EASTERN LINE OF ALLENE AVENUE ONE HUNDRED AND NINETY-NINE AND EIGHT-TENTHS (199.8) FEET TO AN IRON PIPE LOCATED IN THE EAST LINE OF ALLENE AVENUE, AT A POINT ONE HUNDRED EIGHT AND EIGHTY-FIVE HUNDREDTHS (105.85) FEET SOUTHWESTERLY FROM THE CENTER LINE OF THE ATLANTA AND WEST POINT RAILROAD COMPANY'S EASTBOUND FREIGHT MAIN TRACT; THENCE SOUTHEASTERLY THREE HUNDRED AND ELEVEN AND FIVE-TENTHS (311.5) FEET TO THE INTERSECTION OF A LINE WHICH WOULD BE THE PROJECTION OF THE NORTH SIDE OF HELLENA STREET IF SAID STREET WAS EXTENDED EASTERLY ACROSS ALLENE AVENUE, SAID POINT BEING ONE HUNDRED EIGHT AND THIRTY-FIVE HUNDREDTHS (108.35) FEET SOUTHEASTERLY FROM THE CENTER LINE OF EASTBOUND FREIGHT MAIN TRACK OF THE ATLANTA AND WEST POINT RAILROAD; THENCE EASTERLY ALONG A LINE WHICH WOULD BE THE PROJECTION OF THE NORTH SIDE OF HELLENA STREET ONE HUNDRED FORTY-SIX AND THREE TENTHS (146.3) FEET TO A POINT IN THE SOUTHWEST RIGHT OF WAY LINE OF THE ATLANTA AND WEST POINT RAILROAD, WHICH POINT IS LOCATED FIFTY (50) FEET SOUTHWESTERLY FROM THE CENTER LINE OF THE EASTBOUND FREIGHT MAIN TRACK OF SAID RAILROAD; THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY LINE FIFTY (50) FEET FROM AND PARALLEL TO THE CENTER LINE OF SAID WESTBOUND FREIGHT MAIN LINE ONE THOUSAND ONE HUNDRED AND SIXTEEN (1116) FEET, MORE OR LESS, TO A POINT ON THE WEST SIDE OF STEWART AVENUE, WHICH POINT IS MARKED BY A CONCRETE MONUMENT; THENCE SOUTH ALONG THE WEST SIDE OF STEWART AVENUE FIFTY FOUR AND THREE TENTHS (54.3) FEET TO ANOTHER CONCRETE MONUMENT; THENCE WESTERLY FOLLOWING A LINE OF CONCRETE MONUMENTS FOURTEEN HUNDRED SEVENTY-TWO (1472) FEET, MORE OR LESS, TO POINT OF BEGINNING, ALL AS SHOWN ON PLAT OR SURVEY MADE, BY ATLANTA AND WEST POINT RAILROAD DATED OCTOBER 16, 1948, BEING SURVEY NO. 222/33 ACCORDING TO THE ORIGINAL TRACING ON FILING IN THE OFFICE OF THE CHIEF ENGINEER OF THE ATLANTA AND WEST POINT RAILROAD IN ATLANTA, GEORGIA.

EXCEPTING THEREFROM, HOWEVER ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 105 OF THE 14TH DISTRICT OF FULTON COUNTY, GEORGIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST SIDE OF STEWART AVENUE WHERE THE SOUTH RIGHT OF WAY LINE OF ATLANTA AND WEST POINT RAILROAD INTERSECTS, THE WEST SIDE OF STEWART AVENUE; AND RUNNING THENCE SOUTH 54.3 FEET; THENCE WEST A DISTANCE OF 5 FEET TO THE PROPOSED WEST SIDE OF STEWART AVENUE; THENCE NORTH ALONG THE PROPOSED WEST SIDE OF STEWART AVENUE A DISTANCE OF 54.3 FEET TO THE SOUTH RIGHT OF WAY LINE OF SAID RAILROAD; THENCE EAST ALONG THE SOUTH RIGHT OF WAY LINE OF SAID RAILROAD A DISTANCE OF 5 FEET TO THE POINT OF BEGINNING.

ALSO DESCRIBED AS:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 105 OF THE 14TH DISTRICT OF FULTON COUNTY, CITY OF ATLANTA, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8-INCH REBAR SET 201.59 FEET NORTH OF THE INTERSECTION OF THE NORTHERN RIGHT-OF-WAY OF ERIN AVENUE (50 FOOT RIGHT-OF-WAY) WITH THE WESTERN RIGHT-OF-WAY OF METROPOLITAN PARKWAY (VARIABLE RIGHT-OF-WAY); THENCE LEAVING SAID RIGHT-OF-WAY, NORTH 88 DEGREES 39 MINUTES 47 SECONDS WEST A DISTANCE OF 1466.95 FEET TO A 1-INCH OPEN TOP PIPE FOUND ON THE EASTERN RIGHT-OF-WAY OF ALLENE AVENUE (50 FOOT RIGHT-OF-WAY); THENCE ALONG SAID RIGHT-OF-WAY THE FOLLOWING COURSES AND DISTANCES: NORTH 00 DEGREES 24 MINUTES 41 SECONDS EAST A DISTANCE OF 325.41 FEET TO A POINT; ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 699.00 FEET AND AN ARC LENGTH OF 126.92 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 03 DEGREES 25 MINUTES 33 SECONDS WEST FOR A DISTANCE OF 126.75 FEET TO A 5/8-INCH REBAR SET; NORTH 06 DEGREES 26 MINUTES 55 SECONDS WEST A DISTANCE OF 47.67 FEET TO A 1/2-INCH OPEN TOP PIPE FOUND; THENCE LEAVING SAID RIGHT-OF-WAY, SOUTH 66 DEGREES 03 MINUTES 45 SECONDS EAST A DISTANCE OF 311.50 FEET TO A 5/8-INCH REBAR SET; THENCE SOUTH 89 DEGREES 37 MINUTES 23 SECONDS EAST A DISTANCE OF 146.30 FEET TO A 5/8-INCH REBAR SET; THENCE SOUTH 66 DEGREES 07 MINUTES 03 SECONDS EAST A DISTANCE OF 457.93 FEET TO A 5/8-INCH REBAR SET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2061.00 FEET AND AN ARC LENGTH OF 651.81 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 75 DEGREES 08 MINUTES 25 SECONDS EAST FOR A DISTANCE OF 649.10 FEET TO A PK NAIL SET ON THE WESTERN RIGHT-OF-WAY OF METROPOLITAN PARKWAY; THENCE ALONG SAID RIGHT-OF-WAY, SOUTH 00 DEGREES 01 MINUTES 27 SECONDS EAST A DISTANCE OF 54.30 FEET TO A 5/8-INCH REBAR SET AND THE TRUE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 8.471 ACRES.

EXHIBIT B-1
FORM OF CLASS 1 BENEFICIAL OWNERSHIP CERTIFICATE

THIS CLASS 1 BENEFICIAL OWNERSHIP CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**") OR WITH ANY SECURITIES REGULATORY AUTHORITY IN ANY JURISDICTION. THIS CLASS 1 BENEFICIAL OWNERSHIP CERTIFICATE MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS REGISTERED, OTHER THAN PURSUANT TO AN EXEMPTION FROM OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE SECURITIES LAWS. 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 CLASS 1 BENEFICIAL OWNERSHIP CERTIFICATE IS NON-TRANSFERABLE AND MAY NOT BE NEGOTIATED, ENDORSED OR OTHERWISE TRANSFERRED TO A HOLDER.

JWCM VIVIAN, DST

CLASS 1 BENEFICIAL OWNERSHIP CERTIFICATE

No. _____

JWCM Vivian, DST, a statutory trust organized under the laws of the State of Delaware (the "**Issuer**"), certifies that _____ is the owner of a Class 1 Beneficial Interest equal to _____% (_____ percent) of the interest in the Issuer, issued pursuant to the Amended and Restated Trust Agreement dated as of August 21, 2025 (as may be amended or supplemented from time to time, the "**Trust Agreement**") by and among JWCM Vivian Depositor, LLC, as Depositor, JWCM Vivian Manager, LLC, as manager (the "**Manager**") and Signatory Trustee, The Corporation Trust Company, as co-trustee (the "**Delaware Trustee**"), and Ricardo Beausoleil, as the Independent Trustee.

All capitalized terms used in this Class 1 Beneficial Ownership Certificate and not defined herein shall have the meanings assigned to such terms in the Trust Agreement. Reference is made to the Trust Agreement and any agreements supplemental thereto for a statement of the respective rights and obligations thereunder of the Depositor, the Manager, the Trustees, and the Beneficial Owners. This Class 1 Beneficial Ownership Certificate is subject to all terms of the Trust Agreement.

The Class 1 Beneficial Interest evidenced by this Class 1 Beneficial Ownership Certificate is subject to a right of first refusal in favor of the Manager (or any Affiliate thereof designated by the Manager) and the other Class 1 Beneficial Owners. Additional information concerning the terms of the right of first refusal are set forth in Section 6.4 of the Trust Agreement.

This Class 1 Beneficial Ownership Certificate shall in all respects be governed by, and construed in accordance with, the laws of the State of Delaware.

By accepting this Class 1 Beneficial Ownership Certificate, the holder hereof hereby acknowledges and agrees that in its capacity as a Beneficial Owner it lacks the ability to (i) seek a partition of the Trust's assets, (ii) file a voluntary bankruptcy petition on behalf of the Trust, or (iii) 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.

IN WITNESS WHEREOF, the Issuer has caused this Class 1 Beneficial Ownership Certificate to be signed manually by the Manager in accordance with the terms of the Trust Agreement.

Date: _____

JWCM Vivian, DST

By: JWCM Vivian Manager, LLC, not in its individual capacity, but solely as Manager of the Issuer

By: _____
Name: _____
Title: _____

EXHIBIT B-2
FORM OF CLASS 2 BENEFICIAL OWNERSHIP CERTIFICATE

THIS CLASS 2 BENEFICIAL OWNERSHIP CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**") OR WITH ANY SECURITIES REGULATORY AUTHORITY IN ANY JURISDICTION. THIS CLASS 2 BENEFICIAL OWNERSHIP CERTIFICATE MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF UNLESS REGISTERED, OTHER THAN PURSUANT TO AN EXEMPTION FROM OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND APPLICABLE SECURITIES LAWS. 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 OF THE TRUST. THIS CLASS 2 BENEFICIAL OWNERSHIP CERTIFICATE IS NON-TRANSFERABLE AND MAY NOT BE NEGOTIATED, ENDORSED OR OTHERWISE TRANSFERRED TO A HOLDER.

JWCM VIVIAN, DST

CLASS 2 BENEFICIAL OWNERSHIP CERTIFICATE

No. _____

JWCM Vivian, DST, a statutory trust organized under the laws of the State of Delaware (the "**Issuer**"), certifies that _____ is the owner of a Class 2 Beneficial Interest equal to _____% (_____ percent) of the interest in the Issuer, issued pursuant to the Amended and Restated Trust Agreement dated as of August 21, 2025 (as may be amended or supplemented from time to time, the "**Trust Agreement**") by and among JWCM Vivian Depositor, LLC, as Depositor, JWCM Vivian Manager, LLC, as manager (the "**Manager**") and Signatory Trustee, The Corporation Trust Company, as co-trustee (the "**Delaware Trustee**"), and Ricardo Beausoleil, as the Independent Trustee.

All capitalized terms used in this Class 2 Beneficial Ownership Certificate and not defined herein shall have the meanings assigned to such terms in the Trust Agreement. Reference is made to the Trust Agreement and any agreements supplemental thereto for a statement of the respective rights and obligations thereunder of the Depositor, the Manager, the Trustees, and the Beneficial Owners. This Class 2 Beneficial Ownership Certificate is subject to all terms of the Trust Agreement. Any transferee or assignee of all or any portion of the Class 2 Beneficial Interests represented by this Class 2 Beneficial Ownership Certificate is subject to, and agrees to be bound and abide by the terms of the Trust Agreement.

This Class 2 Beneficial Ownership Certificate shall in all respects be governed by, and construed in accordance with, the laws of the State of Delaware.

By accepting this Class 2 Beneficial Ownership Certificate, the holder hereof hereby acknowledges and agrees that in its capacity as a Beneficial Owner it lacks the ability to (i) seek a partition of the Trust's assets, (ii) file a voluntary bankruptcy petition on behalf of the Trust, or (iii) 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.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Issuer has caused this Class 2 Beneficial Ownership Certificate to be signed manually by the Manager in accordance with the terms of the Trust Agreement.

Date: _____

JWCM Vivian, DST

By: JWCM Vivian Manager, LLC, not in its individual capacity, but solely as Manager of the Issuer

By: _____
Name: _____
Title: _____

ENDORSEMENT

FOR VALUE RECEIVED, _____, the registered holder, hereby assigns, transfers, conveys, and delivers unto _____ the Class 2 Beneficial Interests in JWCM Vivian, DST, a Delaware statutory trust (the "**Trust**"), standing in its name on the books of said Trust and represented by Class 2 Beneficial Ownership Certificate, Certificate Number 1 and does hereby irrevocably constitute and appoint _____ attorney to transfer the said Class 2 Beneficial Interest on the books of the Trust with full power of substitution in the premises.

Date: _____

_____

By: _____
Name: _____
Title: _____

EXHIBIT C
CERTIFICATE OF TRUST
OF
JWCM VIVIAN, DST

EXHIBIT D
OWNERSHIP RECORDS
FOR
JWCM VIVIAN, DST

LAST REVISED _____ ____, 20____.

Name:	**Mailing Address:**	**Percentage (%) Beneficial Interest:**

I hereby certify that the foregoing Ownership Records are complete and accurate as of the date set forth above.

JWCM Vivian Manager, LLC, not in its individual capacity, but solely as Manager

By: _____
Name: _____
Title: _____

EXHIBIT E
AGREEMENT OF ASSIGNEE OR TRANSFEREE BENEFICIAL OWNER
OF JWCM VIVIAN, DST

The undersigned has received and reviewed, with assistance from such legal, tax, investment, and other advisors and skilled persons as the undersigned has deemed appropriate, the Amended and Restated Trust Agreement of JWCM Vivian DST (the "**Trust**"), dated as of August 21, 2025 (the "**Trust Agreement**"), by and among JWCM Vivian Depositor, LLC, as Depositor, JWCM Vivian Manager, LLC, as Manager and Signatory Trustee, The Corporation Trust Company, as the Delaware Trustee, and Ricardo Beausoleil, as the Independent Trustee, and hereby covenants and agrees to be bound by the Trust Agreement as a Class 1 Beneficial Owner under the Trust. All capitalized terms used herein, and not defined herein shall have the meanings given to such terms in the Trust Agreement.

In connection with the purchase of the Class 1 Beneficial Interest, the undersigned hereby makes the following representations, warranties, covenants, acknowledgments, agreements, and understandings to and in favor of the Trust, the Depositor, the Manager, and the Trustee:

1.1 Acknowledges (i) that the Class 1 Beneficial Interest being acquired by the undersigned is (A) pursuant to the contract of sale or other written agreement attached hereto as **Exhibit A** and that there are no side letters or other undisclosed understandings or agreements between buyer and seller (hereinafter the "**Offer**") and (B) the Offer is subject to a right of first refusal in favor of the other Beneficial Owners and the Manager, all as more particularly set forth in Section 6.4 of the Trust Agreement and (ii) that the failure of the Manager and other Beneficial Owners of being given the right to exercise said right of first refusal could (A) void the undersigned's acquisition of the subject Class 1 Beneficial Interest or (B) otherwise have an adverse effect on the undersigned's right, title and interest in and to the subject Class 1 Beneficial Interest.

1.2 Represents and warrants that the undersigned: (i) understands and is aware that there are substantial uncertainties regarding the treatment of the undersigned's Class 1 Beneficial Interest as real estate for federal income tax purposes; (ii) fully understands that there is significant risk that the undersigned's Class 1 Beneficial Interest will not be treated as real estate for federal income tax purposes; (iii) has independently obtained advice from its legal counsel and/or accountant regarding any tax-deferred exchange under Code Section 1031, including, without limitation, whether the acquisition of the undersigned's Class 1 Beneficial Interest may qualify as part of a tax-deferred exchange, and the undersigned is relying on such advice and not on the opinion of counsel issued to the Trust or upon any statements in the Memorandum (as defined below) regarding the tax treatment of the Class 1 Beneficial Interests; (iv) is aware that the Internal Revenue Service ("**IRS**") has issued Revenue Ruling 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 undersigned's Class 1 Beneficial Interest will not be treated as a partnership interest for federal income tax purposes; (v) understands that the Trust has not obtained a ruling from the IRS that the undersigned's Class 1 Beneficial Interest will be treated as an undivided interest in real estate as opposed to an interest in a partnership; (vi) understands that the tax consequences of an investment in the undersigned's Class 1 Beneficial Interest, especially the treatment of the transaction described herein under Code Section 1031 and the related "1031 Exchange" rules, are complex and vary with the facts and circumstances of each individual purchaser; (vii) understands that, notwithstanding the opinion of counsel issued to the Trust states that a purchaser's Class 1 Beneficial Interest "should" be considered a real property interest and not a partnership interest for federal income tax purposes, no assurance can be given that the IRS will agree with this opinion; and (viii) shall, for federal income tax purposes, report the purchase of the Class 1 Beneficial Interest by the undersigned as a purchase by the undersigned of a direct ownership interest in the Real Estate.

1.3 Acknowledges that the undersigned (i) has received from the undersigned's transferor or assignor a courtesy copy of the private offering memorandum regarding the sale of the Class 1 Beneficial Interests by the Trust (together with any addendums or supplements thereto, the "**Memorandum**") and the Trust Agreement and (ii) is familiar with and understands each of the foregoing including the "Risk Factors" set forth in the Memorandum.

1.4 Represents and warrants that the undersigned, in determining to acquire the Class 1 Beneficial Interest, has relied solely upon the advice of the undersigned's legal counsel and accountants or other financial advisors with respect to the tax and other consequences involved in acquiring the Class 1 Beneficial Interest and that none of JWCM Exchange I, LLC (the "**Sponsor**"), the Trust, the Trustees, the Manager, or the Depositor (or any of their respective owners, officers, affiliates, representatives, professionals or agents) has made any representation to the undersigned regarding the Class 1 Beneficial Interest or the assets or liabilities of the Trust or the financial viability of the Trust or an investment in the Class 1 Beneficial Interests.

1.5 Acknowledges that the Class 1 Beneficial Interest being acquired will be governed by the terms and conditions of the Trust Agreement, and under certain circumstances by the limited liability company operating agreement contemplated under Section 9.2 of the Trust Agreement and attached as **Exhibit F** thereto, both of which the undersigned accepts and by which the undersigned agrees by execution hereof to be legally bound notwithstanding that his or her signature will not be required on either agreement.

1.6 Represents and warrants that the undersigned either (i) is an accredited investor, or (ii) is acquiring the Class 1 Beneficial Interest in a fiduciary capacity for a person meeting such condition.

1.7 Represents and warrants that the Class 1 Beneficial Interest being acquired will be acquired for the undersigned's own account without a view to public distribution or resale and that the undersigned has no contract, undertaking, agreement or arrangement to sell or otherwise transfer or dispose of the Class 1 Beneficial Interest or any portion thereof to any other Person.

1.8 Represents and warrants that the undersigned (i) can bear the economic risk of the purchase of the Class 1 Beneficial Interest including the total loss of the undersigned's investment, (ii) has such knowledge and experience in business and financial matters, including the analysis of or participation in offerings of privately issued securities, as to be capable of evaluating the merits and risks of purchasing Class 1 Beneficial Interests, and (iii) if an individual, is at least 19 years of age.

1.9 Understands that the Class 1 Beneficial Interest has not been registered under the Securities Act of 1933, as amended (the "**Securities Act**"), or the securities laws of any state and are subject to substantial restrictions on transfer as described in the Memorandum under *"Summary of the Trust Agreement — Summary of Certain Provisions of the Trust Agreement — Transfer Rights; Right of First Refusal,"* which restrictions are in addition to certain other restrictions set forth in the Trust Agreement.

1.10 Understands that a legend will be placed on the Class 1 Beneficial Ownership Certificate with respect to restrictions on distribution, transfer, resale, assignment or subdivision of the Class 1 Beneficial Interest imposed by applicable federal and state securities laws.

1.11 Agrees that the undersigned will not sell or otherwise transfer or dispose of any Class 1 Beneficial Interest or any portion thereof unless (i) such Class 1 Beneficial Interest is registered under the Securities Act and any applicable state securities laws or, if required by the Trust (through the Manager), the undersigned obtains an opinion of counsel that is satisfactory to the Trust that such Class 1 Beneficial Interest may be sold in reliance on an exemption from such registration requirements, and (ii) the transfer is otherwise made in accordance with the Trust Agreement.

1.12 Agrees that the undersigned will not sell or transfer a Class 1 Beneficial Interest or any portion thereof to (i) an employee benefit plan within the meaning of Section 3(3) of ERISA that is subject to the fiduciary responsibility provisions of Title I of ERISA (a "**plan**"), or a plan within the meaning of Code Section 4975(e)(1) that is subject to Code Section 4975 (also, a "**plan**"), including a qualified plan (any pension, profit sharing or stock bonus plan that is qualified under Code Section 401(a)) or an individual retirement account; (iii) any Person that is directly or indirectly acquiring a Class 1 Beneficial Interest on behalf of, as investment manager of, as fiduciary of, as trustee of, or with assets of a plan (including any insurance company using assets in its general or separate account that may constitute assets of a plan); (iii) a charitable remainder trust; (iv) any other tax-exempt entity; or (v) a foreign Person.

1.13 Understands that (i) the Trust has no obligation or intention to register any Class 1 Beneficial Interest for resale or transfer under the Securities Act or any state securities laws or to take any action (including the filing of reports or the publication of information as required by Rule 144 under the Securities Act) which would make available any exemption from the registration requirements of any such laws, and (ii) the undersigned therefore may be precluded from selling or otherwise transferring or disposing of any Class 1 Beneficial Interest or any portion thereof for an indefinite period of time or at any particular time.

1.14 Understands that no federal or state agency including the Securities and Exchange Commission, or the securities commission or authorities of any other state has approved or disapproved the Class 1 Beneficial Interests, passed upon or endorsed the merits of the Trust's offering of Class 1 Beneficial Interests or the accuracy or adequacy of the Memorandum, or made any finding or determination as to the fairness of the Interest for public investment.

1.15 Represents, warrants and agrees that, if the undersigned is acquiring the Class 1 Beneficial Interest in a fiduciary capacity, (i) the above representations, warranties, agreements, acknowledgments and understandings shall be deemed to have been made on behalf of the Person or Persons for whose benefit such Class 1 Beneficial Interest is being acquired, (ii) the name of such Person or Persons is indicated below the undersigned's name, and (iii) such further information as the Manager deems appropriate shall be furnished regarding such Person or Persons.

1.16 Acknowledges and agrees that counsel, including special tax counsel, to the Trust, the Depositor, the Manager and their Affiliates do not represent, and shall not be deemed under applicable codes of professional responsibility, to have represented or to be representing, any transferee or assignee, including the undersigned, in any way in connection with the transfer or assignment of a Class 1 Beneficial Interest.

1.17 Agrees to indemnify, defend and hold harmless the Sponsor, the Trust, Trustees, Depositor, and Manager, and each of their members, managers, shareholders, officers, directors, employees, consultants, affiliates and advisors (collectively, the "**Indemnified Parties**") of and from any and all damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) that they may incur by reason of the untruth or inaccuracy of any of the representations, warranties, covenants or agreements contained herein or in any other document transferee or assignee has furnished to any of the foregoing in connection with this transaction. In addition, if any person shall assert a claim to a finder's fee or real estate brokerage commission on account of alleged employment as a finder or real estate broker through or under the undersigned in connection with the undersigned's acquisition of the Class 1 Beneficial Interest, the undersigned shall indemnify and hold the Indemnified Parties harmless from and against any such claim. This indemnification includes, but is not limited to, any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and costs) incurred by the Indemnified Parties 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 the undersigned has furnished to any of the foregoing in connection with this transaction, and

against any failure of the transaction to satisfy any Code Section 1031 requirements in connection with the undersigned's exchange under such provisions.

1.18 Represents and warrants that neither the undersigned nor any Affiliate of the undersigned (i) is a Sanctioned Person (defined below), (ii) has more than 15.0% of its assets in Sanctioned Countries (defined below), or (iii) derives more than 15.0% of its operating income from investments in, or transactions with Sanctioned Persons or Sanctioned Countries. For purposes of the foregoing, a "**Sanctioned Person**" shall mean (y) a Person named on the list of "specially designated nationals" or "blocked persons" maintained by the U.S. Office of Foreign Assets Control ("**OFAC**") at *http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx*, or as otherwise published from time to time, or (y) (1) an agency of the government of a Sanctioned Country, (2) an organization controlled by a Sanctioned Country, or (3) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. A "**Sanctioned Country**" shall mean a country subject to a sanctions program identified on the list maintained by OFAC and available at *http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx*, or as otherwise published from time to time.

1.19 Acknowledges that the Class 2 Beneficial Owner has certain rights under the Trust Agreement, as more particularly set forth in the Trust Agreement.

[Signature Page to Follow]

The representations, warranties, acknowledgments, understandings and indemnities of transferee or assignee set forth herein shall survive the undersigned's acquisition of the Class 1 Beneficial Interest.

_____

Name: _____

EXHIBIT F
FORM OF LIMITED LIABILITY COMPANY AGREEMENT
OF
JWCM VIVIAN SPRINGING, LLC

This Limited Liability Company Agreement ("**Agreement**"), effective as of the Transfer Date, is entered into by and between JWCM Vivian DST, a Delaware statutory trust (the "**Trust**" or the "**Initial Member**"), as the Initial Member, and JWCM Vivian Springing Manager, LLC, a Delaware limited liability company (the "**Manager**") and with the expectation of the admission of the parties listed on **Exhibit 2** attached hereto, as Members, pursuant to the Act on the following terms and conditions.

RECITALS

WHEREAS, an Affiliate of the Manager established the Trust to acquire and hold the Property and sell Beneficial Interests in the Trust, pursuant to that certain Private Placement Memorandum (as supplemented or amended, the "**Memorandum**");

WHEREAS, the Members hold all of the Beneficial Interests in the Trust as the Beneficial Owners thereof and in the percentage amounts reflected on **Exhibit 2** attached hereto;

WHEREAS, the Manager or its predecessor in interest has determined that a distribution of Units to the Beneficial Owners in proportion to their Beneficial Interests should be made pursuant to Section 9.2 of the Amended and Restated Trust Agreement in order to preserve and protect the Trust Estate;

WHEREAS, in order to preserve and protect the Trust Estate, the Manager established the Company to hold the Property and issue the Units to the Trust in exchange for its contribution of the Trust Estate to the Company; and

WHEREAS, the Trust, as Initial Member, will distribute all of the Units held by the Trust to the Beneficial Owners (in the amounts reflected on **Exhibit 2** attached hereto) in proportion to their Beneficial Interests, and, in connection therewith, the Manager will admit the Beneficial Owners as Members of the Company and the interest of the Initial Member in the Company will be terminated.

NOW THEREFORE, the Members and the Manager 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 Limited Liability Company. On or prior to the Transfer Date, the Manager shall file a Certificate of Formation with the office of the Secretary of State 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 "**JWCM Vivian Springing, LLC**", and its principal place of business shall be at 445 Park Avenue, Suite 2101, New York, New York 10022. The Manager may change such name, change such place of business or establish additional places of business of the Company as the Manager 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, 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 Sections 1.3.1 and 1.3.2 above, since its formation and thereafter until the First Mortgage Loan is paid in full, the Company will continue to (i) be organized solely for the purpose of owning the Property, (ii) not engage in any business unrelated to the ownership of the Property, and (iii) not have any assets other than those related to the Property.

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 during which the First Mortgage Loan remains outstanding with the Lender for the Property. The Company shall have no right, power or authority, express or implied, to divide into multiple entities pursuant to any applicable law allowing an entity to divide or conduct a divisive merger. This provision shall not be amended, modified or otherwise changed to grant such right, power or authority, and any attempt to divide or conduct a divisive merger or to amend this absolute prohibition of division shall, to the fullest extent permitted by law, be void ab initio and of no force or effect whatsoever.

1.5 Required Filings. The Manager 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 Manager 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 and no Member, or any Affiliate of a Member, or any shareholder, officer, director, employee, partner, member or any person owning an interest therein shall have any interest in such other business or venture by reason of their interest in the Company.

2. Definitions. Definitions for this Agreement are set forth on **Exhibit 1** and are incorporated herein.

3. Capitalization and Financing.

3.1 Members' Capital Contributions.

3.1.1 Initial Member. The Trust, as the Initial Member, shall contribute the Trust Estate to the Company in exchange for all of the authorized Units in the Company. The Trust shall then distribute the Units to the Beneficial Owners in proportion to and in exchange for, and in termination of their Beneficial Interests in the Trust.

3.1.2 Units. The Company is hereby authorized to initially issue ten thousand (10,000) Units and to admit the Beneficial Owners as Members of the Company.

3.1.3 Liabilities of Members. Except as specifically provided in this Agreement, neither the Manager nor any Member shall be required to make any additional contributions to the Company and no Manager or Member shall be liable for the debts, liabilities, contracts, or any other obligations of the Company, nor shall the Manager or the Members be required to lend any funds to the Company.

3.2 Additional Voluntary Capital Contributions or Additional Units. The Manager may determine, in its sole discretion, that Capital Expenditures are in the best interest of the Company. The

Manager may request the Members to make additional voluntary capital contributions ("**Additional Voluntary Capital Contributions**") or may sell additional Units to new Members to enable the Company to make Capital Expenditures. In the event the Manager requests Additional Voluntary Capital Contributions, the Manager shall notify the Members in writing of the requested amount of such Additional Voluntary Capital Contribution, and a Member may, within fifteen (15) days of receiving such notice, elect (in writing by notice given to the Manager) to make the requested Additional Voluntary Capital Contributions. If the total specified amount by the Members wishing to make the Additional Voluntary Capital Contributions is less than the amount requested by the Manager, the Manager, in addition to providing the Members with a supplemental request for the remaining portion of the requested Additional Voluntary Capital Contribution, is hereby authorized to admit additional Members as necessary to insure that it receives the requested amount of Additional Voluntary Capital Contributions. To the extent that any Additional Voluntary Capital Contributions are made, whether by existing Members or upon the sale of Units to new Members, new Units shall be issued for those Additional Voluntary Capital Contributions on the basis of the fair market value as determined in the sole discretion of the Manager. In the event the Manager determines to sell additional Units, existing Members may participate on the same basis as new Members on a first-come first-serve basis. Fractional Units may be issued hereunder.

3.3 Manager Loans. Provided it does not violate or conflict with the Financing Documents, the Manager or its Affiliates may, but will have no obligation to, make loans to the Company to pay Company operating expenses if deemed necessary in Manager's reasonable business judgment. Any such loan shall bear interest at the actual cost of funds to the Manager 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 dissolution of the Company.

4. Allocation of Income and Loss.

4.1 Allocation to the Manager and Members. For each fiscal year, the income and loss of the Company shall be allocated to the Members in proportion to their Units.

4.2 Allocation Among Units. Except as otherwise provided in this Agreement, all Distributions and allocations made to the Units shall be in the ratio of the number of 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 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 Units were held by each Member. In the event additional Members are admitted to the Company on different dates during any fiscal year, the income or loss allocated to Members for that fiscal year shall be apportioned among them in proportion to the number of Units each Member held from time to time during the fiscal year in accordance with Code Section 706.

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 a Member in the same proportion.

4.4 Assignment. In the event of the assignment of 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 Units as of the date of the Distribution. An assignee that receives Units during the first fifteen (15) days of a month will receive any allocations relative to such month. An assignee that acquires Units on or after the sixteenth (16th) day of a month will be treated as acquiring his or her 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.

4.6 Withholding Obligations.

4.6.1 If the Company is required (as determined in good faith by the Manager) to make a payment ("**Tax Payment**") with respect to any Member to discharge any legal obligation on the part of the Company or the Manager to make payments to any governmental authority with respect to any federal, foreign, state or local tax liability of such Member arising as a result of such Member's interest in the Company, 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 upon demand or by offset to any Distribution which otherwise would be made to such Member.

4.6.2 If and to the extent the Company or the Manager is required to make any Tax Payment with respect to any Member, or elects to make payment on any loan described in Section 4.6.1 by offset to a Distribution to a Member, either (i) such Member's proportionate share of such Distribution 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 a 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 Manager, either (A) be distributed to the other Members, or (B) be sold by the Company to generate the cash necessary to satisfy such Tax Payment. If the property is sold, then for purposes of income tax allocations only under this Agreement, 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 on such gain, the Member to whom the gain is allocated shall pay the Company prior to the due date of the Tax Payment an amount of cash equal to such Tax Payment.

4.6.3 The Manager shall be entitled to hold back any Distribution to any Member to the extent the Manager believes in good faith that a Tax Payment will be required with respect to such Member in the future and the Manager believes that there will not be sufficient subsequent Distributions to make such Tax Payment.

5. Distributions.

5.1 Cash from Operations. 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 Units.

5.2 Restrictions. The Company intends to make periodic distributions of substantially all cash determined by the Manager to be distributable, subject to the following: (i) Distributions may be restricted or suspended for periods when the Manager determines in its reasonable discretion that it is in the best interest of the Company; (ii) all Distributions are subject to the establishment and maintenance by Manager of reasonable reserves for payment of potential future 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 Financing Documents have been paid or otherwise provided for.

6. Compensation to the Manager and its Affiliates.

6.1 Fees and Compensation to the Manager and its Affiliates. The Manager, its Affiliates, and Affiliates of officers of the Manager shall be entitled to receive an administrative fee and additional compensation for any additional service performed on behalf of the Company equal to the then prevailing market rates for similar services performed in the area where the Property is located. In addition, the

Manager shall receive a refinancing fee equal to one percent (1.0%) of the gross proceeds from any refinancing of the Property, and a disposition fee equal to three percent (3.0%) of the gross price of the Property upon its sale, exchange or other disposition. Any sales commissions or mortgages brokerage fees due to outside brokers shall not be paid from these fees. Notwithstanding the foregoing, any obligation for fees or expenses to be paid to the Manager herein shall be fully subordinate to the First Mortgage Loan and shall not constitute a claim against the Company in the event its cash flow is insufficient to pay its obligations, nor shall it constitute a claim against any member of the Company.

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 Manager 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 Manager; (ii) all costs of personnel employed by the Company and directly involved in the Company's business; (iii) all compensation due to the Manager or its Affiliates; (iv) all costs of personnel employed by the Manager or its Affiliates and directly involved in the business of the Company; (v) all costs of borrowed money and 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) 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; (ix) expenses incurred in preparation and filing reports or other information with appropriate regulatory agencies; (x) expenses of insurance as required in connection with the business of the Company, other than any insurance insuring the Manager against losses for which it is not entitled to be indemnified under Section 7.7; (xi) 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; (xii) the actual costs of goods and materials used by or for the Company; (xiii) 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 Manager or its Affiliates, but not in excess of the lesser of: (a) the actual costs to the Manager 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; (xiv) expenses of Company administration, accounting, documentation and reporting; (xv) expenses of revising, amending, modifying, or terminating this Agreement; (xvi) all travel expenses incurred in connection with the Company's business; and (xvii) 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 Financing Documents.

6.2.2 Manager Overhead. Except as set forth in this Section 6, the Manager 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 Manager.

7.1 Management. The Manager shall manage the business and affairs of the Company. Except as otherwise set forth in this Agreement and the Certificate of Formation, and to the maximum extent permitted by law, the Manager 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.

7.2 Number, Tenure and Qualifications. The Company shall have one Manager, which shall be JWCM Vivian Springing Manager, LLC. The Manager shall remain the Manager until such Manager is removed, withdraws or resigns.

7.3 Manager Authority. The Manager shall have all authority, rights and powers conferred by law (subject only to Section 7.4 and Section 10 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, sell, exchange or otherwise dispose of the Property;

7.3.3 Borrow money, and, if security is required therefor subject the Property to any security device, and to prepay, in whole or in part, refinance, increase, modify, consolidate, or extend any security device. All of the foregoing shall be on such terms and in such amounts as the Manager, in its sole discretion, deems to be in the best interest of the Company and subject to any restrictions or limitations established under the Financing Documents;

7.3.4 Enter into such contracts and agreements as the Manager determines to be reasonably necessary or appropriate in connection with the Company's business and purpose (including contracts with Affiliates of the Manager), and any contract of insurance that the Manager deems necessary or appropriate for the protection of the Company and the Manager, including errors and omissions insurance, for the conservation of Company assets, or for any purpose convenient or beneficial to the Company;

7.3.5 Employ persons, who may be Affiliates of the Manager, in the operation and management of the business of the Company;

7.3.6 Prepare or cause to be prepared reports, statements, and other relevant information for distribution to the Members;

7.3.7 Open accounts and deposits and maintain funds in the name of the Company in banks, savings and loan associations, "money market" mutual funds and other instruments as the Manager may deem in its discretion to be necessary or desirable;

7.3.8 Cause the Company to make or revoke any of the elections referred to in the Code (the Manager shall have no obligation to make any such elections);

7.3.9 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);

7.3.10 Determine the appropriate accounting method or methods to be used by the Company;

7.3.11 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 Manager 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) Amend this Agreement to reflect the addition or substitution of Members;

(d) 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;

(e) Reconstitute the Company under the laws of another state if beneficial;

(f) 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 Manager under a special or limited power of attorney, and to take all such actions in connection therewith as the Manager shall deem necessary or appropriate with the signature of the Manager acting alone;

(g) Make any changes to this Agreement required by the Lender or any subsequent lender that may be required to obtain financing or any refinancing of the First Mortgage Loan so long as such changes are not adverse to the interests of the Members; and

(h) Delete or add any provision to 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.

7.3.12 Require in any Company contract that the Manager 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;

7.3.13 Lease personal property for use by the Company;

7.3.14 Establish reserves from income in such amounts as the Manager may deem appropriate;

7.3.15 Provided it does not violate or conflict with the Financing Documents, make secured or unsecured loans to the Company and receive interest at the rates set forth herein;

7.3.16 Represent the Company and the Members as "partnership representative" within the meaning of the Code in discussions with the Internal Revenue Service 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 deemed in the best interest of the Members, to agree to final Company administrative adjustments or file a petition for a readjustment of the Company items in question with the applicable court;

7.3.17 Redeem or repurchase Units on behalf of the Company;

7.3.18 Hold an election for a successor Manager before the resignation, withdrawal, expulsion or dissolution of the Manager;

7.3.19 Initiate, settle and defend legal actions on behalf of the Company;

7.3.20 Admit itself as a Member, but only to the extent necessary to fulfill its duties as the manager of the Company and, in any event, without any Economic Interest;

7.3.21 Enter into any transaction with any partnership, company or venture;

7.3.22 Perform any and all other acts which the Manager is obligated to perform hereunder;

7.3.23 Perform any and all other acts which the Manager is permitted to perform under the Act; and

7.3.24 Execute, acknowledge and deliver any and all instruments to effectuate the foregoing and take all such actions in connection therewith as the Manager may deem necessary or appropriate. The Manager may, on behalf and in the name of the Company, execute any and all documents or instruments.

7.4 Restrictions on Manager's Authority. Subject to the balance of the terms of this Agreement and the Certificate of Formation, neither the Manager nor any Affiliates shall have authority, without a 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 Manager, 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 Sell or lease to the Company any real property in which the Manager or any Affiliate has any interest;

7.4.5 Admit another person or entity as the Manager, except with the consent of the Members as provided in this Agreement;

7.4.6 Reinvest Cash from Operations in any additional properties;

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 and the Manager 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 Manager. The Manager shall:

7.5.1 Have a fiduciary responsibility for the safekeeping and use of all the funds of the Company (but Manager shall have no other fiduciary duties);

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 Manager in its discretion to be appropriate to the business of the Company; and

7.5.5 At all times use its best efforts to meet applicable requirements for the Company to be taxed as a Company and not as an association taxable as a corporation.

7.6 Administration of Company. So long as it is the Manager and the provisions of this Agreement for compensation and reimbursement of expenses of the Manager are observed, the Manager shall have the responsibility of providing continuing administrative and executive support, advice, consultation, analysis and supervision with respect to the functions of the Company, and compliance with federal, state and local regulatory requirements and procedures. In this regard, the Manager may retain the services of such Affiliates or unaffiliated parties as the Manager 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 Manager.

7.7.1 The Manager, its shareholders, Affiliates, officers, directors, partners, manager, 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, which shall not constitute fraud or gross negligence, pursuant to the authority granted, to promote the interests of the Company. Moreover, the Manager shall not be liable to the Company or the Members because any taxing authorities disallow or adjust any deductions or credits in the Company income tax returns.

7.7.2 Notwithstanding anything contained herein to the contrary, any indemnification of the Manager or any Member shall be fully subordinated to any obligations respecting the Property (including, without limitation, the Financing Documents which secure the First Mortgage 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 Manager shall not be personally liable or responsible for the return or repayment of all or any portion of the Capital Contribution of any Member 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.

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 Manager or secure the approval or confirmation by any Member of any act of the Manager 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 Manager 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 Manager 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 Manager, 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 Manager 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 Manager.

8. [Intentionally Omitted].

9. Rights, Authority and Voting of the Members.

9.1 Members are Not Agents. Pursuant to Section 7 and the Certificate of Formation, the day-to-day management of the Company is vested solely in the Manager. No Member, acting 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.

9.2 Voting Rights of Members. Subject to the terms of the Financing Documents, Members who own Units shall be entitled to cast one vote for each Unit they own. Except as otherwise specifically provided in this Agreement, and subject to receipt of the written approval of the Lender if required under the Financing Documents, Members shall have the right to vote only upon the following matters:

9.2.1 Removal of the Manager as provided in Section 11.2 of this Agreement;

9.2.2 Election of a successor Partnership Representative;

9.2.3 Amendment of this Agreement (except as otherwise provided herein);

9.2.4 Extension of the term of the Company as provided in Section 14.1.4 when there is a Dissolution Event; or

9.2.5 Election of a successor Manager.

9.3 Member Vote; Consent of Manager. All matters upon which the Members may vote, except as otherwise provided in this Agreement, shall require a Majority Vote and, except for removal of the Manager as provided in Section 11.2, the consent of the Manager to pass and become effective, which consent of Manager shall not be unreasonably withheld, conditioned, or delayed. The foregoing notwithstanding, at any time the First Mortgage Loan is outstanding, all Members shall be conclusively deemed to have elected to continue the existence of the Company under Section 9.2.4.

9.4 Meetings of the Members. The Manager 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 ten percent (10.0%) of the Units entitled to vote as of the record date. Within twenty (20) days after receipt of such request, the Manager shall notify all Members of record on the record date of the meeting.

9.4.1 Notice. Except as provided by Section 9.4.5, 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 five (5), nor more than sixty (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.

9.4.2 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 forty-five (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.

9.4.3 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. 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.

9.4.4 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.

9.4.5 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 five (5), nor more than sixty (60), days prior notice.

9.4.6 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 Manager may fix in advance a record date, which is not more than sixty (60) nor less than five (5) days prior to the date of the meeting nor more than sixty (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 Manager adopts it, or the sixtieth (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 Manager, or the Members who requested the meeting, fix a new record date for the adjourned meeting, but the Manager, or such Members, shall fix a new record date if the meeting is adjourned for more than forty-five (45) days from the date set for the original meeting.

9.4.7 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 Manager. No proxy shall be valid after the expiration of three (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.

9.4.8 Chairman of Meeting. The Manager 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 Manager may name any other person in substitution therefor as Chairman. In the absence of an express selection by the Manager of a Chairman or substitute therefor, the Chief Executive Officer, President, Vice President, Secretary, or Chief Financial Officer of the Manager 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.

9.4.9 Inspectors of Election. In advance of any meeting of Members, the Manager may appoint any persons other than nominees for Manager 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.

9.4.10 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.

9.5 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 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; (iii) demand or receive property other than cash in return for his Capital Contribution; or (iv) direct the Manager with respect to day-to-day management of the Company or its books and records. Except as provided in this Agreement, no Member shall have priority over any other Member either as to the return of Capital Contributions or as to allocations of the income, loss or Distributions of the Company. Other than upon the termination 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.

9.6 Restrictions on the Member. No Member shall:

9.6.1 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;

9.6.2 Do any other act or deed with the intention of harming the business operations of the Company; or

9.6.3 Do any act contrary to this Agreement.

9.7 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 Manager or any other Member.

10. Separateness Provisions.

10.1 Lender Covenants.

10.1.1 This Section 10.1 is adopted in order to comply with certain provisions required in order to qualify the Company as a "special purpose entity" as required under the Financing Documents.

10.1.2 Until the First Mortgage Loan is paid in full, the Company must remain a Special Purpose Entity. A "**Special Purpose Entity**" means with respect to the Company, a Delaware limited liability company, which at all times since its formation and thereafter will comply with the following provisions:

(a) The company shall not acquire, lease, or operate any real property, personal property, or assets other than the fee or leasehold interest in the Property;

(b) the Company shall not acquire, own, operate, or participate in any business other than the leasing, ownership, management, operation, and maintenance of the Property;

(c) the Company shall not commingle its assets or funds with those of any other Person, unless such assets or funds can easily be segregated and identified in the ordinary course of business from those of any other Person;

(d) the Company shall maintain its financial statements, accounting records, and other partnership, real estate investment trust, limited liability company, or corporate documents, as the case may be, separate from those of any other Person (unless such entity's assets are included in a consolidated financial statement prepared in accordance with generally accepted accounting principles); provided the beneficial interest holders of the company may also include their share of the assets on their personal financial statements;

(e) the Company shall have no material financial obligation under any indenture, mortgage, deed of trust, deed to secure debt, loan agreement, other agreement or instrument to which it is a party or by which it is otherwise bound, or to which the Property is subject or by which it is otherwise encumbered, other than:

(i) Permitted Equipment Financing or unsecured trade payables incurred in the ordinary course of the operation of the Property (exclusive of amounts (A) to be paid out of the Reserves, or (B) for rehabilitation, restoration, repairs, or replacements of the Property or otherwise approved by Lender) so long as such trade payables (x) are not evidenced by a promissory note, (y) are payable within sixty (60) days of the date incurred, and (z) as of any date, do not exceed, in the aggregate, two percent (2%) of the original principal balance of the First Mortgage Loan; provided, however, that otherwise compliant outstanding trade payables may exceed two percent (2%) up to an aggregate amount of four percent (4%) of the original principal balance of the First Mortgage Loan for a period (beginning on or after the Effective Date) not to exceed ninety (90) consecutive days;

(ii) if the Security Instrument (as defined in the First Mortgage Loan Documents) grants a lien on a leasehold estate, the company's obligations as lessee under the ground lease creating such leasehold estate;

(iii) obligations under the First Mortgage Loan Documents and obligations secured by the Property to the extent permitted by the First Mortgage Loan Documents; and

(iv) obligations under the Permitted Encumbrances (as defined in the First Mortgage Loan Documents);

(f) the Company shall not assume, guaranty, or pledge its assets to secure the liabilities or obligations of any other Person (except, with respect to the company only, in connection with the First Mortgage Loan or other mortgage loans that have been paid in full or collaterally assigned to Lender, including in connection with any consolidation, extension and modification agreement or similar instrument) or hold out its credit as being available to satisfy the obligations of any other Person;

(g) the Company shall not make loans or advances to any other Person;

(h) the Company shall not enter into, or become a party to, any transaction with any Trust Affiliate (as defined in the First Mortgage Loan Documents), except in the ordinary course of business and on terms which are no more favorable to any such Trust Affiliate than would be obtained in a comparable arm's-length transaction with an unrelated third party, provided that neither the company's acquisition of the Property nor the company's entry into and performance of its obligations under the Master Lease shall be deemed to breach this covenant;

(i) the Company shall have at all times an Independent Trustee in compliance with the First Mortgage Loan Documents; or

(j) the Company shall not Divide

10.1.4 Notwithstanding anything to the contrary in this Agreement, no transfer of a Unit will be permitted under the Financing Documents, unless the provisions of this Section 10 are satisfied at all times.

11. Resignation, Withdrawal or Removal of the Manager.

11.1 Resignation or Withdrawal of the Manager. Subject to Section 12 hereof, the Manager shall not resign or withdraw as the Manager or do any act that would require its resignation or withdrawal without a Majority Vote. So long as the First Mortgage Loan is outstanding, the Manager may not resign, except as permitted under the Financing Documents. If the Manager is permitted to resign pursuant to this Section 11.1, 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 Manager shall cease to be a Manager of the Company.

11.2 Removal. Subject to the terms of the Financing Documents, the Manager may be removed by a Majority Vote for "cause". For purposes of this Section 11.2, "cause" shall be deemed to exist (i) if the Manager has engaged in fraud or gross negligence and has materially damaged the Company, or (ii) upon an Event of Insolvency of the Manager.

11.3 Manager's Fees. Upon the removal of the Manager pursuant to Section 11.2 or its withdrawal with the approval of a Majority Vote, such Manager 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 Manager in cash prior to the effective date of the removal or withdrawal of the Manager. All fees and compensation paid to the Manager pursuant to this Section 11.3 shall be subordinate to all

amounts owed by the Company to the Lender; provided, however, the Manager shall be entitled to receive and keep all such fees and compensation paid to the Manager so long as the First Mortgage Loan is not in default at the time such fees and compensation are paid to the Manager.

12. Assignment of Units.

12.1 Permitted Assignments. Unless such transfer is as a part of the Exchange Right under Section 12.8, subject to the terms and conditions of the Financing Documents, a Member may only sell, assign, hypothecate, encumber or otherwise transfer all or any part of his or her interest in the Company, if the following requirements are satisfied:

12.1.1 The Manager 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;

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 Manager, 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 Manager in offering and selling the Units or otherwise violate any federal or state securities laws;

12.1.5 The Manager, 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 Section 7704 of the Code;

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 Manager in writing, in advance of consummation of the transfer;

12.1.7 A transfer fee shall be paid by the transferring Member in such amount as may be required by the Manager and/or Lender to cover all reasonable expenses, including attorneys' fees, connected with such assignment;

12.1.8 The transfer will not violate any of the terms of the Financing Documents, including any requirement for Lender approval of the transfer.

12.2 Right of First Refusal. Notwithstanding Section 12.1 above, before any Member may transfer all or any portion of its Units, such Selling Member shall provide the Manager written notice of the Third-Party Offer pertaining to such Units, together with a true, correct and complete copy of such Third-Party Offer (collectively, the "**ROFR Notice**"). The Manager will provide a copy of the ROFR Notice to each of the Members in accordance with the contact details contained in the Ownership Records within 10 days after Manager's receipt of the ROFR Notice, indicating the date on which the Manager received such ROFR Notice. The giving of a ROFR Notice by a Selling Member to the Manager shall constitute a representation and warranty by the Selling Member to the Offerees that the Third-Party Offer is bona fide in all respects. The Offerees shall have the right, but not the obligation, within 30 days after Manager's receipt of the ROFR Notice, to elect to purchase the Offered Units for the price and upon the terms and

conditions as are contained in the Third-Party Offer by providing a notice of such election to the Selling Member and the Manager; provided, however, the price that any Offeree shall pay for the Offered Units shall be reduced by any broker's fees or commissions that would have been payable by any Person under the Third-Party Offer if the Offered Units had been sold pursuant to the Third-Party Offer. If more than one Offeree elects to exercise its right of first refusal in the Offered Units, then the Offered Units will be sold to the participating Offerees on a pro rata basis according to their respective Percentage Shares. If none of the Offerees elect to exercise its right of first refusal in the Offered Units, then the Manager or its designee shall have a further ten (10) Business Days to determine whether it wishes to purchase the Offered Units on the same terms and, if it does not, the Selling Member shall then be free to sell the Offered Units to the Person who made the Third-Party Offer, but only in accordance with the terms and conditions of the Third-Party Offer. If after compliance with these provisions, and neither the Offerees nor the Manager or its designees exercise their aforesaid right of first refusal, and the Person who made the Third-Party Offer also fails to purchase the Offered Units under the terms and conditions of the Third-Party Offer, then the Offered Units may not be sold unless and until the Offerees have been given a new opportunity to determine whether to accept any new or revised Third-Party Offer (in accordance with the above noticing rights and other terms and conditions of the right of first refusal contained herein). For avoidance of doubt, any Offeree's election not to exercise its right of first refusal hereunder shall not be deemed a waiver of its rights hereunder with respect to any other Third-Party Offers. Any sale or conveyance of an Offered Units that fails to comply with these provisions shall be null, void and ineffectual, and shall not bind the Company or any other Beneficial Owners with respect to such purported transferee. Furthermore, in connection with any transfer in violation of this Section, the Company may enforce this Section by, without limitation, injunction, specific performance or other equitable relief, and both the Selling Member and its purported transferee shall be jointly and severally responsible to reimburse the Trust, the Manager and the Trustees, as applicable, for all of their attorney fees and other costs and expenses incurred in connection with such enforcement of this Section.

12.3 Records of Ownership. The Manager shall keep or otherwise engage a third party recordkeeping service provider to maintain Records of Ownership, which shall include records of the transfer and exchange of Units. Notwithstanding any provision of this Agreement to the contrary, transfer of a Unit, or of any right, title or interest therein, shall occur only upon and by virtue of the entry of such transfer in the Records of Ownership.

12.4 Substituted Member.

12.4.1 Conditions to be Satisfied. Subject to the terms of the Financing Documents, no person shall have the right to become a Substituted Member unless the Manager shall consent thereto in accordance with Section 12.1.1 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 Manager 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 Manager 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.

12.4.2 Consent of Manager. The consent of the Manager 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 Manager.

12.4.3 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 Manager and in compliance with this Agreement.

12.5 Assignment of 50.0% 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 assigned within the thirteen (13) immediately preceding months, would, in the advice of counsel for the Company, result in the termination of the Company under the Code.

12.6 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.

12.7 Termination of Limited Liability Company Interest. Upon the transfer of a Unit in violation of this Agreement, or the occurrence of a Member Dissolution that does not result in the dissolution of the Company, the Limited Liability Company Interest of a Member shall be, at the option of the Manager in its sole and absolute discretion, either (a) converted into an Economic Interest, or (b) deemed void ab initio and shall not be binding on the Company, the Manager or any other Member.

12.8 Exchange Right.

12.8.1 Exchange Right. Subject to Sections 12.8.2 and 12.8.3, each of the Member does hereby grant to the Manager, its affiliates, successors or assigns the right, but not the obligation, to require that each such Member exchange its interest in the Company for units of an equal aggregate value (the "ER **Units**") in one or more entities organized or identified by the Manager (each, an "**Exchange Entity**") in a transaction intended to qualify as a tax-deferred exchange under Code Section 721, pursuant to the terms of this Section 12.8 (the "**Exchange Right**"). Each Member shall receive an amount of ER Units with an aggregate value equal to the then fair market value of such Member's interest in the Company as of the date the Exchange Right is exercised. The Exchange Right shall be exercised pursuant to a Notice of Exchange, a form of which is attached as **Exhibit 4** to this Agreement, delivered to the Members by the Manager.

12.8.2 Dissenting Members. Notwithstanding the provisions of Section 12.8.1, a Member may elect to have any such Exchange Entity acquire the Member's interest in the Company for cash rather than exchange such interest for ER Units (such Member, a "**Dissenting Member**"). The purchase price for a Dissenting Member's interest (the "**Cash Amount**") shall be then fair market value of the Dissenting Member's interest as of the date the Exchange Right is exercised. If a Dissenting Member elects to exercise its right to have an Exchange Entity purchase its interests in the Company for the Cash Amount under this Section 12.8.2 with respect to a Notice of Exchange, it shall so notify the Manager and Exchange Entity in writing within twenty (20) Business Days after the date on which the Manager mails the Notice of Exchange to the Member (the "**Dissenting Notice**"). If any Member does not provide a Dissenting Notice to the Manager within twenty (20) Business Days after the mailing date of the Notice of Exchange, such Member will be deemed to have agreed to the exercise of the Exchange Right by the Manager.

12.8.3 Documentation and Signatures; Delivery. Each Member agrees to execute such documents and signatures as the Manager may reasonably require in connection with the exercise of the Exchange Right under Section 12.8.1 or the cash purchase under Section 12.8.2. For a Member that is not

a Dissenting Member but is subject to the Exchange Right (such Member, a "**Contributing Member**"), the Manager may, but is not obligated to, provide a tax protection agreement (a "**Tax Protection Agreement**") in which the Manager: (i) will agree not to directly or indirectly sell, exchange, transfer, or otherwise dispose of the Property or any interest therein (without regard to whether such disposition is voluntary or involuntary) in a transaction within two (2) years of the date of the Exchange Right that would cause a Contributing Member to recognize any gain under Code Section 704(c) (such transaction, a "**Triggering Event**"), and (ii) for a period of two (2) years following the occurrence of a Triggering Event will agree to pay a Contributing Member's damages equal to the aggregate federal, state and local income taxes incurred by such Contributing Member in connection with such Triggering Event. Upon receipt of any and all documents and signatures required by the Manager under this Section 12.8.3 (such date of final receipt, the "**Receipt Date**"), the Manager shall distribute (i) to any Contributing Member the ER Units within sixty (60) Business Days of the Receipt Date and (ii) to any Dissenting Member the Cash Amount within one hundred eighty (180) days of the Receipt Date.

12.8.4 Determination of Fair Market Value. For the purposes of Section 12.8, the fair market value of a Member's interests in the Company to be acquired by the Exchange Entity will be determined by multiplying: (i) the Member's percentage share of interests in the Company to be acquired by the Exchange Entity by (ii) the fair market value of the Property as determined by an independent appraisal firm selected by the Manager in its sole discretion. Such appraisal shall have been completed within one (1) year of the date the Exchange Right is exercised. No discounts for lack of liquidity or minority interests shall be considered in determining the fair market value of such interests in the Company.

12.8.5 Continued Existence of the Company. Notwithstanding anything to the contrary in this Agreement, the Company shall survive the exercise of the Exchange Right by the Manager. The Company intends to remain a "disregarded entity" under Section 301.7701-3 of the U.S. treasury regulations promulgated under the Code.

13. Books, Records, Accounting and Reports.

13.1 Records, Audits and Reports. The Company shall maintain at its principal office or at a designated location reasonably determined by a third party recordkeeping service provider 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 Manager, 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 (6) 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 (6) 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 (4) fiscal years.

13.2 Delivery to Members.

13.2.1 Each Member and each Member's representative designated in writing have 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 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, provided such copy shall not contain any identifying information with regard to a Member and shall be redacted of such information.

13.2.2 Other than as expressly provided in this Agreement, no Member shall have any right to information, reports or records of the Company or with respect to any Member or the Manager. Without limiting the foregoing, no Member shall have the right under this Agreement to receive, review, copy or inspect any list of the Members or any identifying information with regard to the Members, whether or not requested, and Manager shall not have any obligation to provide such information.

13.3 Annual Report. The Manager 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 ninety (90) days after the close of each fiscal year of the Company.

13.4 Tax Information. The Manager 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 75 days after the end of the Company's fiscal year.

14. Termination and Dissolution of the Company.

14.1 Termination of Company. Subject to the limitations contained in Section 1.4 and Section 10 of this Agreement and to 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 Manager to terminate the Company;

14.1.3 The sale of the Contributed 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 Contributed Property, if later; or

14.1.4 The occurrence of a Dissolution Event unless the business of the Company is continued by a Majority Vote of the remaining Members within ninety (90) days following the occurrence of the event, which shall be mandatory at the times any amounts remain outstanding under the First Mortgage Loan.

The bankruptcy, death, dissolution, liquidation, termination or adjudication of incompetency of a Member (a "**Member Dissolution**") shall not cause the termination 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, a Manager 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 dissolution and termination of the Company, the Manager (or in case there is no Manager, 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 creditors of the Company, including the Lender, 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; and

14.3.3 To the Members in proportion to their Units.

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 dissolution or otherwise) against any Manager 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 Financing 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, to the fullest extent permitted by law, hereby waive their right to dissolve or terminate (and waive their right to consent to the dissolution or termination of) the Company or this Agreement, and shall not take any action towards that end, so long as the First Mortgage 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 First Mortgage Loan is no longer outstanding and no other obligation of any kind whatsoever is owing or due to the Lender.

15. Special and Limited Power of Attorney.

15.1 Power of Attorney. The Manager 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 Manager 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 Manager 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 dissolution and termination of the Company (provided such continuation, admission or dissolution and termination are in accordance with the terms of this Agreement);

15.1.4 Any instrument of conveyance or encumbrance with respect to the Contributed Property;

15.1.5 This Agreement or any other instrument or document to include any single purpose entity or bankruptcy remote entity requirement imposed by the Lender; and

15.1.6 Any and all other instruments as the Manager 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 Sections 7 and 17.

15.2 Provision of Power of Attorney. The special and limited power of attorney of the Manager:

15.2.1 Is a special power of attorney coupled with the interest of the Manager in the Company, and its assets, is irrevocable, shall survive the death, incapacity, termination or dissolution of the granting Member, and is limited to those matters herein set forth;

15.2.2 May be exercised by the Manager by and through one or more of the officers of the Manager, for each of the Members by the signature of the Manager acting as attorney-in-fact for 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 Manager 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 Manager 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 Manager shall promptly furnish to a Member a copy of any amendment to this Agreement executed by the Manager 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 provision of this Agreement 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 Substituted Member shall not, if in accordance with the terms of this Agreement and the Financing Documents, require the consent of any Member.

17.2 Amendments with Consent of Members. Subject to the terms of Section 10.1 and the Certificate of Formation, in addition to any amendments otherwise authorized herein, this Agreement may be amended by the Manager with a 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 10.1 and the Certificate of Formation, in addition to any amendment to this Agreement authorized pursuant to Section 7.3.11 or otherwise authorized herein, the Manager 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 Manager (so long as such decrease does not impair the ability of the Manager 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 10, 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 Manager 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 single purpose entity requirements; provided, however, no such amendment shall be adverse to the interests of the Members.

17.4 Execution and Recording of Amendments. Any amendment to this Agreement shall be executed by the Manager, and by the Manager as attorney-in-fact for the Members pursuant to the power of attorney contained in Section 15. After the execution of such amendment, the Manager 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 Manager 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 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 Manager or any other Member has any obligation or intention to register the Member interests 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

Manager 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 Manager's Address. The address of the Manager is as follows:

JWCM Vivian Springing Manager, LLC
c/o Jesselson Warsavsky Capital Management, LLC
445 Park Avenue
Suite 2101
New York, New York 10022
Attn: Jason Warsavsky
Email: jason@jwcmllc.com
Telephone: 646-386-8117

19.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware (without regard to its conflict of laws principles).

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 Manager, 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 Choice of Law and Venue. Any action relating to or arising out of this Agreement shall be brought only in a court of competent jurisdiction located in New York County, New York, and in such action the substantive laws of Delaware shall be applicable, without regard to any choice of laws principles. Members hereby waive trial by jury in any action, proceeding or counterclaim brought by any of the parties hereto on any matters whatsoever arising out of or in any way connected with this Agreement, or in connection with any emergency statutory or any other statutory remedy.

19.13 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.

19.14 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 (the "**Purchase Agreement**"). This Agreement may be amended only as provided in this Agreement.

19.15 Legal Counsel. Each Member acknowledges and agrees that counsel representing the Company, the Manager 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 Manager, in any respect. In addition, each Member consents to the Manager hiring counsel for the Company that is also counsel to one or more of the Managers.

19.16 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 Limited Liability Company Interest shall be personal property for all purposes. As long as any obligation to the Lender is outstanding, nothing herein is intended to give any creditor of a 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.

19.17 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.

19.18 Signature of the Members. The Members hereby acknowledge and agree that by signing the Purchase 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 Transfer Date.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned have set their hands to this Agreement as of the date set forth below.

MANAGER:

JWCM Vivian Springing Manager, LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____
Date: _____

INITIAL MEMBER:

JWCM Vivian, DST, a Delaware statutory trust

By: JWCM Vivian Manager, LLC,
a Delaware limited liability company
Its: Manager

By: _____
Its: _____
Title: _____
Date: _____

EXHIBIT 1
DEFINITIONS

"**Act**" shall mean the Delaware Limited Liability Company Act, as the same may be amended from time to time.

"**Additional Voluntary Capital Contributions**" means those additional Capital Contributions which may be voluntarily given pursuant to Section 3.2 hereof.

"**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 ten percent (10.0%) 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. The term "person" shall include any natural person, corporation, partnership, company, trust, unincorporated association or other legal entity.

"**Agreement**" shall mean this Limited Liability Company Agreement, as amended from time to time.

"**Beneficial Interest**" means a beneficial interest in the Trust, as such term is used in the Statutory Trust Act, all of which interests shall be either Class 1 Beneficial Interests (as defined in the Trust Agreement) or the Class 2 Beneficial Interests (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 Transfer Date.

"**Capital Contribution(s)**" means, with respect to any Member, or all of the Members, all cash and properties contributed to the Company pursuant to Section 3.1.1 of this Agreement net of liabilities assumed or taken subject to by the Company.

"**Capital Expenditures**" means expenditures for items that are capital in nature, including, but not limited to, tenant improvements, leasing commissions, and major repairs, made at the discretion of the Manager.

"**Cash Amount**" shall have the meaning set forth in Section 12.8.2.

"**Cash from Operations**" shall mean the net cash realized by the Company from all sources, including, but not limited to, the operations of the Company including the sale, financing, refinancing or other disposition of the Contributed Property, after payment of all cash expenditures of the Company, including, but not limited to, all operating expenses including all fees payable to the Manager or its Affiliates, all payments of principal and interest on indebtedness, and such reserves and retentions as the Manager reasonably determines to be necessary and desirable in connection with Company operations with its then existing assets and any anticipated acquisitions.

"**Certificate of Cancellation**" shall mean the Certificate of Cancellation of the Company as filed with the Secretary of State of Delaware.

"**Certificate of Formation**" shall mean the Certificate of Formation of the Company as filed with the Secretary of State of Delaware as the same may be amended or restated from time to time.

"**Code**" shall mean the Internal Revenue Code of 1986, as amended, or corresponding provisions of subsequently enacted federal revenue laws.

"**Company**" shall mean JWCM Vivian Springing, LLC.

"**Contributed Property**" means all of the Trust's right, title, and interest in and to the Property, the Lease or Leases, as applicable, and any and all other property and assets (whether tangible or intangible) in which the Trust at any time has any right, title or interest, contributed by the Trust pursuant to the Transfer Distribution, and all of which are or will be acquired by the Company in connection with the formation of the Company.

"**Contributing Member**" shall have the meaning set forth in Section 12.8.3.

"**Delaware Trustee**" means The Corporation Trust Company.

"**Dissenting Member**" shall have the meaning set forth in Section 12.8.2.

"**Dissenting Notice**" shall have the meaning set forth in Section 12.8.2.

"**Dissolution Event**" shall mean with respect to the Manager one or more of the following: the death, insanity, withdrawal, retirement, resignation, expulsion, Event of Insolvency or dissolution (unless reconstituted by the Manager) of the Manager unless the Members consent to continue the business of the Company pursuant to Section 14.1.4.

"**Distributable Cash**" shall mean Cash from Operations and Capital Contributions determined by the Manager 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 Manager 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.

"**ER Units**" shall have the meaning set forth in Section 12.8.1.

"**Event of Insolvency**" shall occur when an order for relief against the Manager is entered under Chapter 7 of the federal bankruptcy law, or (A) the Manager: (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 Manager a reorganization, arrangement, composition, readjustment, liquidation, 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 Manager in any proceeding of this nature, or (5) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of that Manager or of all or a substantial part of that Manager's properties, or (B) the expiration of sixty (60) days after either (1) the commencement of any proceeding against the Manager seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law, or regulation, if the proceeding has not been dismissed, or (2) the appointment without the Manager's consent or acquiescence of a trustee, receiver, or liquidator of the Manager or of all or any substantial part of the Manager's properties, if the appointment has not been vacated or stayed (or if within sixty (60) days after the expiration of any such stay, the appointment is not vacated).

"**Exchange Entity**" shall have the meaning set forth in Section 12.8.1.

"**Exchange Right**" shall have the meaning set for in Section 12.8.1.

"**Financing Documents**" shall mean the First Mortgage Loan Documents and any other documents or agreements contemplated by any of the foregoing or otherwise required by Lender.

"**First Mortgage**" means the first-priority mortgage securing the First Mortgage Loan.

"**First Mortgage Loan**" means the Lender's mortgage loan in the original principal amount of approximately $47,189,000, secured by the First Mortgage and the First Mortgage Loan Documents.

"**First Mortgage Loan Documents**" means, in connection with the First Mortgage Loan, the First Mortgage and all related assignment of leases and rents, and the other security instruments in or related to the Property.

"**Initial Member**" shall mean the Trust.

"**Issuer**" means the Development Authority of Fulton County.

"**Lease**" means that Master Lease Agreement entered into between the Trust and JWCM Vivian Master Tenant, LLC, together with all amendments, supplements and modifications thereto.

"**Lender**" shall mean KeyBank National Association under the Federal National Mortgage Association Delegated Underwriting and Servicing program, together with its successors, assigns and transferees.

"**Limited Liability Company 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.

"**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 (1) year) to the Member by the Company.

"**Majority Vote**" shall mean the vote of more than fifty percent (50.0%) of the Units entitled to vote. Members shall be entitled to cast one vote for each Unit they own, and a fractional vote for each fractional Unit they own. All Units shall be deemed to have voted FOR the proposed action unless affirmatively cast AGAINST the proposed action in a timely manner, except that votes under Section 9.2.1, 9.2.2, and 9.2.5 shall require the actual and affirmative vote of more than 50.0% of the Units to pass the proposed action.

"**Manager**" shall refer to JWCM Vivian Springing Manager, LLC, a Delaware limited liability company. The term "Manager" shall also refer to any successor or additional Manager who is admitted to the Company as the Manager.

"**Member**" or "**Members**" shall mean the persons listed on **Exhibit 2** attached hereto.

"**Member Dissolution**" shall have the meaning set forth in Section 14.1.4.

"**Offered Units**" means Units, or portion thereof, that are being offered for sale pursuant to a Third-Party Offer.

"**Offerees**" means, with respect to a Third-Party Offer, the Manager and each Member other than the Selling Member.

"**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" as said term is used in Section 6223(a) of the Code. The Partnership Representative shall be the Manager until such time as a new Partnership Representative is selected by the Company.

"**Person**" means a natural person, corporation, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank trust company, land trust, business trust, statutory trust or other organization, whether or not a legal entity, and a government or agency or political subdivision thereof.

"**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 mean the leasehold interest in the property known as "The Vivian," located at 1246 Allene Ave SW, Atlanta, GA 30310.

"**Receipt Date**" shall have the meaning set forth in Section 12.8.3.

"**Records of Ownership**" means the records maintained by the Manager, or a third party recordkeeping service provider engaged to maintain such records, indicating from time to time the name, mailing address, and the number of Units of each Member, and shall be revised by the Manager contemporaneously to reflect the issuance of additional Units in accordance with this Agreement, changes in mailing addresses, or other changes.

"**Substituted Member**" shall mean any person admitted as a substituted Member pursuant to this Agreement.

"**Tax Payment**" shall have the meaning set forth in Section 4.6.1.

"**Tax Protection Agreement**" shall have the meaning set forth in Section 12.8.3.

"**Third-Party Offer**" means an offer to purchase all or a portion of a Member's Units, a controlling ownership interest in the Member selling such Units (the "**Selling Member**") or any right to control the Selling Member that (i) is for a specified price and stated terms, (ii) is made by a Person, identified therein by name and address and (iii) contains all terms and conditions of the proposed purchase and sale thereof

"**Transfer Date**" shall mean the date the Contributed Property is contributed to the Company pursuant to Section 9.2 of the Trust Agreement.

"**Transfer Distribution**" shall have the meaning set forth in Section 9.2 of the Trust Agreement.

"**Triggering Event**" shall have the meaning set forth in Section 12.8.3.

"**Trust**" means JWCM Vivian, DST, that certain Delaware statutory trust formed by and in accordance with, and governed by, the Trust Agreement.

"**Trust Agreement**" means that certain Amended and Restated Trust Agreement dated as of August 21, 2025 by and among JWCM Vivian Depositor, LLC, as Depositor, JWCM Vivian Manager, LLC, as Manager, The Corporation Trust Company, as co-trustee (the "**Delaware Trustee**"), and Ricardo Beausoleil, as the Independent Trustee.

"**Trust Estate**" means all of the Trust's right, title, and interest in and to the Property, the Lease and any and all other property and assets (whether tangible or intangible) in which the Trust at any time has any right, title or interest, held by the Trust prior to the Transfer Distribution.

"**Trustee**" means the person serving, at the time of determination, as a trustee under the Trust.

"**Unit**" shall represent an interest in the Company entitling the owner of the Unit if admitted as a Member or Manager to the respective voting and other rights afforded to a Member holding a Unit, and affording to such Member's share in income, loss and Distributions as provided for in this Agreement. The Units shall consist of ten thousand (10,000) Units held by the Members.

[Remainder of page intentionally left blank]

EXHIBIT 2
MEMBERS

(prior Beneficial Owners under the Trust Agreement)

Name	**Address**	**Percentage Interest in the Trust**	**Number of Units**
_____	_____ _____ _____ _____	_____%	_____ Units

EXHIBIT 3
PROPERTY

EXHIBIT 4
NOTICE OF EXCHANGE

In accordance with Section 12.8.1 of the Operating Agreement (the "**Agreement**") of JWCM VIVIAN SPRINGING, LLC (the "**Company**") the undersigned hereby irrevocably requires _____ (the "**Investor**") to exchange its _____% interest in the Company, in accordance with the terms of the Agreement and the Exchange Right referred to in Section 12.8.1 thereof, for (a) ER Units (as defined in the Agreement) in the amount of the fair market value of the Investor's interest in the Company or (b) the Cash Amount (as defined in the Agreement), provided however, that the Investor must notify the undersigned in writing (the "**Dissenting Notice**") within twenty (20) Business Days of the date of this Notice of Exchange should it desire to receive the Cash Amount rather than ER Units. Should the Investor not provide the undersigned with a Dissenting Notice within twenty (20) Business Days of the date of this Notice of Exchange, the Investor shall be deemed to have surrendered its interest in the Company and all rights, title and interest therein in exchange for ER Units. The undersigned shall deliver the ER Units or Cash Amount, whichever is applicable, to the Investor in accordance with the terms of Section 12.8.3 of the Agreement and to the address specified in Section 1.2 of the Agreement.

Dated: _____, 20____

JWCM Vivian Springing Manager, LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT G
NOTICE OF EXCHANGE

In accordance with Section 10.1 of the Amended and Restated Trust Agreement (the "**Agreement**") of JWCM Vivian, DST (the "**Trust**"), the undersigned hereby exercises its Exchange Right under Section 10.1 of the Agreement in relation to _____ (the "**Investor**") and its _____% interest in the Trust. The Investor may, within twenty (20) Business Days of the date of this Notice of Exercise, notify the undersigned in writing (such writing, a "**Dissenting Notice**") that, pursuant to the terms of Section 10.2 of the Agreement, the Investor (i) is exercising its right to accept the Cash Amount (as defined in the Agreement), instead of Units (as defined in the Agreement) for its interest in the Trust ("**Interest**") or (ii) is exercising its right to retain its Interest instead of receiving Units. Should the Investor not provide the undersigned with a Dissenting Notice within twenty (20) Business Days of the date of this Notice of Exercise, the Investor shall be deemed to have surrendered its Interest and all rights, title and interest therein in exchange for Units (as defined in the Agreement). The undersigned shall deliver the Units or Cash Amount, whichever, if either, is applicable, to the Investor in accordance with the terms of Section 10.3 of the Agreement and to the address specified in **Exhibit D** of the Agreement.

Dated: _____, 20____

JWCM Vivian Manager, LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT H
FORM OF CONVERSION NOTICE

JWCM Vivian Depositor, LLC (the "**Depositor**"), as the sole Class 2 Beneficial Owner and the sole holder of the Class 2 Beneficial Ownership Certificates in JWCM VIVIAN, DST (the "**Trust**"), hereby provides a Conversion Notice pursuant to Section 6.12 of the Amended and Restated Trust Agreement dated as of August 21, 2025.

Date: _____

JWCM Vivian Depositor, LLC, a Delaware limited liability company

By: JWCM Exchange I, LLC, its Sole Member

By: _____
Name: _____
Title: _____

EXHIBIT C

PROPERTY MANAGEMENT AGREEMENT

[ATTACHED]

Management and Leasing Agreement

dated as of August 21, 2025

between

JWCM VIVIAN MASTER TENANT, LLC
Owner

and

RangeWater Residential, LLC
Manager

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MANAGEMENT AND LEASING AGREEMENT

THIS MANAGEMENT AND LEASING AGREEMENT (this "Agreement") is dated as of August 21, 2025 (the "Effective Date") between JWCM VIVIAN MASTER TENANT, LLC, a Delaware limited liability company, having an office at 445 Park Avenue, Suite 1600, New York, NY 10022 "Owner"), and RangeWater Residential, LLC, a Georgia limited liability company, having an office at 5605 Glenridge Drive, Atlanta, Georgia 30342 ("Manager").

WITNESSETH:

WHEREAS, Owner is the master tenant of the Property (described herein) located in the project known as The Vivian in Fulton County, 1246 Allene Avenue, SW, Atlanta, Georgia 30310, pursuant to the Master Lease.

WHEREAS, Owner desires to appoint Manager as an independent contractor to manage and lease the Property, and Manager desires to accept such appointment, upon the terms, covenants, conditions and provisions of this Agreement.

NOW, THEREFORE, in consideration of the premises, in consideration of the mutual covenants and agreements set forth in this Agreement, in consideration of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Owner and Manager hereby covenant and agree as follows:

1. Definitions and Interpretation

In this Agreement, unless otherwise specified, the following terms have the following meanings:

"Affiliate" means (i) with respect to any Person, any relative of the Person in question, if such Person is an individual, or any other Person directly or indirectly controlled by, controlling or under common control with the Person in question, and (ii) with respect to Manager, an entity which is controlled by or under common control with RangeWater Real Estate, LLC.

"Agreement" is defined in the Preamble.

"Allocated Expenses" means allocated costs charged by Manager to Owner for use of Manager's technology stack (including without limitation, Entrata and/or Yardi property management software), technology set up, ancillary software services, MSAs (as defined below) that are expressly permitted to be used for the Property in accordance with this Agreement, training provided by third parties, employee recognition events and marketing expense relating to the Property; provided however, (i) Allocated Expenses must include only costs for items that are actually used for and in connection with the Property, (ii) any allocation of costs to the Property included in Allocated Expenses must be reasonable, and (iii) in no event shall the aggregate amount of Allocated Expenses exceed the separate line item in the Budget that is specifically designated for such Allocated Expenses.

"Budget" is defined in Section 3.5(B).

"Capital Event" means any sale, Financing, Casualty or Condemnation which occurs during the Term hereof with respect to the Property or any part thereof and from which net capital proceeds are received by Owner.

"Capital Expenditures" means capital expenditures as determined under generally accepted accounting principles, except for such items as are otherwise classified under this Agreement. These expenditures will be reported on the cash basis of accounting.

"Casualty" means any damage to or destruction of the Property or any part thereof from a fire or other casualty.

"Condemnation" means any condemnation or other taking or temporary or permanent requisition of the Property, any part thereof, any interest therein or any right appurtenant thereto, or any change of grade affecting the Property, as the result of the exercise of any right of condemnation or eminent domain by any governmental or quasi-governmental bodies or agencies. A conveyance to such a body or agency in lieu or in anticipation of condemnation shall be deemed to be a Condemnation.

"Contracts" means the agreements, contracts, documents and obligations (other than the Leases) now or hereafter in effect and relating to the management or operation of the Property.

"Controllable NOI" means the net operating income of the Property calculated in accordance with accounting practices typically used by Owner in determining said amount; provided, variances in the Budget for real estate taxes and property insurance shall not be included in the calculation of expenses for the Property.

"Covered Employee" is defined in Section 4.1(J).

"Damages" is defined in Section 2.4.

"Development Authority" means the Development Authority of Fulton County.

"Effective Date" is defined in the preamble.

"Financing" means any financing or refinancing by debt, sale and leaseback or other form of financing with respect to the Property or any debt or other obligation of Owner relating to the Property.

"Fiscal Year" means a calendar year or other period as defined by Owner, except that the last Fiscal Year shall end on the date this Agreement expires or terminates.

"Gross Receipts" is defined in Section 4.1.

"Improvements" means the buildings, structures and other improvements now or hereafter located on the Land. The Improvements include, without limitation, 325 midrise apartments, together with all related utilities, landscaping, access, appurtenances and all other interior and exterior improvements, tenant improvements, fixtures, machinery, furnishings, equipment, supplies and other property of any kind to be installed or located on, within or adjacent to the Land.

"Incentive Fee" is defined in Section 4.1(G).

"Indemnified Party" is defined in Section 2.4.

"Initial Term" is defined in Section 5.1.

"Land" means the parcel or parcels of land described in Exhibit A, located in Fulton County, Georgia.

"Leases" means the commercial and residential leases, subleases, licenses, franchises, concessions and other occupancy agreements now or hereafter in effect and relating to the Property, including all renewals, extensions, amendments and other modifications thereof and all guarantees of the obligations of the Tenants thereunder.

"Management Fee" is defined in Section 4.1.

"Manager" is defined in the Preamble, in its capacity as the property manager hereunder.

"Manager's Insurance" is defined in Section 6.14.2.

"Master Landlord" means JWCM Vivian, DST, a Delaware statutory trust.

"Master Lease" means that certain Master Lease Agreement, dated on or about the date hereof, between Owner, as tenant, and Master Landlord, as landlord.

"MSAs" is defined in Section 3.1(E).

"Operating Account" is defined in Section 3.6.

"Operating Expenses" means, for any period, all accrual-based expenses exclusive of interest expense, if applicable, and exclusive of Capital Expenditures incurred by Manager on Owner's behalf with respect to the Property in accordance with the terms of this Agreement.

"Owner" is defined in the Preamble.

"Owner's Insurance" is defined in Section 6.14.1.

"Person" means any individual, corporation, partnership, limited liability company, association, trust or other entity or organization, including a government or political subdivision or agency or instrumentality thereof.

"Post Disposition Accounting Fee" is defined in Section 4.1(I).

"Property" means the leasehold estate in and to Land created by that certain Lease Agreement dated November 1, 2023, as evidenced by that certain Short Form Lease Agreement dated November 1, 2023, by and between 1246 Allene Owner, LP, as lessee, and the Development Authority, as lessor, and filed for record on November 20, 2023 in Deed Book 67370, Page 687, Fulton County, Georgia, but only to the extent owned by Owner.

"Reimbursable Expenses" means (a) any expenses for which Owner is expressly obligated to reimburse Manager under this Agreement, (b) any expenses which Manager incurs at the express direction of Owner, (c) Allocated Expenses, and (d) all expenses incurred by Manager in the performance of its duties under this Agreement and authorized by or contemplated in the Budget, as amended from time to time, or as otherwise expressly approved by Owner, including, without limitation, utility expenses and the following expenses solely to the extent set forth in the Budget or otherwise approved by Owner: supplies, materials, travel expenses, legal fees and disbursements, and payroll and related expenses for employees of Manager

engaged in the direct supervision and management of the Property, but excluding (i) all office, accounting, payroll, management and administrative expenses applicable to any employees working off-site or at a level above the community manager and/or to Manager's home office overhead or general or administrative expense, and (ii) Manager's normal operating expenses incurred in accounting and reporting activities and payment of project expenses. As used in this definition, "payroll and related expenses" includes, for any employee of Manager, a reasonable allocation (based on time spent at the Property) of such employee's wages, salaries, social security payments, bonuses and vacation pay, worker's compensation and Manager's standard sick pay, fringe benefits and related employee payroll costs, taxes and expenses.

"Tenants" means the tenants, subtenants, licensees, franchises, concessionaires and other occupants under the Leases.

"Term" means, unless this Agreement is sooner terminated pursuant to the provisions hereof, the Initial Term and any extension of the Initial Term.

1.1. Interpretation

In this Agreement, unless otherwise specified, (i) singular words include the plural and plural words include the singular; (ii) words which import a number of constituent parts, things or elements, including the terms "Land", "Improvements" and "Property" shall be construed as referring separately to each constituent part, thing or element thereof, as well as to all of such constituent parts, things or elements as a whole; (iii) words importing any gender include the other genders; (iv) references to any Person include such Person's successors and assigns; (v) the word "successors", when it refers to an individual, includes the heirs, devisees, legatees, executors, administrators and personal representatives of such individual; (vi) references to any statute or other law include all rules, regulations and orders adopted or made thereunder and all statutes or other laws amending, consolidating or replacing the statute or law referred to; (vii) references to any agreement or other document include all subsequent amendments or other modifications thereof entered into in accordance with the provisions thereof; (viii) the words "approve", "consent" or "agree", and any derivations thereof or words of similar import, mean the prior written approval, consent or agreement of the Person holding the right to approve, consent or agree; (ix) the words "include" and "including", and words of similar import, shall be deemed to be followed by the words "without limitation"; (x) the words "hereto", "herein" and "hereunder", and words of similar import, refer to this Agreement in its entirety; (xi) the Schedules and Exhibits hereto are part of this Agreement and are incorporated herein by reference; (xii) the words "Article", "Section", "Schedule" or "Exhibit" refer to the articles, sections, schedules and exhibits of and to this Agreement; (xiii) headings of Articles, Sections, Schedules, Exhibits and paragraphs are inserted as a matter of convenience and shall not affect the construction of this Agreement; and (xiv) no inference in favor or against any Person shall be drawn from the fact that such Person or its attorneys drafted any portion hereof.

2. Appointment and General Provisions

2.1. Appointment

Subject to the provisions of this Agreement, Owner hereby appoints Manager as an independent contractor to be the exclusive property manager for the Property while this Agreement remains in effect, and Manager hereby accepts such appointment on the terms set forth in this Agreement.

2.2. Management Responsibility and Limitation of Liability

(A) In the performance of its duties and obligations hereunder, Manager shall use reasonable business efforts to manage the Property in accordance with the terms of this Agreement in a manner at least equivalent to the recognized standards of the property management industry and in accordance with the standards and practices as are prevalent for the management of first class, mixed use and apartment communities in the metropolitan area where the Property is located. Manager will perform the services set forth herein and such other services as may be reasonably requested by Owner consistent herewith in managing, operating, maintaining and servicing the Property, subject to the operating and financial parameters set forth in the Budget and other operational limitations that may be imposed by Owner. Manager shall act in a fiduciary capacity with respect to the proper protection of and accounting for the Owner's assets, in an independent manner with all third parties and in the best interest of the Owner at all times. Except as explicitly set forth herein, Manager shall deal at arm's length with all third parties. Manager shall be available for communication with Owner at all reasonable times and keep Owner advised of all items that affect the Property in any significant manner.

(B) Owner acknowledges and agrees that Manager's responsibilities under this Agreement consist solely of managing the Property. Owner agrees that Manager shall have no liability whatsoever for or with respect to any professional services rendered by third parties in connection with the Property, including without limitation any environmental consulting or remediation services, except to the extent caused by Manager's gross negligence or willful misconduct. Owner further agrees that Manager shall have no liability whatsoever for or with respect to any claims arising from and/or damages of any kind alleged to have been caused by the work of any third parties (including contractors, construction service providers or material suppliers) retained by or on behalf of Owner for works of improvement on the Property, except to the extent caused by Manager's gross negligence or willful misconduct. Owner further agrees that Manager shall have no responsibility or liability of any kind to Owner or its members with respect to or arising from the physical and/or environmental condition of the Property or any improvements located thereon, any environmental remediation or reporting now or hereafter undertaken, or the compliance of the Property with any laws. Owner acknowledges and agrees that Manager is not responsible for assessing accessibility compliance under the Americans with Disabilities Act (ADA) or similar laws, nor is Manager providing legal assistance or advice or risk management assistance or advice to Owner in connection with such matters, and that all such compliance matters will be deferred to Owner. Owner further agrees that Manager has no liability for the failure of, or default by, any tenant in the payment of any rent or other charges due Owner or in the performance of any obligations owed by any Tenant to Owner pursuant to any Lease or otherwise except to the extent caused by Manager's gross negligence or willful misconduct. Manager assumes no liability or responsibility for the provision of security services or devices. In the event Manager engages security services or installs security devices at the Property, Owner assumes any and all responsibility and liability for such services or devices, and Owner shall indemnify and hold Manager harmless, along with the Indemnified Parties, from any and all Damages arising out of the provision or deficiency of any security services or any security devices at the Property unless and only to the extent such Damages are proven to have been caused by Manager's own gross negligence or willful misconduct.

2.3. Independent Contractor

Except as otherwise herein provided (including by way of illustration Manager's execution of contracts pursuant to Section 3.1(E) below), Manager's relationship to Owner hereunder is that of an independent contractor, and neither Manager nor Owner shall represent to any other Person that Manager's relationship to Owner hereunder is other than that of an independent contractor. No partnership, joint venture, employer-employee or other relationship (other than that of independent contractor acting as an agent for Owner, but subject to the limitations of this Agreement) has been created hereby between Owner and Manager under this Agreement

2.4. Indemnification

(A) Manager shall indemnify, defend and hold harmless Owner, its members and each of Owner's and its members' respective stockholders, directors, members, partners, officers, trustees, employees and agents from and against any and all claims, actions, suits, proceedings, losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees and disbursements ("Damages"), to the extent that such Damages arise out of or result from (i) the acts or omissions of Manager and its directors, officers, employees, and agents, which constitute gross negligence, fraud, malfeasance, or reckless or criminal misconduct, (ii) a material breach of this Agreement by Manager, (iii) acts or omissions of Manager that are outside the scope of Manager's authority under this Agreement, but only to the extent that: (a) such acts or omissions constitute a material deviation from the authority granted to Manager under this Agreement; (b) such acts or omissions rise to the level of gross negligence; or (c) such acts or omissions are committed by an employee of Manager, but only to the extent an employee of Manager at the level of regional manager or above ratifies or directs such act or omission; or (iv) any claims brought on account of Manager's employment relationship with its employees, including, without limitation, claims for wrongful termination, discrimination, and wages and hours, but excluding any claims that arise directly as a result of Owner's actions or directives.

(B) Owner shall indemnify, defend and hold harmless Manager, its members and each of Manager's and its members' respective stockholders, directors, members, partners, officers, trustees, employees and agents (each, an "Indemnified Party") from and against any and all Damages to the extent that such Damages arise out of or result from (i) the acts or omissions of Manager and any such other Indemnified Party in connection with the performance of Manager's duties, obligations, powers, or authority hereunder, and (ii) the acts or omissions of Owner and its directors, officers, employees, agents, and previous managers, except that with respect to both items (i) and (ii), such indemnification shall not apply for any acts or omissions for which Manager is obligated to indemnify Owner under Section 2.4(A). Owner shall pay and discharge any and all Contracts and obligations of Manager related to this Agreement in the event Manager shall be discharged by Owner.

(C) It is the intent of the parties to look first and primarily to the insurance coverages set forth herein, with the insurers having no right of subrogation against either party or any Affiliate of either party. A party may make a claim against the other only to the extent that insurance proceeds are not available from that party's insurer to fund fully the hold harmless obligations of such party hereunder. Owner's personal liability shall be limited in all cases to the value of Owner's equity in the Property.

(D) In no event shall the indemnification provisions of this Section 2.4 diminish, affect, impede or impair, in any manner whatsoever, the benefits to which any party may be entitled under any insurance policy with respect to the Property required by this Agreement or otherwise, or under the terms of any waiver of any subrogation contained therein.

(E) Notwithstanding anything to the contrary contained herein, neither Owner nor Manager shall be liable for any lost or prospective profits or any other indirect, consequential, special, incidental, punitive or other exemplary losses or damages, whether in tort, contract or otherwise, regardless of the foreseeability or the cause thereof.

(F) The provisions of this Section 2.4 shall survive the expiration or termination of this Agreement.

2.5. No Fees

Except as may be agreed to in writing by Owner and Manager or as otherwise set forth herein, Manager shall not be entitled to any compensation, commissions or other fee with respect to any Capital Event relating to the Property or any interest therein or any obligation or debt relating to the Property.

2.6. Duties of Owner

(A) Documents and Records. Except to the extent Manager already has the same, Owner agrees to promptly furnish Manager with all appropriate documents and records to properly manage the Property including Financing and loan payment information and copies of all insurance policies with any required endorsements which are carried by Owner during the Term.

(B) Governmental Agencies. In the event that any governmental agency or authority having jurisdiction should order the repair, alteration or removal of any structure or matter on the Property, and if after written notice of the same to Owner, Owner fails to authorize Manager or others to make such repairs, alterations, or removal, Manager shall be released from any responsibility in connection therewith, and Owner shall be answerable to such body for any and all penalties and impositions resulting from such failure on Owner's part.

(C) Interference With Support Personnel. Owner acknowledges that through this Agreement Owner and Manager are undertaking a collaborative business arrangement for their mutual benefit that will give Owner unusual access to and information about Manager's personnel assigned to provide Manager's services to Owner that Owner would not otherwise have. Owner agrees that this access to Manager's personnel and other benefits of this Agreement are intended to be mutually beneficial and should not be used by Owner to undermine the stability of Manager's workforce or to circumvent the need for Manager's services. Accordingly, during the Term, Owner will not solicit any employees assigned to assist in providing Manager's services to Owner to terminate their employment relationship with Manager or to become employed with Owner. Nothing herein prohibits Owner from hiring an employee of Manager who applies for employment with Owner unsolicited (such as in response to a "help wanted" advertisement or similar, general public advertising).

3. Management Duties and Authority

3.1. Property Management Generally

(A) Manager shall, at the expense of Owner, use its diligent and commercially reasonable efforts to manage, operate and care for the Property in a first-class manner, consistent with the Budget, and the Property's condition and the terms of any Financing. Specifically, Manager will perform its duties in a diligent, careful and professional manner to maximize all potential revenues to Owner and to minimize expenses and losses to Owner in a commercially reasonable way. The services of Manager are to be of a scope and quality equal to those generally performed by first class, professional managers of properties similar in type and quality to the Property. Manager will at all times act in good faith, in a commercially reasonable manner and in a fiduciary capacity with respect to the proper protection of and accounting for Owner's assets.

(B) Manager shall have no authority to enter into written contracts on behalf of Owner, unless directed by Owner in writing; however, Manager shall have the right to enter into Contracts (as described in Section 3.1(E) below) and to purchase items which have been approved by Owner in writing or which have been authorized by the Budget. Once any such purchase has been made, Manager is hereby authorized to make payments on account thereof, subject to the limitations set forth in this Agreement.

(C) Manager shall not enter into, nor hold itself out as having the authority to enter into, any Contract except as provided in the provisions of Section 3.1(B) above.

(D) All Contracts and purchases made hereunder at the expense of Owner shall be made either in the name of Owner and executed directly by Owner or, at Owner's request, with Manager executing same solely as Owner's agent, and Owner shall retain title to all property purchased hereunder at the expense of Owner. Manager shall use its diligent and commercially reasonable efforts to ensure that all Contracts made hereunder contain a provision satisfactory to Owner limiting the liability of Owner thereunder to the Property.

(E) Manager shall have the right to enter into Contracts on behalf of Owner so long as such Contracts are terminable without cause, penalty or premium upon not more than thirty (30) days' notice and the financial terms are consistent with the Budget or otherwise approved by Owner. All Contracts (other than MSAs) shall be freely assignable by Owner or Manager and require that all contractors maintain, and provide evidence of, the insurance required herein for contractors, except, in each case, for any such contracts which are specifically pre-approved by Owner. Notwithstanding anything herein to the contrary, Owner acknowledges that Manager partners with outside vendors in Master Service Agreements ("MSAs"), some of which include a rebate program to Manager that is used by Manager to fund dedicated administrative support, training and troubleshooting for those services, as well as sponsorships for Manager's Inspire Conference and other events for team member engagement. Such rebates are approved by Owner. Should Owner (i) elect not to use Manager's MSAs and instead require Contracts directly with Owner for services that would otherwise be provided under an MSA offered by Manager, or (ii) direct Manager to use a third-party software or technology vendor for the Property with whom

Manager has no contractual relationship, then (a) Owner shall be responsible for any legal review and negotiation of such Contracts to the extent desired by Owner, and (b) if any such Contracts are for services that include software that integrates into Manager's property management software system, then Owner shall be responsible for (1) providing appropriate training and technical support for any software or similar operating platforms associated with such Contracts, and (2) indemnifying Manager from and holding Manager harmless from any data security or other cyber security breach, or system failure resulting from such integration. Owner acknowledges that the terms and competitive pricing contained in the MSAs of Manager are exclusive to Manager, and such MSAs will be terminated upon termination of this Agreement.

(F) Manager may elect to have the maintenance, repair, cleaning, landscaping and other services with respect to the Property performed by employees of Manager and the reasonable costs of performing such services shall be at the expense of Owner; provided, that such costs are incurred pursuant to an approved Budget or otherwise approved by Owner.

(G) Notwithstanding anything to the contrary in this Agreement, Manager shall not be required to advance any of its own funds for the payment of any costs and expenses incurred by or on behalf of Owner (in accordance with this Agreement) in connection with the Property, but if Manager advances its own funds in payment of any such costs and expenses, Owner shall promptly reimburse Manager therefor to the extent that such payment(s) were consistent with this Agreement and not contrary to any prior written consent of Owner. Manager shall not be responsible for any inability of Manager to carry out its obligations under this Agreement to the extent said inability arises from the failure of Owner to make available sufficient funds to pay amounts relating to the management and operation of the Property which are the responsibility of Owner to pay hereunder.

(H) Manager will promptly notify Owner of any of the following in any way relating to the Property: notice of any claim of violation of any governmental or legal requirement, any notice of any claim of liability, any summons or service of other legal process including but not limited to mechanic's liens, any damage, any default or alleged default by landlord or tenant under any Lease, and any other material information. Subject to the limitations in Section 3.1(I)(iii)(g), Manager shall monitor compliance of the Property with governmental laws, ordinances and regulations and shall advise Owner of the need to consult legal or other consultants when appropriate and shall reasonably cooperate with the Consultants when necessary. Manager will deliver to Owner a copy of any incident reports filed for the Property within two (2) business days of the date such report is filed. Owner agrees that Manager may provide such notices to Owner, as relevant, using the Happy+Co software system or another comparable product that assists with reporting requirements. Manager will have no liability for any system failure or for any other technical problems of such software outside of Manager's reasonable control. Manager will fully cooperate with Owner in all legal and arbitration proceedings relating to the Property.

(I) Subject to the terms of this Agreement, Manager shall carry out all operation and management services with respect to the Property. Without limiting the foregoing, Manager shall:

(i) Communicate and interface with Owner regarding ongoing Property management issues, longer term Property management strategies, and any significant matters that arise relative to the management of the Property; and

(ii) Communicate and interface directly with the senior management of retail Property tenants and cooperate with retail Property tenants in connection with the procurement by tenants of permits, approvals, licenses and certificates of occupancy.

(iii) Manager shall establish and implement standards and procedures for the management and operation of the Property. Without limiting the foregoing:

(a) Manager, at the request of and in consultation with Owner, shall establish standards for and, when indicated by Owner, complete the implementation of, upgrades of certain of the Property's common areas.

(b) Manager, at the request of and in consultation with Owner, shall develop and implement procedures with respect to tenant visitor processing and security, tenant work orders and requests, and preventive maintenance programs with respect to the Property.

(c) Manager, at the request of and in consultation with Owner, shall establish and implement life and safety protocols and procedures and emergency response planning for the Property.

(d) Manager, at the request of and in consultation with Owner, shall retain a third-party contractor at Owner's expense to develop and implement an energy management program designed to effect savings for the Property.

(e) Manager, at the request of and in consultation with Owner, shall retain a third-party contractor at Owner's expense to develop and implement sustainability initiatives to improve operating efficiency at the Property.

(f) Manager shall be responsible for bidding and contracting for energy contracts and certain other contracts for the Property as designated by Owner from time to time.

(g) Manager shall be responsible, at the request of and in consultation with Owner, retain a third-party contractor at Owner's expense to coordinate and implement all environmental compliance and

monitoring programs that may from time to time be deemed necessary or appropriate with respect to the Property. Notwithstanding anything to the contrary contained herein, Owner acknowledges and understands that Manager has no responsibility to (a) evaluate the presence or absence of hazardous or toxic substances, mold, waste (including solid waste) gas, liquid, materials, electromagnetic fields, radon, lead, asbestos, radioactive materials, or other environmental concerns or other materials regulated by any federal, state or local governmental or quasi-governmental entity or agency thereof (collectively, "Hazardous Materials") upon, within, above, or beneath the Property; (b) maintain or evaluate compliance with respect to any federal, state, and local laws, rules, codes, statutes regulations, orders, notices, directives, determinations ordinances, and any other requirements relating to Hazardous Materials (collectively, "Hazardous Materials Laws"); or (c) conduct or ensure clean-up or remediation of Hazardous Materials. Further, Manager assumes no liability for previously unknown violations of environmental or other regulations which may become known during the period this Agreement is in effect.

(h) Manager shall assist Owner with the transition process in connection with any sale or transfer of the Property.

(iv) Manager shall be responsible, in consultation with Owner, for overseeing any legal services required by Section 3.3(C) related to enforcement of Leases. Manager shall be responsible for undertaking all accounting functions required by Section 3.5, including, but not limited to, the preparation of accounting and other financial reports to be submitted to Owner as set forth in Schedule 3.5. Without limiting the foregoing:

(a) Manager shall develop annual plans for the Property as part of the creation of the Annual Budget and formulate strategies regarding the management of the Property.

(b) Manager shall prepare annual budgets and re-forecasts for the Property as more particularly described in Section 3.5 hereof.

(c) Within forty-five (45) days after the end of each fiscal year and within thirty (30) days after the end of each quarter, as applicable, Manager shall prepare and deliver to Owner annual and quarterly financial reports relating to the operation of the Property.

(d) In addition to any other reporting expressly required hereunder, Manager shall prepare reports required or requested by Owner's lenders and investors to the extent reasonably within the scope of Manager's duties hereunder.

(e) Manager shall provide financial information requested by Owner in connection with audits of Owner or the Property and generally coordinate with Owner's accountants in connection with any such audits.

(f) Manager shall review and revise quarterly reports and provide input regarding ongoing Property management issues.

(g) Manager shall make recommendations to Owner regarding the providing of services to the Property in a cost-effective manner.

(h) Manager shall proceed diligently, on Owner's behalf, with the collection of all rent and other sums due from Tenants.

(i) Manager shall provide the data needed for computation of all sums called for in leases and other occupancy arrangements including, without limitation, any expense reimbursements.

(j) Manager shall use commercially reasonable efforts to enforce the terms of all Leases.

(v) Manager shall be responsible for all purchasing and contracting in connection with the operation and management of the Property. Without limiting the foregoing, Manager shall:

(a) approve the invoices and schedule of checks to be drawn on the Operating Account (as defined herein) on a monthly basis; and

(b) notify Owner of all necessary deposits which are to be made by Owner to the Operating Account.

(vi) Manager shall perform regular inspections of the Property (a) in accordance with Owner's policies and procedures provided in advance and reasonably approved by Manager and (b) subject to the terms of any Leases, and shall keep the Property in a clean and sightly condition and perform, or cause to be performed, all ordinary and extraordinary repairs and maintenance necessary or advisable for the proper operation of the Property, subject to Section 4.1(E) and the limits of the Budget (as defined herein).

(vii) Manager shall promptly investigate all accidents, claims or damage relating to the ownership, operation and maintenance of the Property and any damage or destruction to the Property of which it becomes aware.

(viii) In cooperation with Owner and at Owner's expense, Manager shall apply for, process, and take all necessary steps to procure (in Manager's name, and/or Owner's name to the extent required by local authorities) all necessary licenses and permits (the "Licenses") required for the operation of the Property, and Manager undertakes to comply in a commercially reasonable manner with any conditions set out in any such Licenses and at all times to operate and manage the Property in accordance with such conditions and any other legal requirements. Upon the expiration or sooner termination of this Agreement, Manager agrees, to the extent permitted by applicable law, to sell, assign, transfer and convey to Owner or its designee all of Manager's right, title and interest in and to all such Licenses that are not personal to Manager (such as a brokerage license), without charge (other than any expenses of transfer, which shall be reimbursed expenses), or (in the event such assignment is not permitted by applicable law) to use reasonable efforts at no cost to Manager to provide Owner or Owner's designee with the use and benefits of such Licenses until such time as Owner and/or its designee are able to obtain new Licenses.

(ix) Manager shall obtain, verify and, at Owner's expense, pay bills for real estate and personal property taxes, improvement assessments and other like charges which are or may become liens against the Property.

(x) In the event that under the terms or provisions of any mortgage or deed of trust or other such agreement to which the Property is subject, the mortgagor or trustor is required to deposit in installments an amount against or based upon real estate and personal property taxes, improvement assessments and other like charges, insurance premiums or other sums, then Manager shall make such deposits to the extent Owner provides the funds therefor and written notice of such requirements.

(xi) If requested by Owner, Manager shall review and advise Owner with respect to (i) [the terms of the] Leases, and (ii) plans and specifications for tenant improvement work under Leases and capital improvement work at the Property, subject to Section 4.1(E) hereof.

(xii) Manager shall receive and respond to complaints and requests of Tenants and maintain records showing the action taken with respect to each complaint or request in accordance with Section 3.1(H) hereof.

(xiii) Manager shall screen all contractors, subcontractors and service providers to ensure they are meeting the insurance limits set forth on Manager's insurance matrix using an industry-recognized screening provider.

(xiv) Manager shall carry out other functions with respect to the Property as requested by Owner from time to time that are reasonable and customary.

(xv) Manager shall coordinate move ins with Tenants and, so far as commercially practicable, shall arrange the dates of such moves so that there is a minimum of

disturbance to the operation of the Property and of inconvenience to other Tenants.

(J) If this Agreement is terminated, Manager shall, upon Owner's election, assign to Owner or Owner's nominee, and Owner shall assume (subject to any limitations of liability contained in the applicable contracts), such service agreements (if any) pertaining to the Property as may have been entered into in Manager's name, excluding any MSAs.

(K) Manager shall not contract with respect to the Property with any party which is an Affiliate of Manager unless (i) the nature and the extent of the affiliation or association is first disclosed to Owner in writing, and (ii) the arrangement is approved in advance and in writing by Owner. Manager agrees that it will not recommend to Owner that work be contracted out to Affiliates of Manager unless such work is of a nature that it would normally be contracted to third parties by a property manager acting reasonably.

(L) Owner acknowledges that Manager will be closed for business on the following holidays: Thanksgiving, Christmas, New Year's Day, Martin Luther King Day, Easter, Memorial Day, 4th of July and Labor Day.

3.2. Management Employees

(A) Manager shall have in its employ at all times sufficient staff of capable personnel for the proper maintenance and operation of the Property. Such personnel shall be employees of Manager and all matters pertaining to such personnel, including their employment, supervision, compensation, promotion and discharge, shall be the responsibility of Manager. All salaries, wages and other compensation of personnel employed by Manager hereunder, including fringe benefits, shall be deemed to be expenses of Manager (and Manager shall be responsible for all payroll and other taxes and all other deductions paid or made and/or required by law, and for preparing and filing all returns and other documents required under federal or local laws), subject to Section 3.2(B) below.

(B) Manager shall be reimbursed for the Reimbursable Expenses relating to payroll and related expenses for its employees. The number of the employees and amount of their compensation may be adjusted, and an appropriate pro-rata share therefor shall be specifically set forth in the Budget; provided, however, in no event will Manager be reimbursed for any office, accounting, payroll, management and administrative expenses applicable to any employees working off-site or at a level above the community manager and/or to Manager's home office overhead or general or administrative expense.

(C) Subject to Manager's employment practices and procedures, Manager agrees not to remove or replace any of its employees at the Property during the Initial Term that are properly performing their duties in good faith and in accordance with this Agreement.

(D) Manager shall use its diligent efforts to investigate, hire, pay, supervise and discharge the personnel necessary to be employed by it to properly maintain and operate the Property. Such personnel shall in every instance be independent contractors or employees, as the

case may be, of Manager and Manager shall have no authority to hire employees or establish an agency relationship on behalf of Owner. All employees, agents, officers, and directors of Manager who are involved in, or employed in connection with, the performance of Manager's obligations under this Agreement, shall be insured under the fidelity/ crime insurance policy required under Section 6.14.2 hereof. All salaries, wages and other compensation of personnel employed by Manager shall be deemed to be Operating Expenses of the Property to the extent the same are contemplated in the Budget. In no event shall Owner be required to reimburse Manager for payroll expenses, training, educational and motivational programs, or other compensation or costs in amounts greater than as approved in the Budget. Without limiting the foregoing, no part of Manager's central office overhead or general or administrative expense shall be charged to Owner.

(E) Manager shall execute and timely file all forms, reports and returns required by any applicable law relating to the employment of personnel employed by Manager in connection with the Property. Manager shall directly control the time and manner of the work and services to be performed by the employees of Manager and Manager shall comply with all applicable laws in connection therewith. Manager shall make all necessary payroll deductions for disability and unemployment insurance, social security, withholding taxes and other applicable taxes. Manager shall prepare, maintain and file all necessary reports with respect to such taxes or deductions and all other necessary statements and reports. Manager shall have total responsibility for and shall fully comply with all applicable laws and regulations having to do with workmen's compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and other employer-employee related subjects, including all laws related to discrimination and harassment; subject to Owner's reimbursement obligations expressly set forth herein with respect to employee compensation and except to the extent of any claims that arise directly as a result of Owner's actions or directives.

(F) Manager shall not discriminate against any employee or applicant for employment in connection with the management of the Property because of disability, race, creed, color, age, sex, sexual orientation, marital status or national origin. Manager will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their disability, race, creed, color, age, sex, sexual orientation, marital status or national origin.

3.3. Rent Collection and Services with Respect to Leases

(A) Manager shall use its diligent and commercially reasonable efforts to cause the Property to be fully rented, and in connection therewith Manager shall have the exclusive authority and exclusive right to negotiate and execute Leases with Tenants for the rent, and upon such other terms and conditions as Owner shall set forth in writing to Manager from time to time, in its sole discretion. Manager shall ensure that all leasing, real property advertising or real property brokerage activities for the Property conducted by Manager, its employees or agents, shall be in accordance with Georgia law and Manager shall obtain all required licenses or other authorizations required under Georgia law prior to conducting any such activities.

(B) Manager shall, at the expense of Owner, use its diligent and commercially reasonable efforts to provide that the Tenants receive the services required to be provided by Owner under their Leases, to duly and punctually observe and perform on behalf of Owner all of Owner's obligations under the Leases, and to enforce, preserve and keep unimpaired the rights of Owner and the obligations of the Tenants under the Leases. Manager shall require each Tenant to carry a renter's insurance policy with liability insurance in an amount not less than $100,000.00 per occurrence.

(C) Manager shall use its diligent and commercially reasonable efforts to collect and enforce the collection of all rents and other charges payable by the Tenants under their Leases. Manager shall bill the Tenants for any additional rent in a timely manner so that such additional rent is not forfeited. Manager shall immediately deposit all rents and other sums collected by Manager in the Operating Account (as hereinafter defined).

(D) Manager shall be authorized to pay from time to time in connection with leasing of the residential or nonresidential portions of the Property leasing commissions to third party real estate brokers which have provided services in connection with such leasing in amounts agreed upon by Owner at Owner's expense.

(E) Any Tenant income verification documentation and reporting required thereby may be accomplished through the use of a third-party screening company at Owner's expense.

3.4. Services with Respect to Contracts

Unless otherwise provided herein, Manager shall, at the expense of Owner and in accordance with the Budget, duly and punctually pay and perform on behalf of Owner all of Owner's material obligations under the Contracts. Manager and Owner shall each use their respective diligent and commercially reasonable efforts to enforce, preserve and keep unimpaired the rights of Owner and the obligations of other parties under the Contracts, in accordance with said Contracts and this Agreement.

3.5. Budgets, Records and Reports

(A) Generally. Manager shall deliver to Owner such reports with respect to Manager's services hereunder as Owner shall reasonably request from time to time. Specifically, on or before the 15th day of each month, Manager shall deliver to Owner the reports as shown pursuant to Schedule 3.5(A) attached hereto and made a part hereof. As applicable, the monthly reports described on Schedule 3.5(A) attached hereto shall be prepared on an accrual basis unless otherwise indicated or requested by Owner. In addition to revisions of existing monthly or annual reports, Manager will promptly furnish any other special information as required from time-to-time by Owner including, without limitation, weekly leasing status reports prepared on Manager's form.

(B) Budgets. On or before the Effective Date and at least ninety (90) days before the beginning of each subsequent Fiscal Year, Manager shall prepare and deliver to Owner (i) an operating budget which shall set forth, among other matters, anticipated operating income, operating costs and reserve requirements for such fiscal year, (ii) a capital budget which shall set forth, among other matters, anticipated and proposed repairs, replacements, alterations, renewals and improvements to the Property for such fiscal year which are

normally capitalized and the source of funds in respect thereto, as well as a schedule for completion of such capital expenditure items, (iii) a schedule for maintenance of the Property, including, without limitation, periodic inspections and exterior maintenance on a seasonal basis, (iv) a leasing and marketing plan for such fiscal year, (v) a five-year capital expenditure spending plan for the succeeding five-year period, and (vi) a forecast for the remainder of the current year as well as a comparison of the following year's budget to the current year's forecast (with variance comments) and a comparison of the following year's budget to the current year's budget. Owner may review and revise such budget in its sole discretion, and at such time as such budget (as may have been modified by Owner) has been approved in writing by Owner (as approved, the "Budget"), Manager shall implement such Budget. The initial Budget is attached hereto as Schedule 3.5(B). Without affecting any other limitation imposed by this Agreement and except as may be expressly provided to the contrary elsewhere in this Agreement, Manager shall secure the prior written approval of Owner prior to incurring any liability or obligation for any category of expense not reflected on the Budget, or any increase of more than ten percent (10%) for the expense of any item set forth in the Budget. Owner will approve or disapprove each Budget within a reasonable time after the receipt of same, and Manager will make any changes in the Budget requested by Owner. If any proposed budget for the upcoming calendar year is not approved prior to the start of such calendar year, then from January 1 until such time as Owner approves a Budget for such calendar year, a temporary budget shall take effect which shall be equal to the prior year's Budget increased by two percent (2%) for all line items, except for taxes and/or any insurance premiums included in the prior year's Budget as well as utilities, each of which shall equal the amount actually incurred for each such item during the interim period until a Budget is approved by Owner. Owner acknowledges that the Budget is intended only to be a reasonable estimate of the Property's income and expenses for the ensuing calendar year. Manager shall not be deemed to have made any guarantee, warranty or representation whatsoever in connection with the Budget.

(C) Books and Records.

(i) Manager shall maintain and keep at its main office or in electronic format accurate books, records and accounts of the management, operation and financial condition of the Property's operations.

(ii) Owner shall at all times retain title to the information constituting such books, records and accounts. Manager shall, during the term of this Agreement, retain such books, records and accounts. Upon termination of this Agreement, Manager shall immediately deliver such books and records to Owner at Owner's expense. Any and all computer programs, software and hardware utilized by Manager to maintain such books, records and accounts shall in all events remain the property of Manager.

(iii) Upon reasonable written notice to Manager, Owner may, at its expense, inspect, audit and copy such books, records and accounts during regular business hours on a periodic or continuing basis by accountants retained by, or other representatives of Owner, and Manager shall cooperate with Owner and its representatives in connection with the same.

(iv) Manager shall deliver a final accounting within thirty (30) days after the last day of the calendar month in which a termination of this Agreement occurs.

(v) Manager shall, upon Owner's written request from time to time, submit copies of any lease, contract, bill, license, agreement or any other document relating to the Property or to this Agreement in Manager's possession to Owner.

3.6. Bank Accounts

(A) Manager shall maintain the following bank account in the name of Owner as an Operating Account (the "Operating Account") into which all funds advanced to the Property by Owner or otherwise derived from the operation of the Property shall be deposited. The Operating Account shall be maintained in the name of Owner at a bank as determined by Owner and reasonably approved by Manager, with the parties agreeing that PNC Bank is an approved depository. Either Owner or Manager shall be entitled to draw upon such Operating Account, but all such money shall be deemed to be the property of Owner. Such monies of Owner shall not be commingled with the funds of Manager. Manager may withdraw from the Operating Account (subject to the limitations set forth in this Agreement) for disbursements required or permitted to be made under this Agreement; provided, however, that except as otherwise agreed in writing by Owner, disbursements by Manager out of the Operating Account shall be as permitted under this Agreement, but limited to the purposes set forth in any Budget and to the amounts which do not exceed the corresponding sums allocated to the same in the Budget. Owner shall promptly provide all certifications with respect to Owner's beneficial ownership, withholding obligations and similar matters relating to Owner as may be required by PNC Bank. All funds deposited in such accounts or otherwise held by or in the name of Manager for the account of Owner shall be held by Manager in trust and shall not be commingled with Manager's other funds. Manager shall in no event have any liability in the event that the depository institution should fail, go into receivership or conservatorship or if such funds are otherwise not available for reasons beyond Manager's reasonable control or if Manager's or Manager's officer's or representative's authority to draw on said accounts is terminated.

(B) Manager shall maintain the following bank account in the name of Owner as a deposit account (the "Deposit Account") for the holding of all deposit monies given by tenants or subtenants or guarantors in connection with leases or subleases of the Property or any portion thereof. The Deposit Account shall be maintained in the name of Owner at a bank as determined by Owner and reasonably approved by Manager, with the parties agreeing that PNC Bank is an approved depository. At Owner's discretion, the Deposit Account may be in the name of Manager as managing agent for Owner. Owner shall promptly provide all certifications with respect to Owner's beneficial ownership, withholding obligations and similar matters relating to Owner as may be required by PNC Bank. The Deposit Account shall be separate from all other accounts of Manager or Owner. All funds deposited in such accounts or otherwise held by or in the name of Manager for the account of Owner shall be held by Manager in trust and shall not be commingled with Manager's or Owner's other funds. Manager shall in no event have any liability in the event that the depository institution should fail, go into receivership or conservatorship or if such funds are otherwise not available for reasons beyond Manager's reasonable control or if Manager's or Manager's officer's or representative's authority to draw on said accounts is terminated. Manager and Owner shall not pledge, hypothecate or otherwise use the monies in the Deposit Account in contravention of applicable law.

(C) The Management Fee and Reimbursable Expenses shall be deducted from the monthly remittance of funds in the Operating Account to Owner by Manager. If the excess operating funds are inadequate to pay such fees and Reimbursable Expenses, or if by virtue of the payment to Manager of the Management Fee, other fees explicitly and specifically set forth hereunder, and Reimbursable Expenses, a deficiency would be created, Owner will pay to Manager such fees (or any portion thereof which exceeds the amount of excess operating funds) immediately upon demand.

(D) Manager shall provide for security, pet and all other deposits to be deposited promptly in the designated Deposit Account. As needed, Manager shall withdraw such amounts from the Deposit Account as are necessary to (i) repay a security deposit (or portion thereof) to a tenant as required in the terms of a Lease; and (ii) cause the transfer of a forfeited security deposit (or portion thereof) to Owner's Operating Account.

(E) As of the date of expiration or termination of this Agreement, unless otherwise requested by Owner in writing, Manager will close the Operating Account and Deposit Account and cause all remaining funds from such accounts after payment of expenses as set forth in Section 3.7 below to be transferred to Owner.

3.7. Payment of Expenses

(A) On or before the Effective Date, Owner shall remit to Manager the sum of $20,000.00 to be deposited in the Operating Account as an initial deposit representing the estimated disbursements to be made in the first month following the Effective Date. Owner then agrees to fund the Operating Account on the first of each subsequent month for the anticipated monthly expenses, based on a funding request submitted to Owner by Manager in accordance with the Budget. Further, Owner authorizes Manager to maintain a contingency reserve of $20,000.00 at all times in the Operating Account to ensure Manager has the funding required to pay the operating expenses of the Property pursuant to the terms of this Agreement as and when such expenses come due.

(B) Manager shall, to the extent of available funds over and above the aggregate sum of all security deposits, pay all expenses of operating the Property from the Operating Account in such amounts as are necessary to pay:

(i) the Operating Expenses actually due and owing for such period; and

(ii) mortgage interest expense and principal payments for Financings.

Manager shall have no obligation to make any Capital Expenditures.

(C) If Manager is aware that the funds then on deposit in the Operating Account are insufficient or projected to be insufficient to cover the amounts which are necessary to pay the Operating Expenses for such month, Manager shall promptly notify Owner. In no event shall Manager be obligated to use its own funds to advance funds for the payment of expenses.

(D) Manager shall use the Operating Account to pay when due the following items in the following order of priority:

(i) all real estate taxes as and when they become due, and, in any event before the date on which interest and/or any penalty becomes payable with respect thereto and, if directed by Owner, insurance premiums as and when they become due and payable with respect to the Property;

(ii) if applicable, mortgage loan interest expense and principal for Financings;

(iii) all utility charges as and when they become due and payable with respect to the Property;

(iv) all other fees, costs and expenses payable pursuant to this Agreement, including all Management Fees and other fees and Reimbursable Expenses due to Manager under this Agreement;

(v) all charges due and payable under the Contracts; and

(vi) all amounts necessary to purchase supplies, tools, uniforms and other materials necessary for the proper maintenance and operation of the Property.

(E) Subject to the following sentence, Owner shall reimburse Manager for all direct expenses incurred and paid by Manager in connection with the management, operation and care of the Property pursuant to this Agreement, including Reimbursable Expenses.

(F) Notwithstanding the foregoing of this Section 3.7, in the event Manager hereafter advances any amounts from its own funds, rather than from the funds of Owner, to pay any portion of any expense or obligation hereunder, then Manager may reimburse itself from the Operating Account to the extent such advance was made pursuant to and in accordance with this Agreement. Any such reimbursement which Manager disburses to itself hereunder shall be accounted for by Manager in the next monthly report.

4. Manager's Compensation

4.1. Management Fees

(A) Owner shall pay Manager, and Manager shall accept, as full compensation for Manager's management services during the Term of this Agreement a fee ("Management Fee") on a monthly basis in an amount equal to the greater of (i) Two and One Half Percent (2.5%) of Gross Receipts (as defined below) of the Property actually collected during that month, or (ii) Ten Thousand and No/100ths Dollars ($10,000.00).

(B) The Management Fee for any month shall be paid as an Operating Expense on or prior to the thirteenth (13th) day of the month immediately following the month to which it relates. Manager is hereby authorized to pay itself the Management Fee from the Operating Account. Manager shall provide a monthly accounting of the fees that it has paid to itself to Owner for its review.

(C) For the purposes of this Section 4.1, the term "Gross Receipts" shall mean, for any period of reference, all amounts actually collected by or on behalf of Owner as charges from or in respect of the Property, including, without limitation, if applicable, all rents, income and

revenue derived from the operation of the Property, including forfeited security deposits, pet fees, decorating fees, late charges, parking fees and revenues (net of any payments made to any third party operators of the parking facilities), cable television fees, utility fees, vending machine fees, application fees, decorating fees, cancellation fees, and recoveries. "Gross Receipts" shall not include (i) any revenues derived from the Property by a service provider or other third party (e.g., a cable television operator), but shall include any share of such revenues paid by such third party to Owner (or Manager on behalf of Owner) under any revenue participation or similar agreement, (ii) security deposits (unless and until forfeited); (iii) insurance recoveries, condemnation proceeds and the like (other than proceeds of business interruption or rent interruption insurance); (iv) proceeds from any refinancing or sale of the Property, or any portion(s) thereof, and any capital contributed by Owner; (v) proceeds of the sale of any furnishings, fixtures or equipment, provided such proceeds are used to replace the item(s) sold; (vi) rent refunds paid to tenants; (vii) any local sales, use, occupancy or other similar tax with respect to which Manager is required by law to act as collecting agent; (viii) amounts recovered for any physical damage done to the Property; (ix) any amounts paid or reimbursed by tenants to Owner or its agents for or on account of capital repairs, replacements or improvements unless included in rent or operating expense reimbursements (excluding capital improvements that are required to be made as a result of a change in a law, regulation or ordinance, to the extent the cost of such capital improvements are included in operating costs escalations under a tenant's lease and paid for by such tenant and also excluding any normal turn costs); (x) interest and other income received in respect of bank accounts or other funds invested by Owner, Manager or any of their agents, including without limitation revenues received from the investment of working capital and reserve funds; (xi) payments to Owner or Manager on account of tenant improvement work and other costs of moving tenants into the Property or new space therein (in contradistinction to payments to Owner or Manager for services rendered to existing tenants and normal turn costs); (xii) tax abatement proceeds and tax refunds paid to Owner or Manager; (xiii) deleted; (xiv) proceeds from any litigation other than rent (and other reimbursable expense) collections and interest collected thereon; (xv) rebates received from third party vendors that are paid to the Property (e.g. Utility rebate).

(D) Should Owner terminate this Agreement within twelve (12) months of the Effective Date pursuant to Section 5.2(B) (and, for the avoidance of doubt, not pursuant to Section 5.2(A) or Section 6.10), Owner shall pay Manager an early termination fee equal to three (3) times the Management Fee payable to Manager during the last full month prior to the date of such termination. Owner shall pay such early termination fee within thirty (30) days of Manager's receipt of a termination notice.

(E) Owner shall pay Manager a construction supervision fee in the amount of 3% of hard costs incurred for projects exceeding a total budget of $37,500 for supervising construction, renovation, or deferred maintenance work at the Property. The term, scope of construction supervision services and corresponding fee shall be agreed upon by Owner and Manager prior to commencement of any such services and shall be payable monthly, based on the percentage of completion of such construction work.

(F) The Set-Up Fee is waived.

(G) Owner shall pay Manager a one-time incentive fee (the "Incentive Fee") if actual Controllable NOI exceeds the budgeted Controllable NOI of $5,685,385.00 by Three Percent (3%) or greater during the Initial Term (without extension), calculated based upon the performance of the Property compared to the Budget as detailed in the financial statements for the Property. The amount that actual Controllable NOI exceeds budgeted Controllable NOI is referred to as the "Excess NOI Amount." The Incentive Fee (if any) shall equal 10% of the Excess NOI Amount and shall be paid along with the Management Fee for the immediately following month on or before the date due for the Management Fee for such month.

(H) The Disposition Incentive Fee is waived.

(I) If Owner requires Manager to provide accounting services more than ninety (90) days after a termination of this Agreement, Owner shall pay Manager a fee equal to One Thousand Five Hundred and No/100ths Dollars ($1,500.00) (the "Post Disposition Accounting Fee") for every month or portion thereof beyond such ninety (90) day period in which accounting services are provided. The Post Disposition Accounting Fee for each such month will be paid on or before the first day of such month to which it relates. Other than as otherwise expressly set forth herein, no other accounting or other services will be provided to Owner more than ninety (90) days after the termination of this Agreement unless Manager is paid the applicable Post Disposition Accounting Fee. If Owner fails to pay the Post Disposition Accounting Fee, any invoices related to the Property received more than ninety (90) days after termination of this Agreement will be sent to Owner for payment and processing, and Owner will be responsible for performing any necessary proration true ups with the buyer of the Property after such date.

(K) The provisions of this Section 4 shall survive the expiration or termination of this Agreement.

5. Term

5.1. Term

(A) The term of this Agreement shall commence as of the Effective Date and, subject to subsection B below, shall expire on the first (1st) anniversary of the Effective Date (the "Initial Term"), unless extended or sooner terminated as hereinafter provided.

(B) Following such Initial Term, this Agreement shall continue on a year-to-year basis and may be terminated by either party giving thirty (30) days' prior written notice to the other party.

5.2. Termination

(A) Owner may terminate this Agreement at any time, effective immediately upon notice to Manager, if (i) Manager defaults in its obligations under this Agreement and the default is not cured within thirty (30) days, with respect to any monetary default, or within forty-five (45) days, with respect to any non-monetary default, in either case after receipt by Manager of written notice thereof setting forth the basis of default; or (ii) a petition for relief in bankruptcy or reorganization or arrangement is filed by or against Manager; or (iii) in the

event of Manager's willful misconduct, intentional misrepresentation, gross negligence, fraud or theft with respect to the Property or in connection with Manager's performance of its services hereunder. In all events of a default covered by this Section 5.2(A), the curing of such default shall include making the applicable party whole from any damage, cost, expense or loss arising out of any such default. Manager may terminate this Agreement, effective immediately upon notice to Owner, if Owner defaults in its obligations under this Agreement and the default is not cured within thirty (30) days, with respect to any monetary default, or within forty-five (45) days, with respect to any non-monetary default, in either case after receipt by Owner of written notice thereof setting forth the default.

(B) Notwithstanding anything contained herein to the contrary, this Agreement shall automatically terminate upon (i) the consummation of any sale or other disposition of the Property by Owner, or (ii) thirty (30) days' prior written notice from either party.

Upon any termination of this Agreement, (i) Manager shall deliver to Owner after such termination a final accounting as set forth in Section 3.5(C)(iv), reflecting the balance of income and expenses and assets and liabilities for the Property as of the date of termination, (ii) all funds and records in Manager's custody shall be forthwith turned over as directed by Owner, and (iii) Manager shall forthwith surrender and deliver up to Owner possession of all space occupied by Manager in the Property as its property management office.

5.3. Determination of Fees

Except as otherwise expressly provided in this Agreement, all fees and other sums payable by Owner to Manager hereunder (including the Management Fee) shall cease and be determined (subject to claims by Owner for Damages in connection with defaults by Manager) as of the expiration or termination of this Agreement. Management Fees for partial months shall be prorated on the basis of the number of days in said month.

6. Miscellaneous

6.1. Notices

All notices to either party hereunder shall be in writing and, unless otherwise specified herein, shall be delivered by hand, United States registered or certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express or any other national overnight express delivery service (in each case postage or delivery charges paid by the party giving such communication) addressed to the party to whom such communication is given at its address or facsimile number set forth below:

If to Owner at the address set forth above, with copies to:

JWCM Vivian Master Tenant, LLC
445 Park Avenue, Suite 1600
New York, NY 10022
Attn: Jason Warsavsky
Telephone: 646-386-8117
Email: jason@jwcmllc.com

If to Manager, to:

RangeWater Residential, LLC
5605 Glenridge Drive, Suite 800
Atlanta, Georgia 30342
Attention: Andrew Wittgen
Email: awittgen@liverangewater.com

With a copy to:

RangeWater Residential, LLC
5605 Glenridge Drive, Suite 800
Atlanta, Georgia 30342
Attention: Emily Sweitzer/ Legal Notices
Email: esweitzer@liverangewater.com and
legalnotices@liverangewater.com

Unless otherwise specified herein, each such communication addressed and given as set forth above shall be effective: (i) the date of receipt, or attempted delivery, of such communication; and (ii) if sent by mail as aforesaid, the date which is the date of receipt after such communication is deposited in the mail, postage prepaid as aforesaid. Any party listed above may change its address under this Section 6.1 by notice to the other parties listed above, provided that no such address shall be located outside of the United States of America.

6.2. Representations and Warranties

(A) Manager represents and warrants to Owner that: (i) Manager is a limited liability company, organized and validly existing and in good standing under the laws of the State of Georgia, and has all requisite power and authority to carry on its business as now conducted and to execute, deliver and perform this Agreement; (ii) the execution, delivery and performance by Manager of this Agreement are within its power, have been authorized by all necessary corporate action and do not contravene any provision of its articles or operating agreement; (iii) this Agreement has been duly executed and delivered by Manager; (iv) this Agreement is a valid and binding obligation of Manager subject to applicable bankruptcy laws and the application of principles of equity; (v) the execution, delivery and performance by Manager of this Agreement do not conflict with or result in a breach of any of the provisions of, or constitute a default under, any bond, note or other evidence of indebtedness, indenture, mortgage, deed of trust, loan agreement or similar instrument, any Lease or any other material agreement or contract by which Manager, or its activities or the Property is bound or any applicable law or order, rule or regulation of any court or governmental authority having jurisdiction over Manager, its activities or the Property; and (vi) no order, permission, consent, approval license (other than those already held by Manager), authorization, registration or filing by or with any governmental authority having jurisdiction over Manager, its activities or the Property is required for the execution, delivery or performance by Manager of this Agreement.

(B) Owner represents and warrants to Manager that: (i) Owner is a limited liability company organized and validly existing and in good standing under the laws of the State of Delaware, and has all requisite power and authority to carry on its business as now conducted and to execute, deliver and perform this Agreement; (ii) the execution, delivery

and performance by Owner of this Agreement are within its power, have been authorized by all necessary company action and do not contravene any provision of its articles or operating agreement; (iii) this Agreement has been duly executed and delivered by Owner; (iv) this Agreement is a valid and binding obligation of Owner subject to applicable bankruptcy laws and the application of principles of equity; (v) the execution, delivery and performance by Owner of this Agreement do not conflict with or result in a breach of any of the provisions of, or constitute a default under, any bond, note or other evidence of indebtedness, indenture, mortgage, deed of trust, loan agreement or similar instrument, any Lease or any other material agreement or contract by which Owner, or its activities or the Property is bound or any applicable law or order, rule or regulation of any court or governmental authority having jurisdiction over Owner, its activities or the Property; and (vi) no order, permission, consent, approval license (other than those already held by Owner), authorization, registration or filing by or with any governmental authority having jurisdiction over Owner, its activities or the Property is required for the execution, delivery or performance by Owner of this Agreement.

6.3. No Partnership, etc.

Nothing in this Agreement shall be construed as making Owner or Manager partners, joint ventures or members of a joint enterprise or as creating between Owner and Manager any employer-employee relationship.

6.4. Severability

If any provision of this Agreement or the application thereof to any Person or circumstances shall be held invalid or unenforceable, the other provisions of this Agreement or the application of such provision to other Persons or circumstances shall not be affected thereby but shall continue to be valid and enforceable to the fullest extent permitted under applicable law.

6.5. Modification

Except as specified herein, no provision of this Agreement shall be modified, waived or terminated except by an instrument in writing signed by Owner and Manager.

6.6. Successors and Assigns

(A) This Agreement shall be binding upon Manager and Owner and their respective successors and assigns, and all references in this Agreement to "Manager" and "Owner" shall include the respective successors and assigns of such parties.

(B) This Agreement shall not inure to the benefit of the respective successors and assigns of Manager and Owner unless such assignment has been approved in writing by the party against whom this Agreement is being enforced; provided, however, that Manager shall have the right to assign this Agreement to an Affiliate of Manager without the approval of Owner.

6.7. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to principles of conflicts of laws and venue for all actions shall be in Fulton County, Georgia. Manager and Owner each, after consulting or having had the opportunity to consult with counsel, knowingly, voluntarily and intentionally waives any right it may have to a trial by jury in any action brought with respect to this Agreement or any of the transactions contemplated by this Agreement or any course of conduct, dealing, statements (whether oral or written) or actions of any party to this Agreement. Neither Manager nor Owner shall seek to consolidate, by counterclaim or otherwise, any such action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived. These provisions shall not be deemed to have been modified in any respect or relinquished by Owner or Manager except by a written instrument executed by the party against whom enforcement is sought.

6.8. Counterparts

This Agreement may be signed in any number of counterparts, each of which shall be deemed to be an original, with the same effect as if the signatures thereto and hereto were on the same instrument.

6.9. Exclusive Benefit

Neither this Agreement nor any provision hereof nor any service, relationship or other matter alluded to herein shall inure to the benefit of any third party (except a successor or assign to the extent permitted under Section 6.6), to any trustee in bankruptcy, to any assignee for the benefit of creditors, to any receiver by reason of insolvency, to any other fiduciary or officer representing a bankrupt or insolvent estate of either party, or to the creditors or claimants in such an estate. Without limiting the generality of the foregoing sentence, it is specifically understood and agreed that insolvency or bankruptcy of either party hereto shall, at the option of the other party, void all rights of such insolvent or bankrupt party hereunder (or as many of such rights as the other party shall elect to void) except to receive any moneys which are due to the insolvent or bankrupt party.

6.10. Competing Properties

The services to be rendered by Manager to Owner are not exclusive, and during the term of this Agreement, Manager and Affiliates of Manager may render services identical or similar to those required of Manager under this Agreement to other owners of real property, and may engage in the acquisition, development, management, operation, rental, sale, and exploitation of real property for their own account or benefit, provided the same shall not relieve Manager of any of its duties or obligations under this Agreement. Notwithstanding the foregoing, Manager shall notify Owner (i) at least thirty (30) days prior to beginning management of any property within a five (5) mile radius of the Property, including with respect to a property owned by an Affiliate of Manager, and (ii) at least one hundred twenty (120) days prior to beginning management of any property that RangeWater Real Estate, LLC is developing within a five (5) mile radius of the Property. Within thirty (30) days after receipt of such notice, Owner may notify Manager that it wishes to terminate this Agreement, and Owner shall not pay any early termination fee as a result of such termination.

6.11. Subordination

Manager shall, upon the request of Owner, subordinate this Agreement, and Manager's right to receive payments hereunder, to any first priority Financing in such manner as the lender(s) thereunder may

reasonably request. Manager shall execute any subordination agreement or similar documents which such lender(s) may reasonably require in connection therewith. For purposes of the foregoing, it shall be reasonable for any such lender to require a subordination of this Agreement and Manager's right to receive payments hereunder in a manner and pursuant to documentation similar to that required by such lender in loans similar to the Financing being made to Owner; provided, however, that said documentation shall provide that (1) Manager shall be paid and reimbursed on a current basis immediately after amounts then payable to such lender are paid; and (2) in the event of a foreclosure or transfer in lieu of foreclosure, Manager shall not be required to continue to perform hereunder unless lender shall assume all of Owner's interest in and duties and obligations under this Agreement, including, without limitation, ongoing payment obligations to Manager from and after such foreclosure or transfer in lieu of foreclosure.

6.12. Approvals

Anywhere in this Agreement that a consent or approval of a party or other Person is required, unless a specific standard (e.g., a reasonableness standard) for such approval or consent is specifically provided, such a consent or approval may be given or withheld in the sole and absolute discretion of the party or other Person whose consent or approval is required.

6.13. Manager's Occupying Space at the Property

Manager and Owner hereby acknowledge and agree that for the duration of this Agreement Manager will occupy the leasing office located at the Property.

6.14. Insurance

6.14.1 Owner's Requirements. Owner is responsible for and shall maintain the following coverages during the entire term of this Agreement ("Owner's Insurance") from insurance carriers with an AM Best rating of at least A-, VII or higher:

- Property Insurance against "All Risk" of direct physical loss or damage to the Property in the amount of the full replacement value of the Property, including loss of rental income and extra expense coverage;

- Commercial General Liability insurance (occurrence form): policy with limits of:

$1,000,000	Per Occurrence Limit
$2,000,000	Per Location General Aggregate
$1,000,000	Personal and Advertising Injury Limit
$2,000,000	Products/Completed Operations Aggregate;

  The policy shall include contractual liability for insured contracts and extend coverage to Manager as an insured on a primary and non-contributory basis. This policy shall be primary, non-contributory to all policies for liability claims made against Owner and Manager and covered under both Owner's Insurance and Manager's Insurance.

- Umbrella/ Excess Liability coverage in the amount of at least Ten Million Dollars ($10,000,000) in excess over the Commercial General Liability policy. Any Owner's Umbrella or Excess Liability policy must include Manager as insured and be primary and non-contributory to Manager's Insurance.

Commercial General Liability and Umbrella Liability insurance limits stated herein are the minimum required insurance limits of Owner and any higher liability coverage limits or excess liability policies of Owner at or above this minimum requirement shall include Manager as additional insured on a primary and non-contributory basis with respect to any other insurance of Manager. All such liability insurance of Owner must include a "separation of insureds" or "severability of interests" clause.

When Owner places the coverage required in this Sec 6.14.1, Owner shall provide Manager a certificate of Owner's Insurance containing confirmation Manager is covered as an additional insured of Owner's Commercial General Liability and Umbrella/Excess Liability policies of insurance.

Unless requested and funded by Owner or from the Operating Account and unless Owner is accepted into Manager's master insurance program, Manager shall have no obligation to procure or maintain any of the insurance contemplated by this Section and shall not be liable to Owner or any other party for failure to procure or maintain any insurance not specifically requested by Owner.

Owner shall pay all insurance premiums unless Owner requests Manager to pay such insurance premiums, in which case payments of the insurance premiums shall be made by Manager from the Operating Account. Any deductibles or self-insured retentions of Owner's Insurance will be incurred wholly for the account of Owner.

Owner may request, at Owner's expense, an option to have Manager provide the required insurance for Owner through Manager's master insurance programs, subject to all the terms and conditions of Manager's program offering. If Owner is accepted into Manager's master insurance program, and Manager places the coverage, such insurance shall be placed with a company or companies acceptable to Owner and shall be in form and substance satisfactory to Owner and shall include Owner as a named insured, with a provision giving Owner thirty (30) days' written notice prior to cancellation of the coverage. The parties acknowledge that Owner has been accepted into such master insurance program, but continued placement is conditional upon the terms outlined in the insurance quote. Owner acknowledges that (i) Manager does not provide a guaranty for the types or amounts of insurance provided under any issued policies, (ii) Manager is not responsible for the financial viability of the insurance company issuing any such policies, and (iii) Manager is not an expert or consultant regarding insurance coverage and requirements.

Owner agrees that it will require that any of its contractors or vendors who perform construction activities on the Property include Manager as an Additional Insured for all applicable commercial general liability policies using an endorsement form at least as broad as the most recent edition of Additional Insured-Owner's, Lessors or Contractors Form B (CG2010 and CG2037 or their equivalent), i.e., shall include coverage of both on-going operations and completed operations. Upon request, Certificates of Insurance of all such policies (and all renewals) shall be provided to Manager along with a copy of the policy's additional insured endorsement(s). Furthermore, Owner agrees to notify Manager in writing in the event that any contractor or vendor refuses or otherwise fails to name Manager as an additional insured on the relevant insurance policies.

6.14.2 Manager's Requirements. Manager shall maintain the following insurance ("Manager's Insurance") from insurance carriers with an AM Best rating of at least A-,VII or higher:

- Workers' Compensation policy to provide statutory coverage including Employers Liability in the following minimum amounts (or as otherwise required under Georgia law, if greater):

$1,000,000 Each Accident

$1,000,000 Each Employee

$1,000,000 Policy Limit

The cost of this coverage for all Property employees shall be considered an Operating Expense and will be reimbursable to Manager from the Operating Account;

- Automobile liability insurance with a combined single limit of not less than One Million Dollars ($1,000,000) covering all owned, non-owned and hired vehicles used in connection with the Property.

- Commercial General liability insurance (occurrence form): policy with limits of not less than One Million Dollars ($1,000,000) for each occurrence and general aggregate limits of not less than Two Million Dollars ($2,000,000).

- Umbrella or Excess liability coverage of not less than Five Million Dollars ($5,000,000) in excess over the above underlying policies including Commercial General Liability, Automobile Liability and Employers Liability. The Umbrella/Excess policy will not apply to the Professional Liability.

- Fidelity/crime insurance including coverage of client property with policy limits of not less than Two Million Dollars ($2,000,000).

- Professional liability insurance with limits no less than Two Million Dollars ($2,000,000) aggregate covering errors and omissions of Manager related to all aspects of Manager's duties contained in this Agreement; and

- Property insurance written on an "all risk" basis covering personal property of Manager in an amount equal to the full replacement cost.

- Employment Practices Liability insurance with limits no less than Two Million Dollars ($2,000,000) including third party coverage.

- Any deductibles or self-insured retentions of Manager's Insurance will be incurred wholly for the account of Manager.

Manager's Commercial General Liability, Automobile and Umbrella/Excess liability insurance must include Owner as additional insured. All policies where permitted by law must provide a waiver of subrogation in favor of Owner. Certificates of Insurance of all such policies (and all renewals) shall be provided to Owner. Except for the Workers' Compensation coverage, the cost of the insurance required under this paragraph shall not be an operating expense reimbursable to Manager.

6.14.3 Waiver of Subrogation. Owner and Manager each hereby waive any right of subrogation and right of recovery or cause of action for loss to the extent that such injury or loss is paid by the insurance carrier with respect to the Property providing property coverage, general liability coverage, or professional liability coverage. Owner and Manager each hereby waive any right of subrogation and right of recovery or cause of action for injury including death or disease to respective employees of either as covered by Workers' Compensation (or which would have been covered if Owner or Manager, as the case may be, was carrying the insurance required by this Agreement). Said waivers shall be in addition to, and not in

limitation or derogation of, any other waiver or release contained elsewhere in this Agreement. Written notice of the terms of the above mutual waivers shall be given to the insurance carriers of Owner and Manager as necessary to ensure the enforcement of said waivers on behalf of insurers who may otherwise assume the rights of Owner or Manager. If any contract requires that such party maintain any insurance coverage, Manager shall enforce such requirement under the contract and obtain insurance certificates and corresponding endorsements annually (or more frequently as required pursuant to the applicable contract) from each such party and review the certificates for compliance with the terms of such contract. Owner shall at any time have the right to audit on-site insurance certificates for contractual compliance.

6.14.4 Primary Coverage. In the event of any liability claim made against Owner and/or Manager which is covered under both Owner's Insurance and Manager's Insurance, Owner's liability policies (Commercial General liability, Umbrella liability, Excess liability), if different from Manager's liability policies, shall be the primary and non-contributory coverage with respect to other insurance of Manager. Such insurance may be blanketed with other insurance carried by Owner or any affiliate of Owner, in which case a pro rata share of the premiums will be chargeable to the Property as an operating expense. Owner or Owner's insurer will have the exclusive right (chargeable, at Owner's option, as an operating expense of the Property) to conduct the defense of any claim, demand or suit arising out of the ownership, operation or management of the Property.

In connection with claims by third parties, as between Owner's Liability Insurance and Manager's Liability Insurance, Owner's Liability Insurance shall for all purposes be deemed the primary and non-contributory coverage and policy language shall be written to reflect such intention. No claim shall be made by Owner or its insurance company under or with respect to any insurance maintained by Manager except in the event such claim is caused by gross negligence (except actions or policies specifically approved or required by Owner), willful misconduct (except actions or policies specifically approved or required by Owner) or criminal actions on the part of Manager or Manager's employees.

6.15. Confidentiality

Manager and Owner shall keep the terms and provisions of this Agreement confidential and not disclose the terms hereof to any party without the other party's prior written consent; provided, however, Manager and Owner may disclose the terms and conditions of this Agreement (1) to such party's employees, partners, members, owners, affiliates and lenders, as well as to the attorneys, accountants and other professional consultants of such party, and (2) such other persons as may be required by law, court or governmental order.

6.16. Owners Association

Notwithstanding anything in this Agreement to the contrary, in the event Owner requests Manager's involvement in any respect with an owners association related to the Property, Owner shall represent to Manager that no special license, consent or approval from any governmental authority or other governing body is required for Manager to perform its responsibilities related to the owners association, and that the failure of Manager to have a special license, consent or approval from any governmental authority or other governing body to perform such responsibilities on behalf of or related to the owners association does not violate any provisions of Law or of any governmental authority, and further, Owner shall assume all responsibility and liability in connection with the failure of the foregoing representations to be true. Notwithstanding the foregoing, if such a special license, consent or approval is required and Owner is not able to make the foregoing representations, Owner shall notify Manager of same prior to

Manager performing any duties related to the owners association and permit Manager to obtain such license, consent or approval at Owner's expense.

[Signatures commence on following page.]

IN WITNESS WHEREOF, Owner and Manager have executed and delivered this Agreement as of the Effective Date.

OWNER:

JWCM VIVIAN MASTER TENANT, LLC,
a Delaware limited liability company

By: _____
Name: Jason Warsavsky
Title: President

MANAGER:

RANGEWATER RESIDENTIAL, LLC,
a Georgia limited liability company

By: Signed by: Karen Prince _____
Name: Karen Prince
Title: Vice President

EXHIBIT A

LAND

ALL THAT TRACT OR PARCEL OF LAND LYING, BEING AND SITUATED IN THE CITY OF ATLANTA, IN LAND LOT 105 OF THE 14TH DISTRICT OF FULTON COUNTY, GEORGIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EAST LINE OF ALLENE AVENUE, WHICH POINT IS LOCATED TWO HUNDRED AND TWENTY-EIGHT AND SIX-TENTHS FEET (228.6 FEET) NORTH OF NORTHEAST CORNER OF ALLENE AVENUE AND ERIN STREET, WHICH POINT IS MARKED BY AN IRON PIN; THENCE NORTH ALONG THE EAST SIDE OF ALLENE AVENUE THREE HUNDRED AND TWO-TENTHS (300.2) FEET TO A CONCRETE MONUMENT: THENCE SLIGHTLY NORTHWESTERLY FOLLOWING THE EASTERN LINE OF ALLENE AVENUE ONE HUNDRED AND NINETY-NINE AND EIGHT-TENTHS (199.8) FEET TO AN IRON PIPE LOCATED IN THE EAST LINE OF ALLENE AVENUE, AT A POINT ONE HUNDRED EIGHT AND EIGHTY-FIVE HUNDREDTHS (105.85) FEET SOUTHWESTERLY FROM THE CENTER LINE OF THE ATLANTA AND WEST POINT RAILROAD COMPANY'S EASTBOUND FREIGHT MAIN TRACT; THENCE SOUTHEASTERLY THREE HUNDRED AND ELEVEN AND FIVE-TENTHS (311.5) FEET TO THE INTERSECTION OF A LINE WHICH WOULD BE THE PROJECTION OF THE NORTH SIDE OF HELLENA STREET IF SAID STREET WAS EXTENDED EASTERLY ACROSS ALLENE AVENUE, SAID POINT BEING ONE HUNDRED EIGHT AND THIRTY-FIVE HUNDREDTHS (108.35) FEET SOUTHEASTERLY FROM THE CENTER LINE OF EASTBOUND FREIGHT MAIN TRACK OF THE ATLANTA AND WEST POINT RAILROAD; HENCE EASTERLY ALONG A LINE WHICH WOULD BE THE PROJECTION OF THE NORTH SIDE OF HELLENA STREET ONE HUNDRED FORTY-SIX AND THREE TENTHS (146.3) FEET TO A POINT IN THE SOUTHWEST RIGHT OF WAY LINE OF THE ATLANTA AND WEST POINT RAILROAD, WHICH POINT IS LOCATED FIFTY (50) FEET SOUTHWESTERLY FROM THE CENTER LINE OF THE EASTBOUND FREIGHT MAIN TRACK OF SAID RAILROAD; THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY LINE FIFTY (50) FEET FROM AND PARALLEL TO THE CENTER LINE OF SAID WESTBOUND FREIGHT MAIN LINE ONE THOUSAND ONE HUNDRED AND SIXTEEN (1116) FEET, MORE OR LESS, TO A POINT ON THE WEST SIDE OF STEWART AVENUE, WHICH POINT IS MARKED BY A CONCRETE MONUMENT; THENCE SOUTH ALONG THE WEST SIDE OF STEWART AVENUE FIFTY FOUR AND THREE TENTHS (54.3) FEET TO ANOTHER CONCRETE MONUMENT; THENCE WESTERLY FOLLOWING A LINE OF CONCRETE MONUMENTS FOURTEEN HUNDRED EVENTY-TWO (1472) FEET, MORE OR LESS, TO POINT OF BEGINNING, ALL AS SHOWN ON PLAT OR SURVEY MADE, BY ATLANTA AND WEST POINT RAILROAD DATED OCTOBER 16, 1948, BEING SURVEY NO. 222/33 ACCORDING TO THE ORIGINAL TRACING ON FILING IN THE OFFICE OF THE CHIEF ENGINEER OF THE ATLANTA AND WEST POINT RAILROAD IN ATLANTA, GEORGIA.

EXCEPTING THEREFROM, HOWEVER ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 105 OF THE 14TH DISTRICT OF FULTON COUNTY, GEORGIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST SIDE OF STEWART AVENUE WHERE THE SOUTH RIGHT OF WAY LINE OF ATLANTA AND WEST POINT RAILROAD INTERSECTS, THE WEST SIDE OF STEWART AVENUE; AND RUNNING THENCE SOUTH 54.3 FEET; THENCE WEST A DISTANCE OF 5 FEET TO THE PROPOSED WEST SIDE OF STEWART AVENUE; THENCE NORTH ALONG THE PROPOSED WEST SIDE OF STEWART AVENUE A DISTANCE OF 54.3 FEET TO THE SOUTH RIGHT OF WAY LINE OF SAID RAILROAD; THENCE EAST ALONG THE SOUTH RIGHT OF WAY LINE OF SAID RAILROAD A DISTANCE OF 5 FEET TO THE POINT OF BEGINNING.

ALSO DESCRIBED AS:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 105 OF THE 14TH DISTRICT OF FULTON COUNTY, CITY OF ATLANTA, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8-INCH REBAR SET 201.59 FEET NORTH OF THE INTERSECTION OF THE NORTHERN RIGHT-OF-WAY OF ERIN AVENUE (50 FOOT RIGHT-OF-WAY) WITH THE WESTERN RIGHTOF-WAY OF METROPOLITAN PARKWAY (VARIABLE RIGHT-OF-WAY); THENCE LEAVING SAID RIGHT-OF-WAY, NORTH 88 DEGREES 39 MINUTES 47 SECONDS WEST A DISTANCE OF 1466.95 FEET TO A 1-INCH OPEN TOP PIPE FOUND ON THE EASTERN RIGHT-OF-WAY OF ALLENE AVENUE (50 FOOT RIGHT-OFWAY); THENCE ALONG SAID RIGHT-OF-WAY THE FOLLOWING COURSES AND DISTANCES: NORTH 00 DEGREES 24 MINUTES 41 SECONDS EAST A DISTANCE OF 325.41 FEET TO A POINT; ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 699.00 FEET AND AN ARC LENGTH OF 126.92 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 03 DEGREES 25 MINUTES 33 SECONDS WEST FOR A DISTANCE OF 126.75 FEET TO A 5/8-INCH REBAR SET; NORTH 06 DEGREES 26 MINUTES 55 SECONDS WEST A DISTANCE OF 47.67 FEET TO A 1/2-INCH OPEN TOP PIPE FOUND; THENCE LEAVING SAID RIGHT-OF-WAY, SOUTH 66 DEGREES 03 MINUTES 45 SECONDS EAST A DISTANCE OF 311.50 FEET TO A 5/8-INCH REBAR SET; THENCE SOUTH 89 DEGREES 37 MINUTES 23 SECONDS EAST A DISTANCE OF 146.30 FEET TO A 5/8-INCH REBAR SET; THENCE SOUTH 66 DEGREES 07 MINUTES 03 SECONDS EAST A DISTANCE OF 457.93 FEET TO A 5/8-INCH REBAR SET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2061.00 FEET AND AN ARC LENGTH OF 651.81 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 75 DEGREES 08 MINUTES 25 SECONDS EAST FOR A DISTANCE OF 649.10 FEET TO A PK NAIL SET ON THE WESTERN RIGHT-OF-WAY OF METROPOLITAN PARKWAY; THENCE ALONG SAID RIGHT-OF-WAY, SOUTH 00 DEGREES 01 MINUTES 27 SECONDS EAST A DISTANCE OF 54.30 FEET TO A 5/8-INCH REBAR SET AND THE TRUE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 8.471 ACRES.

SCHEDULE 3.5(A)

Schedule of Reports

On or before the fifteenth (15th) day of each calendar month during the term of this Agreement, Manager shall deliver to Owner the following:

- an executive summary including an updated forecast, a marketing overview, occupancy and rental rate summary, traffic and turnover statistics as well as operational issues;
- a budget vs. actual variance report, monthly and year to date including variance explanations for variances of greater than 5% or $2,500;
- a balance sheet of the Property as of the end of the preceding calendar month;
- a balance sheet for the Master Tenant and DST entities
- a profit and loss statement showing the results of operations of the Property for the preceding calendar month and for the fiscal year to date;
- a cash flow report reconciled to cash account balances;
- a general ledger;
- a calculation of the management fee;
- all bank statements and bank reconciliations for both the Master Tenant and DST entities;
- an aged schedule of delinquent accounts receivable and prepaid amounts by tenant;
- an aged schedule of unpaid bills
- a list of security deposits and a security deposit account reconciliation if such deposits are retained in a separate account;
- the current rent roll; and
- any other statements for the Property reasonably requested by Owner.

SCHEDULE 3.5(B)

Initial Budget

Vivian
Stabilized

Total # Units: 325
Ttl Rnt Sq Ft: 264,136

	Stabilized		Notes
	Proforma	Proforma Per Unit	
Gross Potential Rents	$6,814,141	$20,967	
Rental Income Adjustments	-$435,130	($1,339)	
Net Rental Income	**$6,379,011**	**$19,628**	
Other Income	$995,566	$3,063	Additional fees + utility income
Total Income	**$7,374,577**	**$22,691**	
Payroll	$538,352	$1,656	3 in, 3 out
Marketing	$120,177	$370	SEO/SEM, Elise AI Full Stack
General & Admin	$327,721	$1,008	Full Rangewater software stack + internet + Centralization
Landscaping/Grounds	$41,632	$128	Landscape contract
Redecorating	$73,311	$226	55% retention
General R & M	$213,262	$656	Includes contract security
Utilities	$399,439	$1,229	
Controllable Expenses	**$1,713,895**	**$5,274**	
Controllable Net Operating Income	**$5,660,682**	**$17,417**	
Management Fees	$184,364	$567	
Insurance	$170,464	$525	RangeWater MIP Rate
Taxes	$11,700	$36	
Total Operating Expenses	**$2,080,423**	**$6,401**	
Net Operating Income/(Loss)	**$5,294,154**	**$16,290**	
Debt Service	$0	$0	
Net Income/(Net Loss)	**$5,294,154**	**$16,290**	
Capital Expenditures	$0	$0	
Net Cash Flow	**$5,294,154**	**$16,290**	

Proforma template only, final operating budget to be provided in operation budget software.

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
1						Vivian									
2						Stabilized									
3															
4	Total # Units	325	325	325	325	325	325	325	325	325	325	325	325		
5	Total Rentable Sq Ft	264,136													
6	Move-ins/velocity	16	9	11	8	7	13	8	7	9	13	11	16	129	
7	Expirations	35	21	25	17	16	28	18	16	20	29	25	36	286	
8	Occupancy	95.00%	95.00%	95.00%	95.00%	95.00%	95.00%	95.00%	95.00%	95.00%	95.00%	95.00%	95.00%		
9		Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Full Year	Notes
10	INCOME														
11	Gross Potential Rents														
12	41100 Gross Potential Rents	583,106	584,893	586,681	588,468	590,256	592,043	593,831	595,618	597,406	599,193	600,981	602,768	7,115,242	
13	41200 Gain (Loss) to Lease	-29,260	-28,717	-27,729	-27,630	-27,641	-26,321	-26,110	-26,122	-25,689	-24,258	-23,270	-21,062	-313,806	
14	41300 Below Market Lease Adjustment	0	0	0	0	0	0	0	0	0	0	0	0	0	
15	41400 Rent - Retail	0	1,155	1,155	1,155	1,155	1,155	1,155	1,155	1,155	1,155	1,155	1,155	12,705	Retail Income
16	41540 Base Rent - Office	0	0	0	0	0	0	0	0	0	0	0	0	0	
17	**Total Gross Potential Rents**	553,846	557,332	560,107	561,994	563,770	566,878	568,876	570,652	572,872	576,091	578,866	582,862	6,814,141	
18	Rental Income Adjustments													0	
19	42100 Rent	0	0	0	0	0	0	0	0	0	0	0	0	0	
20	42150 Rent Adjustments	0	0	0	0	0	0	0	0	0	0	0	0	0	
21	42200 Rent Concessions/Incentives	-14,129	-8,477	0	0	0	0	0	0	0	0	0	0	-22,607	1 month free through end of fall
22	42300 Non-Income Units/Models/Office	-1,704	-1,715	-1,723	-1,729	-1,735	-1,744	-1,750	-1,756	-1,763	-1,773	-1,781	-1,793	-20,967	One model unit
23	42350 Employee Units	-2,200	-2,200	-2,200	-2,200	-2,200	-2,200	-2,200	-2,200	-2,200	-2,200	-2,200	-2,200	-26,400	CM Discount
24	42375 Courtesy Officer Units	0	0	0	0	0	0	0	0	0	0	0	0	0	
25	42400 Vacancy Loss	-27,692	-27,867	-28,005	-28,100	-28,188	-28,344	-28,444	-28,533	-28,644	-28,805	-28,943	-29,143	-340,707	
26	43100 Bad Debt Expense	-2,556	-2,572	-2,585	-2,594	-2,602	-2,616	-2,626	-2,634	-2,644	-2,659	-2,672	-2,690	-31,450	
27	43200 Bad Debt Collections	0	1,000	0	0	2,000	0	0	2,000	0	0	2,000	0	7,000	
28	**Total Rental Income Adjustments**	-48,282	-41,831	-34,514	-34,623	-32,725	-34,904	-35,020	-33,122	-35,250	-35,436	-33,596	-35,827	-435,130	
29	**Net Rental Income**	505,564	515,500	525,593	527,371	531,044	531,973	533,856	537,529	537,621	540,655	545,270	547,035	6,379,011	
30	Other Income													0	
31	44050 Access Gate Remotes	551	331	394	268	252	441	284	252	315	457	394	567	4,505	
32	44100 Admin Fees	3,938	2,363	2,813	1,913	1,800	3,150	2,025	1,800	2,250	3,263	2,813	4,050	32,175	
33	44150 Application Fees	1,870	1,122	1,336	908	855	1,496	962	855	1,069	1,550	1,336	1,924	15,283	
34	44200 Cable Income	26,244	26,244	26,244	26,244	26,244	26,244	26,244	26,244	26,244	26,244	26,244	26,244	314,925	Bulk Wifi
35	44205 Cable - Royalty	0	0	0	0	0	0	0	0	0	0	0	0	0	
36	44250 Cancel/Termination Fees	3,408	3,430	3,447	3,458	3,469	3,488	3,501	3,512	3,525	3,545	3,562	3,587	41,933	
37	44275 CAM Charges- Retail	0	0	0	0	0	0	0	0	0	0	0	0	0	
38	44300 Clubhouse Rental	300	300	300	300	300	300	300	300	300	300	300	300	3,600	
39	44350 Damage/Cleaning Fees	1,969	1,181	1,406	956	900	1,575	1,013	900	1,125	1,631	1,406	2,025	16,088	Avg $125/move out for damages and cleaning.
40	44400 Forfeited Deposits	0	0	0	0	0	0	0	0	0	0	0	0	0	
41	44425 Retail Parking	0	0	0	0	0	0	0	0	0	0	0	0	0	
42	44450 Garage Rental	0	0	0	0	0	0	0	0	0	0	0	0	0	
43	44500 Late Charges	3,088	3,088	3,088	3,088	3,088	3,088	3,088	3,088	3,088	3,088	3,088	3,088	37,050	3% of residents late at an avg $150
44	44510 Late Fee - Retail	0	0	0	0	0	0	0	0	0	0	0	0	0	
45	44550 Laundry Income	0	0	0	0	0	0	0	0	0	0	0	0	0	
46	44575 Legal / Eviction Fees	255	255	255	255	255	255	255	255	255	255	255	255	3,060	Legal Fee reimbursement
47	44600 Month-To-Month Fees	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	12,000	Two at $500 each
48	44650 NSF Fees	75	75	75	75	75	75	75	75	75	75	75	75	900	
49	44725 Parking Income	3,240	3,240	3,240	3,240	3,240	3,240	3,240	3,240	3,240	3,240	3,240	3,240	38,880	$60 a space per month
50	44750 Pet Rent	3,242	3,242	3,242	3,242	3,242	3,242	3,242	3,242	3,242	3,242	3,242	3,242	38,903	
51	44775 Pet Fees - Nonrefundable	1,654	992	1,181	803	756	1,323	851	756	945	1,370	1,181	1,701	13,514	
52	44800 Prepaid Rent	0	0	0	0	0	0	0	0	0	0	0	0	0	
53	44850 Storage Unit Rental	2,379	2,379	2,379	2,379	2,379	2,379	2,379	2,379	2,379	2,379	2,379	2,379	28,548	$65 per month @ 60%
54	44950 Transfer Fees	0	0	750	0	0	750	0	0	750	0	0	750	3,000	
55	45000 Trash Income	10,806	10,806	10,806	10,806	10,806	10,806	10,806	10,806	10,806	10,806	10,806	10,806	129,675	$35 per door
56	45050 Vending Income	0	0	0	0	0	0	0	0	0	0	0	0	0	
57	45100 Water Income	14,203	14,203	14,203	14,203	14,203	14,203	14,203	14,203	14,203	14,203	14,203	14,203	170,430	Water/Sewer income
58	45200 Gas Income	0	0	0	0	0	0	0	0	0	0	0	0	0	
59	45300 Pest Control Income	2,161	2,161	2,161	2,161	2,161	2,161	2,161	2,161	2,161	2,161	2,161	2,161	25,935	
60	45400 Electric Income	3,088	3,088	3,088	3,088	3,088	3,088	3,088	3,088	3,088	3,088	3,088	3,088	37,050	$10 per month common area electric fee
61	45600 Utility Billing Fee Income	1,903	1,944	2,007	2,007	2,007	2,007	2,007	2,007	2,007	2,007	2,007	2,007	23,914	Water/Sewer billing fee
62	45650 Smart Bundle Income	0	0	0	0	0	0	0	0	0	0	0	0	0	
63	48800 Miscellaneous Income	350	350	350	350	350	350	350	350	350	350	350	350	4,200	
64	48850 Utility Reimbursement	0	0	0	0	0	0	0	0	0	0	0	0	0	
65	**Total Other Income**	85,721	81,792	83,763	80,743	80,469	84,660	81,071	80,511	82,416	84,252	83,128	87,040	995,566	2094.27935
66	**TOTAL OPERATING REVENUE**	591,285	597,292	609,356	608,114	611,513	616,633	614,927	618,041	620,037	624,907	628,398	634,075	7,374,577	
67	OPERATING EXPENSES													0	
68	PROPERTY OPERATING EXPENSES													0	
69	Property Payroll													0	
70	61010 Property Manager Salary	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	7,500	90,000	
71	61015 Property Manager Bonus	0	0	2,531	0	0	2,531	0	0	2,531	0	0	2,531	10,125	Potential 15% of CD Salary annually, paid out quarterly
72	61020 Assistant Manager Salary	0	0	0	0	0	0	0	0	0	0	0	0	0	
73	61025 Assistant Manager Bonus	0	0	0	0	0	0	0	0	0	0	0	0	0	
74	61030 Leasing Associate Salary	7,280	7,280	7,280	7,280	7,280	7,280	7,280	7,280	7,280	7,280	7,280	7,280	87,360	
75	61035 Leasing Associate Bonus	5,106	3,164	3,719	2,609	2,470	4,135	2,748	2,470	3,025	4,274	3,719	5,245	42,683	
76	61040 Maintenance Supervisor Salary	6,067	6,067	6,067	6,067	6,067	6,067	6,067	6,067	6,067	6,067	6,067	6,067	72,800	
77	61045 Maintenance Assistant Salary	4,333	4,333	4,333	4,333	4,333	4,333	4,333	4,333	4,333	4,333	4,333	4,333	52,000	
78	61049 Maintenance Bonus	600	600	2,648	600	600	2,648	600	600	2,648	600	600	2,648	15,390	Maintenance Bonus: SD 15% paid quarterly and all positions total $600/mth for on call
79	61050 Grounds Person Salary	3,467	3,467	3,467	3,467	3,467	3,467	3,467	3,467	3,467	3,467	3,467	3,467	41,600	
80	61060 Housekeeper Salary	0	0	0	0	0	0	0	0	0	0	0	0	0	
81	61100 Taxes - FUTA/FICA/SUTA	3,123	2,946	3,413	2,896	2,883	3,451	2,908	2,883	3,350	3,047	2,997	3,552	37,447	
82	61200 Group Insurance	5,430	5,430	5,430	5,430	5,430	5,430	5,430	5,430	5,430	5,430	5,430	5,430	65,160	
83	61210 Uniform Expense	0	1,350	1,950	0	0	0	0	1,350	1,950	0	0	0	6,600	Office team $650/p and Maintenance $450/p twice a
84	61295 Leasing Commission	0	0	0	0	0	0	0	0	0	0	0	0	0	
85	61300 401(k) Match	573	573	573	573	573	573	573	573	573	573	573	573	6,875	
86	61310 Employee Units	0	0	0	0	0	0	0	0	0	0	0	0	0	
87	61320 Temp Labor	0	0	0	0	0	0	0	0	0	0	0	0	0	
88	61400 Workers Compensation Insurance	859	859	859	859	859	859	859	859	859	859	859	859	10,313	
89	**Total Payroll**	44,338	43,569	49,769	41,613	41,462	48,273	41,765	42,812	49,012	43,430	42,824	49,484	538,352	
90	Advertising and Marketing													0	

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91	62100 Collateral Materials	0	0	0	0	0	750	0	0	0	0	0	0	750	Restock of collateral and outreach items
92	62125 Concierge Services	0	0	0	0	0	0	0	0	0	0	0	0	0	
93	62150 Direct Mail	0	0	0	0	0	0	0	0	0	0	0	0	0	
94	62200 External Broker/Locator Fees	0	0	0	1,000	0	0	0	0	0	0	0	1,000	2,000	Locator
95	62775 SEO / PPC	4,000	4,000	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	3,500	43,000	
96	62300 Internet Advertising	3,200	3,200	3,200	3,200	3,200	3,200	3,200	3,200	3,200	3,200	3,200	3,200	38,400	Apartments.com, Aptlist quarterly, and Zillow Signature
97	62350 Media	0	0	0	0	0	0	0	0	0	0	0	0	0	
98	62400 Model Expenses	0	0	0	0	0	0	0	0	0	0	0	0	0	
99	62500 Outdoor Advertising	0	0	0	0	0	0	0	0	0	0	0	0	0	
100	62550 Promotional Events	0	0	0	0	0	0	0	0	0	0	0	0	0	
101	62600 Prospect Refreshments	250	250	250	250	250	250	250	250	250	250	250	250	3,000	
102	62650 Resident Incentives	0	0	0	0	0	0	0	0	0	0	0	0	0	
103	62700 Resident Referral	0	0	0	0	0	0	0	0	0	0	0	0	0	
104	62750 Resident Retention	855	855	1,364	955	655	1,364	655	655	1,364	655	655	1,364	11,397	Resident Events and Engagement
105	62800 Seasonal Decorations	0	0	0	0	0	0	0	0	0	0	0	0	0	
106	62850 Specialty Items	0	0	0	0	0	0	0	0	0	0	0	0	0	
107	62900 Temporary Signage	0	0	300	0	0	0	0	0	300	0	0	0	600	
108	62950 Advertising / Marketing - Retail	0	0	0	0	0	0	0	0	0	0	0	0	0	
109	62990 Other Advertising/Marketing	1,753	1,753	1,753	1,753	1,753	1,753	1,753	1,753	1,753	1,753	1,753	1,753	21,030	YEXT, Engrain, Website Maintenance, Employee Shop, and EliseAI Full Stack
110	**Total Advertising and Marketing**	10,058	10,058	10,366	10,658	9,358	10,816	9,358	9,358	10,366	9,358	9,358	11,066	120,177	
111	General and Administrative													0	
112	60220 Bank Charges													0	
113	63090 Answering Service	49	49	49	49	49	49	49	49	49	49	49	49	588	
114	63100 Associate Recognition	75	75	75	75	75	75	75	75	75	75	75	75	900	
115	63150 Associate Travel	0	0	0	750	0	0	0	0	750	0	0	0	1,500	
116	63190 Association Dues	0	0	0	0	0	0	0	0	0	0	0	0	0	
117	63200 Bank Charges/Late Fees	650	650	650	650	650	650	650	650	650	650	650	650	7,800	
118	63250 Cable	100	100	100	100	100	100	100	100	100	100	100	100	1,200	
119	63300 Computer Support/Software	4,444	4,444	4,444	4,444	4,444	4,444	4,444	4,444	4,444	4,444	4,444	4,444	53,332	RangeWater Software, Accounting, and IT Support
120	63350 Consulting Fees	0	0	0	0	0	0	0	0	0	0	0	0	0	
121	63400 Copier/Supplies	0	0	0	0	0	0	0	0	0	0	0	0	0	
122	64225 Smart Home	1,950	1,950	1,950	1,950	1,950	1,950	1,950	1,950	1,950	1,950	1,950	1,950	23,400	Latch System and Package Lockers
123	63450 Credit Bureau Fees	1,709	1,086	1,264	907	863	1,397	952	863	1,041	1,442	1,264	1,754	14,541	ApproveShield
124	63550 Dues and Subscriptions	102	102	102	102	102	103	102	102	102	102	102	102	1,219	Apartment Association
125	63650 Equipment Rental and Leasing	350	350	350	350	350	350	350	350	350	350	350	350	4,200	Copier, Key Software, & Coffee station & other office equipment
126	63700 Forms	124	124	124	124	124	124	124	124	124	124	124	124	1,484	Blue Moon Annual Fee
127	63800 Internet	12,571	12,571	12,571	12,571	12,571	12,571	12,571	12,571	12,571	12,571	12,571	12,571	150,852	
128	63850 Legal Costs/Evictions	550	550	550	550	550	550	550	550	550	550	550	550	6,600	
129	63950 Mobile Phone	240	240	240	240	240	240	240	240	240	240	240	240	2,880	

130	64000 NSF Fees	0	0	0	0	0	0	0	0	0	0	0	0	0	
131	64050 Office Supplies	100	100	100	100	100	100	100	100	100	100	100	100	1,200	
132	64100 Payroll/Benefit Service Fees	44	44	44	44	44	44	44	44	44	44	44	44	528	Employee Screening Fee
133	64150 Permits/ Licenses / Fees	500	500	500	500	500	500	500	500	500	500	500	500	6,000	Business license and pool & elevator permit
134	64200 Postage	25	25	25	25	25	25	25	25	25	25	25	25	300	
135	64250 Telephone	282	282	282	282	282	282	282	282	282	282	282	282	3,384	Voip phone lines for office and emergency phones for pool and elevator
136	64300 Training	568	568	568	568	568	568	568	568	568	568	568	568	6,813	
137	64400 Website	0	0	0	0	0	0	0	0	0	0	0	0	0	
138	64990 Other G&A	3,250	3,250	3,250	3,250	3,250	3,250	3,250	3,250	3,250	3,250	3,250	3,250	39,000	
139	**Total General & Administrative**	27,683	27,059	27,237	27,631	26,836	27,371	26,925	26,836	27,764	27,415	27,237	27,727	327,721	562.6747692
140	Management Fees													0	
141	65000 Management Fees	14,782	14,932	15,234	15,203	15,288	15,416	15,373	15,451	15,501	15,623	15,710	15,852	184,364	
142	Management Fee Minimum Balance	0	0	0	0	0	0	0	0	0	0	0	0	0	
143	**Total Management Fees**	14,782	14,932	15,234	15,203	15,288	15,416	15,373	15,451	15,501	15,623	15,710	15,852	184,364	
144	**Total G&A and Management Fees**	42,465	41,991	42,471	42,834	42,124	42,787	42,298	42,287	43,265	43,038	42,947	43,579	512,086	
145	Landscape / Grounds													0	
146	66010 Flowers	0	0	1,500	0	0	0	0	0	1,500	0	0	0	3,000	
147	66020 Landscaping Services	2,361	2,361	2,361	2,361	2,361	2,361	2,361	2,361	2,361	2,361	2,361	2,361	28,332	
148	66030 Mulch	0	0	5,000	0	0	0	0	0	5,000	0	0	0	10,000	
149	66040 Irrigation Repair and Maintenance	50	0	50	0	50	0	50	0	50	0	50	0	300	
150	66050 Tree Trimming	0	0	0	0	0	0	0	0	0	0	0	0	0	
151	66990 Other Landscape / Grounds	0	0	0	0	0	0	0	0	0	0	0	0	0	
152	**Total Landscape / Grounds**	2,411	2,361	8,911	2,361	2,411	2,361	2,411	2,361	8,911	2,361	2,411	2,361	41,632	
153	Redecorating													0	
154	67050 Carpet Cleaning - Turnkey	788	473	563	383	360	630	405	360	450	653	563	810	6,435	
155	67100 Carpet Repairs	50	50	50	50	50	50	50	50	50	50	50	50	600	
156	67200 Interior Cleaning	2,756	1,654	2,369	1,339	1,260	2,205	1,419	1,260	1,575	2,284	2,369	2,835	22,523	
157	67250 Interior Repairs/Materials	100	100	100	100	100	100	100	100	100	100	100	100	1,200	
158	67300 Millwork/Doors/Hardware	0	0	0	0	0	0	0	0	0	0	0	0	0	
159	67350 Painting Supplies	150	150	150	150	150	150	150	150	150	150	150	150	1,800	
160	67400 Painting-Units	4,804	2,882	3,431	2,333	2,196	3,843	2,471	2,196	2,745	3,980	3,431	4,941	39,254	
161	67450 Vinyl Repairs	50	50	50	50	50	50	50	50	50	50	50	50	600	
162	67550 Window Coverings	75	75	75	75	75	75	75	75	75	75	75	75	900	
163	67990 Other Redecorating	0	0	0	0	0	0	0	0	0	0	0	0	0	
164	**Total Redecorating**	8,773	5,434	6,388	4,480	4,241	7,103	4,718	4,241	5,195	7,342	6,388	9,011	73,311	
165	General R & M													0	
166	68010 Access Gate R&M	0	0	750	0	0	750	0	0	750	0	0	750	3,000	
167	68020 Appliance Repair/Maintenance	100	100	100	100	100	100	100	100	100	100	100	100	1,200	
168	68030 Cleaning Supplies	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	12,000	
169	68040 Common Area Cleaning/Repairs	4,368	4,368	4,368	4,368	4,368	4,368	4,368	4,368	4,368	4,368	4,368	4,368	52,416	

9		Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Full Year	Notes	
170	68050 Contracted Security Service	9,000	9,000	9,000	8,500	8,000	7,500	7,000	6,500	6,000	6,000	6,000	6,000	88,500	year to cover reduced overnight hours	
171	68060 Doors/Windows/Screens	75	75	75	75	75	75	75	75	75	75	75	75	900		
172	68070 Electrical Service	0	0	0	0	0	0	0	0	0	0	0	0	0		
173	68080 Electrical Supplies/Parts	100	100	100	100	100	100	100	100	100	100	100	100	1,200		
174	68090 Elevator Maintenance Contract	1,274	1,274	1,274	1,274	1,274	1,274	1,274	1,274	1,274	1,274	1,274	1,274	15,288		
175	68100 Equipment Repair/Maintenance	60	60	60	60	60	60	60	60	60	60	60	60	720		
176	68110 Fire Alarm and Sprinkler Repairs	750	750	750	750	750	750	750	750	750	750	750	750	9,000	Fire alarm inspection and repairs	
177	68120 Fitness Center Repair/Maintenance	50	50	300	50	50	300	50	50	300	50	50	300	1,600		
178	68130 Garage Repair/Maintenance	0	0	300	0	0	300	0	0	300	0	0	300	1,200		
179	68140 Golf Cart Supplies/Repairs	0	0	0	0	0	0	500	0	0	0	0	0	500		
180	68150 HVAC Service	0	0	0	0	0	0	0	0	0	0	0	0	0		
181	68160 HVAC Supplies/Parts	250	250	500	500	750	1,000	750	500	500	500	250	250	6,000		
182	68170 Interior Plant Maintenance	0	0	0	0	0	0	0	0	0	0	0	0	0		
183	68175 Lift Station Maintenance Contract	0	0	0	0	0	0	0	0	0	0	0	0	0		
184	68180 Light Bulbs	100	100	100	100	100	100	100	100	100	100	100	100	1,200		
185	68190 Locks & Keys	25	25	25	25	25	25	25	25	25	25	25	25	300		
186	68200 Maintenance Supplies	200	200	200	200	200	200	200	200	200	200	200	200	2,400		
187	68210 Painting/General & Exterior	0	0	0	0	0	0	0	0	0	0	0	0	0		
188	68220 Parking Lot Repair/Maintenance	0	0	0	0	0	0	0	0	0	0	0	0	0		
189	68230 Pest Control	599	599	599	599	599	599	599	599	599	599	599	599	7,188		
190	68240 Plumbing Service	0	0	0	0	0	0	0	0	0	0	0	0	0		
191	68250 Plumbing Supplies/Parts	150	150	150	150	150	150	150	150	150	150	150	150	1,800		
192	68260 Pool Maintenance and Supplies	0	0	0	550	550	550	550	550	550	550	0	0	3,850		
193	68270 Repairs/Labor - Exterior	125	125	125	125	125	125	125	125	125	125	125	125	1,500		
194	68280 Repairs/Labor - Interior	125	125	125	125	125	125	125	125	125	125	125	125	1,500		
195	68290 Roof Repairs	0	0	0	0	0	0	0	0	0	0	0	0	0		
196	68300 Security/Fire Alarm Monitor	0	0	0	0	0	0	0	0	0	0	0	0	0		
197	68310 Sidewalk Repair/Maintenance	0	0	0	0	0	0	0	0	0	0	0	0	0		
198	68350 R & M - Retail	0	0	0	0	0	0	0	0	0	0	0	0	0		
199	68990 Other R&M	0	0	0	0	0	0	0	0	0	0	0	0	0		
200	**Total General R & M**	18,351	18,351	19,901	18,651	18,401	19,451	17,901	16,651	17,451	16,151	15,351	16,651	213,262		383.8830769
201	Utilities													0		
202	69100 Electricity - Common Area	9,000	9,000	8,000	8,000	9,000	9,000	8,000	8,000	8,000	9,000	9,000	9,000	103,000		
203	69110 Electricity - Vacants	813	813	813	813	813	813	813	813	813	813	813	813	9,750		
204	69120 Electricity - Occupied Units	0	0	0	0	0	0	0	0	0	0	0	0	0		
205	69125 Utilities Reimb - Occupied Electric	0	0	0	0	0	0	0	0	0	0	0	0	0		
206	69200 Trash Removal	3,675	3,675	3,675	3,675	3,675	3,675	3,675	3,675	3,675	3,675	3,675	3,675	44,100		
207	69225 Valet Trash	3,461	3,461	3,461	3,461	3,461	3,461	3,461	3,461	3,461	3,461	3,461	3,461	41,532		
208	69250 Utilities Reimb - Trash Refunds	0	0	0	0	0	0	0	0	0	0	0	0	0		
209	69300 Gas - Common Area	0	0	250	0	0	250	0	0	250	0	0	250	1,000		
210	69310 Gas - Vacants	0	0	0	0	0	0	0	0	0	0	0	0	0		

69400 Utility Billing Fees	2,025	1,955	1,975	1,935	1,930	1,990	1,940	1,930	1,950	1,995	1,975	2,030	23,627	
69500 Water/Sewer	14,703	14,703	14,703	14,703	14,703	14,703	14,703	14,703	14,703	14,703	14,703	14,703	176,430	Avg water bill @ $49
69525 Irrigation	0	0	0	0	0	0	0	0	0	0	0	0	0	
69550 Utilities Reimb - Water/Sewer Refunds	0	0	0	0	0	0	0	0	0	0	0	0	0	
Total Utilities	**33,676**	**33,606**	**32,876**	**32,586**	**33,581**	**33,891**	**32,591**	**32,581**	**32,851**	**33,646**	**33,626**	**33,931**	**399,439**	
Insurance														
70100 Insurance Premium	14,205	14,205	14,205	14,205	14,205	14,205	14,205	14,205	14,205	14,205	14,205	14,205	170,464	RangeWater MIP
70110 Insurance Premium - Surety Bonds	0	0	0	0	0	0	0	0	0	0	0	0	0	
70150 Insurance Premium - Retail	0	0	0	0	0	0	0	0	0	0	0	0	0	
70200 Uninsured Loss	0	0	0	0	0	0	0	0	0	0	0	0	0	
Total Insurance	**14,205**	**14,205**	**14,205**	**14,205**	**14,205**	**14,205**	**14,205**	**14,205**	**14,205**	**14,205**	**14,205**	**14,205**	**170,464**	
Taxes													0	
71100 Property Taxes	975	975	975	975	975	975	975	975	975	975	975	975	11,700	
71200 Property Tax Service	0	0	0	0	0	0	0	0	0	0	0	0	0	
71300 Franchise Taxes	0	0	0	0	0	0	0	0	0	0	0	0	0	
71900 Other Taxes	0	0	0	0	0	0	0	0	0	0	0	0	0	
Total Taxes	975	975	975	975	975	975	975	975	975	975	975	975	11,700	
TOTAL OPERATING EXPENSES	**175,251**	**170,549**	**185,862**	**168,962**	**166,758**	**179,862**	**166,222**	**165,471**	**182,232**	**170,505**	**168,085**	**181,263**	**2,080,423**	
NET OPERATING INCOME/(LOSS)	**416,034**	**426,743**	**423,494**	**439,752**	**444,755**	**436,771**	**448,704**	**452,570**	**437,805**	**454,402**	**460,313**	**452,812**	**5,294,154**	
Debt Service													0	
81100 Interest - Senior Debt	0	0	0	0	0	0	0	0	0	0	0	0	0	
81150 Interest - 2nd Mortgage	0	0	0	0	0	0	0	0	0	0	0	0	0	
81200 Interest - Other	0	0	0	0	0	0	0	0	0	0	0	0	0	
81300 Unrealized Gain/Loss Mark to Market	0	0	0	0	0	0	0	0	0	0	0	0	0	
81400 Cancellation of Debt	0	0	0	0	0	0	0	0	0	0	0	0	0	
Total Debt Service	0	0	0	0	0	0	0	0	0	0	0	0	0	
NOI/(NOL) after Debt Service	**416,034**	**426,743**	**423,494**	**439,752**	**444,755**	**436,771**	**448,704**	**452,570**	**437,805**	**454,402**	**460,313**	**452,812**	**5,294,154**	
NON OPERATING INCOME / EXPENSES													0	
Ownership Income/Expenses													0	
93100 Interest Income	0	0	0	0	0	0	0	0	0	0	0	0	0	
93150 Interest Income - Security Deposit	0	0	0	0	0	0	0	0	0	0	0	0	0	
93932 Master Rent Exp - Debt Service/Taxes	0	0	0	0	0	0	0	0	0	0	0	0	0	
93934 Master Rent Exp - Debt Service/Insurance	0	0	0	0	0	0	0	0	0	0	0	0	0	
93936 Master Rent Exp - Debt Service/Replace Re	0	0	0	0	0	0	0	0	0	0	0	0	0	
93940 Master Rent Exp - Stated Rent / Distributi	0	0	0	0	0	0	0	0	0	0	0	0	0	
93950 Master Rent Exp - Utilities	0	0	0	0	0	0	0	0	0	0	0	0	0	
93960 Master Tenant Base Income	0	0	0	0	0	0	0	0	0	0	0	0	0	
94100 Ownership Asset Management Fees	0	0	0	0	0	0	0	0	0	0	0	0	0	
94200 Ownership Auditing	0	0	0	0	0	0	0	0	0	0	0	0	0	
94300 Ownership Tax Preparation	0	0	0	0	0	0	0	0	0	0	0	0	0	
94400 Ownership Legal	0	0	0	0	0	0	0	0	0	0	0	0	0	
94500 Acquisition Costs	0	0	0	0	0	0	0	0	0	0	0	0	0	
94600 Start-up Costs	0	0	0	0	0	0	0	0	0	0	0	0	0	
94700 Ownership Accounting	0	0	0	0	0	0	0	0	0	0	0	0	0	
94750 Insured Loss	0	0	0	0	0	0	0	0	0	0	0	0	0	
94800 Unrealized Gain/Loss on RE	0	0	0	0	0	0	0	0	0	0	0	0	0	
94850 Franchise Tax	0	0	0	0	0	0	0	0	0	0	0	0	0	
94899 Other Ownership Fees	0	0	0	0	0	0	0	0	0	0	0	0	0	
94950 Sale of Real Estate	0	0	0	0	0	0	0	0	0	0	0	0	0	
94975 Cost of Real Estate Sale	0	0	0	0	0	0	0	0	0	0	0	0	0	
Total Ownership Income/Expenses	0	0	0	0	0	0	0	0	0	0	0	0	0	
Depreciation / Amortization Expense													0	
96100 Amortization - Loan Costs	0	0	0	0	0	0	0	0	0	0	0	0	0	
96200 Amortization - Organization Costs	0	0	0	0	0	0	0	0	0	0	0	0	0	
96300 Amortization - In-Place Leases	0	0	0	0	0	0	0	0	0	0	0	0	0	
96500 Depreciation - Building	0	0	0	0	0	0	0	0	0	0	0	0	0	
96520 Depreciation - FF&E	0	0	0	0	0	0	0	0	0	0	0	0	0	
96540 Depreciation - Land Improvements	0	0	0	0	0	0	0	0	0	0	0	0	0	
Total Depreciation / Amortization Expense	0	0	0	0	0	0	0	0	0	0	0	0	0	
Interest Income													0	
97200 Interest Income	0	0	0	0	0	0	0	0	0	0	0	0	0	
Total Interest Income	0	0	0	0	0	0	0	0	0	0	0	0	0	
R&M Expenditures													0	
95100 Carpet	0	0	0	0	0	0	0	0	0	0	0	0	0	
95120 Vinyl	0	0	0	0	0	0	0	0	0	0	0	0	0	
95200 Appliances	0	0	0	0	0	0	0	0	0	0	0	0	0	
95220 HVAC	0	0	0	0	0	0	0	0	0	0	0	0	0	
95240 Water Heaters	0	0	0	0	0	0	0	0	0	0	0	0	0	
95260 Lighting Fixtures / Ceiling Fans	0	0	0	0	0	0	0	0	0	0	0	0	0	
95280 Furniture & Computer Equipment	0	0	0	0	0	0	0	0	0	0	0	0	0	
95300 Roof	0	0	0	0	0	0	0	0	0	0	0	0	0	
95320 Landscape / Drainage	0	0	0	0	0	0	0	0	0	0	0	0	0	
95340 Fencing / Controlled Gate	0	0	0	0	0	0	0	0	0	0	0	0	0	
95350 Sidewalk / Curbing	0	0	0	0	0	0	0	0	0	0	0	0	0	
95360 Common Area / Amenities	0	0	0	0	0	0	0	0	0	0	0	0	0	
95380 Signage	0	0	0	0	0	0	0	0	0	0	0	0	0	
95990 Other - Interior	0	0	0	0	0	0	0	0	0	0	0	0	0	
95992 Other - Exterior	0	0	0	0	0	0	0	0	0	0	0	0	0	
95994 Other	0	0	0	0	0	0	0	0	0	0	0	0	0	
Total R&M Expenditures	0	0	0	0	0	0	0	0	0	0	0	0	0	
Total Non Operating Income / (Loss)	0	0	0	0	0	0	0	0	0	0	0	0	0	
NET INCOME/(NET LOSS)	416,034	426,743	423,494	439,752	444,755	436,771	448,704	452,570	437,805	454,402	460,313	452,812	5,294,154	

Vivian
Stabilized

Total # Units:	325	**Date:**	######
Ttl Rat Sq Ft:	264,136	**Time:**	4:00 PM

MARKET RENT - 51100

Floor Plan	Sq Ft	# Units	% Mix	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Total
1A	646	30	9.23%	1,479	1,484	1,490	1,495	1,501	1,506	1,512	1,517	1,523	1,528	1,534	1,539	543,193
1A- AFF	646	6	1.85%	1,450	1,456	1,461	1,467	1,472	1,478	1,483	1,489	1,494	1,500	1,505	1,511	106,578
1AHC	646	1	0.31%	1,400	1,406	1,411	1,417	1,422	1,428	1,433	1,439	1,444	1,450	1,455	1,461	17,163
A1	702	47	14.46%	1,723	1,729	1,734	1,740	1,745	1,751	1,756	1,762	1,767	1,773	1,778	1,784	388,881
A1 - AFF	702	12	3.69%	1,563	1,569	1,574	1,580	1,585	1,591	1,596	1,602	1,607	1,613	1,618	1,624	229,476
A1HC	702	4	1.23%	1,523	1,528	1,534	1,539	1,545	1,550	1,556	1,561	1,567	1,572	1,578	1,583	74,532
A2	738	62	19.08%	1,763	1,769	1,774	1,780	1,785	1,791	1,796	1,802	1,807	1,813	1,818	1,824	1,334,262
A2 - AFF	738	9	2.77%	1,591	1,597	1,602	1,608	1,613	1,619	1,624	1,630	1,635	1,641	1,646	1,652	175,143
A3	757	9	2.77%	1,835	1,841	1,846	1,852	1,857	1,863	1,868	1,874	1,879	1,885	1,890	1,896	201,495
A3 - AFF	757	6	1.85%	1,675	1,680	1,686	1,691	1,697	1,702	1,708	1,713	1,719	1,724	1,730	1,735	122,754
A4	806	24	7.38%	1,805	1,810	1,816	1,821	1,827	1,832	1,838	1,843	1,849	1,854	1,860	1,865	528,528
A5	744	7	2.15%	1,757	1,762	1,768	1,773	1,779	1,784	1,790	1,795	1,801	1,806	1,812	1,817	150,105
A6	714	19	5.85%	1,636	1,641	1,647	1,652	1,658	1,663	1,669	1,674	1,680	1,685	1,691	1,696	373,809
A6 - AFF	714	2	0.62%	1,619	1,625	1,630	1,636	1,641	1,647	1,652	1,658	1,663	1,669	1,674	1,680	39,582
A6.1	723	2	0.62%	1,654	1,660	1,665	1,671	1,676	1,682	1,687	1,693	1,698	1,704	1,709	1,715	40,422
A6.1-AFF	723	1	0.31%	1,609	1,615	1,620	1,626	1,631	1,637	1,642	1,648	1,653	1,659	1,664	1,670	19,671
A7	699	3	0.92%	1,692	1,698	1,703	1,709	1,714	1,720	1,725	1,731	1,736	1,742	1,747	1,753	62,001
A7 - AFF	699	2	0.62%	1,510	1,516	1,521	1,527	1,532	1,538	1,543	1,549	1,554	1,560	1,565	1,571	36,366
B1	1,065	20	6.15%	2,235	2,240	2,246	2,251	2,257	2,262	2,268	2,273	2,279	2,284	2,290	2,295	543,540
B1 - AFF	1,065	8	2.46%	1,852	1,858	1,863	1,869	1,874	1,880	1,885	1,891	1,896	1,902	1,907	1,913	180,720
B1.1	1,037	2	0.62%	2,030	2,036	2,041	2,047	2,052	2,058	2,063	2,069	2,074	2,080	2,085	2,091	43,446
B1.1 - AFF	1,037	1	0.31%	1,836	1,842	1,847	1,853	1,858	1,864	1,869	1,875	1,880	1,886	1,891	1,897	22,395
B1.2	1,102	9	2.77%	2,221	2,226	2,232	2,237	2,243	2,248	2,254	2,259	2,265	2,270	2,276	2,281	243,087
B1.2 - AFF	1,102	3	0.92%	1,318	1,323	1,329	1,334	1,340	1,345	1,351	1,356	1,362	1,367	1,373	1,378	70,125
B1HC	1,065	2	0.62%	2,073	2,078	2,084	2,089	2,095	2,100	2,106	2,111	2,117	2,122	2,128	2,133	50,466
B2	1,124	26	8.00%	2,188	2,194	2,199	2,205	2,210	2,216	2,221	2,227	2,232	2,238	2,243	2,249	632,118
B2.1	1,147	9	0.92%	2,170	2,176	2,181	2,187	2,192	2,198	2,203	2,209	2,214	2,220	2,225	2,231	79,209
B2.2	1,183	5	1.54%	2,196	2,202	2,207	2,213	2,218	2,224	2,229	2,235	2,240	2,246	2,251	2,257	133,575
	813	325	100.00%													
Budgeted Amount				**583,106**	**584,893**	**586,681**	**588,468**	**590,256**	**592,043**	**593,831**	**595,618**	**597,406**	**599,193**	**600,981**	**602,768**	7,115,242
Rent per Square Foot				2.21	2.21	2.22	2.23	2.23	2.24	2.25	2.25	2.26	2.27	2.28	2.28	26.94
% Incr/(Decr) from Prior Month				0.00%	0.31%	0.31%	0.30%	0.30%	0.30%	0.30%	0.30%	0.30%	0.30%	0.30%	0.30%	3.37%
				1,794	1,800	1,805	1,811	1,816	1,822	1,827	1,833	1,838	1,844	1,849	1,855	

Notes to Explain:

Gain (Loss) to Lease - 41200

	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Total
Lease Expirations	**35**	**21**	**25**	**17**	**16**	**28**	**18**	**16**	**20**	**29**	**25**	**36**	286
Beginning Loss To Lease	(29,260)	(29,260)	(28,717)	(27,729)	(27,630)	(27,641)	(26,321)	(26,110)	(26,122)	(25,689)	(24,258)	(23,270)	
Changes In Market Rent	0	(1,788)	(1,788)	(1,788)	(1,788)	(1,788)	(1,788)	(1,788)	(1,788)	(1,788)	(1,788)	(1,788)	
Lease Expirations	3,885	2,331	2,775	1,887	1,776	3,108	1,998	1,776	2,220	3,219	2,775	3,996	
Skips, Evictions, Other													
Ending Loss To Lease	(29,260)	(28,717)	(27,729)	(27,630)	(27,641)	(26,321)	(26,110)	(26,122)	(25,689)	(24,258)	(23,270)	(21,062)	
Avg increase on MI and renewals	3,885	2,331	2,775	1,887	1,776	3,108	1,998	1,776	2,220	3,219	2,775	3,996	
Budgeted Amt (Negative if Loss)	**(29,260)**	**(28,717)**	**(27,729)**	**(27,630)**	**(27,641)**	**(26,321)**	**(26,110)**	**(26,122)**	**(25,689)**	**(24,258)**	**(23,270)**	**(21,062)**	######
Average Loss To Lease on Occ Units	115												

Notes to Explain:

CURRENT POTENTIAL RENT - 5005 (Totaling Accounts 51100, 51200+B38) (not on new budget)+B34

Description	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Total	
Current Potential Rent	553,846	556,177	558,952	560,839	562,615	565,723	567,721	569,497	571,717	574,936	577,711	581,707	6,801,436	4.8%
Budgeted Amount	**553,846**	**556,177**	**558,952**	**560,839**	**562,615**	**565,723**	**567,721**	**569,497**	**571,717**	**574,936**	**577,711**	**581,707**	######	
Prior Year Actual	0	0	0	0	0	0	0	0	0	0	0	0	0	
Prior Year Budget	0	0	0	0	0	0	0	0	0	0	0	0	0	

Income			**Staffing**	
Average concession	$ (1,794)			
App Fee	$ 119		CM	$ 90,000
Admin Fee	$ 250		ACM	
Pet Fee	$ 300		LC	$ 22
Pet Rent	$ 30.00		LC	$ 20
Avg occ unit w pet	35%		LC	
Trash fee	$ 35		LC	
Avg water bill	$ 46		Concierge	
Amenity	$ -			
Cable/Internet	$ 85		SM	$ 35
Smart Home	$ -		Tech	$ 25
Storage	$ 65		Tech	
Garage	$ 150		Tech	
Community Bundle	$0		Grounds	$ 20
			House Keeper	
Redec				
Avg carpet clean	$ 50		# associates w ins	6
Avg clean	$ 175			
Avg paint	$ 305			
Pest Control Income	$ 7		(●) Multifamily	
Pest control monthly expense	$ 599		( ) BTR	
Management fee	2.50%			
Management fee min	$ 10,000			
Beginning Occ units	309			
Avg renewal increase	$ 75			
Avg new lease increase	$ 155			
Renewal ratio	55.00%			
Rent Growth	4.79%			
Smart Bundle:		Expense:		
Pest	$ -	$ -		
Trash	$ -	$ -		
Landscape	$ -	$ -		
Amenity	$ -	$ -		
Smart Home	$ -	$ -		
Bulk Wifi	$ -	$ -		
	$ -	$ -		

EXHIBIT D

TAX OPINION

[ATTACHED]

Baker & McKenzie LLP

300 East Randolph Street, Suite 5000
Chicago, IL 60601
United States

Tel: +1 312 861 8000
Fax: +1 312 861 2899
www.bakermckenzie.com

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* Associated Firm
** In cooperation with Trench, Rossi e Watanabe Advogados

September 15, 2025

JWCM Exchange I, LLC
445 Park Avenue
Suite 1600
New York, New York 10022

RE: JWCM Vivian, DST

Dear Ladies and Gentlemen,

JWCM Exchange I, LLC, a Delaware limited liability company (the "**Company**"), and JWCM Vivian, DST (the "**Trust**") have retained Baker & McKenzie LLP as special tax counsel to address certain federal income tax consequences and render opinions on specific federal income tax issues in connection with the proposed transactions described in the Private Placement Memorandum for Interests in the Trust (the "**Memorandum**"). Unless otherwise indicated, all capitalized terms used herein and not otherwise defined have the meanings set forth in the Memorandum.

In formulating our opinion, we have reviewed the following documents: (i) the Memorandum; (ii) the Amended and Restated Trust Agreement (the "**Trust Agreement**"); (iii) the form Limited Liability Company Agreement accompanying the Trust Agreement; (iv) the Master Lease (the "**Lease**"); (v) the form of the Investor Questionnaire & Purchase Agreement; (vi) the Loan Documents; and (vii) the Bond Documents (collectively, the "**Business Documents**"). We have also assumed that the representations set forth in the letter addressed to us and signed on behalf of the Company on September 15, 2025 (the "**Representation Letter**"), are true, complete and correct in all respects as of the date hereof.

Based on our review of the Business Documents and the Representation Letter, it is our opinion that (i) the Trust should be treated as an investment trust described in Treasury Regulations Section 301.7701-4(c) [1] that is classified as a "trust" under Treasury Regulations Section 301.7701-4(a), (ii) the Beneficial Owners should be treated as "grantors" of the Trust, (iii) as "grantors" of the Trust, the Beneficial Owners should be treated as owning an undivided fractional interest in the Property for federal income tax purposes, (iv) the Interests should not be treated as securities for purposes of Section 1031, (v) the Interests should not be treated as certificates of trust or beneficial interests for purposes of Section 1031, (vi) the Lease should be treated as a true lease and not a financing for federal income tax purposes, (vii) the Lease should be treated as a true lease and not a deemed partnership for federal income tax purposes, (viii) the Beneficial Owners, via their Interests in the Trust, should be treated as the true owners of the Property, rather than lessees for federal income tax purposes, (ix) the discussions of the federal income tax

[1] All section references provided for herein refer to the Internal Revenue Code of 1986, as amended (the "**Code**"), and the Treasury Regulations promulgated thereunder.

consequences contained in the Memorandum are correct in all material respects, and (x) certain judicially created doctrines 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 specific Purchaser, constitute the acquisition of like-kind replacement property by any Purchaser in a transaction that qualifies for non-recognition of gain or loss under Section 1031.

DISCUSSION

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." Non-recognition 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.[2] Section 1031 does not expressly address the treatment of interests in a Delaware Statutory Trust (a "**DST**").

The Internal Revenue Service (the "**IRS**") concluded in Revenue Ruling 2004-86[3] 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 non-recognition provisions of 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 Regulations Section 301.7701-4(c) that is classified as a "trust" under Treasury Regulations 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 Beneficial Owners (and the Interests that are the subject of the Offering) should be the same as the treatment of the DST and its beneficial owners in Revenue Ruling 2004-86 for federal income tax purposes.

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[2] Treas. Reg. § 1.1031(a)-1(a)(1); former Section 1031(a)(2)(C), (D), (E) (1984). On December 22, 2017, the Tax Cuts and Jobs Act (the "**TCJA**") was signed into law. The TCJA significantly modified Section 1031 by limiting it to *only* exchanges of certain real property not held primarily for sale. Exchanges of personal and intangible property completed after December 31, 2017, can no longer qualify for a 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 a Section 1031 Exchange. Although the specific language providing for non-qualification (for Section 1031 purposes) of interests in a partnership, securities, certificates of trust, and 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 Beneficial Owners should be treated as owning qualifying real property for federal income tax purposes.

[3] 2004-33 I.R.B. 191.

Baker McKenzie.

I. The Trust should be treated as an investment trust described in Treasury Regulations Section 301.7701-4(c) that is classified as a "trust" under Treasury Regulations 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 Beneficial Owners for federal income tax purposes, and (ii) should be treated as an investment trust described in Treasury Regulations Section 301.7701-4(c).

A. The Trust should be recognized as an entity separate from the Beneficial 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.[4] Thus, an entity formed under local law is not always recognized as a separate entity for federal income tax purposes.[5] 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.[6]

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*,[7] 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 an agreement providing that (i) the corporation would hold title to the property as the shareholders' nominee and agent 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.

Similarly, the IRS concluded in Revenue Ruling 92-105[8] 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

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4 Treas. Reg. § 301.7701-1(a)(1).
5 Treas. Reg. § 301.7701-1(a)(3).
6 *See Moline Properties, Inc. v. Comm'r*, 319 U.S. 436 (1943).
7 485 U.S. 340 (1988).
8 1992-2 C.B. 204.

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[9] that the DST described therein was 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 herself. 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. 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, 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 Beneficial Owners. The Trust should not be viewed merely as an agent of the Beneficial Owners because, unlike the trusts in *Bollinger* and Revenue Ruling 92-105, the Beneficial Owners have no right or power to direct in any manner the Trust or the Manager in connection with the operation of the Trust or the actions of the Delaware Trustee, the Signatory Trustee, the Independent Trustee or the Manager.[11] Specifically, the Beneficial Owners have no right or power to (i) contribute additional assets to the Trust (other than the initial contribution of cash in exchange for Interests), (ii) be involved in any manner in the operation or management of the Trust or its assets, (iii) cause the Trust to negotiate or renegotiate leases or loans or (iv) cause the Trust to sell its assets and reinvest the proceeds of such sale.[12] Additionally, until the Loan is paid in full, the Trust Agreement requires the Trust to, among other things: (i) not acquire, lease or operate any real property, personal property, or assets other than the Property, (ii) not own, operate or participate in any business other than, pursuant to the Master Lease, the fee or leasehold interest in the Property, (iii) not commingle its assets or funds with those of any other Person, unless such assets or funds can easily be segregated and identified in the ordinary course of business from those of any other person; (iv) maintain its financial statements, accounting records, and other partnership, real estate investment trust, limited liability company or corporate documents, as the case may be, separate from those of any other person (unless the Trust's

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9 2004-33 I.R.B. 191.

10 *Id*. (citing to Del. Code Ann. Title 12, §§ 3801-3824).

11 *See* the Trust Agreement at § 6.13.

12 *See id*.

assets have been included in a consolidated financial statement prepared in accordance with generally accepted accounting principles), (v) except for the Bonds, not make loans or advances to any other person and (vi) not divide at any time during the term of the Loan.[13]

These requirements and prohibitions evidence an intent that the Trust be engaged in activities on its own behalf rather than as an agent of the Beneficial Owners. Lastly, because the Trust is organized as a DST, the Beneficial Owners may avail themselves only of the limited powers and privileges afforded to a beneficial owner under Delaware law. Thus, the Trust (as a DST) and the Beneficial 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 Beneficial Owners.

B. The Trust should be treated as an investment trust described in Treasury Regulations 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 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 Regulations Section 301.7701-4(c).

1. No power exists under the Trust Agreement for the Delaware Trustee, Signatory 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 beneficiaries. Two opinions issued by 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

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13 *See id.* at § 2.4.
14 Treas. Reg. § 301.7701-4(a).
15 Treas. Reg. § 301.7701-4(c)(1).
16 *Id*.

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 Delaware Trustee, Signatory Trustee and Manager in the Trust Agreement are consistent with the limited scope of powers applicable to an investment trust described in Treasury Regulations 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. 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 the instant case was similar to the trust in *Chase National Bank*, the trust instrument in the instant case 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

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17 122 F.2d 540 (2d Cir. 1941).
18 *Id.* at 543.
19 122 F.2d 545 (2d Cir. 1941), *cert. denied*, 314 U.S. 701 (1942).
20 *Id*.

holders at will" and, accordingly, that the trust was treated as taxable as an association rather than as a fixed investment trust.[21]

(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 (John) borrowed money from an unrelated lender (Bank) and signed a 10-year, interest-bearing non-recourse note. John then used the proceeds of the loan to purchase rental real property, Blackacre, which was the sole collateral for the loan from the Bank. Immediately thereafter, John "net" leased the property to Mary for a term of 10 years.[22] Under the terms of the lease, Mary was required to pay all taxes, assessments, fees or other charges imposed on Blackacre by federal, state or local authorities. In addition, Mary was required to pay all insurance, maintenance, ordinary repairs and utilities relating to Blackacre. Mary was free to sublease Blackacre to anyone she chose.

The rent paid by Mary to John 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 Mary was not contingent upon Mary's ability to lease the property or on her gross sales or net profits derived from Blackacre.[23]

On the same date that John acquired Blackacre and leased it to Mary, John also formed a trust under Delaware law to which he contributed fee title to Blackacre after entering into the loan with the Bank and the lease with Mary. Upon contribution, the trust assumed John's rights and obligations under the loan from the Bank as well as under the lease with Mary. In accordance with the non-recourse nature of the note, neither the trust nor any of its beneficial owners were personally liable to the Bank for the loan, 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 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

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21 *Id*.

22 The ruling does not indicate whether John is related to Mary, but given that the ruling states that Mary is not related to persons described in the ruling other than John, it can be assumed that she is related to him.

23 Although the lease from John to Mary is described in Revenue Ruling 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.

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 each beneficial owner in proportion to their respective interests in the trust. The trustee was required to invest cash received from Blackacre between 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 prohibited the trustee from engaging in activities beyond the scope of 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) for the trust from the beneficiaries. The trustee could not renegotiate the terms of the debt used to acquire Blackacre and could not renegotiate the lease with Mary or enter into leases with tenants other than Mary, except in the case of Mary'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 John or indicate to third parties that the trustee (or the trust) is his agent.

Immediately after John contributed his interest in Blackacre to the trust, he conveyed his entire interest in the trust to Dan and Michelle in exchange for interests in Whiteacre and Greenacre, respectively. Dan and Michelle were not related to the Bank or Mary (the lessee of Blackacre), and neither the trustee nor the trust was an agent of Dan or Michelle. Dan and Michelle desired to treat their acquired interests in the trust as replacement property pursuant to a 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 John, Dan or Michelle creating an agency relationship and in dealings with third parties, neither the trust nor the trustee represented itself as an agent of John, Dan or Michelle.

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

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[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.

assumed by the trust at the time of 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 mature 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 Mary or enter into leases with tenants other than Mary, except in the case of her bankruptcy or insolvency. In addition, the trustee could make only minor non-structural modifications to its property except to the extent required by law. The IRS observed that the trustee had none of the powers that would indicate 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 Mary (except in the case of Mary's bankruptcy or insolvency);
- Enter into leases with a tenant other than Mary (except in the case of Mary's bankruptcy or insolvency);
- Renegotiate the obligation used to purchase Blackacre (except in the case of Mary'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 that were 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 75-192[25] 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 required 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 78-371[27] 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, and to raze or erect any building or other structure or make any improvements to the land contributed to the trust. The trustees were also empowered 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 that the trust arrangement was not formed merely to protect and conserve the trust's property and, thus, ruled that the trust was taxable as a business entity treated as a corporation.

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25 1975-1 C.B. 384.
26 1979-1 C.B. 448.
27 1978-2 C.B. 344.

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The existence of a power to sell trust assets does not always give rise to a power to vary the trust's investments.[28] 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."[29] 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 Delaware Trustee, the Signatory Trustee, the Independent Trustee, the Manager, the Beneficial Owners and the Trust in the Trust Agreement fall within the limited scope of the powers and authority that may be exercised by a trustee of an "investment trust." From and after the issuance of the Conversion Notice (as defined in the Trust Agreement), the Trust Agreement authorizes the Manager to (a) acquire the Property and receive cash sufficient to enable the Trust to acquire the Property pursuant to the Purchase Contract (as defined in the Trust Agreement) and subject to the Leases (as defined in the Trust Agreement), and enter into the Lease and Loan, (b) comply with the terms of the Financing Documents (as defined in the Trust Agreement), (c) collect rent and make distributions thereof, (d) enter into any agreements for purposes of completing tax-free exchanges of real property with a "qualified intermediary" as defined in Treasury Regulations Section 1.1031(k)-1(g)(4), (e) notify the relevant parties of any defaults under the Transaction Documents (as defined in the Trust Agreement), (f) take any action which in the reasoned opinion of tax counsel to the Trust, should not have an adverse effect on either the treatment of the Trust as an "investment trust" within the meaning of Regulations Section 301.7701-4(c) or each Beneficial Owner as a "grantor" within the meaning of Section 671, and (g) solely to the extent necessitated by the bankruptcy or insolvency of a tenant, enter into a new lease with respect to the Property, or renegotiate or refinance any debt (including, without limitation, the Loan) secured by the Property.[30]

Additionally, the Trust Agreement expressly denies the Manager any power or authority, from and after the issuance of the Conversion Notice, to take an action that would cause the Trust to cease to be an investment trust described in Treasury Regulations Section 301.7701-4(c).[31] Moreover, the Trust Agreement expressly denies the Delaware Trustee, the Independent Trustee, the Signatory Trustee, the Manager, the Beneficial 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 Regulations Section 301.7701-4(c)(1)

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28 *Id*.

29 *See Comm'r v. N. Am. Bond Trust*, 122 F.2d 545 (2d Cir. 1941), *cert. denied,* 314 U.S. 701 (1942); *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.

30 *See* the Trust Agreement at § 5.3(b).

31 *See id.* at § 5.3.

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and Revenue Ruling 2004-86.[32] Furthermore, the Trust Agreement provides that none of the Delaware Trustee, the Signatory Trustee, the Independent 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 Treasury Regulations Section 301.7701-4 and not treated as a "business entity" within the meaning of Treasury Regulations Section 301.7701-3.[33] Finally, as noted above, the Beneficial Owners generally have no right or power to make decisions for or to operate or manage the Trust in any manner.[34]

We believe that the material provisions of the Trust Agreement that are not included in the trust arrangement described in Revenue Ruling 2004-86 are consistent with treating the Trust as an investment trust. These provisions include, but are not limited to: (i) the power to sell the Trust's corpus; (ii) the potential termination of the Trust through any event that would cause a Transfer Distribution; and (iii) the potential transfer of the Property to an Exchange Entity pursuant to the Exchange Right provided in the Trust Agreement.

The power granted under the Trust Agreement to sell the Property should not be viewed as a power to vary the Trust's investments. Immediately after a sale of the Property, the sales proceeds must be distributed to the Beneficial Owners and the Trust will terminate.[35] None of the Delaware Trustee, the Signatory Trustee, the Independent Trustee or the Manager has the power to purchase replacement investments with the proceeds from the sale of the Property.[36] Additionally, the power of the Manager to cause a sale of the Property is not unfettered, but instead can be exercised only after the Trust has owned the Property for two years.[37]

The sale of the Property under these circumstances is consistent with the objective of achieving an investment return on the assets comprising the initial trust estate when the Beneficial Owners acquired their interests therein. Because the sales proceeds cannot be reinvested by the Delaware Trustee, the Signatory Trustee, the Independent 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 Property and the cash reserves that accumulate between monthly distributions.[38] All cash reserves will be invested only in the types of debt instruments expressly permitted under Revenue Ruling 2004-86.[39] Accordingly, providing the Manager with the discretion concerning the timing and amount of the sale of the Property should not prevent the Trust from being treated as an investment trust that is classified as a "trust" for federal income tax purposes.

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32 *See id.* at § 3.3(c)(7).
33 *See id.* at § 3.3(c).
34 *See id.* at § 6.13.
35 *See id.* at §§ 9.1 & 9.3.
36 *See id.* at § 3.3(c)(2).
37 *See id.* at § 9.3.
38 *See id.* at §§ 2.4(1) & 7.2.
39 *See id.* at § 7.2.

Baker McKenzie.

Although no direct authority exists regarding the use of a Transfer Distribution in connection with a fixed investment trust, we believe the Transfer Distribution as used in the Trust Agreement is consistent with treating the Trust as a fixed investment trust for federal income tax purposes. We believe that the events that would cause a Transfer Distribution are not in any way expected or viewed as likely to occur, which supports the passive and fixed nature of the Trust. In addition, the Trust Agreement also grants the Class 1 Beneficial Owners a right of first refusal upon the receipt of a bona fide Third-Party Offer (as defined in the Trust Agreement).[40] As discussed in further detail in Part VII hereof, we believe that this right of first refusal is not inconsistent with the Trust's classification as a fixed investment trust because such right is indicative of a co-ownership arrangement, as opposed to joint operation of a business entity. Moreover, the Trust has represented that no Transfer Distribution is currently intended or anticipated and that to the knowledge of the Depositor, Trust and Manager an event which would cause a Transfer Distribution with respect to any of the assets of the Trust is not expected and that it is the belief of the Depositor, Trust and Manager that the occurrence of such an event would be unanticipated.

In addition, the Exchange Right provided in the Trust Agreement also should not be viewed as a power to vary the Trust's investments. In the case of the Exchange Right, such a transfer is only exercisable for a purchase price equal to the then fair market value of a Purchaser's Interest at such time in exchange for Units in an Exchange Entity (or cash, as the case may be).[41] The option price is tied directly to the fair market value as of the option exercise date as determined by an appraisal to be obtained at such time and is not nominal in relation to such value or discounted in any way.[42] The Exchange Right is discussed in further detail in Part VI.E below.

Although distinctions exist between the Trust Agreement and the trust arrangement described in Revenue Ruling 2004-86, we believe these distinctions are not material. These distinctions include, but are not limited to: (i) the ongoing role of the Company or its affiliate as the Manager; (ii) the Trust's potential acceptance of multiple contributions over time, rather than through a single contribution; (iii) the conversion of the Trust for tax purposes from a disregarded entity into an investment trust prior to the admission of purchasers; and (iv) the certain limited guarantees certain indirect owners of the Company have executed with respect to the Loan. 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, the Company's (or its affiliate's) ongoing role as the Manager should not be viewed as inconsistent with the analysis in Revenue Ruling 2004-86 or the case law because the Manager's powers are limited to those permitted to be exercised by a trustee of a fixed investment trust.

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40 *See id.* at § 6.4.
41 *See id.* at §§ 10.1 & 10.4.
42 *See id.* at § 10.4.

Baker McKenzie.

Second, the Trust's acceptance of multiple contributions over time should not be viewed as raising additional capital (which is prohibited under Revenue Ruling 2004-86) because the capital of the Trust is not increasing. Both the terms and the amount of the Offering were established at the time the Trust Agreement was made. Additionally, the proceeds of the additional closings must be distributed to the Company. Further, the fact that 100% of the Interests may be sold in multiple closings rather than in a single closing is driven by practical considerations and does not provide a basis for distinguishing a trust from a partnership. In addition, because the terms of the Offering are fixed, the additional contributions do not enable the Trust to benefit from market fluctuations over time.

Third, prior to conversion, the Trust is not recognized as an entity separate from the Company (or its affiliate) for federal income tax purposes.[43] Accordingly, the conversion feature of the Trust from a disregarded entity to a fixed investment trust 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.

Fourth, we have considered the fact that certain indirect owners of the Company have each executed a certain limited guaranty with respect to the Loan. Under the limited guarantees, the guarantors will be responsible for liabilities, costs, expenses, claims, losses or damages incurred by the Lender as a result of certain customary non-recourse carveout events and springing recourse liabilities with respect to the Loan.[44] The occurrence or non-occurrence of these events will largely be solely within their control. Since these limited guarantees otherwise generally impose liability only for actions which are within the control of certain indirect owners of the Company, they should not constitute impermissible guarantees of the Loan for these purposes. Nor should the guarantees be viewed as obligations of certain indirect owners of the Company to contribute additional capital to the Trust. Accordingly, we do not view the existence of the limited guarantees as inconsistent with Revenue Ruling 2004-86.

Because none of these provisions permit the Delaware Trustee, Signatory Trustee or Manager to vary the investments of the Trust in a manner that results in the Beneficial 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 Lease.

Under the terms of the Lease, the Master Tenant has the right, at the Master Tenant's cost and expense, to make structural and non-structural alterations to the Property, provided that any such alteration or addition when completed is of a character that does not impair the usefulness, materially reduce the market value of such Property, or violate the terms of any

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43 *See id.* at § 3.3(a); *see also* Treas. Reg. § 301.7701-3(b)(1).

44 For example, the Loan Documents provide that if an Event of Default occurs, the Lender will be entitled to exercise all rights and remedies under the Loan Agreement and certain other Loan Documents. *See* the Loan Agreement at § 14.02. An "Event of Default" is defined in the Loan Documents to include, for example, any default on any required payment by any Loan Document, and if any representation, financial statement, or other information provided pursuant to the Loan Documents should prove to be materially false, among others. *See* the Loan Agreement at § 14.01(a).

sublease.[45] However, unlike the Master Tenant, at any time that the Trust is a DST the Trust shall not have the right, power or ability to make more than minor non-structural modifications to the Property.[46] Under Revenue Ruling 2004-86, the trustee is prohibited from making more than minor non-structural modifications to the property. We believe, however, that the alteration rights provided to the Master Tenant under the Lease should not be attributed to the Delaware Trustee, the Signatory Trustee, the Independent 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 Lease do not provide the Delaware Trustee, the Signatory Trustee, the Independent Trustee or the Manager with the unfettered power to make structural modifications to the Property; such alteration rights are held solely by the Master Tenant. Moreover, the cost of any such alterations or additions will be born solely by the Master Tenant, not the Trust. Although not free from doubt, we believe that the alteration rights provided to the Master Tenant under the Lease should not violate the intent and purpose of Revenue Ruling 2004-86 or the underlying cases and rulings governing whether the Delaware Trustee, the Signatory Trustee, the Independent Trustee or the Manager possesses an impermissible right to vary the investments of the Trust.

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 the Trust was formed to facilitate direct investment in the Property and the repurchase of the Class 2 Beneficial Interests is incidental to that purpose.

The often-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.[47] The Treasury Regulations describing an investment trust applies this principle 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.[48] The Treasury Regulations illustrate by example the types 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

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45 *See* the Lease at § 11.1.

46 *See* the Trust Agreement at § 3.3(c)(5).

47 *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. Stearn*, 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").

48 Treas. Reg. § 301.7701-4(c).

investment in a portfolio of residential mortgages.[49] 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.

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.[50] Purchasers 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 will 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 redemption of the Class 2 Beneficial Interests upon the issuance of Class 1 Beneficial Interests gives rise to multiple classes of ownership interests,[51] even though the rights of a Class 2 Beneficial Owner otherwise will be identical to the rights of a Class 1 Beneficial Owner immediately upon a Purchaser investing in the Trust.[52] Consistent with the facts in the examples discussed above, however, we believe that the redemption right of the Company (or its affiliate) also should be treated as existing simply to facilitate the Purchasers' investment in the Class 1 Beneficial Interests in the Trust. The redemption simply replaces the Company's (or its affiliate's) *pro rata* ownership interest in the Trust and its underlying assets with that of the Purchasers. This same result could be accomplished by either the Depositor selling directly to the Purchasers its Class 2 Beneficial Interests or the Company (or its affiliate) selling the Purchasers a direct interest in the Property followed by the Purchasers' contribution of same 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 Company's (or its affiliate's) interest in the Property is transferred to the Class 1 Beneficial Owners should not affect the tax consequences of the underlying transaction.

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49 *See* Treas. Reg. § 301.7701-4(c)(2), Example 2.
50 *See* Treas. Reg. § 301.7701-4(c)(2), Example 4.
51 *See* the Trust Agreement at § 6.14.
52 *See id.* at §§ 6.12 & 6.13.

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 Dan and Michelle 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 Dan and Michelle. The rights of the Company (or its affiliate) with respect to the underlying assets in the Trust, *i.e.*, the Property, are no different vis-à-vis a Class 1 Beneficial Owner for as long as the Company (or its affiliate) retains any Class 2 Beneficial Interests. The result is the economic equivalent of the Purchasers purchasing a direct interest in the Property from the Company and then contributing the purchased interests in the Property to the Trust. Under these circumstances no 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 Beneficial Owners for federal income tax purposes, and (ii) should be treated as an investment trust described in Treasury Regulations Section 301.7701-4(c). As a result, the Trust should be classified as a "trust" under Treasury Regulations Section 301.7701-4(a).

II. The Beneficial Owners should be treated as "grantors" of the Trust.

A "grantor" of a trust includes any person that either creates a trust or directly or indirectly makes a gratuitous transfer of property, including cash, to a trust.[53] A gratuitous transfer to a trust includes a transfer of cash to the trust in exchange solely for an interest in the trust.[54] 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 Regulations Section 301.7701-4(c).[55]

The Beneficial Owners will transfer cash (and, with respect to the Class 2 Beneficial Owner, has effectuated the formation of the Trust and the acquisition of the Property pursuant to the Purchase Contract) to the Trust in exchange solely for an interest therein. Because receiving an interest in the Trust is not treated as the receipt of property, each Beneficial Owner should be treated as making a gratuitous transfer to the Trust. Thus, the Beneficial Owners should be treated as "grantors" of the Trust.

III. As "grantors" of the Trust, the Beneficial Owners should be treated as owning an undivided fractional interest in the Property 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 also is treated as owning an undivided fractional interest of such assets for all federal income tax purposes.[56] Sections

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53 Treas. Reg. § 1.671-2(e)(1).
54 Treas. Reg. § 1.671-2(e)(2).
55 Treas. Reg. § 1.671-2(e)(3).
56 *See* Rev. Rul. 88-103, 1988-2 C.B. 304; Rev. Rul. 85-45, 1985-1 C.B. 183; Rev. Rul. 85-13, 1985-1 C.B. 184; *see also* Treas. Reg. § 1.1001-2(c), Example 5.

673 through 677 set forth rules for determining when the grantor or another person is treated as the owner of any portion of a trust.[57] Under Section 673, 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 Section 677, 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.[58]

Revenue Ruling 2004-86 also considered whether the purchase of interests in the trust arrangement by Dan and Michelle 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 John). The IRS concluded that Dan and Michelle should be treated as grantors of the trust when they acquire their interests in the trust from John, who had formed the trust. The IRS also concluded that, because Dan and Michelle have the right to distributions of all the income of the trust attributable to their undivided fractional interests, they should be treated under 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 Dan and Michelle 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 Dan and Michelle as each owning an undivided fractional interest in Blackacre for federal income tax purposes.

The IRS's treatment of Dan and Michelle as the owners of the trust's property for purposes of Section 1031 is consistent with the treatment by the IRS of grantors of a trust for Section 1033 purposes. Section 1033 is similar to Section 1031 in that it confers non-recognition treatment on the involuntary conversion of property into similar or related-use property.[59] In several rulings, the IRS 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 Section 1033 purposes.[60]

Several of the rights accorded, directly and indirectly, under the Trust Agreement to the Beneficial Owners as "grantors" should result in the Beneficial Owners being treated as owning direct interests in the Property for federal income tax purposes. Generally, the Beneficial Owners have the right to the distribution of all available cash received by the Trust without the approval, consent or exercise of discretion by any person.[61] Additionally, the Beneficial Owners have a total reversionary interest in the assets of the Trust. These rights of the Beneficial Owners as grantors should result in the Beneficial Owners being

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57 Treas. Reg. § 1.671-2(a).

58 Section 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).

59 *See* Section 1033(a).

60 *See* Rev. Rul. 88-103, 1988-2 C.B. 304; Rev. Rul. 70-376, 1970-2 C.B. 164.

61 *See* the Trust Agreement at § 7.2.

treated as owning direct interests in the Trust's assets (*i.e.*, the Property) under Sections 673 and 677 and therefore also for all federal income tax purposes, including Section 1031.

IV. The Interests should not be treated as securities for purposes of Section 1031.

If the Interests were determined to be securities for purposes of 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.[62] For the reasons discussed below, the Interests should not constitute securities for purposes of Section 1031.[63]

A. Legislative History of Section 1031.

The exclusion of securities from Section 1031 was added to the predecessor to Section 1031 in 1923.[64] The legislation amended the predecessor to 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 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 Section 1031 to exchange investment securities, such as stocks and bonds, on a tax free basis. A letter from the Secretary of the 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,

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62 Section 1001.

63 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.

64 *See*, *e.g.*, H.R. 13774, Public No. 545, 67th Cong., 4th Sess., ch. 294.

> 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 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.[65]

In response to the concern expressed in the letter above, Congress amended the predecessor to Section 1031 to exclude securities.[66]

B. Use of the term "securities" in the Code.

The term "securities" is not defined in either Section 1031 or the Treasury Regulations promulgated thereunder. The term "securities" is narrowly defined in other Sections of the Code, including the following:

- 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 . . . .");
- 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 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)");[67] and
- 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").

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65 *Id.*

66 *Id.*

67 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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The Interests clearly should not be considered "securities" under any of the above definitions. Although the foregoing Sections are not expressly applicable for purposes of Section 1031, the IRS has indicated that the scope of "securities" (as used in such other Sections) can be relevant by analogy for purposes of Section 1031.[68]

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:

- 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) . . . .");
- 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 . . . .");
- Section 162(m)(2) (". . . the term 'publicly held corporation' means any corporation which is an issuer . . . the securities of which are required to be registered under section 12 of [the Securities Exchange Act of 1934] . . . .");
- 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
- Section 409(e)(4)(A) (". . . a class of securities required to be registered under section 12 of the Securities Exchange Act of 1934 . . . .").

In *Plow Realty Co. of Texas v. Commissioner*,[69] 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 Internal Revenue Code of 1939, 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 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

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68 *See, e.g.,* I.R.S. Gen. Couns. Mem. 35242 (Feb. 16, 1973).

69 4 T.C. 600 (1945).

> 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.[70]

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."

In General Counsel Memorandum 35242,[71] the IRS stated that "[a]lthough [the definitions under Sections 165(g), 402(a)(3), 1083(f), and 1236(c)] do not control for purposes of Code §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 non-recognition treatment under Section 1031(a).

Equally important, General Counsel Memorandum 35242 determined that the whisky receipts were not "securities" for purposes of 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 conclusion 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.[72] The IRS further noted, in the proposed revenue ruling attached to the general counsel memorandum, that the "securities" exception to non-recognition treatment was added to "preclude brokers, investment houses, and bond houses from arranging the tax free exchanges of appreciated securities for their clients."[73]

Based on the narrow scope of the definition of "securities" for various Code provisions, the IRS endorsement of this narrow definition in the Section 1031 context, and the Tax Court's conclusion that the definition of a "security" under applicable securities laws is irrelevant, we believe that the Interests should not be treated as securities for purposes of Section 1031.

V. The Interests should not be treated as certificates of trust or beneficial interests for purposes of Section 1031.

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70 *Id.* at 608 (internal citation omitted).

71 I.R.S. Gen. Couns. Mem. 35242 (Feb. 16, 1973).

72 *Plow Realty Co.*, 4 T.C. 600 (1945) (concluding that mineral deeds were not securities for purposes of the predecessor to Section 543 (personal holding company income) despite the fact that they were securities under securities and exchange acts).

73 I.R.S. Gen. Couns. Mem. 35242 (Feb. 16, 1973) (*citing* S. Rept. 1113, 67th Cong. (1927), 1939-1 (Part 2) C.B. 845-46).

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The non-recognition rules of Section 1031 do not apply to an exchange of certificates of trust or beneficial interests.[74] However, as concluded above, the Trust should be treated as a fixed investment trust within the meaning of Treasury Regulations Section 301.7701-4(c). Therefore, the Trust is considered to be a disregarded entity and the Beneficial Owners should be viewed as owning an underlying fractional interest in the Property (as opposed to an interest in the Trust itself for federal income tax purposes) because, for federal income tax purposes, the Trust is disregarded and viewed as if it does not exist. Thus, the Interests should not be viewed as prohibited certificates of trust or beneficial interests for purposes of Section 1031.

VI. The Lease should be treated as a true lease and not a financing for federal income tax purposes.

A. Generally.

We believe that the Lease has the hallmarks of a bona fide, true lease and, therefore, should be treated as such for federal income tax purposes. The economic substance of a leasing transaction is analyzed in light of all of the facts and circumstances.[75] Transactions structured as leases may be recharacterized for federal income tax purposes to reflect their economic substance.[76] For example, in appropriate circumstances a purported lease may be recharacterized as a conditional sales contract. Recharacterization of the Lease as a financing or other arrangement for federal income tax purposes would have significant adverse tax consequences. For example, if the Lease were recharacterized as a financing, then for federal income tax purposes, the Beneficial Owners would be treated as having immediately sold the acquired Interests in the Property to the Master Tenant and the Master Tenant would be treated as the owner of the Property for federal income tax purposes. As a result, a Purchaser attempting to participate in a Section 1031 Exchange would not be treated as having received qualified replacement property when the Purchaser acquired his, her or its Interest because the Purchaser would be treated as having made a loan to the Master Tenant. As the owner of the Property for federal income tax purposes, the Master Tenant, rather than the Purchasers, 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 Purchasers and would not be deductible by the Master Tenant. All of these, and

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74 Treas. Reg. § 1.1031(a)-1(a)(1)(v); former Section 1031(a)(2)(E) (1984). As noted above, although the specific language providing for non-qualification (for Section 1031 purposes) of interests in a partnership, securities, certificates of trust, and 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 Beneficial Owners should be treated as owning real property for federal income tax purposes.

75 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).

76 *See*, *e.g.*, *Frank Lyon Co. v. United States*, 435 U.S. 561 (1978), *rev'g* 536 F.2d 746 (8th Cir. 1976); *Rice's Toyota World*, 752 F.2d 89 (4th Cir. 1985); *Helvering v. F. & R. Lazarus & Co.*, 308 U.S. 252 (1939); *Emershaw v. Comm'r*, T.C. Memo 1990-246.

other, consequences could have a significant impact on the federal income tax consequences of an investment in the Property.

B. Revenue Procedure 2001-28.

It is possible that the Lease could be treated 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 issue will be analyzed in the context of Revenue Procedure 2001-28,[77] which sets forth guidelines for obtaining an advance 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.[78] The business purpose test has been described as a subjective analysis examining the motivations for entering into a transaction,[79] 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).[80] 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.[81] The essence of the courts' benefits and burdens analysis is an examination of whether the purported lessor is subject to the risks of ownership (*i.e.*, downside) and will enjoy the profits of the property (*i.e.*, upside).

Revenue Procedure 2001-28[82] 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

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77 2001-1 C.B. 1156.

78 *See Rice's Toyota World*, 752 F.2d 89; *Van Roekel v. Comm'r*, T.C. Memo 1989-74, *app. dism'd*, 905 F.2d 80 (5th Cir. 1990); *Offermann v. Comm'r*, T.C. Memo 1988-236; *L. W. Hardy Co., Inc. v. Comm'r*, T.C. Memo 1987-63; *Greenbaum v. Comm'r*, T.C. Memo 1987-222; *Torres v. Comm'r*, 88 T.C. 702 (1987); *Mukerji v. Comm'r*, 87 T.C. 926 (1986).

79 *Levy v. Comm'r*, 91 T.C. 838, 854 (1988).

80 *Id.* at 838; *Rubin v. Comm'r*, T.C. Memo 1989-484; *Moser v. Comm'r*, T.C. Memo 1989-142, *aff'd* 914 F.2d 1040 (8th Cir. 1990); *Van Roekel v. Comm'r*, T.C. Memo 1989-74; *Offermann v. Comm'r*, 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).

81 *See Emershaw v. Comm'r*, T.C. Memo 1990-246, *aff'd* 949 F.2d 841 (6th Cir. 1991); *Rubin v. Comm'r*, T.C. Memo 1989-484; *Pearlstein v. Comm'r*, T.C. Memo 1989-621; *Moser v. Comm'r*, T.C. Memo 1989-142, *aff'd* 914 F.2d 1040 (8th Cir. 1990); *Van Roekel v. Comm'r*, T.C. Memo 1989-74; *Levy*, 91 T.C. 838.

82 2001-1 C.B. 1156. The guidelines were designed with equipment, rather than real estate, leveraged leases as a primary concern.

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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 other rulings, in determining whether the 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 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 this purpose. 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.[83]

C. Minimum Unconditional At-Risk Investment.

Under the Revenue Procedure, 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.[84] 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.[85]

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 Section 318 of the Code) (the "**Lessee Group**").[86] Each of the Purchasers will acquire his, her or its Interest in the Property (through the Trust) for an unconditional equity investment equal to approximately 49.45% of the cost of his, her or its Interest in the Property. None of the Purchasers will be entitled to demand the return of his, her or its Equity Investment from

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83 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.

84 Rev. Proc. 2001-28, 2001-1 C.B. 1156 § 4.01.

85 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 v. Comm'r*, T.C. Memo 1990-246 (6% investment); *Greenbaum v. Comm'r*, T.C. Memo 1987-222 (7% investment); *L. W. Hardy Co., Inc. v. Comm'r*, T.C. Memo 1987-63 (17% investment).

86 Rev. Proc. 2001-28, 2001-1 C.B. 1156 § 4.01(1).

the Trust, or any tenant 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 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).[87] The Trust and the Manager have represented to us that they anticipate that the equity invested in the Property by the Purchasers will equal at least 20% of the cost of the Property to the Trust at all times throughout the term of the Lease (disregarding fluctuations in value) and that, to their knowledge, no plans or intention exists to reduce such equity through distributions or refinancing of the Property or otherwise. It is impossible, however, to determine at this time whether the economic performance of the Property will comply with the above stated requirement of Revenue Procedure 2001-28. Accordingly, this estimation alone neither weighs in support nor against characterization of the 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.[88] The Trust and the Manager have represented that the Property is expected to have a value at the end of the Lease term or the anticipated time of sale that is at least 20% of the original cost of the Property and that the financial projections of the value of the Property at the end of the Lease term or the anticipated time of sale are not based on increases or decreases in inflation or deflation during the Lease term and reflect the anticipated costs of sale. In addition, the Trust and the Manager have represented that a reasonable estimate of the remaining useful life of the Property at the end of its initial Lease term should equal the longer of one year or 20% of the originally estimated useful life of the Property.

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87 *Id*. at § 4.01(2).
88 *Id*. at § 4.01(3).

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D. Lease Term and Renewal Options.

For purposes of determining whether the various requirements imposed by 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.[89] Because both the Equity Investment of the Purchasers and the Lease will terminate at the time of the anticipated sale, the anticipated time of sale might be used as the measuring period for purposes of determining the term of the Lease. One could also argue that the entire term of the Lease should be used as the applicable measuring period in determining whether the various requirements of Revenue Procedure 2001-28 have been met. We have considered each of these alternatives in reaching our conclusions herein concerning the application of Revenue Procedure 2001-28. There are no renewal options or extension periods as such terms are used in Revenue Procedure 2001-28.

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.[90] 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.[91] 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.[92] 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 in relation to such value.[93] The Lease and other Business Documents do not provide the Trust with a put option or the right to abandon the Property to any party.

In the present case, the Exchange Right provided to the Manager under the Trust Agreement is only exercisable for a purchase price equal to the then fair market value of an investor's Interest at such time in exchange for Units in one or more Exchange Entities

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89 *Id*. at § 4.02.

90 *Id*. at § 4.03.

91 *Id*. at § 4.03.

92 *Id*. at § 4.03.

93 *See L. W. Hardy Co., Inc. v. Comm'r*, T.C. Memo 1987-63; *Transamerica Corp. v. United States*, 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.").

(or cash, as the case may be) and, therefore, should not cause the Lease to fail as a true lease for federal income tax purposes as the Exchange Right represents an estimate of the fair market value as of the option date and is not nominal in relation to such value.[94] Although not free from doubt, in light of the case law and rulings discussed above, the Exchange Right provided under the Trust Agreement should not cause the Lease to fail to be a true lease for federal income tax purposes.

F. Investment by Lessee.

No part of the cost of the property or the cost of improvements, modifications or additions to the property ("**Improvements**"), may be furnished by any member of the Lessee Group. If the lease requires 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.[95]

While the Master Tenant may incur some obligations to construct improvements under one or more subleases, this should not affect the characterization of the Lease for federal income tax purposes. Under the Lease, the Master Tenant may be required to pay for certain tenant improvements associated with the Property. For example, the Master Tenant must throughout the term of the Lease take good care of the Property, put, keep and maintain the Property and every part thereof in a condition substantially the same as the condition of the Property as of the commencement of the Lease, and make all necessary repairs of whatsoever kind or nature.[96] We believe that any such improvements required to be constructed by the Master Tenant under the Lease are in the nature of maintenance and repairs consistent with ordinary commercial practice and, therefore, should not prevent the Lease from qualifying as a true lease for federal income tax purposes.[97]

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.[98] 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

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94 *See* the Trust Agreement at §§ 10.1 & 10.4.

95 Rev. Proc. 2001-28, 2001-1 C.B. 1156 § 4.04.

96 *See* the Lease at § 6.1.

97 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* I.R.S. Gen. Couns. Mem. 36727 (May 13, 1976) ("We too have found no statutory or judicial law reclassifying a lease transaction as a purchase because of lessee improvements").

98 Rev. Proc. 2001-28, 2001-1 C.B. 1156 § 4.05.

guarantee of the indebtedness of the lessor.[99] There are no guarantees under the Lease or other Business Documents that violate this requirement.[100]

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.[101] 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.[102] The Trust and the Manager have represented to us that this requirement is expected to be satisfied.

I. Conclusion.

In light of the above factors, the Lease satisfies most of the pertinent material conditions set forth in Revenue Procedure 2001-28 that we believe are necessary for characterization as a true lease for federal income tax purposes. Likewise, under the framework established in the case law, the Lease bears the hallmarks of a bona fide lease. Accordingly, we believe

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99 *Id*. at § 4.05.

100 As discussed in Part I.B.1.b above, Samuel Jesselson and Jason Warsavsky, each an indirect owner of the Company, have each provided the Lender with a limited, non-recourse carveout guarantee which guarantees the payment and performance of certain obligations caused by the Trust's action or inaction in connection with the Manager's management of the Property. Each limited guarantee should not be viewed as an amount of capital at risk in connection with ownership of the Property because the potential liability only arises due to events within the control of the Trust. Because the liability triggers are within the control of the Trust, such limited guarantees are distinguishable from a full guarantee of the Trust's entire indebtedness.

101 Rev. Proc. 2001-28, 2001-1 C.B. 1156 at § 4.06.

102 While the "Uncontrollable Costs" feature of the Lease could potentially be viewed as giving rise to a relationship similar to a cash flow lease (*e.g.*, if the pool of items included in the formulation of Uncontrollable Costs was so expansive as to include the totality of operating expenses, or a significant portion thereof, thereby changing the nature of the Lease), we believe that the limited categories included therein (*i.e.*, real estate taxes and similar impositions, insurance and utilities, snow and ice removal and other unusual weather-related costs, the costs of complying with governmental requirements, and increased costs due to unionization) are sufficiently tied to historic and anticipated costs and discrete in nature such that the Lease should still be properly viewed as a true lease and not an agency or financing arrangement. As such, the Uncontrollable Costs adjustment mechanism in the Lease should not be viewed as a sharing of profits or losses. In addition, if there is an increase in the amount of Uncontrollable Costs, such costs will only be offset to the extent of Additional Rent or Supplemental Rent; accordingly, if such rent amounts are unavailable, the burden for such costs remains with the Master Tenant.

that the Lease should be treated as a true lease rather than as a financing for federal income tax purposes.

VII. The 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 Lease could be recharacterized as a partnership for federal income tax purposes because if the Trust or the Beneficial Owners are treated as partners with the Master Tenant with respect to the ownership of the Property, the Beneficial Owners would not be treated as directly holding interests in the Property for income tax purposes.[103] Case law provides that certain factors are indicative that a purported lease may in fact be a partnership for federal income tax purposes.[104]

A. Applicable Standards.

The courts have focused on the following factors when analyzing this issue:

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[103] Because the Property Manager will not be in privity of contract with the Trust, there should be little doubt that there is no partnership between the Property Manager and the Trust.

[104] *See Haley v. Comm'r*, 203 F.2d 815 (5th Cir. 1953), *rev'g and rem'g* 16 T.C. 1509 (1951) (citing *Culbertson* and stating 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"); *Luna v. Comm'r*, 42 T.C. 1067 (1964) (outlining factors that will aid in the determination of whether a partnership exists for federal income tax purposes: "[T]he following factors, none of which are conclusive, bear on this issue: The agreement of the parties and their conduct in executing its terms; the contributions if any, which each party has made to the venture; the parties' control over income and capital and the right of each to make withdrawals; whether each party was a principal and coproprietor, sharing a mutual proprietary interest in the net profits and having an obligation to share losses, or whether one party was the employee of the other; whether business was conducted in the joint name of the parties; whether the parties filed Federal partnership returns or otherwise represented that they were joint venturers; whether separate books of account were maintained for the venture; and whether the parties exercised mutual control over and assumed mutual responsibilities for the enterprise.") (internal citations omitted); *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"); *Deitch v. Comm'r*, T.C. Memo 2022-86 (a partnership "for tax purposes is generally a more inclusive term than 'partnership' at common law, and for tax purposes it may include entities not traditionally considered partnerships . . . . To decide whether a partnership exists, a court must also analyze the relevant facts" under the *Luna* factors). In *Bussing*, the parties entered into a multiparty sale lease-back transaction intended to qualify under *Frank Lyon*. In a sale lease-back transaction, rent payments generally offset amounts due under the debt incurred to purchase the asset, giving the purchaser-lessor an interest in the rent. Because of a remarketing agreement that enabled the seller-lessee to share along with the purchaser-lessor in the net residual value of the leased property and that the purchaser-lessor took the property subject to already existing debt and therefore bore a risk of loss if the debt was not repaid, the court determined this evidenced a partnership. In *Deitch*, a lender and creditor entered into a financing arrangement whereby certain loan documents exhibited terms that weighed against the finding of a debtor-creditor relationship and, thus, weighed in favor of finding a partnership for tax purposes (*e.g.*, lender entitled to a portion of net cash flow of the underlying property and a portion of gross sale proceeds that attempted to capture appreciation of the property's value). However, the Tax Court affirmed the principle espoused in *Luna* that no single factor is conclusive and accordingly held that the transaction, when viewed as a whole, did not establish a partnership for tax purposes despite certain partnership-like characteristics.

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1. Intent.

The test set forth in *Culbertson* is applicable in determining whether an agreement is treated as a partnership or as a lease.[105] The Lease specifically states that the parties do not intend to form a partnership or joint venture.[106] Likewise, the Lease recites that it is intended to be characterized as a true lease and that the parties shall reflect the Lease as such in all applicable books, records and reports, including income tax filings.[107]

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.[108] The Trust and the Master Tenant do not intend to pool either their capital or services. The Trust will make the Property available to the Master Tenant and will not participate in, or provide services to, the Master Tenant's business (except to the extent necessary to protect its investment in the Property). Similarly, the Master Tenant will not provide capital to enable the Trust to acquire or improve the Property and will not provide services to the Trust (except to the extent necessary to comply with its obligations under the 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.[109] The Master Tenant will have control over cash from the Property. However, the Master Tenant 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 Lease. The Trust and the Master Tenant will each earn a separate profit. The Master Tenant 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 Property. The Trust will receive rent from the Master Tenant, including a fixed base rent payment payable monthly, and a percentage of gross rents earned on an annual basis (with estimated payments being made to the Trust on a monthly basis).[110] The Lease does not provide for any rental payments based on net operating income or net cash flow from the operation of the Property. 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.

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

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105 *Comm'r v. Culbertson*, 337 U.S. 733 (1949).
106 *See* the Lease at § 23.16.
107 *See id.* at § 3.5.
108 *Bussing*, 88 T.C. 449; *Alhouse v. Comm'r*, T.C. Memo 1991-652.
109 *Luna v. Comm'r*, 42 T.C. 1067 (1964).
110 *See* the Lease at § 4.1.

enterprise if the requisite element of co-ownership is not established.[111] A profit share in a lease can be received by a lessor as rent without the lessor becoming a partner in the enterprise. 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 Lease, the Master Tenant receives rent from the sublease of the Property whereas the Trust receives rent from the Master Tenant. Under the Treasury Regulations, the sharing of gross rents, without more, is very unlikely to create a partnership arrangement.[112] The only sharing involved in the present case is the fact that the Trust might share in certain gross percentage rent, as a landlord and not as a partner, only to the extent such rent exceeds a set base.[113] Thus, the Trust and the Master Tenant should not be viewed as sharing in the net profits from the Property.

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,

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111 *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'g* 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"); *see also United States 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. United States*, 9 F.3d 623 (7th Cir. 1993) (same result); *Oblinger Trust v. Comm'r*, 100 T.C. 114 (1993); *cf. Bank of El Paso v. United States*, 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. United States*, 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 (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 (no partnership when joint sharing of profits because no obligation to contribute capital or share losses and no proprietary interest in profits); *Deitch*, T.C. Memo 2022-86 (50% of debtor's net cash flow from encumbered property nominally classified as interest; not recharacterized as a partnership); I.R.S. Priv. Ltr. Rul. 8003027 (Oct. 23, 1979); I.R.S. Gen. Couns. Mem. 36113 (Dec. 19, 1974); Rev. Rul. 75-43, 1975-1 C.B. 383.

112 Treas. Reg. § 1.761-1(a); Treas. Reg. § 301.7701-1(a)(2) (when an owner of farm land leases property to a farmer for a cash rental or a share of the crops, the lease does not necessarily result in a separate entity for federal income tax purposes).

113 *See* the Lease at § 4.1. As noted above, we believe that the limited categories of expenses included in Uncontrollable Costs (*i.e.*, real estate taxes and similar impositions, insurance and utilities, snow and ice removal and other unusual weather-related costs, the costs of complying with governmental requirements, and increased costs due to unionization) are sufficiently tied to historic and anticipated costs and discrete in nature such that the Lease should still be properly viewed as a true lease and not a deemed partnership. As such, the Uncontrollable Costs adjustment mechanism in the Lease should not be viewed as a sharing of profits or losses and, therefore, is not indicative of a deemed partnership.

especially when there was no agreement to share losses.[114] In this case, the Master Tenant will not share in losses generated from an ownership interest in the Property. Further, in the case of the Lease, the Trust will lease the Property to the Master Tenant, and will not share in losses, if any, sustained by the Master Tenant with respect to operating and subletting of the Property.

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.[115] 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.[116] Under the terms of the Lease, the Trust will have limited rights to participate in the management of the Property. The Master Tenant will have the right to manage the day-to-day operation of the Property. Any sublease by the Master Tenant does not require the consent of the Trust, so long as the term of such sublease terminates prior to the term of the Lease or meets certain conditions.[117] While any decision to sell or refinance the Property 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 Property and, therefore, does not support partnership characterization. In addition, the Trust Agreement grants the Beneficial Owners, or the Manager if no Beneficial Owner exercises its right, a right of first refusal upon the receipt by any Beneficial Owner of a bona fide Third-Party Offer.[118] This right is only operative upon the receipt of a Third-Party Offer, and the Beneficial Owner (or Manager, as the case may be) may only exercise such right on the same arm's length terms and conditions as contained in the bona fide Third-Party Offer. As such, the right of first refusal should not be viewed as a shared control arrangement.

7. Parties' Agreement and Conduct in Executing its Terms.

As stated above, the Lease specifically states that the parties do not intend to create a partnership or joint venture.[119] Additionally, we believe the terms of the Lease are not indicative of a financing arrangement, joint venture or management arrangement.

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114 *See Deitch*, T.C. Memo 2022-86 (the lender's entitlement to 50% of net cash flow meant that the parties "did not have equivalent interests in the [property's] income stream" and that the lender "was always guaranteed to receive what amounted to more than half of the income from the property, provided that the property was profitable"; although the court ultimately found that the arrangement gave parties control over the income and capital of the purported venture, the court's language implies that that the mere sharing of profit, but not loss, was not the critical factor in such determination).

115 *Joe Balestrieri and Co. v. Comm'r*, 177 F.2d 867 (9th Cir. 1949); *O'Connor v. Comm'r*, T.C. Memo 1960-70 (broker split profits but compensated for losses).

116 *See*, *e.g.*, *Grandview Mines*, 282 F.2d 700; *Haley*, 203 F.2d 815.

117 *See* the Lease at § 19.4.

118 *See* the Trust Agreement at § 6.4.

119 *See* the Lease at § 23.16.

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Accordingly, the parties' agreement and, to our knowledge, their conduct in executing its terms should not be indicative of a partnership for federal income tax purposes.[120]

8. Maintenance of Separate Books.

The Master Tenant is not obligated to keep books or records on behalf of the Trust,[121] and instead such tasks will be performed by the Manager or a third-party recordkeeping services provider on behalf of the Trust.[122]

9. Filing of Tax Returns or Other Partnership Action.

Pursuant to the Lease, no partnership returns will be filed and the parties are prohibited from otherwise acting or holding themselves out as partners in a partnership.[123] Each party is specifically required to reflect the transactions represented by the Lease in all applicable books, records and reports (including, without limitation, income tax filings) in a manner consistent with true lease treatment (*i.e.*, in a manner reflecting a relationship between a landlord and tenant).[124]

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,[125] this factor is not present here. In addition, any compensation of the Manager, if any, upon a sale of the Property is a matter of contract between the Trust and the Manager and should not give rise to a partnership between the Master Tenant and the Trust for federal income tax purposes.

B. Conclusion.

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120 *Sun Capital Partners III, LP v. New England Teamsters & Trucking Industry Pension Fund,* No. 16-1376 (1st Cir. 2019) (in deciding whether two private equity funds (the "**Funds**") had created a deemed partnership: "The fact that the Funds expressly disclaimed any sort of partnership between the Funds counts against a partnership finding as to several of the *Luna* factors."); *Deitch*, T.C. Memo 2022-86 (". . . loan documents executed by [the parties] could hardly have been more explicit in naming their relationship. Affirmatively, the documents stated that [the parties] were borrower and lender. Negatively, the documents expressly stated that [the parties] did not form a joint venture [and the parties] conducted themselves in accordance with the terms of the loan documents . . . .").

121 Under the Lease, the Master Tenant is obligated to provide the Trust, with respect to the Property, (i) an operating statement, (ii) a rent roll and (iii) a report describing any structural alterations. *See* the Lease at § 23.21. The Master Tenant is also obligated to provide the Trust certain other documentation or information related to the Property and the Lease. *See* the Lease at §§ 5.6, 18.4, 23.17 & 27.1.1. However, no provision of the Lease obligates the Master Tenant to keep books or records on behalf of the Trust.

122 *See* the Trust Agreement at § 5.3(c).

123 *See* the Lease at § 3.5; *Sun Capital,* No. 16-1376 (1st Cir. 2019) (in applying the *Luna* factors, recognized that "The Funds also filed separate tax returns . . . a fact which tends to rebut partnership formation."); *Deitch*, T.C. Memo 2022-86.

124 *See* the Lease at § 3.5.

125 *See, e.g.*, *Levy*, 91 T.C. 838; *Casebeer*, 909 F.2d 1360.

Baker McKenzie.

Based on these factors, the arrangement between and among the Trust and the Master Tenant should not give rise to a deemed partnership for federal income tax purposes.

VIII. The Beneficial Owners, via their Interests in the Trust, should be treated as the true owners of the Property rather than lessees for federal income tax purposes.

It is critical to the foregoing opinions and the intended functionality of the structure as set forth in the Memorandum that the Beneficial Owners, via their Interests in the Trust, be treated as the "true owners" of the Property for federal income tax purposes. In this regard, we must consider whether, in light of the arrangement between the Trust and the Development Authority of Fulton County (the "**Development Authority**"), the Purchasers, via the Trust, acquire and retain ownership of the Property from a federal income tax perspective. The key to making this analysis is determining whether or not the benefits and burdens of ownership are held by the Development Authority,[126] and is a question of fact "that must be ascertained from the intent of the parties as evidenced by the written agreements read in light of the attending facts and circumstances existing at the time the agreement was executed."[127] Because the Code does not define "ownership" for federal income tax purposes, this decision is delegated to the judiciary. We believe that, viewed in the light of two of the leading judicial analyses of the benefits and burdens of ownership (i.e., the *Grodt* test[128] and the "upside/downside" test),[129] the Beneficial Owners, via their Interests in the Trust, should be treated as the true owners of the Property rather than lessees for federal income tax purposes. The following discussion reviews the factors considered relevant by the *Grodt* and upside/downside tests.

A. The *Grodt* Test.

Under what has been referred to as the *Grodt* test, a number of factors determine if a true sale, and thus a transfer of ownership, has occurred.[130] No single factor determines whether a sale has occurred; rather, the facts and circumstances of the particular transaction determine the relative importance of each factor. Each such factor is discussed in turn below. We believe that, when viewed in the aggregate, under the *Grodt* test analysis, the Beneficial Owners, via their Interests in the Trust, should be treated as the true owners of the Property rather than lessees for federal income tax purposes.

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126 *See, e.g.*, FSA 200146025 (citing *Larsen v. Comm'r*, 89 T.C. 1229, 1267 (1987), *aff'd in relevant part, rev'd in part sub nom, Casebeer v. Comm'r*, 909 F.2d 1360 (9th Cir. 1990)).

127 *Haggard v. Comm'r*, 24 T.C. 1124, 1129 (1955).

128 *Grodt & McKay Realty, Inc. v. Comm'r*, 77 T.C. 1221 (1981).

129 The "upside/downside" test is essentially a grouping of case law that examines the upside/downside potential in certain tax-sensitive transactions in order to determine which party is the true owner for tax purposes. *See, e.g., American Nat'l Bank v. U.S.*, 421 F.2d 442 (5th Cir.), *cert. denied*, 400 U.S. 819 (1970); *Union Planters Nat'l Bank v. U.S.*, 426 F.2d 115 (6th Cir. 1970); *Citizens Nat'l Bank of Waco v. U.S.*, 551 F.2d 832 (Ct. Cl. 1977).

130 These same factors are used to determine whether a transaction is properly characterized as a true sale or a lease. *See, e.g.*, TAM 9748005 (Aug. 19, 1997) and TAM 9802002 (Sept. 18, 1997).

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1. Passage of legal title.

The "passage of title" factor focuses on whether official legal documentation has been entered into which reflects a transfer of legal ownership. The IRS has been flexible with this requirement, finding support for this factor by a mere showing that legal title is very likely to pass in the future.[131] Here, pursuant to the terms of the arrangement between the Trust and the Development Authority, legal title to the Property is already vested in the Development Authority as a result of its prior bond arrangement with the Seller. As such, this factor is supportive of ownership being held by the Development Authority, as opposed to being acquired by the Trust. However, as noted previously, no one factor is determinative in and of itself. For example, the IRS has issued guidance in other situations supporting the determination that a seller-lessee remains the true owner in a sale-leaseback transaction in which legal title transfers to a buyer-lessor.[132] Further, as will be shown below, the preponderance of the factors appear to support the position that the benefits and burdens of ownership have been acquired by the Trust.

2. Treatment of the transaction by the parties.

True ownership analysis also considers the intent of the parties, as evidenced by the form and formalities the parties have applied to the transaction at issue. In making the determination as to which party should be considered to be the true owner, one must consider whether the parties to the transaction have treated the transaction as a sale, and whether or not the transaction was reported and treated as a sale in all circumstances. Although the Bond Program follows certain of the legal formalities of a sale (e.g., passage of legal title) and leaseback, it is important to note that the Trust and the Development Authority will not report and treat these transactions as a sale under all circumstances. For example, although the Trust will make rental payments under the Bond Lease, the Development Authority and the Trust have agreed that the Trust will pay directly to itself moneys sufficient to provide for payment of the debt service on the Bonds. In this regard, the Trust will effectively be in the position of being both the lessor and the lessee. Further, the issuance of the Bonds itself is indicative of that fact that the parties did not intend that the original transaction be characterized as a sale of the Property to the Development Authority because the Bonds exist for the purpose of reducing the property tax to which the Trust would otherwise be subject in an actual sale-leaseback arrangement. Thus, although certain aspects of the Bond Program appear to be indicative of a sale-leaseback of the Property, when the transaction structure is viewed as a whole it is apparent that the parties are taking specific and detailed measures that actually go against such characterization. Because the Trust and the Development Authority do not treat the transaction as a sale-leaseback in all circumstances, we believe that this factor supports the

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131 *See* TAM 9748005 (Aug. 19, 1997) and TAM 9802002 (Sept. 18, 1997).

132 *Id.* In the "Japanese leveraged lease" ruling, despite the fact that legal title passed to the Japanese buyer-lessors, the IRS treated the U.S. taxpayers as the true owners and held that U.S. taxpayers were properly reporting their sale and leaseback transactions as arrangements in which the U.S. taxpayers remained the owners of the aircraft for federal income tax purposes, receiving a net taxable payment from the buyer-lessors.

proposition that the Trust acquired and will retain the benefits and burdens of ownership of the Property.

3. Acquisition of an equity interest in the property.

Acquisition of an equity interest in the property is another factor that is indicative of a party having taken an ownership interest in an underlying property. The hallmark of "equity" is that it takes the risk and profit from the success or failure of the underlying investment.[133] Here, the Development Authority does not take an equity interest in the property and its risk and profit in connection with the Bond Program is not tied up in the operation of the Property. As discussed above, the arrangement does involve certain of the hallmarks of the transfer of legal ownership, such as passage of legal title. The Development Authority's risk and profit in connection with this transaction, however, is not tied up in the operation of the Property. Instead, the Development Authority's benefit from the arrangement arises tangentially from the Trust's investment in the community. In other words, the Development Authority stands to benefit from an improvement to the economy of the community, but not from a share of the profits of the Property itself.[134] For example, the Development Authority must defend its title to the Property only if the Trust pays for such defense of title claims.[135] The Development Authority also agrees that it shall, upon request of the Trust, join where necessary in any proceeding to protect and defend the Development Authority's title in and to the Property, provided that the Trust shall pay the entire cost of any such proceeding, and reimburse and indemnify and hold harmless the Development Authority from any cost or liability whatsoever.[136] The Development Authority also acknowledges its fee simple interest and estate in the property is subordinate to any leasehold mortgage or any superior security documents and liens granted by the Trust.[137] Finally, the Trust has an ultimate obligation to repurchase the property from the Development Authority at the end of the lease term (i.e., when the tax abatement ends).[138] In this way, the equity-type economic participation in the Property's performance is reserved to the Trust.

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133 *See*, William T. Plumb, Jr., *The Federal Income Tax Significance of Corporate Debt: A Critical Analysis and a Proposal*, 26 TAX L. REV. 369 (1971).

134 Recall that the rents paid to the Development Authority under the Bond Lease are to be offset by the expense of the Bonds paid by the Development Authority.

135 Bond Lease at § 3.2.

136 *Id.*

137 *Id.* at § 3.5.

138 *Id.* at Article XII.

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4. Obligations of the seller to deliver a deed and the purchaser to make payments.

Recitation of formalities alone is not necessarily sufficient for a showing that true ownership of an underlying property has changed hands. This factor focuses on the documentation of a purported transaction and the actual payment of the recited purchase price. As noted previously, the original transaction followed certain of the hallmarks of a transfer of legal ownership, including the delivery of a deed transferring right, title and interest in the Property to the Development Authority. In this regard, this factor weighs in favor of the Development Authority having taken ownership of the Property, even for tax purposes. However, as that transfer was merely an accommodation under the Bond Program due to the requirements of the Georgia Constitution, the consideration in connection with the deed was a *de minimis* amount of $10. Thus, although some of the formalities of a transfer of ownership were observed, in light of the *Grodt* analysis the fact that the transfer occurred by virtue of a *de minimis* payment undercuts the substance of the "purchase" of the Property by the Development Authority. Hence, this factor serves as a basis for us to conclude that the original transaction, although on its face a transfer of ownership, should not be regarded in substance (and was not intended to be) a transfer of ownership.

5. Vesting of the right of possession, payment of income and property taxes after the transaction, and risk of economic loss or physical damage to the property.

We believe that this factor is likely one of the most important considerations under a true sale analysis.[139] Receipt of income alone is likely insufficient to establish true ownership for federal income tax purposes.[140] In other words, additional benefits and burdens of ownership must be present.[141] This "catchall" factor is supportive of the position that the Trust acquired and will retain true ownership of the Property.

For example, although the structure sets the Development Authority as the legal owner of the Property, as noted previously this has been effectuated as an accommodation of the Bond Program due to the requirements of the Georgia Constitution. The Trust will at all times retain possession of the Property and will be responsible for the operation and maintenance of the Property.

Further, although the Bond Program itself has been established as a means to provide property tax abatement benefits in Fulton County, ultimately the burden of property tax will remain with the Trust. The Trust will make payments to the Development Authority

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139 *See Frank Lyon Co. v. U.S.*, 435 U.S. 561 (1978); *see also* Rev. Proc. 75-21, 1975-1 C.B. 715; *superseded by* Rev. Proc. 2001-28, 2001-19 I.R.B. 1156 (May 7, 2001) and Rev. Proc. 2001-29, 2001-19 I.R.B. 1160 (May 7, 2001).

140 *See e.g.*, *Mapco v. U.S.*, 556 F.2d 1107 (1977); *see also, Hydrometals v. Comm'r*, 31 T.C.M. 1260 (1972).

141 *See Stranahan v. Comm'r*, 472 F.2d 867 (1973) (considering payment of dividends and reporting tax thereon in a true sale analysis).

on an increasing, graduated rate schedule intended to imitate a typical property tax abatement schedule. In this way, the Trust will be making *de facto* property tax payments.

Finally, the risk of economic loss and/or physical damage to the Property is borne by the Trust. As noted previously, the Development Authority's economic benefit from the Property arises tangentially in connection with the general benefit from an improvement to the economy of the community, but not from a share of the profits of the Property itself. In addition, the Development Authority derives benefits from payments under the Bond Program; however, these payments are designed to be perfectly offset by payments of rent under the Bond Lease. Further, the Trust's economic benefits and, perhaps more saliently, risk of loss are more closely tied to the performance of the Property. The Trust will incur a significant investment in acquiring, operating and maintaining its leasehold interest in the Property. Failure of the Property to generate income streams in the amounts projected will have a significant impact on the Trust's ability to generate a return on its investment. Further, the Trust will still be obligated to make the Bond Payments to the Development Authority under the terms of the Bond Documents. As the party responsible for operating and maintaining the Property, the Trust will also bear the economic brunt of any physical damage to the Property. Moreover, upon the expiration of the Bond Lease, the Trust is obligated to acquire the fee interest in the Property in return for a nominal sale price.[142]

6. Profit from the operation, retention and sale of the Property.

The potential for cash flow from operation of the underlying property, as well as the potential for additional profit from retention or sale of the ownership right of such property are relevant factors in determining the true owner for federal income tax purposes. Here, as discussed above, both parties will derive cash flow from the Property. The Development Authority will receive payments under the Bond Program, and the Trust will retain the operating revenues from the Property. We believe that the Trust's right to the operating revenues, as opposed to the Development Authority's right to receive what are essentially the equivalent of replacement property taxes, are more closely tied to the true ownership of the Property. In addition, for all intents and purposes the potential for profit from the retention or eventual sale of the Property inures to the benefit of the Trust as a result of its nominal $10 purchase option. Because the operational profits and the potential for disposition profits inure to the Trust, we believe that this factor supports the position that the Trust should be treated as the true owner.

Finally, in addition to the *Grodt* test factors the IRS has also stated that an "important factor in determining whether the property or only the income from the property has been transferred is who has control over the income flow."[143] Under the Bond Program, the

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142 Bond Lease at Article XII.

143 FSA 200146025 (citing *Thibodaux v. Comm'r*, 915 F.2d 992 (5th Cir. 1990); *United States v. Pirro*, 212 F.3d 86 (2d. Cir. 2000) ("It is a fundamental axiom, even in the criminal context, that tax consequences flow from the substance rather than the form of a transaction, and that 'control over property, rather than documentary title' marks the real owner for federal tax purposes"); *United States v. Atkins*, 869 F.2d 135,

Development Authority participates simply as a passive party, and exists merely as a conduit for the accommodation of the abatement of property taxes. The Trust, on the other hand, has a real economic investment in its leasehold interest in the Property and it (and its affiliates) are ultimately responsible for the operation of the Property on a day-to-day basis. As such, the Trust and not the Development Authority control the flow of income from the Property. Because the Trust controls the flow of income from the Property, and because the preponderance of the *Grodt* test factors appear to support the position that the Trust, and not the Development Authority, retains ownership of the Property, we believe that the Beneficial Owners, via their Interests in the Trust, should be treated as the true owners of the Property for federal income tax purposes.

B. The upside/downside test.

Under the upside/downside test, the ultimate inquiry into the tax ownership question involves an assessment of whether a lessor stands to realize a significant economic gain or incur a meaningful economic loss with respect to leased property.[144] Upside/downside is an economic concept that ignores both legal title and the rights and duties associated with the use of property during the lease term.[145] The courts have imposed two threshold hurdles before upside/downside will generally be examined: (i) it must be demonstrated that the purported lessor has retained something of value at the end of the lease; and (ii) it must be evident that the purported lessor has made a significant investment in the underlying property and, therefore, that a meaningful loss is possible. Each hurdle, and the upside/downside analysis are discussed in turn below.

1. Retention of value at the end of the lease.

A major consideration in determining whether a lessor has secured significant upside potential is whether the transaction allows the lessee to exploit substantially all of the leased property's value throughout its economic life, or merely provides the lessee with the temporary use of the property.[146] To be classified as the owner of leased property, a lessor must expect at the beginning of the transaction to receive a meaningful residual value at the end of the scheduled lease term.[147] Here, from the outset the Development Authority does not expect to receive a meaningful residual value at the end of the Bond Lease. On the contrary, the Trust is obligated to purchase the Property for a nominal amount at the end of the term of the Bond Lease. It is also important to consider whether the lessee retains possession of the underlying property for substantially all of its useful life. The IRS has required that at least 20% of the useful life remain at the end of leases, and has prohibited continued use of the property by the lessee for a nominal rent during the

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140 (2d Cir. 1989) (citing *Corliss v. Bowers*, 281 U.S. 376, 378 (1930), "taxation is not so much concerned with the refinements of title as it is with actual command over the property taxed.")).

144 Michael H. Simonson, *Determining Tax Ownership of Leased Property*, 38 TAX L. 1, 3 (1984) [hereinafter *Determining Tax Ownership of Leased Property*].

145 *Id*.

146 *Id*. at 4.

147 Rev. Proc. 75-21, 1975-1 C.B. 715.

remaining useful life.[148] Here, although the Trust has represented that a reasonable estimate of the remaining useful life of the Property at the end of its applicable lease term should equal the longer of one year or 20% of the originally estimated useful life of the Property, the Trust has the option to retain the Property for a longer period as a result of the *de minimis* purchase option. When considered in light of the policy considerations of the upside/downside test, this purchase option appears tantamount to nominal rent. While the presence of a fixed-price purchase option the price of which is negotiated based upon the property's expected fair market value does not preclude lease status,[149] here this *de minimis* purchase option weighs in favor of the Trust retaining ownership as it has no relation to the value of the Property at the end of the Bond Lease.

We believe that the above factors support the position that the Development Authority will not retain something of value at the end of the Bond Lease sufficient to satisfy the first hurdle of the upside/downside test. As such, we believe that the fact pattern at hand should not even rise to the level of upside/downside analysis under the relevant case law. Nevertheless, we continue the analysis below for further support of the conclusion that the Beneficial Owners, via their Interests in the Trust, should be treated as the true owners of the Property for federal income tax purposes.

2. Significant investment in the property.

A second critical consideration in determining tax ownership is whether a lessor has a "depreciable interest" in the leased property, because a nominal lessor cannot have downside risk unless he has something to lose.[150] Depreciation is not predicated upon ownership of property but upon an investment in it.[151] Thus, there is little justification for granting a lessor depreciation deductions if the lessor has not made a significant equity investment in the property.[152] Here, although the Development Authority foregoes a percentage of property taxes that are in effect abated under the Bond Program, the Development Authority does not make an investment in the Property. Only the Trust expends funds operating and maintaining the Property. As such, we believe that this factor also weighs in favor of the Beneficial Owners (via their Interests in the Trust), and not the Development Authority, being the true owners of the Property. Because the Development Authority will not make a significant investment in the Property, the second hurdle of the upside/downside test is not met and the fact pattern at hand should not even rise to the level of upside/downside analysis under the relevant case law. However, we again continue the analysis below for further support of the conclusion that the Beneficial Owners, via their Interests in the Trust, should be treated as the true owners of the Property for federal income tax purposes.

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148 *Id*.

149 *See Lockhart Leasing Co. v. Comm'r*, 54 T.C. 301 (1970).

150 *Determining Tax Ownership of Leased Property*, *supra* note 144, at 18.

151 *Gladding Dry Goods Co. v. Comm'r*, 2 B.T.A. 336, 338 (1925).

152 *See, e.g., Hilton v. Comm'r*, 74 T.C. 305 (1980), *aff'd*, 671 F.2d 316 (9th Cir.), *cert. denied*, 459 U.S. 907 (1982); *Narver v. Comm'r*, 75 T.C. 53 (1980), *aff'd*, 670 F.2d 855 (9th Cir. 1982); *Rice's Toyota World v. Comm'r*, 81 T.C. 184 (1983).

3. Retention of upside potential and downside risk.

As noted above, we do not believe that the facts at issue will satisfy the two hurdles necessary before the upside/downside analysis is required. However, even if this transaction were to be analyzed under the upside/downside case law, we believe that, for the reasons outlined under the analysis of the *Grodt* factors above, the preponderance of the upside potential and down side risk will inure to the Trust as opposed to the Development Authority.

Based on our consideration of the *Grodt* and upside/downside tests, we conclude that the Beneficial Owners, via their Interests in the Trust, and not the Development Authority, should be treated as the true owners of the Property for federal income tax purposes.

C. Neither the *Danielson* standard nor the "strong proof" standard should alter the foregoing conclusions.

Notwithstanding the *Grodt* and upside/downside tests' analyses provided above, it is possible that the IRS could assert that the parties to the Bond Lease and related Bond Program documents cannot disavow their forms and should instead be bound by the technical form of the transaction, *i.e.,* the Development Authority should be treated as the "true owner" of the Property for federal income tax purposes because the Bond Lease facially purports to be a lease for nontax purposes. Based on the following reasoning, we believe that the parties should not be bound to report the Bond Lease as a "true lease" for federal income tax purposes.

As described above, the IRS may employ common law doctrines to recast a transaction in a manner that comports with the underlying substance of the transaction, notwithstanding its form. This is relevant in leasing transactions, as courts have held that the vesting of title in property to a party is *prima facie* evidence that such party is the owner of the property for federal income tax purposes.[153] However, taxpayers have also availed themselves of these doctrines to disavow the form of a transaction and claim federal income tax treatment consistent with the substance of the transaction.[154] Courts have not created a unified, definitive standard by which a taxpayer may disavow its chosen transaction form, but generally two primary approaches have emerged. The first is commonly referred to as the "strong proof" standard that has been adopted by several circuits, whereby a taxpayer may disavow its chosen form if the taxpayer has "strong proof" to support its alternate form.[155] The second is the "*Danielson*"[156] standard, whereby a taxpayer may disavow its chosen form only by proving that the contract between the parties should be disregarded on the

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153 *Coleman v. Commissioner*, 87 T.C. 178, 204 (1986); *Illinois Power Co. v. Commissioner*, 87 T.C. 1417, 1433 (1986).

154 *Complex Media. Inc. v. Commissioner*, T.C. Memo 2021-14; *Pac. Gamble Robinson v. Commissioner*, T.C. Memo 1987-533.

155 *Schultz v. Commissioner*, 294 F.2d 52 (9th Cir. 1961); *Ullman v. Commissioner*, 264 F.2d 305 (2d Cir. 1959); *Krieder v. Commissioner*, 762 F.2d 580, 586-87 (7th Cir. 1985); *Major v. Commissioner*, 76 T.C. at 249; *Muskat v. United States*, 554 F.3d 183 (1st Cir. 2009).

156 *See Commissioner v. Danielson*, 378 F.2d 771 (3rd Cir. 1967).

grounds of mistake, fraud, undue influence, or similar grounds.[157] Although the Tax Court generally follows the strong proof standard,[158] the Tax Court might be obligated to follow the stricter *Danielson* standard if an appeal from a court would be made to a circuit that applies the *Danielson* standard. We examine each standard in turn below.

1. "Strong Proof" Standard

Under the strong proof standard, a taxpayer must generally show "strong proof" that a transaction's substance is inconsistent with its form.[159] Courts have generally held that at least a preponderance of evidence is required to show that the terms of the transaction documents do not reflect the intentions of the contracting parties,[160] whereas some courts have required more than a mere preponderance.[161] To determine the intent and substance of a transaction, courts have adopted a facts and circumstances analysis, and indicated that where the parties to a transaction have clearly documented their intent (despite a contradictory form of transaction) and each party has consistently and accurately reported their treatment of the transaction in a manner that does not subject the IRS to contradictory positions (*i.e.*, "whipsaw"), taxpayers should not be *per se* bound to the chosen form of transaction.[162]

In the context of leasing transactions, the IRS and courts have viewed the vesting of title in a party as *prima facie* evidence that the party is the owner of such property for federal income tax purposes.[163] However, taxpayers have successfully rebutted this *prima facie* evidence by showing that (i) the overall substance of the structure caused the profits and

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157 *Elrod v. Commissioner*, 87 T.C. 1046, 1066 (1986) ("[The Tax] Court has not adopted the *Danielson* rule as set forth by the Court of Appeals for the Third Circuit . . . . Inasmuch as this case would be appealable to the Court of Appeals for the Fourth Circuit, we are not bound to apply this rule in the instant case . . . . The strong proof rule is a standard applied by this Court.").

158 *See, e.g.*, *Dev. Corp. of Am. v. Commissioner*, T.C. Memo 1988-127 ("[W]hile we still adhere to our strong proof standard, we are bound to apply the *Danielson* rule in the instant case.").

159 *Penn-Dixie Steel Corp. v. Commissioner*, 69 T.C. 837, 842 (1978); *Pac. Gamble Robinson v. Commissioner*, T.C. Memo 1987-533.

160 *Elrod v. Commissioner*, 87 T.C. at 1066 ("The strong proof standard requires the taxpayer to present 'strong proof,' that is, more than a preponderance of the evidence, that the terms of the written instrument do not reflect the actual intentions of the contracting parties.").

161 *Illinois Power Co. v. Commissioner*, 87 T.C. 1417, 1434 n. 15 (1986) ("A precise definition of 'strong proof' has not been articulated. Suffice it to say that the strong proof standard requires a showing of somewhat more than a preponderance of the evidence and somewhat less than the so-called '*Danielson* test.'").

162 *Comdisco v. United States*, 756 F.2d 569 (7th Cir. 1985) (the court found "no reason to extend the [IRS's] power to hold a taxpayer to the technical form of its transactions to situations in which the [IRS] will never face conflicting claims . . . we abandon the approach that binds a taxpayer to the labels given to a transaction in favor of an analysis that looks at the economic substance of the transaction."); *Weinert's Estate v. Commissioner*, 294 F.2d 750, 755 (5th Cir. 1961) ("The taxpayer too has a right to assert the priority of substance—at least in a case where his tax reporting and actions show an honest and consistent respect for the substance of a transaction.").

163 *Coleman v. Commissioner*, 87 T.C. 178, 204 (1986). In *Coleman*, the Tax Court ruled against the taxpayer because it failed to establish that the taxpayer had a present economic interest in the leased property because insufficient residual value of the equipment remained at the time that the taxpayer's contingent right to payments would arise. 87 T.C. at 208.

losses attributable to the property's use to inure to the taxpayer, and (ii) the taxpayer consistently took and fully disclosed the position that despite the form of the transaction, the parties did not treat the lease as a "true lease" for federal income tax purposes.[164] Thus, we believe the analysis depends on whether the parties to a lease can show that demonstrable benefits and burdens of ownership lie with the intended owner and both parties to the transaction treat the transaction consistently for federal income tax purposes.

Applied to the instant transaction, we believe that sufficient evidence exists to satisfy the strong proof standard and disavow the form of the Bond Lease. Under the Bond Lease, the Trust is responsible for the payment of "all taxes and governmental charges of any kind whatsoever upon or with respect to the [Property]."[165] It has been represented to us that, to the best of the Company's knowledge and prior to the assumption of the Bond Lease by the Trust, each of the Development Authority and the Seller have consistently reported and treated the Seller as the "true owner" of the Property for federal income tax purposes. In addition, it has been further represented to us that the Trust and the Development Authority shall report the Trust's ownership of the leasehold interest in the Property under the Bond Lease as ownership of the Property for federal income tax purposes. Finally, and as described in detail above under the *Grodt* and upside/downside tests' analyses, we believe that sufficient indicia exist to claim that the benefits and burdens of ownership inure to the nominal lessee under the Bond Lease, such that the Beneficial Owners (as the owners of the Trust) should be treated as the "true owners" of their respective fractional interests in the Property.

2. *Danielson*

Under the *Danielson* standard, a taxpayer may not challenge the tax consequences of an agreement (*i.e.*, the form of the transaction) except to provide proof that, in an action between the parties, would be admissible to alter the construction of the agreement because of mistake, fraud, or other indicia of unenforceability.[166] In rendering the *Danielson* decision, the Third Circuit articulated three reasons for this rule: (i) a contrary rule might result in unjust enrichment of one contracting party because tax consequences are presumed taken into account in the bargaining process; (ii) to permit taxpayers to challenge their stated agreements, even when laboring under a burden of "strong proof," would nullify the reasonably predictable tax consequences of the agreement to the other party such that participants to future transactions would be unwilling to pay for tax benefits that would not be realized if the other party could readily disavow the form; and (iii) the rule is necessary to minimize the administrative burden on the IRS relating to potential whipsaw problems where the two parties take inconsistent positions.[167]

In applying the *Danielson* standard, several courts have limited applicability of the *Danielson* standard based on these justifications. In particular, courts have viewed the

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164 *Illinois Power*, 87 T.C. 1417.
165 *See* the Bond Lease at § 6.3(a).
166 *Danielson*, 378 F.2d 771.
167 *Id.* at 755.

Danielson standard as appropriate only in situations where one party to a transaction claims tax benefits based on the form agreed upon by the parties, and the counterparty subsequently (or concurrently) wishes to disavow the transaction form and also enjoy tax benefits.[168] In addition, the IRS itself has elected to not apply the *Danielson* rule to fact patterns that involve a disavowed lease where substance supports the parties' intended characterization for federal income tax purposes.[169]

Based on the above, the *Danielson* standard should be inapplicable to the instant transaction. Pursuant to the Bond Lease, the Development Authority is not subject to federal income taxation, and therefore should not be negatively impact by the Trust being treated as the owner of the Property for federal income tax purposes.[170] This fact should nullify both the first and second justifications of the *Danielson* rule, as the Development Authority should be unaffected by the Trust's tax reporting of its owners of the Property. Similarly, treatment of the Trust as the owner of the Property for federal income tax purposes should not create a potential "whipsaw" effect to the IRS, as the Development Authority's treatment of the Property would be irrelevant; consequently, the third justification for the *Danielson* rule should be inapplicable. Because none of the justifications for applying the *Danielson* rule are present, and because the IRS has elected to not apply the *Danielson* standard in leasing situations that do not trigger these justifications, we believe that the IRS should not be successful in attempting to recast the intended federal income tax treatment of the Trust as the owner of the Property.

Even assuming for the sake of argument, however, that the justifications for the *Danielson* standard discussed above supported restricting the parties' tax treatment of the Bond Lease to the form of a lease, courts have generally allowed taxpayers to disregard the form of a transaction when all parties' tax reporting of that transaction show an honest, good faith and consistent respect for the substance of the transaction.[171] This general exception to the *Danielson* rule was noted by the Tax Court:

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168 *Comdisco v. United States*, 756 F.2d 569, 577 (7th Cir. 1985) ("Often called the *Danielson* rule, the disparate treatment arose and has since been applied in cases where two parties to a deal have both sought to acquire beneficial tax treatment . . . . The form of the deal usually results in one party claiming the benefits. If the second party later disavows the form of the deal, the [g]overnment would be faced with the prospect of having to proceed against both taxpayers to resolve who should receive the advantageous treatment.").

169 TAM 9307002 (even though a party to a lease does not hold legal title to the property, "it would not be appropriate to bind the taxpayer to the form chosen for the transaction when substance requires a different result.").

170 *See* the Bond Lease at § 6.3(a).

171 *Taiyo Hawaii Co. Ltd. v. Commissioner*, 108 T.C. 590 (1997) citing *FNMA v. Commissioner*, 90 T.C. 405, 426 (1988) (stating "petitioner's tax reporting and other actions have not shown such an honest and consistent respect for what it now claims to be the substance of the resale/refinance transactions," which suggests that honest and consistent reporting would be probative with respect to a substance-over-form argument); *Illinois Power Co. v. Commissioner*, 87 T.C. 1417 (1986), *aff'd* 896 F.2d 580 (D.C. Cir. 1990) ("Resort to substance is not a right reserved for the Commissioner's exclusive benefit, to use or not to use—depending on the amount of the tax to be realized. The taxpayer too has a right to assert the priority of substance—at least in a case where his tax reporting and actions show an honest and consistent respect

> The rule binding taxpayers to the form of their transaction is not an absolute . . . . Resort to substance is not a right reserved for the Commissioner's exclusive benefit, to use or not to use—depending on the amount of the tax to be realized. The taxpayer too has a right to assert the priority of substance—at least in a case where his tax reporting and actions show an honest and consistent respect for the substance of a transaction.[172]

In FSA 200206010, the IRS distilled these cases into a list of factors which, if satisfied, would allow a taxpayer to affirmatively invoke substance-over-form to disregard the form of its own transaction.[173] The IRS provided four requirements that must be satisfied for a taxpayer to assert substance-over-form:

(i) the taxpayer must not be seeking to disavow its own tax return treatment for the transaction;

(ii) the taxpayer must show an honest and consistent respect for the substance of the transaction;

(iii) the taxpayer must not be unilaterally attempting to recast the transaction to obtain tax benefits with the perspective of hindsight; and

(iv) the taxpayer must not be unjustly enriched by disallowing the form of a transaction and belatedly changing a deal after well-informed negotiations.[174]

Based on the above factors, the Beneficial Owners, via their Interests in the Trust, should be allowed to disregard the form of the Bond Lease as a lease and treat the Trust as the owner of the Property for federal income tax purposes. It has been represented to us that (i) the parties to the Bond Lease have and will continue to honestly and consistently treat the tenants of the Bond Lease as the true owners of the Property for the periods they hold the leasehold interest pursuant to the Bond Lease, (ii) none of the parties to the Bond Lease will seek to disavow their treatments of the Property on their tax returns or treat ownership

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for the substance of a transaction.") (emphasis added) (quoting *Weinert's Estate v. Commissioner*, 294 F.2d 750, 755 (5th Cir. 1961)) (citing *Comdisco*, 756 F.2d at 578).

172 *Estate of Durkin v. Comm'r*, 99 T.C. 561, 572, 573 (1992). In *Durkin*, the case was appealable to the Third Circuit, which authored *Danielson*. *Id.* at 573. Thus, the Tax Court examined whether the transaction at issue could be respected on its substance even though the *Danielson* rule otherwise applied. *See id.* at 573-576.

173 FSA 200206010 (Feb. 8, 2002).

174 *Id.* (citing *Durkin*, 99 T.C. at 574-75).

of the Property in any manner that is not honest and consistent, (iii) none of the parties to the Bond Lease will seek to unilaterally recast the transaction in a manner inconsistent with treating the Trust as the true owner of the Property, and (iv) none of the parties to the Bond Lease will treat the Bond Lease as a true lease, and thus treatment of the Trust as the true owner of the Property will not belatedly change the deal. Given the foregoing, treating the Trust as the true owner of the Property will not unjustly enrich the Trust by belatedly changing the deal between the Trust and the Development Authority or the Trust and the Seller. For the reasons above and presuming the form of the Bond Lease is that of a lease, the form of the Bond Lease should be disregarded and the Beneficial Owners, via their Interests in the Trust, should be treated as the true owners of the Property rather than lessees for federal income tax purposes.

IX. The discussions of the federal income tax consequences contained in the Memorandum are correct in all material respects.

We have reviewed the discussion of federal income tax consequences contained in the Memorandum, and we believe that it is correct in all material respects. Our opinion, however, does not address whether the exchange entered into by a Purchaser satisfies all of the requirements of Section 1031.

X. Certain judicially created doctrines should not apply to change the foregoing conclusions.

There are a number of judicially created doctrines that may conceivably apply to the Trust's contractual arrangements, including the economic substance, the 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.

A. Economic Substance and Business Purpose.

1. Applicable Rules.

Taxpayers generally are free to structure their business transactions as they please, even if motivated by tax avoidance considerations.[175] While a transaction with no purpose other than to reduce taxes will not be recognized for 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.[176]

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175 *See Gregory*, 293 U.S. 465; *Rice's Toyota World v. Comm'r*, 81 T.C. 184, 196 (1983), *aff'd in part, rev'd in part and rem'd*, 752 F.2d 89 (4th Cir. 1985).

176 *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 . . . [t]he 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*, 157 F.3d at 248 n.31 ("[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

In *Frank Lyon Co. v. United States*,[177] 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.[178]

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.*,[179] 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."[180] 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.[181] 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.[182]

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merely because it was motivated by tax considerations. In analyzing both the objective and subjective aspects of [the] 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."); *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.").

177 435 U.S. 561 (1978).

178 *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).

179 81 T.C. 184 (1983), *aff'd in part, rev'd in part and rem'd*, 752 F.2d 89 (4th Cir. 1985).

180 *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).

181 *Casebeer*, 909 F.2d at 1363; *accord Lerman v. Comm'r*, 939 F.2d 44, 53-54 (3d Cir. 1991) (noting that a sham transaction is defined as a transaction that "has no business purpose or economic effect other than the creation of tax deductions" and holding that the taxpayer was not entitled "to claim 'losses' when none in fact were sustained").

182 *Id.* at 1363; *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; *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

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 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.[183] Other courts, however, have been reluctant to propose a threshold amount.[184]

In *United Parcel Service of America, Inc. v. Commissioner*,[185] the Eleventh Circuit reversed the Tax Court[186] 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's 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."[187]

The economic substance doctrine was developed under an extensive body of case law prior to being codified as Section 7701(o) as part of the Reconciliation Act of 2010.[188] Before the economic substance doctrine under Section 7701(o) can be applied to a transaction, it is important to ask whether the economic substance doctrine is relevant to such transaction. 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 has never been enacted."[189] 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."[190] This suggests that the economic substance doctrine as codified will be applied as it historically has been

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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).

183 *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).

184 *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).

185 254 F.3d 1014 (11th Cir. 2001), *rev'g* T.C. Memo 1999-268.

186 T.C. Memo 1999-268.

187 *United Parcel Service of America, Inc*., 254 F.3d at 1019.

188 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." Section 7701(o)(5)(A).

189 *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.").

190 *Id.*

applied under the case law. However, taxpayers should anticipate that the courts and the IRS could apply the specific language of the statute.

The Joint Committee Report provides for two types of transactions that are not considered relevant for purposes of the economic substance doctrine: (i) transactions giving rise to the realization of tax benefits consistent with the intent of Congress; and (ii) certain basic business transactions that are respected "under longstanding judicial and administrative practice."[191] Regarding the first category of transactions to which the economic substance doctrine is not relevant, the Joint Committee Report states that "[if] the realization of the tax benefits of a transaction is consistent with the Congressional purpose or plan that the tax benefits were designed by Congress to effectuate, it is not intended that such tax benefits be disallowed."[192] Regarding the second category of transactions to which the economic substance doctrine is not relevant, the Joint Committee Report states that Section 7701(o) "is not intended 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."[193] The Joint Committee Report further provides that the economic substance doctrine does not apply to the following four basic business transactions: (i) the choice between capitalizing a business enterprise with debt or equity; (ii) a U.S. person's choice between utilizing a foreign corporation or a domestic corporation to make a foreign investment; (iii) the choice to enter a transaction or series of transactions that constitute a corporate organization or reorganization under subchapter C of the Code; and (iv) the choice to use a related-party entity in a transaction, provided that the arm's length standard of Section 482 and other applicable concepts are satisfied.[194]

The legislative history to Section 7701(o) provides limited guidance as to whether the economic substance doctrine applies in the first instance. Specifically, in House Report 111-443 (the "**House Report**"), the House Budget Committee explained 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."[195] 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."[196]

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**").[197] The LB&I Directive lists factors tending to show that it likely would be

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191 *Id.* at 152-53.
192 *Id.* at 152 n. 344.
193 *Id.* at 152.
194 *Id.* at 152-53.
195 H.R. Rep. 111-443 at 296.
196 *Id.*
197 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). Comments from members of the

inappropriate to apply the economic substance doctrine, such as if (i) the transaction was not highly structured, (ii) the 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.[198]

If a transaction is relevant and thus subject to the economic substance doctrine, Section 7701(o) codifies the position, already taken by many courts, that the economic substance doctrine entails application of a conjunctive test.[199] Specifically, 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: (1) it changes in a meaningful way (apart from any 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. Before enacting Section 7701(o), some circuit courts of appeal would only require a change in economic circumstances or a business purpose. By enacting 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.

2. Analysis.

The Trust's contractual arrangements should be recognized for federal income tax purposes according to their form. As discussed above, the economic substance doctrine does not apply to certain basic business transactions, including a U.S. person's choice between utilizing a foreign corporation or a domestic corporation to make a foreign investment. Although the use of DSTs to invest in real properties is not a transaction that is specifically included in the list of basic business transactions in the Joint Committee Report that are not subject to the economic substance doctrine, the transaction pertaining to "a U.S. person's choice between utilizing a foreign corporation or a domestic corporation to make a foreign investment" speaks to the general issue of how a taxpayer structures investments, such that the type of entity used by a taxpayer to structure an investment (*i.e.*, a corporation, partnership, or trust) should arguably be considered a basic business transaction that is not relevant and to which the economic substance doctrine is not applicable. Accordingly, the holding by the Beneficial Owners of the Property through the Trust should be treated as a transaction that is not relevant for purposes of Section 7701(o), such that the economic substance doctrine should not apply.

Even if for the sake of argument, however, the holding by the Beneficial Owners of the Property through the Trust were treated as a transaction that is relevant for purposes of

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IRS suggest that the IRS does not consider the LB&I Directive to represent substantive guidance for taxpayers. *See* Lee A. Sheppard & Jeremiah Coder, *What Does the Economic Substance Directive Mean?*, 2011 TAX NOTES TODAY 205-5 (Oct. 24, 2011). Even so, the LB&I Directive provided insight into the IRS's understanding of Section 7701(o).

198 LB&I Directive.

199 *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 at 1014.

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Section 7701(o), such transaction should be respected because (i) the Beneficial Owners' economic positions are meaningfully changed as a result of entering into the transactions herein; and (ii) there is a substantial purpose (apart from federal income tax effects) for the Beneficial Owners for entering into the transactions. Such substantial purpose is to enable each Beneficial Owner to be treated as a direct owner of a portion of the Property for federal income tax purposes. Furthermore, each Beneficial Owner's economic position changes in a meaningful way as it will be given an opportunity to own an interest in the Property in a manner that it might not otherwise be able to do on its own accord due to its respective individual financial limitations. In addition, each Beneficial Owner will have a right to its *pro rata* share of all income and loss generated by the bona fide, profit-seeking business of operating the Property, and the allocation of all economic benefits and burdens associated with the Property will correspond to the respective Interest owned by each Beneficial Owner. For the foregoing reasons, the transactions and contractual arrangements herein should be respected under the economic substance doctrine.

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.[200] In contrast, an economic sham is a transaction that has occurred, but is devoid of economic substance.[201] 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.[202]

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.[203] 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.[204] The Third Circuit nevertheless recognized that "it

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200 *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); Brion D. Graber, *Can the Battle be Won? Compaq, the Sham Transaction Doctrine, and a Critique of Proposals to Combat the Corporate Tax Shelter Dragon*, 149 U. PA. L. REV. 355, 362-63 (Nov. 2000).

201 *Gregory*, 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 in order to reduce his taxes, will also be so transparently arranged that they can candidly be labeled 'shams.'"), *cert. denied*, 385 U.S. 1005 (1967); *Alessandra v. Comm'r*, T.C. Memo 1995-238.

202 *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.

203 157 F.3d 231, 263 (3d Cir. 1998).

204 *Id.* at 247.

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."[205] The transaction at issue in *Boca Investerings Partnership v. United States*[206] 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*[207] 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. 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.[208] As a result, Compaq could credit the foreign taxes associated with the dividend.[209] The Eighth Circuit came to a similar conclusion in *IES Industries, Inc. v. United States*,[210] which reversed a district court decision that a purchase and sale of ADRs were sham transactions.

There are a number of cases in this area that are difficult to reconcile. Nevertheless, the main point that appears to underlie all of the cases is the principle enunciated by Judge Learned Hand in *Gregory v. Helvering—i.e.*, that tax motivated transactions are not *per se* invalid, provided there is some non-tax business purpose for the transaction.[211]

2. Analysis.

The sham transaction doctrine should also not apply to recharacterize the Trust's contractual arrangements because all of the component steps necessary to implement the proposed contractual arrangements will actually occur. Moreover, the economic sham concept should not apply to the instant case because the parties have a substantial business purpose in undertaking the investment in the Interests, and, as discussed above, the

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205 *Id.* at 248, fn. 31.
206 167 F. Supp. 2d 298 (D.D.C. 2001).
207 277 F.3d 778 (5th Cir. 2001), *rev'g* 113 T.C. 214 (1999).
208 *Id*. at 786-87.
209 *Id*. at 788.
210 253 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).
211 69 F.2d 809, 810 (2d Cir. 1934) ("Anyone 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.") *aff'd* 293 U.S. 465 (1935).

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 by tax avoidance considerations.[212] 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."[213]

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 *Gregory*, 'what was done.'"[214] "To determine the substance of the transactions, we consider all of their aspects that shed any light upon their true character."[215]

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.[216] 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.[217] 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."[218]

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212 *See Gregory*, 293 U.S. 465 (1935); *Rice's Toyota World*, 81 T.C. at 196.
213 *AWG Leasing Trust v. United States*, 592 F. Supp. 2d 953 (N.D. Ohio 2008).
214 *Principal Life Ins. Co. & Subs. v. United States*, 70 Fed. Cl. 144 (2006).
215 *Communications Satellite Corp. v. United States*, 625 F.2d 997, 1000 (1980).
216 *Court Holding Co.*, 324 U.S. 331.
217 *See*, *e.g.*, *ACM Partnership*, 157 F.3d at 263 (3d Cir. 1998); *Boca Investerings Partnership,* 167 F. Supp. 2d 298.
218 69 F.2d 809, 810 (2d Cir. 1934) *aff'd* 293 U.S. 465 (1935).

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.[219] 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.[220]

The Tax Court applied both the end result and mutual interdependence tests in *Andantech, LLC v. Commissioner*.[221] In *Andantech*, 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. 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.[222] 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.[223] 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*.[224] 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.[225] 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.[226] 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

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219 Stephen S. Bowen, *The End Result Test*, 72 TAXES 722 (December 1994).

220 *Esmark, Inc. 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 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).

221 T.C. Memo 2002-97.

222 *Id*.

223 *Id*.

224 490 F.2d 241, 247 (2d Cir. 1973).

225 *Id*. at 245.

226 *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.").

mere fact that a taxpayer considers the federal income tax effects of a transaction in its planning should not transform a non-taxable event into a taxable event.

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 Beneficial Owners of an undivided fractional interest in the Property, and there is a substantial business purpose for such form. Moreover, the allocation of all economic benefits and burdens associated with the Property corresponds to the respective Interest in the Trust owned by each Beneficial 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 the Trust's contractual arrangements. In this case, the Purchasers constitute a separate, diverse and unrelated group desiring to acquire a portion of the Property as offered by the Trust under a private placement of the Interests. Thus, the ultimate result of the contractual arrangements (*i.e.*, collective ownership of the Property by an unrelated group of Purchasers) can only be achieved if the intermediate steps of (i) the Trust acquiring the Property and (ii) offering the Interests for sale to the Purchasers are each first undertaken. Thus, the step transaction doctrine should not be applied to recharacterize the transaction steps utilized to implement the proposed contractual arrangement. Moreover, even if the IRS were to collapse the transaction steps together, the resulting transaction (a direct purchase of the Property by the Purchasers) 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 Purchaser must consult his, her or its own tax counsel about the tax consequences of an investment in an Interest.

This opinion is solely for your information and assistance with respect to the sale of Interests in the Property. Each prospective Purchaser is encouraged to consult with his, her or its tax advisor in determining whether to purchase an Interest. Other than as set forth herein, this opinion may not be relied upon, circulated, quoted or otherwise referred to by any other person or for any other purpose, including in connection with any other transaction or arrangement nor may copies of this opinion be delivered to any other person without our prior written consent. This opinion does not address any tax consequences of the acquisition of an Interest other than those specifically addressed herein. This opinion is not applicable as to any individual tax consequences of a Purchaser or the individual application of the Section 1031 rules to such Purchaser. Our willingness to render the

Baker McKenzie.

opinion set forth herein neither implies, nor should be viewed as implying, any approval or recommendation of an investment in the Property.

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 opinions 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. In addition, the opinions and conclusions contained herein are based upon Baker & McKenzie LLP's review of the Business Documents, the Representation Letter, and the documents obtained and reviewed while conducting due diligence in the course of preparing the Offering. As a result, the opinions and conclusions contained herein cannot and do not speak to any facts or analysis relating to documents, arrangements, or other items not obtained prior to the date of this opinion or the Offering.

****

This opinion is written to support the promotion and marketing of the proposed transaction, and each prospective Purchaser should seek advice based on the Purchaser'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 Purchasers. This opinion may be relied upon by Purchasers in connection with their purchase of Interests, but may not be relied upon, circulated, quoted or otherwise referred to by any other person or for any other purpose, including in connection with any other transaction or arrangement nor may copies of this opinion be delivered to any other person without our prior written consent.

Very truly yours,

Baker & McKenzie LLP

Baker & McKenzie LLP

EXHIBIT E

INVESTOR QUESTIONNAIRE AND PURCHASE AGREEMENT

[ATTACHED]

Offeree Name:_____ Memorandum Number:_____

JWCM VIVIAN, DST
Investor Questionnaire & Purchase Agreement

Dear Investor:

We would like to take this opportunity to thank you for your interest in JWCM Vivian, DST. In order to complete the closing of this transaction, please provide the following information regarding your desired investment:

Type of Investment:

☐ Section 1031 tax-deferred exchange. (If selected, please complete Section III).

☐ Section 1033 tax-deferred exchange.

☐ Cash Investment.

Amount of Equity Investment: $_____

If a Section 1031 tax-deferred exchange or Section 1033 tax-deferred exchange was selected above, please also provide the following information:

(a) Anticipated or actual closing / conversion date of relinquished property: _____

(b) Relinquished property tax basis (as reported on most recent tax return): $_____

(c) Relinquished property proceeds: $_____

(d) Relinquished debt: $_____

Funds to Close: Please indicate how you will be purchasing your interest.

☐ Funds will be wired or sent by check by my qualified intermediary (the holder of the exchange proceeds from my relinquished property).

☐ Funds will be wired by me.

☐ I have enclosed a **check made payable to JWCM Vivian, DST**.

In addition, in order to complete the closing of your investment, the following information is required:

☐ **Investor Questionnaire** (attached): please complete, sign and date.

☐ **Purchase Agreement** (attached): please complete, sign and date.

☐ **Accreditation Letter of Accredited Investor Status** (attached): please complete, sign and date.

☐ **Entity Documentation** (i.e., trust certificate and trust agreement, as amended; corporate bylaws; partnership agreement; operating agreement; resolution, as applicable). Please note that the documentation submitted **must include documents evidencing signing authority** and should include any and all amendments.

☐ **Government-Issued Photo ID**: Please provide a copy of a valid passport for all individuals signing the Purchase Agreement on behalf of the subscriber(s).

Please complete and return all documentation to: JWCM Vivian, DST, c/o Orchard Securities, LLC, 365 South Garden Grove Lane, Suite 100, Pleasant Grove, Utah 84062 or via email to ops@orchardsecurities.com. **JWCM Vivian, DST reserves the right to request additional documentation and information as necessary.**

Ownership Information/Registration Name:_____
Please note that if this is a Section 1031 or Section 1033 tax-deferred exchange, the replacement property must be held in exactly the same name as the relinquished property. List the name(s) exactly as they appeared on the title of the relinquished property.

Check applicable ownership type:

☐ Individual[1]

☐ Joint Tenants with Right of Survivorship[1]

☐ Tenants in Common[1]

☐ Community Property[1]

☐ Trust[2] **Date Established (Required):** _____

- ☐ Currently Revocable
- ☐ Irrevocable

☐ Company or Corporation[3]

- ☐ S-Corp
- ☐ C-Corp

☐ Partnership[3]

☐ Limited Liability Company[3]

1 Please complete Section 1.A.
2 Please complete Section 1.B.
3 Please complete Section 1.C.

Name of Trust or Business Entity (If Applicable): _____

Full Legal Name of Primary Investor or Trustee (Required): ☐ Mr. ☐ Mrs. ☐ Ms. ☐ Other: (SPECIFY)

_____

Full Legal Name of Joint Investor or Trustee (If Applicable): ☐ Mr. ☐ Mrs. ☐ Ms. ☐ Other: (SPECIFY)

_____

Street Address (Required) No P.O. Box: _____

City: _____ **State:** _____ **Zip:** _____

Street Address of Permanent Residence of Primary Investor or Trustee (Required, If Different From Above)

No P.O. Box: _____

City: _____ **State:** _____ **Zip:** _____

Street Address of Permanent Residence of Joint Investor or Trustee (If Applicable, If Different From Above)

No P.O. Box: _____

City: _____ **State:** _____ **Zip:** _____

Home Phone (Required): _____ **Business Phone:** _____

Email Address (Recommended): _____

☐ I (we) authorize JWCM Vivian, DST to make available on its website the documents and reports required to be delivered to me, and notify me via e-mail when such reports are available in lieu of receiving paper copies.

_____
(SIGNATURE REQUIRED)

Alternate Mailing Address or P.O. Box: _____

City: _____ **State:** _____ **Zip:** _____

Investor or Trustee Date of Birth (MM/DD/YYYY):	**Joint Investor or Trustee Date of Birth (MM/DD/YYYY):**	**Entity Tax ID #:**
_____	_____	_____
Investor or Trustee Country of Birth:	**Joint Investor or Trustee Country of Birth:**	**FinCEN ID (if applicable)**
_____	_____	_____
Investor or Trustee SSN#:	**Joint Investor or Trustee SSN#:**	
_____	_____	

Please indicate Citizenship Status (REQUIRED): If a box is not checked, U.S. Citizenship will be applied by default.

Investor or Trustee:	**Joint Investor or Trustee:**
☐ U.S. Citizen ☐ U.S. Resident Alien	☐ U.S. Citizen ☐ U.S. Resident Alien
Country of Citizenship if other than the U.S.:	**Country of Citizenship if other than the U.S.:**
_____	_____

DISTRIBUTION INSTRUCTIONS

Please direct distributions: (Select one.)

☐ VIA MAIL TO: MAILING ADDRESS OF RECORD
☐ VIA MAIL TO BANK OR BROKERAGE ACCOUNT: (Complete #1, #2, #3 and #5 in below box.)
☐ VIA ELECTRONIC DEPOSIT (ACH) TO: (Complete #1 through #5 and attach a voided check.)

1. _____
Name of Bank, Brokerage Firm or Individual

2. _____
Mailing Address

3. _____
City, State, Zip Code

4. _____
Bank ABA Number

5. _____
Account Number

☐ Checking ☐ Savings

Electronic Deposit (ACH) Authorization - I (we) authorize JWCM Vivian Manager, LLC (the "**Manager**"), to deposit distributions from my (our) interest in JWCM Vivian, DST to my (our) account indicated above at the depository financial institution (hereinafter, the "**Depository**") indicated above. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law. I (we) further authorize the Manager to debit my (our) account noted below in the event that the Manager erroneously deposits additional funds to which I (we) am (are) not entitled, provided that such debit shall not exceed the original amount of the erroneous deposit. In the event that I (we) withdraw funds erroneously deposited into my (our) account before the Manager reverses such deposit, I (we) agree that the Manager has the right to retain any future distributions to which I (we) am (are) entitled until the erroneously deposited amounts are recovered by the Manager. This authorization is to remain in full force and effect until the Manager has received written notification from me (or either of us) of its termination in such time and in such manner as to afford the Manager and the Depository a reasonable opportunity to act on it, or until the Manager has sent me written notice of termination of this authorization.

The signature(s) of all investors of record are required.

_____ _____
Signature of Investor Signature of Co-Investor (if applicable)

For questions or assistance, please contact 212-751-3344 or InvestorRelations@jwcmllc.com.

THE INTERESTS OFFERED BY THE PRIVATE PLACEMENT MEMORANDUM HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER THE LAWS OF ANY STATE, AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE PROVISIONS OF THE SECURITIES ACT AND APPLICABLE STATE LAW. THE INTERESTS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE U.S. SECURITIES AND EXCHANGE COMMISSION, ANY STATE SECURITIES COMMISSION OR ANY OTHER REGULATORY AUTHORITY, NOR HAVE ANY OF THE FOREGOING AUTHORITIES PASSED UPON, OR ENDORSED THE MERITS OF, THE OFFERING OR THE ACCURACY OR ADEQUACY OF THE PRIVATE PLACEMENT MEMORANDUM.

JWCM VIVIAN, DST
broker-dealer / registered investment advisor
representations and warranties

Investor suitability requirements have been established by JWCM Vivian, DST and fully disclosed in the Private Placement Memorandum (as defined herein) under "Who May Invest" and in the Purchase Agreement. Before recommending the purchase of an Interest (as defined herein), we have reasonable grounds to believe, on the basis of information supplied by the investor concerning his, her, or its investment objectives, other investments, financial situation and needs, and other pertinent information that: (i) the investor is an Accredited Investor as defined in Section 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended, and the undersigned has taken all steps necessary to confirm such Accredited Investor status as required pursuant to Rule 506(c) of Regulation D promulgated under the Securities Act of 1933, as amended, (ii) the investor meets the investor suitability requirements as set forth in the Private Placement Memorandum and the Purchase Agreement, (iii) the investor has a net worth and income sufficient to sustain the risks inherent in the Interests, including loss of investment and lack of liquidity, (iv) the Interests are otherwise a suitable purchase for the investor. We will maintain in our files documents disclosing the basis upon which the suitability of this investor was determined as well as documents establishing a pre-existing relationship with the investor.

The Offering (as defined herein) is being made in reliance on Rule 506(c) of Regulation D promulgated under the Securities Act of 1933, as amended. The undersigned certifies that it has complied with all of the requirements of Rule 506(c) of Regulation D promulgated under the Securities Act of 1933, as amended, including with respect to the determination of the Accredited Investor status of any investor recommended by the broker dealer / registered investment advisor for the purchase of Interests. The undersigned hereby certifies that the investor is an accredited investor and that the undersigned has made the determination of Accredited Investor status within the past three (3) months.

We verify that the below subscription or equity investment either does not involve a discretionary account or, if so, that the investor's prior written approval was obtained relating to the liquidity and marketability of the Interests during the term of the purchase.

We hereby certify that the broker-dealer, registered representative, or registered investment advisor is not or has not been subject to any disqualified or disclosure events as set forth in Rule 506(d) and Rule 506(e) of Regulation D promulgated under the Securities Act of 1933, as amended.

We affirm the broker-dealer, registered representative, or registered investment advisor are properly licensed in the state of residence of the investor.

Except as otherwise stated, the representations and warranties made herein are made as of the date hereof and shall be continuing representations and warranties. In the event that the registered representative, broker-dealer, or registered investment advisor becomes aware that any of these representations or warranties becomes untrue or is incorrect, it shall promptly notify JWCM Vivian, DST in writing of the fact which makes such representation or warranty untrue or incorrect.

[Signatures on Next Page]

Name of Investor: _____

Amount of Equity Investment: _____

Broker Dealer Principal or RIA Principal APPROVAL
(A Principal of the Broker Dealer or RIA must approve and sign below)

The investment provided for herein is approved pursuant to the terms and conditions of the Participating Dealer Agreement for the Offering.

Signature: _____ Date: _____

Printed Name: _____

B/D or RIA Name: _____

Address: _____

City / State / Zip: _____

Phone No.: _____

E-mail Address: _____

Financial Advisor APPROVAL AND CERTIFICATION
(Financial Advisor must approve, certify and sign below)

The investment provided for herein is approved pursuant to the terms and conditions of the Participating Dealer Agreement for the Offering.

The undersigned Financial Advisor hereby represents and warrants that he or she will comply with the applicable requirements of the Securities Act of 1933, as amended, and the published rules and regulations of the U.S. Securities and Exchange Commission thereunder, and applicable blue sky or other state securities laws, as well as the rules and regulations of FINRA or any other applicable regulatory authority. The undersigned further represents and warrants that he or she is not subject to any of the "Bad Actor" disqualifications described in Rule 506(d) under the Securities Act of 1933, as amended, except for such event: (1) contemplated by Rule 506(d)(2) of the Securities Act of 1933, as amended, and (2) a reasonably detailed description of which has been furnished to **JWCM Vivian, DST** in writing.

Signature: _____ Date: _____

Printed Name/Rep Code: _____

Address: _____

City / State / Zip: _____

Phone No.: _____

E-mail Address: _____

Broker Dealer Name: _____

Internal Use Only: SDA Date: _____

JWCM VIVIAN, DST

IMPORTANT NOTE: PLEASE MAKE SURE THAT ANY CHECKS ARE MADE PAYABLE TO JWCM VIVIAN, DST. CHECKS MADE PAYABLE TO JWCM EXCHANGE I, LLC WILL NOT BE ACCEPTED.

Instructions to Investor Questionnaire & Purchase Agreement

Please read carefully the Private Placement Memorandum for the beneficial ownership interests (each, an "**Interest**") in **JWCM Vivian, DST**, a Delaware statutory trust, (the "**Seller**"), dated September 15, 2025 (as amended and supplemented from time to time, the "**Private Placement Memorandum**"), and all exhibits thereto, before deciding to purchase the Interests.

This private offering of Interests is limited to a purchaser who certifies that he, she or it is an "accredited investor," as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended, and meets all of the qualifications set forth in the Private Placement Memorandum. If you meet these qualifications and desire to purchase an Interest, then please follow the instructions below to complete your purchase.

EACH PROSPECTIVE PURCHASER SHOULD EXAMINE THE SUITABILITY OF THIS TYPE OF PURCHASE OF SECURITIES IN THE CONTEXT OF HIS, HER OR ITS OWN NEEDS, PURCHASE OBJECTIVES AND FINANCIAL CAPABILITIES AND SHOULD MAKE HIS, HER OR ITS OWN INDEPENDENT INVESTIGATION AND DECISION AS TO SUITABILITY AND RISK. IN ADDITION, EACH PROSPECTIVE PURCHASER IS ENCOURAGED TO CONSULT WITH HIS, HER OR ITS ATTORNEY, ACCOUNTANT, FINANCIAL CONSULTANT OR OTHER BUSINESS OR TAX ADVISOR REGARDING THE RISKS AND MERITS OF THE PROPOSED PURCHASE.

INSTRUCTIONS TO INVESTORS FOR PURCHASING INTERESTS:

1. This Investor Questionnaire & Purchase Agreement is comprised of three parts – the Investor Questionnaire, the Purchase Agreement and the Accreditation Letter of Accredited Investor Status, each of which is accompanied by specific instructions. You must complete, sign and date all parts of the Investor Questionnaire & Purchase Agreement according to the instructions provided**.** Deliver the completed and signed Investor Questionnaire & Purchase Agreement to your financial advisor.

2. Your financial advisor will forward the documents to his/her Broker Dealer or Registered Investment Advisor. The Broker Dealer or Registered Investment Advisor will then forward the documents to **JWCM Vivian, DST, c/o Orchard Securities, LLC, 365 South Garden Grove Lane, Suite 100, Pleasant Grove, Utah 84062 or via email to ops@orchardsecurities.com.**

3. If your investment is part of an Internal Revenue Code Section 1031 ("**Section 1031**") tax-deferred exchange: The Seller and the qualified intermediary (the holder of the exchange proceeds from your relinquished property) will coordinate the payment for the purchase of the Interests. Upon receiving the Purchase Agreement, and the necessary wiring/escrow instructions from the Seller, as applicable, the qualified intermediary will either wire the funds to the Seller or deliver in person or by mail, a check made payable to **JWCM Vivian, DST**.

4. If your investment is a direct investment: Payment for the purchase of Interests may be made by either wiring the funds directly to the Seller (the preferred method), or by delivering to JWCM Exchange I, LLC, in person or by mail, a check made payable to **JWCM Vivian, DST**. The Seller will provide wiring/escrow instructions, as applicable, prior to the closing of the transaction.

   Please note that investments will not be accepted from, or on behalf of tax-exempt entities, including but not limited to qualified employee pension and *profit sharing trusts, individual retirement accounts, Simple 401(k) plans, annuities and charitable remainder trusts.*

INVESTOR QUESTIONNAIRE
SECTION I – OWNERSHIP AND INVESTMENT INFORMATION

A. IF THE INVESTOR IS AN INDIVIDUAL, PLEASE COMPLETE THE FOLLOWING:

Each investor must initial the statement or statements below that truthfully describe him or her:

_____ _____ I am a natural person whose individual net worth or joint net worth with that person's spouse,[4] exceeds $1,000,000 at the time of purchasing the Interests; provided, that for purposes of calculating such net worth: (1) my primary residence shall not be included as an asset; (2) indebtedness that is secured by my primary residence, up to the estimated fair market value of the primary residence at the time of the closing of my acquisition of the Interests, shall not be included as a liability; provided, however, that if the amount of such indebtedness outstanding at the time of the closing of my acquisition of the Interests exceeds the amount of indebtedness outstanding 60 days before such time, other than as a result of the acquisition of the primary residence (such as, for example, if I take out a home equity loan that is not used to acquire a primary residence during such 60-day time frame), the amount of such new indebtedness shall be included as a liability; and (3) indebtedness that is secured by my primary residence in excess of the estimated fair market value of the primary residence shall be included as a liability.[5]

_____ _____ I am a natural person who had an individual income[6] in excess of $200,000 in each of the two most recent preceding full calendar years or joint income[7] with my spouse in excess of $300,000 in each of those years, and I have (individually or with my spouse) a reasonable expectation of reaching the same income level in the current year.[8]

_____ _____ I am a director, executive officer, general partner, or person serving in a similar capacity of (1) the Seller; (2) JWCM Vivian, LLC (the "**Manager**"); or (3) any of the Manager's managing affiliates.

_____ _____ I am an employee of (1) the Manager or any of the Manager's affiliates who in such role has participated in investment activities of the Seller or one or more other affiliated investment vehicles; or (2) an unaffiliated Section 3(c)(1) or 3(c)(7) fund or any of its managing entities who, in such role, has participated in the investment activities of the Seller, in either case for at least the past 12 months in connection with my regular job duties.

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[4] The term "spouse" includes a "spousal equivalent" which is defined as a cohabitant occupying a relationship generally equivalent to that of a spouse.

[5] An investor (i) who self-certifies to this representation, and (ii) subscribes for more than $200,000 in the Interests is not required to complete the Accreditation Letter of Accredited Investor Status.

[6] For purposes of this item, "individual income" means adjusted gross income as reported for federal income tax purposes, less any income attributable to a spouse or to property owned by a spouse, increased by the following amounts (but not including any amounts attributable to a spouse or to property owned by a spouse): (i) the amount of any interest income received which is tax-exempt under Section 103 of the Internal Revenue Code of 1986, as amended (the "**Code**"), (ii) the amount of losses claimed as a limited partner in a limited partnership (as reported on Schedule E of Form 1040), (iii) any deduction claimed for depletion under Section 611 et seq. of the Code, and (iv) any amount by which income from long-term capital gains has been reduced in arriving at adjusted gross income pursuant to the provisions of Section 1202 of the Code prior to its repeal by the Tax Reform Act of 1986.

[7] For purposes of this item, "joint income" means adjusted gross income as reported for Federal income tax purposes, including any income attributable to a spouse or to property owned by a spouse, increased by the following amounts (including any amounts attributable to a spouse or to property owned by a spouse): (i) the amount of any interest income received which is tax-exempt under Section 103 of the Code, (ii) the amount of losses claimed as a limited partner in a limited partnership (as reported on Schedule E of Form 1040), (iii) any deduction claimed for depletion under Section 611 et seq. of the Code, and (iv) any amount by which income from long-term capital gains has been reduced in arriving at adjusted gross income pursuant to the provisions of Section 1202 of the Code prior to its repeal by the Tax Reform Act of 1986.

[8] An investor (i) who self-certifies to this representation, and (ii) subscribes for more than $200,000 in the Interests is not required to complete the Accreditation Letter of Accredited Investor Status.

_____ _____ I am a natural person (1) holding a Series 7, 65 or 82 license issued by the Financial Industry Regulatory Authority, Inc. ("**FINRA**"); and (2) whose license remains in good standing.[9]

After completing this page, you may proceed to Section II.

[9] Investors making this election must enclose with their completed Investor Questionnaire and Purchase Agreement a detailed report from FINRA's BrokerCheck website (https://brokercheck.finra.org/) (A) verifying that the Investor passed a Series 7, Series 65 or Series 82 exam, and (B) confirming that his or her license remains in good standing.

B. IF THE INVESTOR IS A TRUST, PLEASE COMPLETE THE FOLLOWING:

Please complete a Trust Certificate (Appendix A) and submit a copy of the Trust Agreement and any amendments.

Please note: If an investor is purchasing Interests through a trust that is a taxpaying entity, then all trustees must complete and execute the Investor Questionnaire 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 the Investor Questionnaire and all questions concerning income, and assets will pertain to the taxpayer.

Please select the appropriate type of trust below and initial accordingly.

Revocable Trusts: Please initial the statement or statements below that truthfully describe the purchaser:

_____ _____ Purchaser is a revocable trust: (1) not formed for the specific purpose of acquiring the securities offered; (2) with total assets in excess of $5,000,000; and (3) with the power and authority to execute and comply with the terms of the Purchase Agreement.

_____ _____ Purchaser is a revocable trust in which the trustee, or co-trustee, is a bank, insurance company, registered investment company, business development company, or small investment company.

_____ _____ Purchaser is a trust in which each grantor is either:

(a) a natural person whose individual net worth or joint net worth with that person's spouse, exceeds $1,000,000 at the time of purchasing the Interests; provided, that for purposes of calculating such net worth: (1) the person's primary residence shall not be included as an asset; (2) indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the closing of the person's acquisition of the Interests, shall not be included as a liability; provided, however, that if the amount of such indebtedness outstanding at the time of the closing of the person's acquisition of the Interests exceeds the amount of indebtedness outstanding 60 days before such time, other than as a result of the acquisition of the primary residence (such as, for example, if the person takes out a home equity loan that is not used to acquire a primary residence during such 60-day time frame), the amount of such new indebtedness shall be included as a liability; and (3) indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence shall be included as a liability; OR

(b) a natural person who had individual income in excess of $200,000 in each of the two most recent preceding full calendar years or joint income with their spouse in excess of $300,000 in each of those years, and who has (individually or with their spouse) a reasonable expectation of reaching the same income level in the current year.

Irrevocable Trusts: Please initial the statement below that truthfully describes the purchaser:

_____ _____ Purchaser is an irrevocable trust: (1) not formed for the specific purpose of acquiring the securities offered; (2) with total assets in excess of $5,000,000; and (3) with the power and authority to execute and comply with the terms of the Purchase Agreement.[10]

_____ _____ Purchaser is a trust in which the trustee, or co-trustee, of the trust is a bank, insurance company, registered investment company, business development company, or small investment company.

_____ _____ Purchaser is an irrevocable trust (1) that has all of the characteristics set forth in Question 255.24 of SEC's Compliance and Disclosure Interpretations; and (2) whose grantor satisfies one or more of the accreditation standards set forth under this Investor Questionnaire.

After completing this page, you may proceed to Section II.

[10] An investor (i) who self-certifies to this representation, and (ii) subscribes for more than $200,000 in the Interests is not required to complete the Accreditation Letter of Accredited Investor Status.

C. IF THE INVESTOR IS AN ENTITY (CORPORATION, PARTNERSHIP, LLC, ETC.), PLEASE COMPLETE THE FOLLOWING:

Full Legal Names of all Beneficial Owners/Signatories:	Ownership Percentage (must total 100%):
1.	
2.	
3.	
4.	

Beneficial Owner/Signatory 1 Information:

Address of Permanent Residence: _____

City / State / Zip: _____

Phone No.: _____

Date of Birth: _____

Country of Birth: _____

SSN#: _____

Country of Citizenship: _____

Beneficial Owner/Signatory 2 Information:

Address of Permanent Residence: _____

City / State / Zip: _____

Phone No.: _____

Date of Birth: _____

Country of Birth: _____

SSN#: _____

Country of Citizenship: _____

Beneficial Owner/Signatory 3 Information:

Address of Permanent Residence: _____

City / State / Zip: _____

Phone No.: _____

Date of Birth: _____

Country of Birth: _____

SSN#: _____

Country of Citizenship: _____

Beneficial Owner/Signatory 4 Information:

Address of Permanent Residence: _____

City / State / Zip: _____

Phone No.: _____

Date of Birth: _____

Country of Birth: _____

SSN#: _____

Country of Citizenship: _____

(please attach additional page(s) if needed)

Type of ownership: ☐ Corporation ☐ Partnership ☐ Limited Liability Company ☐ Other: _____

Corporation – If purchasing as a **corporation**, the investor must submit the following: (1) a copy of the corporation's bylaws, with any and all amendments; (2) a completed Incumbency Certificate (Appendix B); and (3) a completed Corporate Resolution or Officer's Certificate (Appendix C or Appendix D).

Partnership – If purchasing as a **partnership**, the investor must submit the following: (1) a copy of the Partnership Agreement, with any and all amendments; and (2) a completed Partnership Resolution (Appendix E).

Limited Liability Company – If purchasing as a **limited liability company**, the investor must submit the following: (1) a copy of the Operating Agreement, with any and all amendments; and (2) a completed LLC Resolution (Appendix F).

Please initial the statement or statements below that truthfully describe the purchaser:

_____ _____ Purchaser is a corporation, a business trust, a partnership, a limited liability company, an Indian tribe, a labor union, a governmental body or fund, or an entity organized under the laws of a country other than the United States of America: (1) not formed for the specific purpose of acquiring the securities offered; (2) with total assets in excess of $5,000,000; and (3) with the power and authority to execute and comply with the terms of this Investor Questionnaire and Purchase Agreement.[11]

_____ _____ Purchaser is any of the following: (1) a bank or savings and loan association or other institution acting in its individual or fiduciary capacity; (2) a broker or dealer; (3) an insurance company; (4) an investment company or a business development company under the Investment Company Act of 1940, as amended; (5) a private business development company under the Investment Advisers Act of 1940, as amended (the "**Advisers Act**"); or (6) a Small Business Investment Company licensed by the U.S. Small Business Administration.

_____ _____ Purchaser is an entity in which all the equity owners are either:[12]

(a) natural persons whose individual net worth or joint net worth with that person's spouse, exceeds $1,000,000 at the time of purchasing the Interests; provided, that for purposes of calculating such net worth: (1) the person's primary residence shall not be included as an asset; (2) indebtedness that is secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time of the closing of the person's acquisition of the Interests, shall not be included as a liability; provided, however, that if the amount of such indebtedness outstanding at the time of the closing of the person's acquisition of the Interests

[11] An investor (i) who self-certifies to this representation, and (ii) subscribes for more than $200,000 in the Interests is not required to complete the Accreditation Letter of Accredited Investor Status.

[12] An investor (i) who self-certifies to this representation, and (ii) subscribes for more than $200,000 in the Interests is not required to complete the Accreditation Letter of Accredited Investor Status.

exceeds the amount of indebtedness outstanding 60 days before such time, other than as a result of the acquisition of the primary residence (such as, for example, if the person takes out a home equity loan that is not used to acquire a primary residence during such 60-day time frame), the amount of such new indebtedness shall be included as a liability; and (3) indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the primary residence shall be included as a liability; OR

(b) natural persons who had individual income in excess of $200,000 in each of the two most recent preceding full calendar years or joint income with their spouse in excess of $300,000 in each of those years, and who have (individually or with their spouse) a reasonable expectation of reaching the same income level in the current year.

_____ _____ Purchaser is either (1) registered with the U.S. Securities and Exchange Commission as an investment adviser or an exempt reporting adviser under Section 203 of the Advisers Act; or (2) registered as an investment adviser or equivalent under the laws of any state of the United States of America.

_____ _____ Purchaser is a "rural business investment company" as defined in Section 384A of the Consolidated Farm and Rural Development Act, as amended.

_____ _____ Purchaser is a "family office"[13] or "family client" (each as defined in Rule 202(a)(11)(G)-1 of the Advisers Act) of a family office that (1) has at least $5,000,000 in assets under management; (2) was not formed for the specific purpose of acquiring the securities offered; and (3) is directed by a person who has such knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of purchasing Interests.

[13] An investor (i) who self-certifies to this representation, and (ii) subscribes for more than $200,000 in the Interests is not required to complete the Accreditation Letter of Accredited Investor Status.

SECTION II – SUBSTITUTE W-9

TO BE COMPLETED BY INDIVIDUAL/ENTITY FOR WHICH INFORMATION WILL BE REPORTED TO THE IRS.

THE UNDERSIGNED CERTIFIES, under penalties of perjury that: (1) the taxpayer identification number shown below is true, correct and complete; (2) I am not subject to backup withholding either because (a) I am exempt from backup withholding, (b) I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or distributions, or (c) the Internal Revenue Service has notified me that I am no longer subject to backup withholding; (3) I am a U.S. citizen or other U.S. person (as defined in the IRS Form W-9 Instructions); and (4) I am exempt from Foreign Account Tax Compliance Act ("**FATCA**") reporting.

Certification Instructions: You must cross out certification 2 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. The IRS does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

Taxpayer Identification No. _____

Signature of Investor _____ Date _____

SECTION III – QUALIFIED INTERMEDIARY INFORMATION

I (we) hereby provide the following information pertaining to my (our) Qualified Intermediary for this acquisition. I (we) request and authorize my (our) Qualified intermediary to furnish the Seller any information requested regarding my (our) Section 1031 exchange.

The following Qualified Intermediary is authorized and instructed to fund all equity due to close the transaction prior to the scheduled closing date:

Company Name: _____
Exchange Coordinator: _____
Address: _____
City / State / Zip Code: _____
Telephone No.: _____
Facsimile No.: _____
E-mail Address: _____

Is escrow closed (please check one): _____ Yes_____ No

I (we) instruct my (our) Qualified Intermediary to wire (check only one box):

☐ All funds held by the Qualified Intermediary in the qualified escrow account, which is $_____, excluding any accumulated interest and expenses that cause the amount to be less than a whole dollar (rounding up or down), with the understanding that these costs will be treated as boot.

☐ Only $_____ held by the Qualified Intermediary in the qualified escrow account.

SIGNATURE PAGE TO INVESTOR QUESTIONNAIRE – ALL AUTHORIZED PERSONS MUST SIGN.

I (we) acknowledge and agree to all of the representations and warranties contained in this Investor Questionnaire.

Executed this ____ day of _____, 20_____
(Date must be completed.)

If a natural person:

Signature: _____

Name: _____

(If Joint Ownership: to be signed by joint owner.)

Signature: _____

Name: _____

If not a natural person:

Name of Trust/Entity: _____

Signature: _____

Name: _____

Signature: _____

Name: _____

Signature: _____

Name: _____

Signature: _____

Name: _____

SIGNATURE PAGE TO THE AMENDED AND RESTATED TRUST AGREEMENT OF JWCM VIVIAN, DST

ALL AUTHORIZED PERSONS MUST SIGN THIS PAGE.

The undersigned has received and reviewed, with assistance from such legal, tax, investment, and other advisors and skilled persons as the undersigned has deemed appropriate, the Amended and Restated Trust Agreement of JWCM Vivian, DST, dated August 21, 2025 (the "**Trust Agreement**"), as may be further amended or supplemented from time to time, and hereby covenants and agrees to be bound by the Trust Agreement.

ON BEHALF OF OR BY INDIVIDUAL INVESTOR(S):

Signature Investor #1	Signature Investor #2
Print Name	Print Name
Signature Investor #3	Signature Investor #4
Print Name	Print Name

ON BEHALF OF OR BY OTHER ENTITY (trust, corporation, partnership, limited liability company):

NAME OF TRUST/ENTITY: _____

Signature of Trustee/Equity Owner	Signature of Trustee/Equity Owner
Print Name / Title	Print Name / Title
Signature of Trustee/Equity Owner	Signature of Trustee/Equity Owner
Print Name / Title	Print Name / Title

APPENDIX A – TRUST CERTIFICATE
NOTE: TO BE COMPLETED ONLY BY THOSE INVESTORS INVESTING THROUGH A TRUST.

1. The title of the Trust to which this Certificate applies is: _____

2. The date of the Trust Agreement is: _____

3. The date of the last amendment to the Trust Agreement (if any) is: _____

4. The grantor(s) or testator(s) of the Trust is/are: _____

5. The Seller has the authority to accept orders and other instructions relative to the Trust account from designated trustees, who are:

Trustee Name (please print)	Date of Birth	Trustee Name (please print)	Date of Birth
Trustee Name (please print)	Date of Birth	Trustee Name (please print)	Date of Birth

6. **Please select one of the following three options**:

   ☐ The trustee(s) listed above may act independently as provided in the Trust Agreement, and the execution by any one trustee can bind the Trust.

   ☐ The trustees listed above may act as a majority as provided in the Trust Agreement.

   ☐ The trustee(s) listed above must act unanimously as provided in the Trust Agreement, and the execution or authorization of all of the trustees is required to bind the Trust.

7. The undersigned, constituting all of the trustee(s) of the Trust, hereby certify as follows:

   a) A true and correct copy of the Trust Agreement is attached hereto and that, as of the date hereof, the Trust Agreement has not been amended (except as to any attached amendments) or revoked and is still in full force and effect.

   b) As the trustee(s) of the Trust, we have determined that the investment in, and purchase of Interests in **JWCM Vivian, DST** is authorized by the terms of the Trust Agreement and is of benefit to the Trust, and we have determined to make such investment on behalf of the Trust.

   c) We, the trustees, jointly and severally, indemnify **JWCM Vivian, DST** and hold **JWCM Vivian, DST** harmless from and against any liability relating to effecting any orders, transactions, instructions or directions given by any individuals listed in this Certificate.

All trustees must sign and date below.

Trustee Signature	Date	Trustee Signature	Date
Trustee Signature	Date	Trustee Signature	Date

APPENDIX B – INCUMBENCY CERTIFICATE
NOTE: TO BE COMPLETED ONLY BY THOSE INVESTORS INVESTING THROUGH A CORPORATION.

_____

Name of Corporation

_____

State of Incorporation

The undersigned hereby certifies that the following persons are the duly elected directors and officers, respectively, of _____, a/an _____ corporation.

_____ Director _____ Director

_____ Director _____ Director

_____ Director _____ Director

_____ President _____ Vice President

_____ Treasurer _____ Secretary

Dated effective _____, 20_____

_____ a/an

_____ corporation

By: _____

Name: _____

Title: _____

APPENDIX C – CORPORATE RESOLUTION

NOTE: TO BE COMPLETED ONLY BY THOSE INVESTORS INVESTING THROUGH A CORPORATION.
ADDITIONAL NOTE: APPENDIX D MAY BE PROVIDED AS AN ALTERNATIVE TO THIS APPENDIX C.

The undersigned, being all the members of the Board of Directors (the "**Board of Directors**") of _____, a/an _____ corporation (the "**Corporation**"), hereby adopt the following preambles and resolutions:

WHEREAS, the Corporation desires to purchase an interest in **JWCM Vivian, DST** (the "**Investment**");

WHEREAS, that the Corporation is authorized to execute and deliver all documents relating to the Investment; and

WHEREAS, the Board of Directors believes it to be in the best interest of the Corporation to make the Investment and execute any documents related thereto.

NOW THEREFORE, BE IT RESOLVED, that the Investment is hereby approved, confirmed and ratified by the Board of Directors in all respects;

FURTHER RESOLVED, that _____, an officer of the Corporation ("**Officer**"), is hereby authorized and directed to execute, deliver and perform those agreements and documents related to the Investment, in the name and on behalf of the Corporation, with such changes therein and additions thereto as the Officer may deem necessary, appropriate or advisable to effect the transactions contemplated by the foregoing resolution;

FURTHER RESOLVED, that the Officer is hereby authorized and directed to execute, deliver and perform all further instruments and documentation and to take all other actions, in the name and on behalf of the Corporation, as it may deem convenient or proper to carry out the Investment; and

FURTHER RESOLVED, that any action heretofore taken and all documentation heretofore delivered by the Corporation or the Officer in furtherance of the Investment and foregoing resolutions are hereby ratified and confirmed in all respects.

Dated effective _____, 20____

_____	_____
Director (signature)	Director (signature)
_____	_____
Director (signature)	Director (signature)
_____	_____
Director (signature)	Director (signature)

Being all of the Directors of the Corporation

APPENDIX D – OFFICER'S CERTIFICATE

NOTE: TO BE COMPLETED ONLY BY THOSE INVESTORS INVESTING THROUGH A CORPORATION.
ADDITIONAL NOTE: APPENDIX C MAY BE PROVIDED AS AN ALTERNATIVE TO THIS APPENDIX D.

The undersigned, _____, hereby certifies that:

1. _____ is the _____ of _____, a/an _____ corporation ("**Corporation**"), and has personal knowledge of the matters set forth herein.

2. This Certificate is executed to evidence the approval and consent of the Corporation to purchase an interest in **JWCM Vivian, DST** (the "**Investment**").

3. The undersigned acknowledges that the Corporation is authorized to execute and deliver all documents relating to the Investment.

4. Pursuant to the organizational documents of the Corporation, the specific consent or approval of the Board of Directors of the Corporation is not necessary for the consummation of the Investment.

5. The undersigned acting alone has the authority, pursuant to the organizational documents of the Corporation, to execute all documents related to the Investment.

6. This Certificate may be relied upon by **JWCM Vivian, DST** and its affiliates.

Dated effective _____, 20_____

By: _____

Name: _____

Title: _____

APPENDIX E – PARTNERSHIP RESOLUTION

NOTE: TO BE COMPLETED ONLY BY THOSE INVESTORS INVESTING THROUGH A PARTNERSHIP, AND TO BE MODIFIED AS NECESSARY TO REFLECT THE APPLICABLE GOVERNANCE STRUCTURE OF THE PARTNERSHIP.

The undersigned, being all the partners (the "**Partners**") of _____, a/an _____ partnership (the "**Partnership**"), hereby adopt the following preambles and resolutions:

WHEREAS, the Partnership desires to purchase an interest in **JWCM Vivian, DST** (the "**Investment**");

WHEREAS, that the Partnership is authorized to execute and deliver all documents relating to the Investment; and

WHEREAS, the Partners believe it to be in the best interest of the Partnership to make the Investment and execute any documents related thereto.

NOW THEREFORE, BE IT RESOLVED, that the Investment is hereby approved, confirmed and ratified by the Partners in all respects;

FURTHER RESOLVED, that _____, an agent of the Partnership ("**Authorized Person**"), is hereby authorized and directed to execute, deliver and perform those agreements and documents related to the Investment, in the name and on behalf of the Partnership, with such changes therein and additions thereto as the Authorized Person may deem necessary, appropriate or advisable to effect the transactions contemplated by the foregoing resolution;

FURTHER RESOLVED, that the Authorized Person is hereby authorized and directed to execute, deliver and perform all further instruments and documentation and to take all other actions, in the name and on behalf of the Partnership, as it may deem convenient or proper to carry out the Investment; and

FURTHER RESOLVED, that any action heretofore taken and all documentation heretofore delivered by the Partnership or the Authorized Person in furtherance of the Investment and foregoing resolutions are hereby ratified and confirmed in all respects.

Dated effective _____, 20_____

_____	_____
Partner (signature)	Partner (signature)
_____	_____
Partner (signature)	Partner (signature)
_____	_____
Partner (signature)	Partner (signature)

Being all of the Partners of the Partnership

APPENDIX F – LIMITED LIABILITY COMPANY RESOLUTION

NOTE: TO BE COMPLETED ONLY BY THOSE INVESTORS INVESTING THROUGH A LIMITED LIABILITY COMPANY, AND TO BE MODIFIED AS NECESSARY TO REFLECT THE APPLICABLE GOVERNANCE STRUCTURE OF THE LIMITED LIABILITY COMPANY.

The undersigned, being all the members (the "**Members**") of _____, a/an _____ limited liability company (the "**LLC**"), hereby adopt the following preambles and resolutions:

WHEREAS, the LLC desires to purchase an interest in **JWCM Vivian, DST** (the "**Investment**");

WHEREAS, that the LLC is authorized to execute and deliver all documents relating to the Investment; and

WHEREAS, the Members believe it to be in the best interest of the LLC to make the Investment and execute any documents related thereto.

NOW THEREFORE, BE IT RESOLVED, that the Investment is hereby approved, confirmed and ratified by the Members in all respects;

FURTHER RESOLVED, that _____, an agent of the LLC ("**Authorized Person**"), is hereby authorized and directed to execute, deliver and perform those agreements and documents related to the Investment, in the name and on behalf of the LLC, with such changes therein and additions thereto as the Authorized Person may deem necessary, appropriate or advisable to effect the transactions contemplated by the foregoing resolution;

FURTHER RESOLVED, that the Authorized Person is hereby authorized and directed to execute, deliver and perform all further instruments and documentation and to take all other actions, in the name and on behalf of the LLC, as it may deem convenient or proper to carry out the Investment; and

FURTHER RESOLVED, that any action heretofore taken and all documentation heretofore delivered by the LLC or the Authorized Person in furtherance of the Investment and foregoing resolutions are hereby ratified and confirmed in all respects.

Dated effective _____, 20_____

_____	_____
Member (signature)	Member (signature)
_____	_____
Member (signature)	Member (signature)
_____	_____
Member (signature)	Member (signature)

Being all of the Members of the LLC

PURCHASE AGREEMENT OF JWCM VIVIAN, DST

Up to $46,170,900 of Interests

THIS PURCHASE AGREEMENT (the "**Purchase Agreement**") is made by and between JWCM Vivian, DST, a Delaware statutory trust (the "**Seller**") and the undersigned, with reference to the facts set forth below.

RECITALS

A. The Seller owns a leasehold interest in the multifamily apartment community known as "The Vivian" located in Atlanta, Georgia, as more particularly described on **Exhibit A** attached hereto (the "**Property**"). The Seller obtained a loan, secured by the Property, in the original principal amount of $47,189,000, from KeyBank National Association under the Federal National Mortgage Association Delegated Underwriting and Servicing Program.

B. The Seller is offering (the "**Offering**") to sell to certain qualified, accredited investors pursuant to that certain private placement memorandum, dated September 15, 2025 (as amended and supplemented from time to time, the "**Private Placement Memorandum**"), beneficial ownership interests in the Seller (the "**Interests**").

C. The Seller desires to sell and the undersigned desires to buy the Interests on the terms and conditions set forth in the Private Placement Memorandum. This sale will be made pursuant to the Private Placement 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. Purchase of Interests. The undersigned, intending to be legally bound, hereby irrevocably offers to purchase $_____ worth of Interests in the Seller. The Interests are being purchased pursuant to the terms and conditions of the Private Placement Memorandum, receipt of which is hereby acknowledged. Terms not defined herein shall have the same meanings as in the Private Placement Memorandum.

2. Amount and Method of Payment. Payment for the Interests purchased hereunder is to be made by either wiring the funds from the qualified escrow account or by delivering to JWCM Exchange I, LLC or another mutually agreed upon escrow party, in person or by mail, a check made payable to "**JWCM Vivian, DST**" for the aggregate purchase price of the Interests. The minimum amount of Interests that a prospective Investor completing an Internal Revenue Code Section 1031 ("**Section 1031**") tax-deferred exchange will be required to purchase is $100,000, and the minimum amount of Interests that a prospective Investor completing a cash investment will be required to purchase is $25,000, in either case unless the Seller waives such requirement. If the purchase of an Interest is part of a Section 1031 tax-deferred exchange, payment shall be coordinated through the undersigned's qualified intermediary who holds the undersigned's exchange proceeds from the relinquished property.

3. Acceptance and Closing of Purchase. The undersigned understands and agrees that the Seller, in its sole discretion, reserves the right to accept or reject this or any other offer to purchase for the Interests in whole or in part. If this offer to purchase is rejected in whole or in part, or if the Seller terminates the Offering for any reason, the Seller will promptly return the applicable portion of the purchase price. This Purchase Agreement shall thereafter have no force or effect with respect to the rejected portion of the purchase of Interests. If the Seller does not accept a Purchase Agreement within 30 days of its submission, then it shall be deemed rejected. In such an event, the Seller will promptly return the full amount of funds sent.

4. Representations and Warranties of the Seller. The Seller hereby acknowledges, represents and warrants that:

(a) Status. The Seller is a validly formed and existing statutory trust under the laws of the State of Delaware.

(b) Issuance. When issued, authenticated and delivered by the Seller and paid for by the undersigned pursuant to the provisions of this Purchase Agreement and of the Seller's Amended and Restated Trust Agreement, as amended or restated from time to time (the "**Trust Agreement**"), the undersigned's Interests 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.

5. Representations and Warranties of the Undersigned. The undersigned hereby acknowledges, represents and warrants that:

(a) The Interests offered by the Private Placement Memorandum have not been registered under the Securities Act of 1933, as amended (the "**Securities Act**"), or under the laws of any state, and are being offered and sold in reliance on exemptions from the provisions of the Securities Act and applicable state law. The Interests have not been approved or disapproved by the U.S. Securities and Exchange Commission, any state securities commission or any other regulatory authority, nor have any of the foregoing authorities passed upon, or endorsed the merits of, the offering or the accuracy or adequacy of the Private Placement Memorandum. The undersigned hereby further acknowledges, represents and warrants that:

(i) the undersigned has received the Private Placement Memorandum, has carefully reviewed it and understands the information contained therein and information otherwise provided in writing by the Seller relating to this investment;

(ii) the undersigned acknowledges that all documents, records and books pertaining to this investment (including, without limitation, the Private Placement Memorandum) have been made available for inspection to the undersigned or the undersigned's agents or advisors;

(iii) the undersigned, either directly or through advisors, has had a reasonable opportunity to ask questions of and receive information and answers from a person or persons acting on behalf of the Seller concerning the Offering and, as the undersigned may deem necessary, to verify the information contained in the Private Placement Memorandum, and all questions have been answered and all such information has been provided to the full satisfaction of the undersigned;

(iv) no oral or written representations have been made or oral or written information furnished to the undersigned or his, her, or its advisor(s) in connection with the Offering that were in any way inconsistent with the information stated in the Private Placement Memorandum;

(v) the undersigned qualifies as an "accredited investor," as defined in Rule 501(a) of Regulation D under the Securities Act;

(vi) the undersigned is not purchasing the Interests on behalf of any tax-exempt entity, including but not limited to any qualified employee pension or profit sharing trust, any individual retirement account, Simple 401k plan, annuity or charitable remainder trust;

(vii) the undersigned's overall commitment to investments that are not readily marketable is not disproportionate to the undersigned's net worth and the undersigned's investment in the Interests will not cause the overall commitment to become disproportionate to the undersigned's net worth;

(viii) the undersigned has reached the age of majority, has adequate net worth and means of providing for the undersigned's current needs and personal contingencies, is able to bear the substantial economic risks of an investment in the Interests for an indefinite period of time, has no need for liquidity in such investment and, at the present time, could afford a complete loss of such investment;

(ix) the undersigned has the requisite knowledge and experience in financial and business matters so as to enable the undersigned to use the information made available to evaluate the merits and risks of an investment in the Interests and to make an informed decision;

(x) the undersigned is acquiring the Interests solely for his, her, or its own account as principal, for investment purposes only and not with a view to the resale or distribution thereof in whole or in part, and no other person has a direct or beneficial interest in the Interests purchased by the undersigned;

(xi) the undersigned will not sell or otherwise transfer his, her, or its Interests without complying with all applicable laws and fully understands and agrees that he, she, or it must bear the economic risk of his, her, or its purchase for an indefinite period of time because, among other reasons, the Interests may not be readily transferable; and

(xii) the undersigned's assets have not been the subject of any proceeding under any matter relating to bankruptcy, insolvency, reorganization, conservatorship, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to its debts or debtors ("**Creditor Rights Laws**") during the ten (10) years prior to the date hereof, nor has the undersigned sought the protection of any Creditors Rights Laws during the ten (10) years prior to the date hereof. The foregoing representation with regard to this paragraph also are applicable to the undersigned's affiliates which the undersigned owns or controls, including any individual, corporation, partnership, joint venture, limited liability company, estate, trust, unincorporated association and any fiduciary acting in such capacity on behalf of any of the foregoing, and further including any such entity in which the undersigned or its affiliate is an officer or director.

(b) The undersigned recognizes that the purchase of the Interests involves a number of significant risks and other factors relating to the structure and objectives of the Seller as described in the Private Placement Memorandum under the heading "Risk Factors" and that there can be no assurance that the Seller will achieve its objectives. In addition, the undersigned acknowledges that:

(i) no federal or state agency has passed upon the adequacy of the information presented to the undersigned or made any finding or determination as to the fairness of this investment; and

(ii) there is no established market for the Interests and a public market for the Interests may never develop.

(c) **The undersigned understands that the Seller has not obtained a specific Private Letter ruling from the Internal Revenue Service ("IRS") addressing the treatment of the Interests in this Offering for income tax purposes, including but not limited to whether an Interest is "of like kind" to real property for purposes of Section 1031 or is "similar or related in service or use" to involuntarily converted property of the undersigned for purposes of Internal Revenue Code section 1033 ("Section 1033"). In addition, the undersigned understands that the tax consequences of an investment in the Interests, especially the qualification of the transaction under Section 1031 or Section 1033 of the Code and the related rules, are complex and vary with the facts and circumstances of each individual. Therefore, the undersigned represents and warrants that he, she, or it: (1) has independently obtained advice from legal counsel and/or accountants about a tax-deferred exchange under Section 1031 or a conversion under Section 1033 and applicable state laws, including, without limitation, whether the acquisition of an Interest may qualify as part of a tax-deferred exchange or involuntary conversion, and he, she, or it is relying on such advice; (2) understands that the Seller has not obtained a ruling from the IRS addressing the treatment of the Interests in this Offering for income tax purposes, including but not limited to whether an Interest is "of like kind" to real property for purposes of Section 1031 or is "similar or related in service or use" to involuntarily converted property of the undersigned for purposes of Section 1033; (3) understands that the tax consequences of an investment in an Interest, especially the treatment of the transaction under Section 1031 and the related Section 1031 exchange rules, or under Section 1033 and its underlying rules, are complex and vary with the facts and circumstances of each individual purchaser; (4) understands and is aware that there are substantial uncertainties regarding the treatment of the undersigned's purchased Interest as an interest in real property for income tax purposes and has read the entire Private Placement**

Memorandum and fully understands that there is a risk that the undersigned's purchased Interest will not be treated as an interest in real property for income tax purposes; (5) is aware that, although the IRS has issued Revenue Ruling 2004-86, 2004-2 C.B. 191 specifically addressing Delaware statutory trusts, such 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 undersigned's purchased Interest will not be a partnership interest for income tax purposes; and (6) understands that the opinion of Baker & McKenzie LLP, as special tax counsel to the Seller, is only Baker & McKenzie LLP's view of the anticipated tax treatment, and there is no guarantee that the IRS will agree with such opinion.

(d) If the undersigned is purchasing the Interests in a representative or fiduciary capacity, e.g., serving as a qualified intermediary, the representations and warranties contained herein (and in any other written statement or document delivered to the Seller in connection herewith) shall be deemed to have been made on behalf of the person or persons for whom the Interests are being purchased.

(e) All information furnished to the Seller by the undersigned is correct and complete as of the date of this Purchase Agreement, and the undersigned will immediately furnish revised or corrected information to the Seller if there should be any material change in this information prior to the Seller completing the Offering.

(f) Within five days after receipt of a request from the Seller, the undersigned hereby 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 ordinances to which the Seller is subject.

(g) The undersigned has not distributed the Private Placement Memorandum to anyone other than his, her, or its advisors, if any, and no one other than the undersigned and his or her advisors, if any, has used the Private Placement Memorandum.

(h) The foregoing representations, warranties and agreements, together with all other representations and warranties made or given by the undersigned to the Seller in any other written statement or document delivered in connection with the Offering shall be true and correct in all respects on and as of the date the purchase is accepted as if made on that date. If more than one person is signing this Purchase Agreement, each representation, warranty and undertaking herein shall be the joint and several representation, warranty and undertaking of each such person.

6. Additional Representations and Warranties – Section 1031 Exchanges. **The following additional representations and warranties apply only to those investors purchasing Interests as part of a Section 1031 tax-deferred exchange.**

(a) The undersigned hereby acknowledges, represents and warrants that the undersigned's rights under this Purchase Agreement may be assigned to his, her or its qualified intermediary (the "**Qualified Intermediary**") for the purpose of completing a Section 1031 exchange.

(b) The Seller hereby acknowledges, represents and warrants that:

(i) It is the intent of the undersigned to effect a Section 1031 tax-deferred exchange, which will not delay the closing or cause additional expense to the Seller.

(ii) The Seller will cooperate with the undersigned and his, her or its Qualified Intermediary in a manner necessary to complete the Section 1031 tax-deferred exchange.

7. Additional Information. The undersigned hereby acknowledges and agrees that the Seller may make such further inquiry and obtain such additional information as it may deem appropriate with regard to the suitability of the undersigned.

8. Authorization. The undersigned releases to the Seller and those third party vendors retained to conduct credit and background evaluations in accordance with the questions contained in the Investor Questionnaire (the "**Vendors**") any information regarding the undersigned's employment status, bank account records, mortgage or other current or prior credit, collection accounts, rental history, state and federal tax liens, state and federal crimes, state and federal civil litigation and

bankruptcy, and state and county UCC (Uniform Commercial Code) searches. As part of such authorization, the undersigned hereby authorizes the Seller's release of such information to the Vendors. This information is for the confidential use of the Seller and the Vendors only.

9. Indemnification. The undersigned agrees to indemnify and hold harmless the Seller and the Seller's Signatory Trustee and their respective officers, directors, employees, beneficiaries, trustees, and agents (the "**Indemnified Parties**") against any and all loss, liability, claim, damage and expense whatsoever (including reasonable attorneys' fees) arising out of or based upon any false representation or warranty or breach or failure by the undersigned to comply with any covenant or agreement made by the undersigned herein, or in any other document furnished by the undersigned to any of the foregoing in connection with this transaction. This indemnification includes, but is not limited to, any damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees) incurred by the Indemnified Parties in investigating, preparing or 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 the undersigned has furnished to any of the foregoing in connection with this transaction.

10. Irrevocability; Binding Effect. The undersigned hereby acknowledges and agrees that, except as provided under applicable state law and Section 3 of the Purchase Agreement, the purchase hereunder is irrevocable and may not be canceled, terminated or revoked and that this Purchase Agreement shall survive the death or disability of the undersigned and shall be binding upon and inure to the benefit of the parties and their heirs, executors, administrators, successors, legal representatives and assigns.

11. Modifications. Neither this Purchase Agreement nor any provision hereof shall be waived, modified, discharged or terminated except by an instrument in writing signed by the party against whom any such waiver, modification, discharge or termination is sought.

12. Notices. Any notice, demand or other communication that any party hereto may be required, or may elect, or give to any other party hereunder shall be sufficiently given if: (1) deposited, postage prepaid, in a United States mailbox, stamped registered or certified mail, return receipt requested, or with an established and reputable overnight delivery service, addressed to **JWCM Vivian, DST, 445 Park Avenue, Suite 1600 New York, New York 10022, Attn: Investor Relations**, or to the undersigned purchaser at the address set forth on the signature page of the Investor Questionnaire or such other address as the parties may agree; or (2) delivered personally at such address.

13. Counterparts; Signatures. This Purchase Agreement, the related Investor Questionnaire and supporting documents may be executed and delivered (including by facsimile transmission or portable document format (PDF)) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same Purchase Agreement, Investor Questionnaire or other document, as applicable.

14. Entire Agreement. This Purchase Agreement contains the entire agreement of the parties with respect to the subject matter hereof and there are no representations, covenants or other agreements except as stated or referred to herein. The undersigned acknowledges that it participated in, or had the meaningful opportunity to participate in, the negotiations and drafting of this Purchase Agreement. In the event an ambiguity or question of intent or interpretation arises, the undersigned agrees that this Purchase Agreement shall be construed to be the product of meaningful negotiations between the undersigned and the Seller, and no presumption or burden of proof shall arise favoring or disfavoring either one of them by virtue of the authorship of any of the provisions of this Purchase Agreement.

15. Severability. Each provision of this Purchase Agreement is intended to be severable from every other provision, and the invalidity or illegality of any portion hereof shall not affect the validity or legality of the remainder hereof.

16. Assignability. This Purchase Agreement is not transferable or assignable by the undersigned except to a qualified intermediary in the case of a Section 1031 tax-deferred exchange.

17. Applicable Law. This Purchase Agreement shall be governed by and construed in accordance with the laws of the State of Delaware as applied to residents of that state executing contracts wholly to be performed in that state.

18. Choice of Jurisdiction. The undersigned agrees that any action or proceeding arising, directly, indirectly, or otherwise, in connection with, out of, or from this Purchase Agreement, and breach thereof, or any transaction covered hereby shall be resolved, whether by arbitration or otherwise, within New York County, New York. The parties further agree that any such relief whatsoever in connection with this Purchase Agreement shall be commenced exclusively in the United States federal or state courts, or if possible before an arbitral body, located within New York County, New York.

19. Reimbursement. If any action or other proceeding, other than arbitration, is brought to enforce this Purchase Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Purchase Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees and other costs incurred in the action or proceeding in addition to any other relief to which they may be entitled.

20. Certificates of Non-Foreign Status. Under penalties of perjury, the undersigned declares that, to the best of his, her, or its knowledge and belief the following statements are true, correct and complete: (1) that the undersigned is not a foreign person for purposes of U.S. income taxation (i.e., he, she, or it is not a nonresident alien, nor executing this document as an officer of a foreign corporation, as a partner in a foreign partnership, or as a fiduciary of a foreign employee benefit plan, foreign trust or foreign estate); (2) that the following information contained elsewhere in the Purchase Agreement or the Investor Questionnaire is true, correct and complete: the U.S. taxpayer identification number (i.e., social security number), and the home address; and (3) that the undersigned agrees to inform the Seller promptly if the undersigned becomes a nonresident alien (in the case of an individual) or other foreign person (in case of an entity) during the three years immediately following the date hereof.

21. Certification regarding Securities Laws. By signing below, the undersigned certifies that he, she, or it has read and understands the following additional considerations: **The Interests have not been approved or disapproved by the U.S. Securities and Exchange Commission, any state securities commission or other regulatory authority, nor have any of the foregoing authorities passed upon or endorsed the merits of this Offering or the accuracy or adequacy of the Private Placement Memorandum. Any representation to the contrary is unlawful. The Interests offered hereby are subject to investment risk, including the possible loss of principal.**

[Signatures on the Following Page]

I (we) acknowledge and agree to all of the representations and warranties contained in this Purchase Agreement.

SELLER

Executed this ____ day of _____, 20___

JWCM Vivian, DST, a Delaware Statutory Trust

By: JWCM Vivian Manager, LLC,
a Delaware limited liability company, its Manager and Signatory Trustee

By: _____

Name: _____

BUYER

Executed this ____ day of _____, 20___
(Date must be completed.)

If a natural person:

Signature: _____

Name: _____

(If Joint Ownership: to be signed by joint owner.)

Signature: _____

Name: _____

If not a natural person:

Name of Trust/Entity: _____

Signature: _____

Name: _____

Signature: _____

Name: _____

Signature: _____

Name: _____

Signature: _____

Name: _____

EXHIBIT A TO PURCHASE AGREEMENT
LEGAL DESCRIPTION OF THE PROPERTY

LEGAL DESCRIPTION OF THE LAND

ALL THAT TRACT OR PARCEL OF LAND LYING, BEING AND SITUATED IN THE CITY OF ATLANTA, IN LAND LOT 105 OF THE 14TH DISTRICT OF FULTON COUNTY, GEORGIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EAST LINE OF ALLENE AVENUE, WHICH POINT IS LOCATED TWO HUNDRED AND TWENTY-EIGHT AND SIX-TENTHS FEET (228.6 FEET) NORTH OF NORTHEAST CORNER OF ALLENE AVENUE AND ERIN STREET, WHICH POINT IS MARKED BY AN IRON PIN; THENCE NORTH ALONG THE EAST SIDE OF ALLENE AVENUE THREE HUNDRED AND TWO-TENTHS (300.2) FEET TO A CONCRETE MONUMENT: THENCE SLIGHTLY NORTHWESTERLY FOLLOWING THE EASTERN LINE OF ALLENE AVENUE ONE HUNDRED AND NINETY-NINE AND EIGHT-TENTHS (199.8) FEET TO AN IRON PIPE LOCATED IN THE EAST LINE OF ALLENE AVENUE, AT A POINT ONE HUNDRED EIGHT AND EIGHTY-FIVE HUNDREDTHS (105.85) FEET SOUTHWESTERLY FROM THE CENTER LINE OF THE ATLANTA AND WEST POINT RAILROAD COMPANY'S EASTBOUND FREIGHT MAIN TRACT; THENCE SOUTHEASTERLY THREE HUNDRED AND ELEVEN AND FIVE-TENTHS (311.5) FEET TO THE INTERSECTION OF A LINE WHICH WOULD BE THE PROJECTION OF THE NORTH SIDE OF HELLENA STREET IF SAID STREET WAS EXTENDED EASTERLY ACROSS ALLENE AVENUE, SAID POINT BEING ONE HUNDRED EIGHT AND THIRTY-FIVE HUNDREDTHS (108.35) FEET SOUTHEASTERLY FROM THE CENTER LINE OF EASTBOUND FREIGHT MAIN TRACK OF THE ATLANTA AND WEST POINT RAILROAD; THENCE EASTERLY ALONG A LINE WHICH WOULD BE THE PROJECTION OF THE NORTH SIDE OF HELLENA STREET ONE HUNDRED FORTY-SIX AND THREE TENTHS (146.3) FEET TO A POINT IN THE SOUTHWEST RIGHT OF WAY LINE OF THE ATLANTA AND WEST POINT RAILROAD, WHICH POINT IS LOCATED FIFTY (50) FEET SOUTHWESTERLY FROM THE CENTER LINE OF THE EASTBOUND FREIGHT MAIN TRACK OF SAID RAILROAD; THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY LINE FIFTY (50) FEET FROM AND PARALLEL TO THE CENTER LINE OF SAID WESTBOUND FREIGHT MAIN LINE ONE THOUSAND ONE HUNDRED AND SIXTEEN (1116) FEET, MORE OR LESS, TO A POINT ON THE WEST SIDE OF STEWART AVENUE, WHICH POINT IS MARKED BY A CONCRETE MONUMENT; THENCE SOUTH ALONG THE WEST SIDE OF STEWART AVENUE FIFTY FOUR AND THREE TENTHS (54.3) FEET TO ANOTHER CONCRETE MONUMENT; THENCE WESTERLY FOLLOWING A LINE OF CONCRETE MONUMENTS FOURTEEN HUNDRED SEVENTY-TWO (1472) FEET, MORE OR LESS, TO POINT OF BEGINNING, ALL AS SHOWN ON PLAT OR SURVEY MADE, BY ATLANTA AND WEST POINT RAILROAD DATED OCTOBER 16, 1948, BEING SURVEY NO. 222/33 ACCORDING TO THE ORIGINAL TRACING ON FILING IN THE OFFICE OF THE CHIEF ENGINEER OF THE ATLANTA AND WEST POINT RAILROAD IN ATLANTA, GEORGIA.

EXCEPTING THEREFROM, HOWEVER ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 105 OF THE 14TH DISTRICT OF FULTON COUNTY, GEORGIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST SIDE OF STEWART AVENUE WHERE THE SOUTH RIGHT OF WAY LINE OF ATLANTA AND WEST POINT RAILROAD INTERSECTS, THE WEST SIDE OF STEWART AVENUE; AND RUNNING THENCE SOUTH 54.3 FEET; THENCE WEST A DISTANCE OF 5 FEET TO THE PROPOSED WEST SIDE OF STEWART AVENUE; THENCE NORTH ALONG THE PROPOSED WEST SIDE OF STEWART AVENUE A DISTANCE OF 54.3 FEET TO THE SOUTH RIGHT OF WAY LINE OF

SAID RAILROAD; THENCE EAST ALONG THE SOUTH RIGHT OF WAY LINE OF SAID RAILROAD A DISTANCE OF 5 FEET TO THE POINT OF BEGINNING.

ALSO DESCRIBED AS:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 105 OF THE 14TH DISTRICT OF FULTON COUNTY, CITY OF ATLANTA, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8-INCH REBAR SET 201.59 FEET NORTH OF THE INTERSECTION OF THE NORTHERN RIGHT-OF-WAY OF ERIN AVENUE (50 FOOT RIGHT-OF-WAY) WITH THE WESTERN RIGHT-OF-WAY OF METROPOLITAN PARKWAY (VARIABLE RIGHT-OF-WAY); THENCE LEAVING SAID RIGHT-OF-WAY, NORTH 88 DEGREES 39 MINUTES 47 SECONDS WEST A DISTANCE OF 1466.95 FEET TO A 1-INCH OPEN TOP PIPE FOUND ON THE EASTERN RIGHT-OF-WAY OF ALLENE AVENUE (50 FOOT RIGHT-OF-WAY); THENCE ALONG SAID RIGHT-OF-WAY THE FOLLOWING COURSES AND DISTANCES: NORTH 00 DEGREES 24 MINUTES 41 SECONDS EAST A DISTANCE OF 325.41 FEET TO A POINT; ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 699.00 FEET AND AN ARC LENGTH OF 126.92 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 03 DEGREES 25 MINUTES 33 SECONDS WEST FOR A DISTANCE OF 126.75 FEET TO A 5/8-INCH REBAR SET; NORTH 06 DEGREES 26 MINUTES 55 SECONDS WEST A DISTANCE OF 47.67 FEET TO A 1/2-INCH OPEN TOP PIPE FOUND; THENCE LEAVING SAID RIGHT-OF-WAY, SOUTH 66 DEGREES 03 MINUTES 45 SECONDS EAST A DISTANCE OF 311.50 FEET TO A 5/8-INCH REBAR SET; THENCE SOUTH 89 DEGREES 37 MINUTES 23 SECONDS EAST A DISTANCE OF 146.30 FEET TO A 5/8-INCH REBAR SET; THENCE SOUTH 66 DEGREES 07 MINUTES 03 SECONDS EAST A DISTANCE OF 457.93 FEET TO A 5/8-INCH REBAR SET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2061.00 FEET AND AN ARC LENGTH OF 651.81 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 75 DEGREES 08 MINUTES 25 SECONDS EAST FOR A DISTANCE OF 649.10 FEET TO A PK NAIL SET ON THE WESTERN RIGHT-OF-WAY OF METROPOLITAN PARKWAY; THENCE ALONG SAID RIGHT-OF-WAY, SOUTH 00 DEGREES 01 MINUTES 27 SECONDS EAST A DISTANCE OF 54.30 FEET TO A 5/8-INCH REBAR SET AND THE TRUE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 8.471 ACRES.

CONSENT OF SPOUSE

(FOR INDIVIDUAL INVESTORS IN COMMUNITY PROPERTY STATES, WHICH ARE CURRENTLY ARIZONA, CALIFORNIA, IDAHO, LOUISIANA, NEVADA, NEW MEXICO, TEXAS, WASHINGTON AND WISCONSIN. ALASKA, FLORIDA, KENTUCKY, TENNESSEE, AND SOUTH DAKOTA ARE OPT-IN COMMUNITY PROPERTY STATES OR STATES THAT PERMIT THE DESIGNATION OF CERTAIN ASSETS AS COMMUNITY PROPERTY, THAT GIVE BOTH PARTIES THE OPTION TO MAKE THEIR PROPERTY COMMUNITY PROPERTY.)

I,_____ [print name], spouse of _____ [print name], have read and hereby approve of the Investor Questionnaire and Purchase Agreement for JWCM Vivian, DST (the "**Purchase Agreement**"), which my spouse has signed. I hereby appoint my spouse as my attorney-in-fact with respect to the exercise of any rights related to a purchase of any such Interests and agree to be bound by the provisions of the Purchase Agreement and any other documents related to the purchase of any such Interests (collectively, the "**Purchase Documents**") insofar as I may have any rights in said Purchase Documents or any property or interest subject thereto under the community property laws of the State of _____ or similar laws relating to marital property in effect in the state of our residence as of the date of signing of the Purchase Agreement and/or the Purchase Documents.

Signature:_____ Date:_____

Print Name:_____

Accreditation Letter of Accredited Investor Status

ACCREDITATION LETTER

NOTE: THIS ACCREDITATION LETTER (OR DOCUMENTATION OTHERWISE MATERIALLY IDENTICAL IN SUBSTANCE) IS REQUIRED TO BE COMPLETED AND PROVIDED ON BEHALF OF EACH PURCHASER.

TO BE PREPARED BY THE PURCHASER'S THIRD-PARTY LICENSED ATTORNEY, CERTIFIED PUBLIC ACCOUNTANT, AN SEC-REGISTERED INVESTMENT ADVISER OR A REGISTERED BROKER-DEALER.

In connection with a proposed investment pursuant to Rule 506(c) of Regulation D under the Securities Act of 1933, as amended (the "**Securities Act**"), I hereby confirm that, as of the date set forth below, _____ is/are "accredited investor(s)" as defined in Rule 501(a) of Regulation D under the Securities Act.

In making this determination, I have reviewed the selected documents and information and determined within the ***prior three months***:

(Initial one of the options below)

_____ With respect to **Income**: Any Internal Revenue Service form that reports the purchaser's income for the two most recent years (including, but not limited to, Form W–2, Form 1099, Schedule K–1 of Form 1065, and Form 1040) and obtained a written representation from the purchaser that s/he (alone or with their spouse) has a reasonable expectation of reaching the income level necessary to qualify as an "accredited investor" during the current year;

_____ With respect to **Net Worth**: Asset and liability documentation listed below, ***dated within the prior three months*** and a written representation that all liabilities necessary to make a determination of net worth have been disclosed.

- *Assets*: Bank statements, brokerage statements and other statements of securities holdings, certificates of deposit, tax assessments, and appraisal reports issued by independent third parties;
- *Liabilities*: A consumer report or credit report from at least one of the nationwide consumer reporting agencies.

I am a _____ (attorney, CPA, broker-dealer, investment adviser) licensed (#_____) and in good standing in the state of _____.

Sincerely,

_____

Printed Name: _____

Date: _____

Phone Number: _____

EXHIBIT F

ASSET MANAGEMENT AGREEMENT

[ATTACHED]

ASSET MANAGEMENT AGREEMENT

THIS ASSET MANAGEMENT AGREEMENT ("**Agreement**") is made as of August 21, 2025 by and between JWCM Vivian, DST, a Delaware statutory trust (the "**Trust**") and JWCM Vivian Manager, LLC, a Delaware limited liability company (the "**Asset Manager**").

RECITALS

A. The Trust has acquired or will acquire a leasehold interest in a multifamily property described on **Exhibit A** attached hereto (the "**Property**").

B. JWCM Vivian Master Tenant, LLC, the master tenant of the Property and an affiliate of the Trust, has or will enter into a property management agreement (the "**Property Management Agreement**") with RangeWater Residential, LLC, a Georgia limited liability company (the "**Property Manager**") pursuant to which the Property Manager will manage and operate the Property.

C. The Trust desires to engage the Asset Manager to provide certain management services and oversee the performance of the Property Manager, and the Asset Manager has agreed to accept such engagement, on the terms and conditions set forth below.

IN LIGHT OF THE FOREGOING FACTS, and in consideration of the mutual agreements contained herein, Trust and Asset Manager hereby agree as follows:

ARTICLE I
APPOINTMENT AND TERM

1.1 Appointment.

The Trust hereby engages the Asset Manager, and the Asset Manager hereby accepts the engagement, to provide asset management services for the Property in accordance with the terms of this Agreement. The Asset Manager shall perform its services in a competent manner in accordance with this Agreement and shall fully and faithfully discharge its obligations and responsibilities hereunder and shall devote such time and attention to ensure the full, prompt and professional discharge of its duties under this Agreement. The Asset Manager shall at all times promote and protect the best interests of the Trust and Property.

1.2 Term.

The term (the "**Term**") of this Agreement shall commence on the date the Trust acquires a leasehold interest in the Property and shall continue until this Agreement is terminated as provided herein. Notwithstanding this Section 1.2, in the event the Property is sold by the Trust to a third party, or the Trust's leasehold interest in the Property is sold to a third party, the Trust may terminate this Agreement upon not less than thirty (30) days' written notice to the Asset Manager.

1.3 Relationship.

The Asset Manager will not acquire title to, any security interest in, or any rights of any kind in or to the Property (or any income, receipts or revenues therefrom). For purposes of this Agreement, the Asset Manager shall be an independent contractor of the Trust and not an agent, employee, partner or joint venturer of the Trust and nothing in this Agreement will be deemed or construed to create such a relationship between the parties hereto and the services other than an independent contractor. Under no circumstances shall the Asset Manager represent or hold itself out to any third party as an agent of the Trust.

ARTICLE II
DUTIES AND POWERS OF THE ASSET MANAGER

2.1 Duties and Powers.

The Asset Manager will provide management services to the Trust with respect to the Property, will arrange for financing of the Property, implement all decisions and policies of the Trust and will oversee and supervise the provision of services by the Property Manager to ensure that the Property Manager is performing in a manner consistent with the terms of the Property Management Agreement.

ARTICLE III
COMPENSATION

3.1 Reimbursements.

During the Term of this Agreement, the Trust shall reimburse the Asset Manager for all reasonable, out-of-pocket expenses properly incurred by the Asset Manager in performing its services under this Agreement provided same are reflected in a budget provided by the Property Manager or provided by the Asset Manager and approved by the Trust, or as may otherwise be approved by the Trust.

3.2 Asset Management Fee.

During the Term of this Agreement, the Trust shall cause to be paid to the Asset Manager an annual asset management fee equal to Thirty-Five Thousand and 00/100 U.S. Dollars ($35,000) (the "**Asset Management Fee**"). The Asset Management Fee will be paid monthly in arrears on a pro rata basis, and if the Agreement is terminated during any calendar year, shall be prorated for such partial year.

Notwithstanding anything in the Agreement to the contrary, so long as any indebtedness is outstanding under the loan documentation executed and delivered on behalf of the Trust (the "**Loan Documents**") to the holder of any mortgage, deed of trust or other similar document placed on the Property by the Trust ("**Permitted Mortgage**"), the Asset Management Fee and all rights and privileges of Asset Manager to the Asset Management Fees are and will at all times continue to be subject and unconditionally subordinate in all respects in lien and payment to the lien and payment of the Loan Documents and to any renewals, extensions, modifications, assignments, replacements, or consolidations of the Loan Documents, and the rights, privileges, and powers of lender under the Loan Documents, and subject to the debt limitations set forth in the Loan Documents. Any permitted lender under a Permitted Mortgage ("**Lender**") is intended as a third-party beneficiary of this section of this Agreement, and Trust and Asset Manager agree that if there is an event of default under the Loan Documents during the term of this Agreement, Lender may terminate the Agreement without payment of any cancellation fee or penalty.

3.3 Disposition Fee.

During the Term of this Agreement, the Trust shall cause to be paid to the Asset Manager a disposition fee equal to three percent (3.0%) of the gross proceeds of (i) any sale of the Property by the Trust, or (ii) any sale of the Trust's leasehold interest in the Property.

ARTICLE IV
INDEMNIFICATION

4.1 Indemnification.

The Trust agrees to indemnify the Asset Manager and hold it harmless from and against all claims, losses, actions, lawsuits and other liabilities arising directly or indirectly out of any action taken by the Asset Manager within the scope of its authority and duties under this Agreement, excluding only those

liabilities which arise as a result of the gross negligence or fraudulent, criminal or willful misconduct of the Asset Manager. This indemnity extends to and protects the agents, officers, directors, shareholders, affiliated companies and employees of the Asset Manager.

The Asset Manager agrees to indemnify the Trust and hold it harmless from and against all claims, losses, actions, lawsuits and other liabilities arising directly or indirectly out of any action taken by the Asset Manager that is not within the scope of its authority and duties under this Agreement and constitutes the gross negligence or fraudulent, criminal or willful misconduct of the Asset Manager. This indemnity extends to and protects the agents, officers, directors, shareholders, affiliated companies and employees of the Trust.

ARTICLE V
GENERAL PROVISIONS

5.1 Default of Asset Manager.

The Trust will be entitled to terminate this Agreement if the Asset Manager is in material default of its obligations under this Agreement and such default is not remedied within thirty (30) days after the Asset Manager has received written notice from the Trust specifying that the Asset Manager is in material default, identifying the nature of the material default and outlining the steps required to be taken in order to remedy such default. Where the default is of such nature that it is incapable of being remedied within the 30-day period, then the time for curing the default will be extended for such period of time as is reasonably necessary under the circumstances so long as the Asset Manager has commenced the cure during the initial 30-day period and is diligently pursuing the completion of same.

5.2 Default of Trust.

The Asset Manager will be entitled to terminate this Agreement if the Trust is in default of its obligations under this Agreement and the default is not remedied within 30 days after the Trust has received written notice from the Asset Manager specifying that the Trust is in default, identifying the nature of the default and outlining the steps required to be taken in order to remedy such default. Where the default is of such nature that it is incapable of being remedied within the 30-day period, then the time for curing the default will be extended for such period of time as is reasonably necessary under the circumstances so long as the Trust has commenced the cure during the initial 30-day period and is diligently pursuing the completion of same.

5.3 Assignment.

Neither party will be entitled to assign this Agreement to any other party without the written consent of the other.

5.4 Notices.

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed given or delivered (a) when delivered personally or by commercial messenger; (b) one business day after deposit with a recognized overnight delivery service, provided such deposit occurs prior to the deadline imposed by such service for overnight delivery; or (c) when transmitted by facsimile, provided confirmation of receipt is received by sender and such notice is sent by an additional method

provided hereunder, in each case provided such communication is addressed to the intended recipient thereof as set forth below:

If to the Trust:	JWCM Vivian, DST c/o Jesselson Warsavsky Capital Management, LLC 445 Park Avenue Suite 1600 New York, New York 10022 Attn: Jason Warsavsky Email: jason@jwcmllc.com Telephone: 646-386-8117
If to the Asset Manager:	JWCM Vivian Manager, LLC c/o Jesselson Warsavsky Capital Management, LLC 445 Park Avenue Suite 1600 New York, New York 10022 Attn: Jason Warsavsky Email: jason@jwcmllc.com Telephone: 646-386-8117

Any party may change its address specified above by giving the other party notice of such change in accordance with this Section 5.4.

5.5 Termination.

Any unperformed obligations of either the Trust or the Asset Manager will survive the termination of this Agreement. Immediately upon the expiration or termination, the Asset Manager shall deliver all books of account and records to the Trust together with all other documents and records which pertain to the Property.

5.6 Nonwaiver.

The failure of any party to insist upon or enforce strict performance by any other party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision or right in that or any other instance; rather, such provision or right shall be and remain in full force and effect.

5.7 Captions.

The captions contained in this Agreement are for convenience of reference only and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

5.8 Applicable Law.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAWS. BOTH OF THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) RELATED TO OR ARISING OUT OF THIS AGREEMENT. The parties hereby irrevocably submit to the exclusive jurisdiction of the courts of the State of New York and the Federal courts of the United States of America located in New York County, New York for purposes of any suit, action or other proceeding arising from this Agreement and the Offering, and hereby

waive, and agree not to assert, as a defense in any action, suit or proceeding for the interpretation or enforcement hereof or thereof, that it is not subject thereto or that such action, suit or proceeding may not be brought or is not maintainable in such courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts. The parties hereto hereby consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of any such dispute.

5.9 Entire Agreement.

This Agreement supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties, and there is no warranty, representation or any other agreement between the parties in connection with the subject matter of this Agreement. No supplement, modification, waiver or termination of this Agreement will be binding unless executed in writing by both parties.

5.10 Successors and Assigns.

This Agreement will inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. Nothing in this Agreement is intended or shall be construed to give to any other person any right, remedy or claim, except as otherwise specifically provided herein.

5.11 Counterparts.

This Agreement may be executed in multiple counterparts, and all such counterparts together shall constitute one and the same Agreement.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

TRUST:

JWCM VIVIAN, DST

By: JWCM Vivian Manager, LLC
Its: Manager and Signatory Trustee

By: _____
Name: Jason Warsavsky
Title: President

ASSET MANAGER:

JWCM VIVIAN MANAGER, LLC

By: _____
Name: Jason Warsavsky
Title: President

EXHIBIT A

LEGAL DESCRIPTION OF THE LAND

ALL THAT TRACT OR PARCEL OF LAND LYING, BEING AND SITUATED IN THE CITY OF ATLANTA, IN LAND LOT 105 OF THE 14TH DISTRICT OF FULTON COUNTY, GEORGIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE EAST LINE OF ALLENE AVENUE, WHICH POINT IS LOCATED TWO HUNDRED AND TWENTY-EIGHT AND SIX-TENTHS FEET (228.6 FEET) NORTH OF NORTHEAST CORNER OF ALLENE AVENUE AND ERIN STREET, WHICH POINT IS MARKED BY AN IRON PIN; THENCE NORTH ALONG THE EAST SIDE OF ALLENE AVENUE THREE HUNDRED AND TWO-TENTHS (300.2) FEET TO A CONCRETE MONUMENT: THENCE SLIGHTLY NORTHWESTERLY FOLLOWING THE EASTERN LINE OF ALLENE AVENUE ONE HUNDRED AND NINETY-NINE AND EIGHT-TENTHS (199.8) FEET TO AN IRON PIPE LOCATED IN THE EAST LINE OF ALLENE AVENUE, AT A POINT ONE HUNDRED EIGHT AND EIGHTY-FIVE HUNDREDTHS (105.85) FEET SOUTHWESTERLY FROM THE CENTER LINE OF THE ATLANTA AND WEST POINT RAILROAD COMPANY'S EASTBOUND FREIGHT MAIN TRACT; THENCE SOUTHEASTERLY THREE HUNDRED AND ELEVEN AND FIVE-TENTHS (311.5) FEET TO THE INTERSECTION OF A LINE WHICH WOULD BE THE PROJECTION OF THE NORTH SIDE OF HELLENA STREET IF SAID STREET WAS EXTENDED EASTERLY ACROSS ALLENE AVENUE, SAID POINT BEING ONE HUNDRED EIGHT AND THIRTY-FIVE HUNDREDTHS (108.35) FEET SOUTHEASTERLY FROM THE CENTER LINE OF EASTBOUND FREIGHT MAIN TRACK OF THE ATLANTA AND WEST POINT RAILROAD; THENCE EASTERLY ALONG A LINE WHICH WOULD BE THE PROJECTION OF THE NORTH SIDE OF HELLENA STREET ONE HUNDRED FORTY-SIX AND THREE TENTHS (146.3) FEET TO A POINT IN THE SOUTHWEST RIGHT OF WAY LINE OF THE ATLANTA AND WEST POINT RAILROAD, WHICH POINT IS LOCATED FIFTY (50) FEET SOUTHWESTERLY FROM THE CENTER LINE OF THE EASTBOUND FREIGHT MAIN TRACK OF SAID RAILROAD; THENCE SOUTHEASTERLY ALONG SAID RIGHT OF WAY LINE FIFTY (50) FEET FROM AND PARALLEL TO THE CENTER LINE OF SAID WESTBOUND FREIGHT MAIN LINE ONE THOUSAND ONE HUNDRED AND SIXTEEN (1116) FEET, MORE OR LESS, TO A POINT ON THE WEST SIDE OF STEWART AVENUE, WHICH POINT IS MARKED BY A CONCRETE MONUMENT; THENCE SOUTH ALONG THE WEST SIDE OF STEWART AVENUE FIFTY FOUR AND THREE TENTHS (54.3) FEET TO ANOTHER CONCRETE MONUMENT; THENCE WESTERLY FOLLOWING A LINE OF CONCRETE MONUMENTS FOURTEEN HUNDRED SEVENTY-TWO (1472) FEET, MORE OR LESS, TO POINT OF BEGINNING, ALL AS SHOWN ON PLAT OR SURVEY MADE, BY ATLANTA AND WEST POINT RAILROAD DATED OCTOBER 16, 1948, BEING SURVEY NO. 222/33 ACCORDING TO THE ORIGINAL TRACING ON FILING IN THE OFFICE OF THE CHIEF ENGINEER OF THE ATLANTA AND WEST POINT RAILROAD IN ATLANTA, GEORGIA.

EXCEPTING THEREFROM, HOWEVER ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 105 OF THE 14TH DISTRICT OF FULTON COUNTY, GEORGIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST SIDE OF STEWART AVENUE WHERE THE SOUTH RIGHT OF WAY LINE OF ATLANTA AND WEST POINT RAILROAD INTERSECTS, THE WEST SIDE OF STEWART AVENUE; AND RUNNING THENCE SOUTH 54.3 FEET; THENCE WEST A DISTANCE OF 5 FEET TO THE PROPOSED WEST SIDE OF STEWART AVENUE; THENCE NORTH ALONG THE PROPOSED WEST SIDE OF STEWART AVENUE A DISTANCE OF 54.3 FEET TO THE SOUTH RIGHT OF WAY LINE OF SAID RAILROAD; THENCE EAST ALONG THE SOUTH RIGHT OF WAY LINE OF SAID RAILROAD A DISTANCE OF 5 FEET TO THE POINT OF BEGINNING.

ALSO DESCRIBED AS:

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 105 OF THE 14TH DISTRICT OF FULTON COUNTY, CITY OF ATLANTA, GEORGIA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A 5/8-INCH REBAR SET 201.59 FEET NORTH OF THE INTERSECTION OF THE NORTHERN RIGHT-OF-WAY OF ERIN AVENUE (50 FOOT RIGHT-OF-WAY) WITH THE WESTERN RIGHT-OF-WAY OF METROPOLITAN PARKWAY (VARIABLE RIGHT-OF-WAY); THENCE LEAVING SAID RIGHT-OF-WAY, NORTH 88 DEGREES 39 MINUTES 47 SECONDS WEST A DISTANCE OF 1466.95 FEET TO A 1-INCH OPEN TOP PIPE FOUND ON THE EASTERN RIGHT-OF-WAY OF ALLENE AVENUE (50 FOOT RIGHT-OF-WAY); THENCE ALONG SAID RIGHT-OF-WAY THE FOLLOWING COURSES AND DISTANCES: NORTH 00 DEGREES 24 MINUTES 41 SECONDS EAST A DISTANCE OF 325.41 FEET TO A POINT; ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 699.00 FEET AND AN ARC LENGTH OF 126.92 FEET, BEING SUBTENDED BY A CHORD BEARING OF NORTH 03 DEGREES 25 MINUTES 33 SECONDS WEST FOR A DISTANCE OF 126.75 FEET TO A 5/8-INCH REBAR SET; NORTH 06 DEGREES 26 MINUTES 55 SECONDS WEST A DISTANCE OF 47.67 FEET TO A 1/2-INCH OPEN TOP PIPE FOUND; THENCE LEAVING SAID RIGHT-OF-WAY, SOUTH 66 DEGREES 03 MINUTES 45 SECONDS EAST A DISTANCE OF 311.50 FEET TO A 5/8-INCH REBAR SET; THENCE SOUTH 89 DEGREES 37 MINUTES 23 SECONDS EAST A DISTANCE OF 146.30 FEET TO A 5/8-INCH REBAR SET; THENCE SOUTH 66 DEGREES 07 MINUTES 03 SECONDS EAST A DISTANCE OF 457.93 FEET TO A 5/8-INCH REBAR SET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2061.00 FEET AND AN ARC LENGTH OF 651.81 FEET, BEING SUBTENDED BY A CHORD BEARING OF SOUTH 75 DEGREES 08 MINUTES 25 SECONDS EAST FOR A DISTANCE OF 649.10 FEET TO A PK NAIL SET ON THE WESTERN RIGHT-OF-WAY OF METROPOLITAN PARKWAY; THENCE ALONG SAID RIGHT-OF-WAY, SOUTH 00 DEGREES 01 MINUTES 27 SECONDS EAST A DISTANCE OF 54.30 FEET TO A 5/8-INCH REBAR SET AND THE TRUE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS 8.471 ACRES.

APPENDIX I – FINANCIAL FORECAST

The following Financial Forecast is intended to supplement the disclosures contained in this Memorandum.

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Occupancy	94.7%	95.0%	95.0%	95.0%	95.0%	95.0%	95.0%	95.0%	95.0%	95.0%
REVENUE										
Market Rent	$ 7,058,442	$7,305,487	$7,561,179	$7,825,821	$8,099,724	$8,342,716	$8,592,998	$8,850,788	$9,116,311	$9,389,801
Gain or Loss to Lease	(302,398)	(312,982)	(323,936)	(335,274)	(347,009)	(357,419)	(368,142)	(379,186)	(390,561)	(402,278)
Gross Potential Rent	**$ 6,756,044**	**$6,992,505**	**$7,237,243**	**$7,490,547**	**$7,752,716**	**$7,985,297**	**$8,224,856**	**$8,471,602**	**$8,725,750**	**$8,987,522**
Vacancy	(360,057)	(349,625)	(361,862)	(374,527)	(387,636)	(399,265)	(411,243)	(423,580)	(436,287)	(449,376)
Concessions (Upfront)	-	-	-	-	-	-	-	-	-	-
Concessions (Recurring)	-	-	-	-	-	-	-	-	-	-
Employee Units	(8,302)	(8,592)	(8,893)	(9,204)	(9,526)	(9,812)	(10,106)	(10,410)	(10,722)	(11,043)
Model	(20,754)	(21,480)	(22,232)	(23,010)	(23,816)	(24,530)	(25,266)	(26,024)	(26,805)	(27,609)
Bad Debt / Other Losses	(27,024)	(27,970)	(28,949)	(29,962)	(31,011)	(31,941)	(32,899)	(33,886)	(34,903)	(35,950)
Total Rental Revenue	**$ 6,339,908**	**$6,584,838**	**$6,815,307**	**$7,053,843**	**$7,300,727**	**$7,519,749**	**$7,745,342**	**$7,977,702**	**$8,217,033**	**$8,463,544**
RUBS Income	$ 220,074	$ 220,613	$ 227,231	$ 234,048	$ 241,069	$ 248,301	$ 255,750	$ 263,423	$ 271,326	$ 279,465
Trash	129,220	133,097	137,089	141,202	145,438	149,801	154,295	158,924	163,692	168,603
Parking	38,297	40,046	41,248	42,485	43,760	45,073	46,425	47,817	49,252	50,730
Storage	9,750	10,043	10,344	10,654	10,974	11,303	11,642	11,991	12,351	12,722
Other Fees	188,960	214,184	220,609	227,228	234,044	241,066	248,298	255,747	263,419	271,322
Pets	31,125	51,617	53,165	54,760	56,403	58,095	59,838	61,633	63,482	65,387
Technology	296,806	337,580	347,708	358,139	368,883	379,950	391,348	403,088	415,181	427,637
Commercial Rent	12,809	14,383	14,814	15,258	15,716	16,188	16,673	17,174	17,689	15,119
Total Other Income	**$ 927,039**	**$1,021,561**	**$1,052,208**	**$1,083,775**	**$1,116,288**	**$1,149,776**	**$1,184,270**	**$1,219,798**	**$1,256,392**	**$1,290,983**
EFFECTIVE GROSS INCOME	**$ 7,266,946**	**$7,606,399**	**$7,867,515**	**$8,137,617**	**$8,417,015**	**$8,669,526**	**$8,929,611**	**$9,197,500**	**$9,473,425**	**$9,754,527**
EXPENSES										
Personnel	$ 557,419	$ 573,386	$ 590,588	$ 608,306	$ 626,555	$ 645,351	$ 664,712	$ 684,653	$ 705,193	$ 726,349
Leasing	134,004	129,150	133,025	137,016	141,126	145,360	149,721	154,212	158,839	163,604
Service Contracts	165,679	138,499	142,654	146,934	151,342	155,882	160,558	165,375	170,336	175,447
Repairs and Maintenance	139,484	132,959	136,948	141,056	145,288	149,647	154,136	158,760	163,523	168,429
Turnover Costs	75,973	78,252	80,600	83,018	85,508	88,073	90,716	93,437	96,240	99,127
Project Administration	149,118	146,809	151,213	155,750	160,422	165,235	170,192	175,298	180,557	185,973
Trash Contracts	154,562	160,659	165,479	170,443	175,556	180,823	186,248	191,835	197,590	203,518
Utilities	404,833	404,417	416,550	429,046	441,918	455,175	468,831	482,896	497,382	512,304
Management Fee	181,674	190,160	196,688	203,440	210,425	216,738	223,240	229,937	236,836	243,863
Total Controllable Expenses	**$ 1,962,745**	**$1,954,292**	**$2,013,744**	**$2,075,009**	**$2,138,141**	**$2,202,285**	**$2,268,353**	**$2,336,404**	**$2,406,496**	**$2,478,613**
Real Estate Taxes	$ 12,143	$ 12,172	$ 12,201	$ 319,059	$ 808,972	$1,019,647	$1,083,501	$1,147,668	$1,212,149	$1,235,733
Insurance	182,650	242,720	250,001	257,501	265,226	273,183	281,378	289,820	298,514	307,470
Reserves	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000
Total Non-Controllable Expenses	**$ 259,793**	**$ 319,892**	**$ 327,203**	**$ 641,561**	**$1,139,198**	**$1,357,830**	**$1,429,880**	**$1,502,488**	**$1,575,663**	**$1,608,203**
TOTAL EXPENSES	**$ 2,222,538**	**$2,274,184**	**$2,340,947**	**$2,716,569**	**$3,277,339**	**$3,560,115**	**$3,698,233**	**$3,838,892**	**$3,982,159**	**$4,086,816**
NET CASH FLOW	**$ 5,044,408**	**$5,332,215**	**$5,526,569**	**$5,421,048**	**$5,139,676**	**$5,109,411**	**$5,231,379**	**$5,358,608**	**$5,491,265**	**$5,667,711**

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
MASTER TENANT RENT TO TRUST (Landlord)										
BASE RENT										
Base Rent	$ 2,730,546	$ 2,888,145	$ 2,902,403	$ 3,209,814	$ 3,707,452	$ 3,926,083	$ 4,005,080	$ 4,679,500	$ 4,752,676	$ 4,785,215
ADDITIONAL RENT										
Additional Rent Breakpoint	$ 4,751,400	$ 4,903,200	$ 4,979,000	$ 5,349,900	$ 5,912,900	$ 6,197,700	$ 6,344,800	$ 7,089,400	$ 7,234,900	$ 7,341,800
Additional Rent	$ 1,884,300	$ 1,884,300	$ 1,884,300	$ 1,884,300	$ 1,884,300	$ 1,884,300	$ 1,884,300	$ 1,884,300	$ 1,884,300	$ 1,884,300
Master Tenant Base Income	$ 58,109	$ 60,763	$ 62,852	$ 65,078	$ 67,308	$ 69,332	$ 71,367	$ 73,496	$ 75,728	$ 77,971
SUPPLEMENTAL RENT										
Supplemental Rent Breakpoint	$ 6,635,700	$ 6,787,500	$ 6,863,300	$ 7,234,200	$ 7,797,200	$ 8,082,000	$ 8,229,100	$ 8,973,700	$ 9,119,200	$ 9,226,100
Supplemental Rent	$ 568,122	$ 737,009	$ 903,794	$ 813,076	$ 557,834	$ 528,773	$ 630,460	$ 201,420	$ 318,802	$ 475,584
Master Tenant - Supplemental Rent	$ 63,125	$ 81,890	$ 100,422	$ 90,342	$ 61,982	$ 58,753	$ 70,051	$ 22,380	$ 35,422	$ 52,843
DST INVESTOR DISTRIBUTIONS										
Additional Rent										
Additional Rent	$ 1,884,300	$ 1,884,300	$ 1,884,300	$ 1,884,300	$ 1,884,300	$ 1,884,300	$ 1,884,300	$ 1,884,300	$ 1,884,300	$ 1,884,300
- Asset Management Fee	-	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)
- Trustee Fee	-	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)	(2,500)
Total Additional Rent (DST Investors)	**$ 1,884,300**	**$ 1,846,800**	**$ 1,846,800**	**$ 1,846,800**	**$ 1,846,800**	**$ 1,846,800**	**$ 1,846,800**	**$ 1,846,800**	**$ 1,846,800**	**$ 1,846,800**
DST Investor Cash Flow										
Net Additional Rent	$ 1,884,300	$ 1,846,800	$ 1,846,800	$ 1,846,800	$ 1,846,800	$ 1,846,800	$ 1,846,800	$ 1,846,800	$ 1,846,800	$ 1,846,800
Supplemental Rent	568,122	737,009	903,794	813,076	557,834	528,773	630,460	201,420	318,802	475,584
Total DST Investor Cash Flow	**$ 2,452,422**	**$ 2,583,809**	**$ 2,750,594**	**$ 2,659,876**	**$ 2,404,634**	**$ 2,375,573**	**$ 2,477,260**	**$ 2,048,220**	**$ 2,165,602**	**$ 2,322,384**
Cash on Cash Return	**5.31%**	**5.60%**	**5.96%**	**5.76%**	**5.21%**	**5.15%**	**5.37%**	**4.44%**	**4.69%**	**5.03%**
FORECASTED LOAN AMORTIZATION										
Beginning Principal Balance	**$47,189,000**	**$47,189,000**	**$47,189,000**	**$47,189,000**	**$47,189,000**	**$47,189,000**	**$47,189,000**	**$47,189,000**	**$46,564,802**	**$45,906,224**
Amortization	-	-	-	-	-	-	-	(624,198)	(658,578)	(694,852)
Ending Principal Balance	**$47,189,000**	**$47,189,000**	**$47,189,000**	**$47,189,000**	**$47,189,000**	**$47,189,000**	**$47,189,000**	**$46,564,802**	**$45,906,224**	**$45,211,371**
SUPPLEMENTAL TRUST RESERVE										
Beginning Reserve Balance	**$ 646,735**	**$ 497,896**	**$ 530,396**	**$ 342,396**	**$ 154,396**	**$ 186,896**	**$ 219,396**	**$ 251,896**	**$ 284,396**	**$ 316,896**
Trust Reserve Contribution	-	32,500	32,500	32,500	32,500	32,500	32,500	32,500	32,500	32,500
Capital Expenditure Budget Drawdowns	-	-	(220,500)	(220,500)	-	-	-	-	-	(24,396)
Trust Drawdowns	(148,840)	-	-	-	-	-	-	-	-	-
Ending Reserve Balance	**$ 497,896**	**$ 530,396**	**$ 342,396**	**$ 154,396**	**$ 186,896**	**$ 219,396**	**$ 251,896**	**$ 284,396**	**$ 316,896**	**$ 325,000**
LENDER REPLACEMENT RESERVE (ILLUSTRATIVE)										
Beginning Reserve Balance	**$ 130,000**	**$ 195,000**	**$ 260,000**	**$ 303,946**	**$ 368,946**	**$ 433,946**	**$ 498,946**	**$ 518,670**	**$ 500,333**	**$ 517,302**
Reserve Contribution	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000	65,000
PCR Schedule (inflation factor)	-	-	(21,054)	-	-	-	(45,276)	(83,337)	(48,031)	(137,784)
Ending Reserve Balance	**$ 195,000**	**$ 260,000**	**$ 303,946**	**$ 368,946**	**$ 433,946**	**$ 498,946**	**$ 518,670**	**$ 500,333**	**$ 517,302**	**$ 444,518**