Offeree Name:_____ Memorandum Number:_____

**NEXPOINT WATERFORD DST**

**PRIVATE PLACEMENT MEMORANDUM**

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**Minimum Purchase**: 0.319% Interest ($100,000 of equity and $94,704 of debt)

**Maximum Offering Amount**: $31,360,817 of equity

The date of this Memorandum is March 18, 2026

*Investing in DST Interests involves a high degree of risk. Before investing you should review the entire Private Placement Memorandum, including the "Risk Factors" beginning on page 17.*

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# NEXPOINT WATERFORD DST

## PRIVATE PLACEMENT MEMORANDUM

**Class 1 Beneficial Interests in a Delaware Statutory Trust**
**Minimum Purchase: 0.319% Interest ($100,000 of equity and $94,704 of debt)**
**Maximum Offering Amount: $31,360,817 of Interests (100% ownership of the Trust)**

### The Trust

NexPoint Waterford DST (the "**Trust**") is a recently formed Delaware statutory trust ("**DST**") that is offering to sell (the "**Offering**") up to 100% of the Class 1 Beneficial Interests (as defined herein; each such interest, an "**Interest**" or "**Interests**") to Accredited Investors (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 (each, a "**Beneficial Owner**"). **You should read this Memorandum in its entirety before making an investment decision.**

### The Sponsor

NexPoint Real Estate Advisors IV, L.P. ("**NexPoint Real Estate Advisors**") is the sponsor (the "**Sponsor**") of this Offering. NexPoint Real Estate Advisors is an affiliate of NexPoint Advisors, L.P. (together with NexPoint Real Estate Advisors, "**NexPoint**"). NexPoint is a leading alternative investment platform that provides differentiated access to alternatives through a range of investment offerings, including publicly traded real estate investment trusts ("**REITs**"), real estate private placements, Section 1031 Exchanges (as defined herein), closed-end funds, interval funds, and a business development company ("**BDC**"). NexPoint is based in Dallas, Texas. NexPoint and its affiliates had approximately $15.97 billion in fee-earning assets under management as of December 31, 2025, and have completed over $21.9 billion in gross real estate acquisitions since the beginning of 2012. The NexPoint group of companies is the direct or indirect sponsor of and/or investment advisor to NexPoint Residential Trust, Inc. ("**NXRT**"), an externally managed, publicly traded REIT that manages a portfolio of "Class B" value-add multifamily properties; NexPoint Real Estate Finance, Inc. (formerly, NexPoint Multifamily Capital Trust, Inc., "**NREF**"), an externally managed, publicly traded REIT and commercial real estate finance company; NexPoint Real Estate Strategies Fund ("**NRESF**"), a continuously offered closed-end management investment company that operates as an interval fund; NexPoint Diversified Real Estate Trust ("**NXDT**") (f.k.a. NexPoint Strategic Opportunities Fund or "**NHF**", a publicly listed REIT); NexPoint Hospitality Trust ("**NHT**"), a formerly publicly traded REIT listed on the TSX Venture Exchange, whose operating partnership recently merged with a subsidiary of NXDT, that manages a portfolio of hospitality assets located in the United States; VineBrook Homes Trust, Inc. ("**VBHT**"), a private REIT that is a public filer, that manages a portfolio of single-family housing properties in the Midwest and Southeast; and NexPoint Storage Partners, Inc. ("**NSP**"), a formerly publicly traded REIT (traded under the name Jernigan Capital, Inc. ("**JCAP**")) focused on the self-storage sector. The NexPoint platform is also the investment advisor to multiple REIT Subsidiaries (as defined herein) that are wholly-owned subsidiaries of affiliated registered investment companies: NexPoint Real Estate Capital, LLC ("**NREC**"); NexPoint Real Estate Opportunities, LLC ("**NREO**"); NexPoint Capital REIT, LLC; NFRO REIT Sub, LLC ("**NFRO**"); and GAF REIT, LLC (the wholly-owned subsidiaries are collectively referred to herein as the "**REIT Subsidiaries**").

### The Manager of the Trust

NexPoint Waterford Parent Manager, LLC, a Delaware limited liability company (the "**Manager**"), which is an affiliate of the Sponsor, will manage the Trust. The Manager of the Trust will be managed by senior members of the Sponsor's management team as described below. The Manager is also the "**Signatory Trustee**" of the Trust.

### The Property

Waterford Place is a multifamily garden-style apartment development located at 101 Shore Lake Drive, Greensboro, North Carolina 27455 (the "**Property**"). Developed in 1997, the Property consists of 20.64 acres of land upon which 20 residential buildings are situated, housing a total of approximately 277,296 rentable square feet across

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240 apartment units (the "**Apartment Units**"). The Property includes amenities such as a clubhouse building with fitness center, business center, and package room, maintenance building, mailbox building, pool, car wash station, playground, tennis court, and dog park. As of March 9, 2026, the Property was 90.0% leased.

**The Acquisition Closing**

The Trust closed on the acquisition of the Property on January 16, 2026 (the "**Acquisition Closing**"). The sellers of the Property were Waterford Place Owner LLC, Waterford Place TIC II Owner LLC, Waterford Place TIC III Owner LLC, and Waterford Place TIC IV Owner LLC, each a Delaware limited liability company (collectively, the "**Seller**"). The Seller is an unaffiliated third party.

NexPoint Acquisitions, LLC ("**NREA**"), an affiliate of the Sponsor, was under contract to acquire the Property for $49,500,000 pursuant to that certain Purchase and Sale Agreement dated November 4, 2025 (as amended and restated, the "**PSA**"). Prior to the Acquisition Closing, NREA assigned all of its rights under the PSA (such assignment, together with the PSA, the "**Purchase Contract**") to the Trust. At the Acquisition Closing, NexPoint Waterford Investment Co, LLC, a Delaware limited liability company (the "**Contributor**"), contributed to the Trust sufficient cash (the "**Contributor Contribution**"), which, together with the proceeds from the Loan (as defined below), enabled the Trust to acquire the Property and pay expenses and fees associated with the acquisition. In exchange for the Contributor Contribution, the Trust simultaneously issued to the Contributor all of the Class 2 Beneficial Interests in the Trust (the "**Class 2 Beneficial Interests**"). Contemporaneously with the Contributor Contribution, the Trust obtained a loan in the original principal amount of $29,700,000 (the "**Loan**") from Walker & Dunlop, LLC, a Delaware limited liability company (the "**Lender**"), under the Federal Home Loan Mortgage Corporation ("**Freddie Mac**") Capital Markets Execution Program. As part of the foregoing, the Contributor paid a facilitation fee (the "**Facilitation Fee**") in the amount of $742,500 to the Sponsor in connection with the Sponsor's services in the identification, negotiation, diligence, and acquisition of the Property.

In connection with the Acquisition Closing, the Lender obtained an appraisal for the Property prepared by CBRE Valuation & Advisory Services (the "**Appraiser**"), dated December 4, 2025 (the "**Appraisal**"), reflecting a market value "as is" for the Property of $51,000,000.

**The Lease**

Concurrent with the acquisition of the Property, the Trust leased the Property to an affiliate of the Sponsor, NexPoint Waterford Leaseco, LLC, a newly formed Delaware limited liability company (the "**Master Tenant**"), pursuant to a Master Lease Agreement dated as of January 16, 2026 (the "**Master Lease**"). The Master Tenant sub-leases the Apartment Units to the end-user tenants pursuant to residential leases.

**The Property Manager**

The Master Tenant has entered into a property management agreement (the "**Property Management Agreement**") with BH Management Services, LLC (the "**Property Manager**") for the management of the Property. BH Companies, the parent to the Property Manager, is a fully integrated apartment management platform that provides acquisition, apartment management, design, construction and other advisory services to the Sponsor. Founded by Harry Bookey in 1993, the Property Manager has become one of the 15 largest management companies in the United States, with over 1,700 employees, over 85,000 units under management and revenues surpassing $400 million annually.

**The Trust**

The Trust is governed by that certain First Amended and Restated Trust Agreement dated January 16, 2026, (the "**Trust Agreement**"), by and among the Contributor, the Manager (in its capacity as manager of the Trust and also in its capacity as Signatory Trustee), and the Corporation Trust Company, as the Delaware trustee (in its capacity as the Delaware trustee of the Trust, the "**Delaware Trustee**"; together with the Signatory Trustee, the "**Trustees**"). Each Purchaser will acquire Interests subject to the Trust Agreement that will govern the terms of the Trust, as well as the rights and obligations of the Beneficial Owners with respect to their investment. The Trust Agreement sets

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forth the rights and duties of the Beneficial Owners, the Trust, the Manager, the Signatory Trustee, and the Delaware Trustee.

**Section 1031 Exchanges**

A tax-deferred exchange (a "**Section 1031 Exchange**") under Section 1031 of the Internal Revenue Code of 1986, as amended (the "**Code**") generally allows the seller of investment and business real 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 a direct acquisition of the 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 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 (the "**Class 1 Beneficial Interests**") (*i.e.*, the Interests) 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 Agency, Inc. ("**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 escrow by UMB Bank, NA (the "**Escrow Agent**"), and the Sponsor will conduct an initial closing of such subscriptions (the "**Initial Closing**"). The Sponsor may hold the Initial Closing at any time after one or more subscriptions of Interests have been processed. Subsequent to the Initial Closing, the remaining Interests, if any, will continue to be sold and additional closings may be thereafter conducted on a daily basis in accordance with the Offering Documents (as defined herein) until the Maximum Offering Amount (as defined herein) of Interests is sold or, if earlier, until March 31, 2027 (the "**Offering Termination Date**"). The Offering Termination Date may be extended at the Sponsor's discretion. *See* "*Plan of Distribution*." Notwithstanding the foregoing, in no event shall 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; Collateral Assignment of Subordination, Assignment and Security Agreement; Subordination, Assignment and Security Agreement; Multifamily Note; Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing; and additional loan documents (collectively, the "**Loan Documents**"), entered into as of the Acquisition Closing. The Loan Documents provide for a "Replacement Reserve Fund" (referred to herein as "**Replacement Reserve**"), and the Trust used $461,112 of the Loan proceeds to fund initial contributions to the Replacement Reserve as required under the Loan Documents. The Lender will require additional monthly deposits to the Replacement Reserve at a required rate of approximately $384 per apartment unit per year. Also, as required by the Lender, the Trust used $336,464 of the Loan proceeds to fund a reserve for the purposes of paying taxes, insurance premiums, and other obligations of the Trust (the "**Imposition Reserve**"; together with the Replacement Reserve, the "**Lender Reserves**"). In addition to the Lender-controlled Lender Reserves, the Trust established a reserve funded from the Loan proceeds and the Offering proceeds for costs and expenses associated with the Property, in the amount of $4,552,427, of which $3,500,000 will be Lender-controlled (the "**Supplemental Trust Reserve**"). Finally, in connection with the Acquisition Closing, Holdings (as defined herein) contributed $100,000 in cash to the Master Tenant for working capital and other operating expenses (the "**Master Tenant Working Capital**").

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The Loan Documents provide for a $29,700,000 Loan, with a 10-year term, full-term interest-only payments, and a fixed interest rate of 4.86% per annum. On a fully-loaded basis, the loan-to-capitalization ("**LTC**") ratio is 48.6%. The Loan is "non-recourse" to the Trust except for standard non-recourse carve outs contained within the Loan Documents. Purchasers will not be required to execute personal guaranties or an environmental indemnity agreement in favor of the Lender.

**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 and/or public market for 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 garden-style apartment development, and real estate generally, in North Carolina, and more specifically the Greensboro-High Point Metropolitan Statistical Area (the "**Greensboro MSA**");
- risks associated with the Exchange Right (as defined herein);
- risks associated with general market fluctuations such as recessions (global or local), the impact of pandemics (including the COVID-19 pandemic), and other systemic market or economic fluctuations of the communities in which the Property exists;
- the Trust depends on the Master Tenant for revenue, and the Master Tenant depends on the end-user tenants for revenue and thus any default by the Master Tenant or the end-user tenants will adversely affect the Trust's operations;
- 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 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;
- the existence of various conflicts of interest among the Sponsor, the Trust, the Master Tenant, the Manager (as defined herein), 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 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;
- lack of diversity of investment;
- risks related to competition from properties similar to and near the Property; and
- the possibility of environmental risks related to the Property.

**You must carefully consider the risk factors beginning on page 17 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.**

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| | Cash Price To Purchasers | Sales Commissions and Expenses[1] | Proceeds to the Trust[2] |
|---|---|---|---|
| Per 0.313% Interest (minimum purchase)[3] | $100,000 | $9,350 | $90,650 |
| Maximum Offering Amount | $31,360,817 | $2,932,236 | $28,428,581 |

**The date of this Memorandum is March 18, 2026**

(1) NexPoint Securities, Inc., a Delaware corporation, a member of FINRA and an affiliate of the Sponsor, will serve as Managing Broker-Dealer for the Offering (the "**Managing Broker-Dealer**"). The Managing Broker-Dealer will receive sales commissions (the "**Sales Commissions**") of up to 6.0% of the purchase price of the Interests sold in the Offering ("**Total Sales**") by Participating Dealers, which it will re-allow to the Participating Dealers; provided, however, in the event that a commission rate lower than 6.0% 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 the Total Sales ("**Marketing/Due Diligence Expense Allowances**"). The Managing Broker-Dealer will also receive a Managing Broker-Dealer Fee of up to 1.5% of the Total Sales (the "**Managing Broker-Dealer Fee**") 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. The Sponsor and its affiliates will be entitled to reimbursement for expenses incurred in connection with the Offering, on an accountable basis, of 0.6% of the 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**"). The total aggregate amount of the Sales Commissions, Organization and Offering Expenses, Marketing/Due Diligence Expense Allowances and the Managing Broker-Dealer Fee (collectively, "**Sales Commissions and Expenses**") will not exceed 9.35% of the 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 Advisor ("**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 $31,360,817 of Interests (the "**Maximum Offering Amount**"), 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 Offering, the Acquisition Closing, 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 cash purchase price of $100,000 and deemed debt assumption of $94,704 represents a 0.319% 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 with the Escrow Agent. Purchasers will not receive any interest on funds held in the escrow account.

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**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, financial, tax and related matters concerning an investment in Interests. None of the Trust, the Sponsor, nor any of their affiliates (including the Managing Broker-Dealer) 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.**

Each prospective Purchaser should note that the Trust, the Sponsor, and their affiliates (including the Managing Broker-Dealer) make no representation or warranty of any kind regarding the suitability of an investment in the Interests by a prospective Purchaser. Further, each prospective Purchaser will be required to acknowledge and agree that it has not relied upon any investment advice or recommendation of the Trust, the Sponsor, or any of their affiliates (including the Managing Broker-Dealer) as a basis for the decision to invest in the Interests. Accordingly, each prospective Purchaser should examine the suitability of this type of investment in the context of its own needs, purchase objectives, and financial capabilities and should make its own independent investigation and decision as to suitability and as to the risk and potential gain involved.

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, performance of the Property, regulatory compliance and litigation, and 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, regulatory enforcement, and third-party behavior, and these assumptions may prove to be incorrect. Accordingly, while the Sponsor believes these assumptions to be reasonable under the circumstances existing at the time they were made, such forward-looking statements might not accurately predict future events or the actual performance of an investment in the Interests. Factors that could cause forward-looking statements to be incorrect include changes in the economy or the markets where we operate, developments in litigation, changes in regulatory frameworks, and other factors discussed more completely in the risk factors section of this Memorandum. 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 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 shall not in any way be deemed an issuer or underwriter of, the Interests, and shall 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 PURCHASERS 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 ("Accredited Investors"), 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 TAX ISSUES CONTAINED OR REFERENCED IN THIS MEMORANDUM IS WRITTEN IN CONNECTION WITH THE PROMOTION OR MARKETING BY THE TRUST OF THE TRANSACTIONS**

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**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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## EXHIBITS

EXHIBIT A: PURCHASE AGREEMENT AND PURCHASER QUESTIONNAIRE
EXHIBIT B: RENT ROLL
EXHIBIT C: TAX OPINION
EXHIBIT D: FINANCIAL FORECAST

In an effort to promote environmental responsibility, the Sponsor has made most of the additional information relating to the Offering available in electronic copies (the "**Digital Investor Kit**") rather than by paper copy. Paper copies are, however, available upon request. To obtain paper copies, please contact your financial advisor and/or Investor Services at NexPoint Securities, Inc., 300 Crescent Court, Suite 700, Dallas, Texas 75201, or 833-697-7253, Option 4.

The following additional documents are available in the Digital Investor Kit:

- Appraisal
- Asset Management Agreement
- Trust Agreement (including the Springing LLC Agreement (as defined herein))
- Loan Documents
- Master Lease Agreement
- Phase I Environmental Site Assessment

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- Property Condition Assessment
- Property Management Agreement
- Survey
- Owner's Policy of Title Insurance
- Zoning Report

**THE DOCUMENTS THAT ARE AVAILABLE IN THE DIGITAL INVESTOR KIT ARE IMPORTANT FOR PURPOSES OF A PURCHASER'S REVIEW. IF YOU ARE NOT ABLE TO ACCESS THE DIGITAL INVESTOR KIT, PLEASE CONTACT THE SPONSOR IMMEDIATELY.**

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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, affiliates of the foregoing 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 $31,360,817 in the Interests, whose owners will be Beneficial Owners along with the Contributor. 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 Interests represent ownership, for U.S. federal income tax purposes, of the Property. The minimum purchase price is $100,000 in cash, which represents a 0.319% 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 $94,704 of mortgage debt for each 0.319% 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, Loan-Related Costs (as defined herein), Other Closing Costs (as defined herein), the Facilitation Fee, the Replacement Reserve, the Supplemental Trust Reserve, and the Imposition 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 from Master Lease rent payments estimated to start at 4.51% per annum in year one, and projected to range from 4.87% to 7.64% per annum in years two through 10, which may be partially tax-deferred as a result of depreciation and amortization expenses, (iii) capitalize on potential rental premiums afforded by the easy access to major economic drivers, robust development and thriving economic conditions in the local area, (iv) increase the net operating income of the Property through growth in rental rates, maintenance of high renter demand and occupancy, implementation and maintenance of expense controls by professional property management, and institutional-quality asset management, (v) add value and improve asset quality through selective minor and non-structural capital improvements, thereby increasing rent and renter demand, and (vi) sell the Property at a profit within approximately five to 10 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

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investment in the Interests involves substantial risks. *See* "*Risk Factors*."

**The Property**:

The Property is a multifamily garden-style apartment development located at 101 Shore Lake Drive, Greensboro, North Carolina 27455. Developed in 1997, the Property consists of 26.64 acres of land upon which 20 residential buildings are situated housing a total of approximately 277,296 rentable square feet across 240 apartment units. The Property includes amenities such as a clubhouse building with fitness center, business center, and package room, maintenance building, mailbox building, pool, car wash station, playground, tennis court, and dog park. As of March 9, 2026, the Property was 90.0% leased.

**The Acquisition Closing:**

The Trust acquired the Property for $49,500,000 through the Acquisition Closing on January 16, 2026. In connection with the Acquisition Closing, the Contributor Contribution enabled the Trust to acquire the Property (directly or indirectly) and pay expenses and fees associated with the Acquisition Closing. In exchange for the Contributor Contribution, the Trust simultaneously issued to the Contributor all of the Class 2 Beneficial Interests in the Trust. Under the Trust Agreement, the Trust is obligated to use the "Class 1 Beneficial Interests" in the Trust to redeem a proportionate amount of the Trust's Class 2 Beneficial Interests upon issuance of the Conversion Notice (as defined in the Trust Agreement) to the Delaware Trustee and the Manager. Contemporaneously, the Trust obtained the Loan in the original principal amount of $29,700,000 from the Lender.

**The Sponsor and the Master Tenant**:

The Offering is sponsored by the Sponsor (*i.e.*, NexPoint Real Estate Advisors). The Sponsor is an affiliate of NexPoint Advisors, L.P. NexPoint (*i.e.*, NexPoint Real Estate Advisors and NexPoint Advisors, L.P.) is a leading alternative investment platform that provides differentiated access to alternatives through a range of investment offerings, including publicly traded REITs, real estate private placements, Section 1031 Exchanges, closed-end funds, interval funds, and a BDC. NexPoint and its affiliates had approximately $15.97 billion in fee-earning assets under management as of December 31, 2025, and has completed over $21.9 billion in gross real estate acquisitions since the beginning of 2012.

Concurrently with the Acquisition Closing, the Trust master leased the Property to the Master Tenant pursuant to the Master Lease. The Master Tenant is wholly owned and managed by NexPoint Waterford Holdco, LLC ("**Holdings**"), an affiliate of the Sponsor. The Master Lease is subject to the existing apartment leases with end-user tenants who sublease the Property from the Master Tenant. A copy of the Master Lease is available in the Digital Investor Kit.

**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

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Agreement will govern the rights and obligations of the Beneficial Owners with respect to the Trust. A copy of the Trust Agreement is available in the Digital Investor Kit.

The Trust has two classes of Interests: (1) the Class 1 Beneficial Interests; and (2) the Class 2 Beneficial Interests. In connection with the Acquisition Closing, the Trust issued to the Contributor 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, up to 100% of the Contributor'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 thereafter will be used by the Trust, in accordance with the Trust Agreement. The Trust shall retain and may utilize any remaining 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 each of the Class 1 Beneficial Interests shall mean an amount equal to the purchase price of each Class 1 Beneficial Interest, less Sales Commissions and Expenses allocable to each such sale. *See* "*Estimated Use of Proceeds*" and "*Compensation and Fees*."

The Manager may appoint in its sole discretion, 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 Manager has appointed itself as the initial Signatory Trustee.

The Beneficial Owners may be required to exchange their Interests for units in NexPoint Diversified Real Estate Trust Operating Partnership, L.P., a Delaware limited partnership (the "**Operating Partnership**") or elect to have their Interest purchased for cash, if the Operating Partnership exercises its exchange right under the Trust Agreement ("**Exchange Right**"). *See* "*Summary of the Trust Agreement*" and "*Risk Factors*."

The Sponsor or its affiliates may, but have no obligation to, periodically extend an offer to purchase from a Beneficial Owner some or all of such Beneficial Owner's Interests following the second anniversary of the Acquisition Closing (a "**Periodic Purchase Offer**"). *See* "*Summary of the Trust Agreement*" and "*Risk Factors*."

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**Management of the Trust**:

NexPoint Waterford Parent Manager, LLC, a Delaware limited liability company, which is an affiliate of the Sponsor, is 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 Holdings, which is an affiliate of the Sponsor. *See* "*Management*."

In addition to the Exchange Right, the Trust will terminate upon the first to occur of (i) the sale of the Property by the Manager or (ii) a Transfer Distribution (as defined herein). The Manager shall 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. 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 and in such manner as the Manager determines to be in the best interests of the Trust. Further, the Beneficial Owners agree to reimburse the Manager for reasonable and customary expenses incurred with respect to the foregoing.

For purposes of this Memorandum, a "**Transfer Distribution**" shall 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 (including (i) all of the Trust's assets are in jeopardy of being lost due to any reason, (ii) the Purchasers are at risk of losing all or a substantial portion of their investment in the Class 1 Beneficial Interests, or (iii) the Trust needs to take a prohibited action as detailed in the Trust Agreement), 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 terms of a 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

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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 (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 Property; and (5) other improvements or replacements to the Property that would be considered capital expenditures or are required by law (collectively, "**Landlord Costs**"). The Master Tenant has the right to utilize certain 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 Acquisition Closing, and shall 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. The Sponsor capitalized the Master Tenant with a demand note in the amount of $750,000 (the "**Demand Note**"), and Holdings contributed $100,000 in cash (*i.e.*, the Master Tenant Working Capital). The Master Tenant 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: (1) an amount equal to certain debt service payments including principal and interest payments and necessary deposits into all Lender-required reserve funds (collectively, "**Base Rent**"); (2) 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) 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**" (as defined in the Master Lease) with respect to the Property (the "**Projected Uncontrollable Costs**"). In the event that the Projected Uncontrollable Costs for any calendar year exceed the actual Uncontrollable Costs for such calendar year, the Master Tenant shall pay to the Trust, as additional Rent, the amount of such excess. If, however, the

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actual Uncontrollable Costs for any calendar year exceed the Projected Uncontrollable Costs for such calendar year, then the Master Tenant shall be responsible for payment of such excess, but shall be entitled to reimbursement of such excess Uncontrollable Costs by offsetting such amount against Rent payable to the Trust.

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 the monthly Base Rent and breakpoints and ceilings for the calculation of monthly Additional Rent and annual Supplemental Rent. 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. 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. *See* "*Summary of the Master Lease*."

**Rent Amounts Pursuant to the Master Lease**

| Lease Period | Base Rent | Gross Revenue Additional Rent Breakpoint | Additional Rent Annual Maximum | Gross Revenue Supplemental Rent Breakpoint |
|---|---|---|---|---|
| Year 1 | $1,463,468 | $3,400,000 | $1,254,000 | $4,654,000 |
| Year 2 | $1,463,468 | $3,482,000 | $1,402,500 | $4,884,500 |
| Year 3 | $1,467,477 | $3,555,000 | $1,476,750 | $5,031,750 |
| Year 4 | $1,463,468 | $3,604,000 | $1,476,750 | $5,080,750 |
| Year 5 | $1,463,468 | $3,679,000 | $1,402,500 | $5,081,500 |
| Year 6 | $1,463,468 | $3,784,000 | $1,402,500 | $5,186,500 |
| Year 7 | $1,467,477 | $3,836,000 | $1,402,500 | $5,238,500 |
| Year 8 | $1,463,468 | $3,882,000 | $1,402,500 | $5,284,500 |
| Year 9 | $1,463,468 | $4,007,000 | $1,402,500 | $5,409,500 |
| Year 10 | $1,463,468 | $4,059,000 | $1,402,500 | $5,461,500 |

**Property Management**: Concurrently with the Acquisition Closing, the Master Tenant entered into the Property Management Agreement with respect to the Property with the Property Manager. The property

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management fee payable under the Property Management Agreement will be equal to the greater of 2.85% of the monthly Gross Income (as defined in the Property Management Agreement) from the Property or a base fee of $34 per unit per month (the "**Property Management Fee**"). The Property Manager may also receive set-up fees, administration fees, construction management fees, and other fees. The Master Tenant is solely responsible for all costs associated with property management services. *See* "*Summary of the Property Management Agreement*." A copy of the Property Management Agreement is available in the Digital Investor Kit.

**Asset Management:**

NexPoint Waterford Asset Manager, LLC (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.

**Financing and Lender Reserves**:

In connection with the Acquisition Closing, the Trust entered into the Loan in the original principal amount of $29,700,000 from the Lender. In addition to the acquisition of the Property, Loan proceeds were used at the outset to fund the Replacement Reserve in the amount of $461,112. The Lender will require additional monthly deposits to the Replacement Reserve at a required rate of approximately $384 per apartment unit per year. As required by the Lender, the Trust also used $336,464 of the Loan proceeds to fund the Imposition Reserve.

The Loan Documents provide for a $29,700,000 Loan with a 10-year term, interest-only payments and a fixed interest rate of 4.86% per annum.

The Property is subject to a first mortgage 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 the entire value of their Interests 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*."

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The Property is leveraged with a LTC ratio of approximately 48.6%, 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 and Contribution of the Property and Financing Terms*" and the risk factors set forth under "*Risk Factors - Risks Related to Financing of the Property*."

**Supplemental Trust Reserve**:

In addition, to the Replacement Reserve, the Trust will establish and control the Supplemental Trust Reserve in the amount of $4,552,427 (of which $3,500,000 will be Lender-controlled), which was funded from the Loan proceeds and the Offering Proceeds, for Property renovations, costs and expenses (including Landlord Costs and amounts as may be required under the Replacement Reserve), which may be drawn upon by the Master Tenant as provided in the Master Lease.

**Purchaser Suitability Requirements**:

You should purchase Interests only if you have substantial financial means and you have no need for liquidity in your investment. Only Accredited Investors who meet certain minimum 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 Non-U.S. Persons (as defined herein). *See* "*Who May Invest*."

For the purposes of this Memorandum, the term "**U.S. Person**" means (1) an individual citizen or resident of the United States, (2) a corporation or any entity taxable as a corporation created or organized in or under the laws of the United States, any state or political subdivision thereof or the District of Columbia, (3) an estate the income of which is subject to U.S. federal income taxation regardless of its source, and (4) a trust if (i) it is subject to the primary supervision of a U.S. Court and one or more U.S. Persons have the authority to control all substantial decisions of the trust, or (ii) that has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. Person. *See* "*Who May Invest*." Prospective Purchasers who are partnerships for U.S. federal income tax purposes, or that invest in the Interests through a partnership for U.S. federal income tax purposes, should consult with their tax advisors regarding the tax consequences to them. *See* "*Who May Invest*." For the purposes of this Memorandum, the term "**Non-U.S. Person**" means an individual or an entity that is not a U.S. Person.

**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.

**Initial Closing:**

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

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Trust. Subsequent to the Initial Closing, the Sponsor may hold additional daily closings.

**Offering Termination Date**: The Interests will be offered until the Maximum Offering Amount is attained or March 31, 2027, whichever is earlier. If any Interests in the Trust cannot be sold, the Contributor or its affiliate will own the remaining Interests. The Offering Termination Date may be extended at the Sponsor's discretion. The Contributor or its affiliate will hold the Interests for investment purposes and not for resale.

**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 and Purchaser Questionnaire ("**Purchase Agreement**") in its sole discretion. If the Trust does not accept a Purchase Agreement within 30 days of its submission, then it shall 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 (including upon exercise of the Exchange Right), 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 Asset Management Fee (as defined herein), the Facilitation Fee (as defined herein), and the Disposition Fee (as defined herein). *See* "*Compensation and Fees*."

**Friends and Family Investors:** The Sponsor and the Trust, each in their sole discretion, may offer Interests to its employees, affiliates, or other individuals selected by the Sponsor who meet the criteria set forth in this Memorandum (each, a "**FF Offering**"). Neither the Managing Broker-Dealer, the Participating Dealers, nor any RIAs will have any duties or responsibilities in connection with any FF Offering and may not receive fees or selling commissions on such sales. In addition, as part of a FF Offering, the Trust may

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waive minimum investment requirements or fees as it deems appropriate or as are otherwise waived by the applicable party who would receive such fees. The Trust, however, does not intend to waive or reduce any part of the fees or expenses relating to the on-going operations of the Trust.

**Reports**:

The Trust will prepare and send to each Purchaser unaudited, quarterly financial and operational reports and an annual report containing a cash basis unaudited trust-level year-end balance sheet and income statement. In addition, the Trust will send to each Purchaser such tax information as may be necessary for the preparation of the Purchaser'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 Code Section 1031;
- the Interests should not be treated as certificates of trust or beneficial interests for purposes of Code Section 1031;
- the Master Lease should be treated as a true lease and not a financing;
- the Master Lease should be treated as a true lease and not a deemed partnership;
- 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 C 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 its proportionate share of taxable income or loss on 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 its tax advisor concerning the identification requirements under Code Section 1031 and other

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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 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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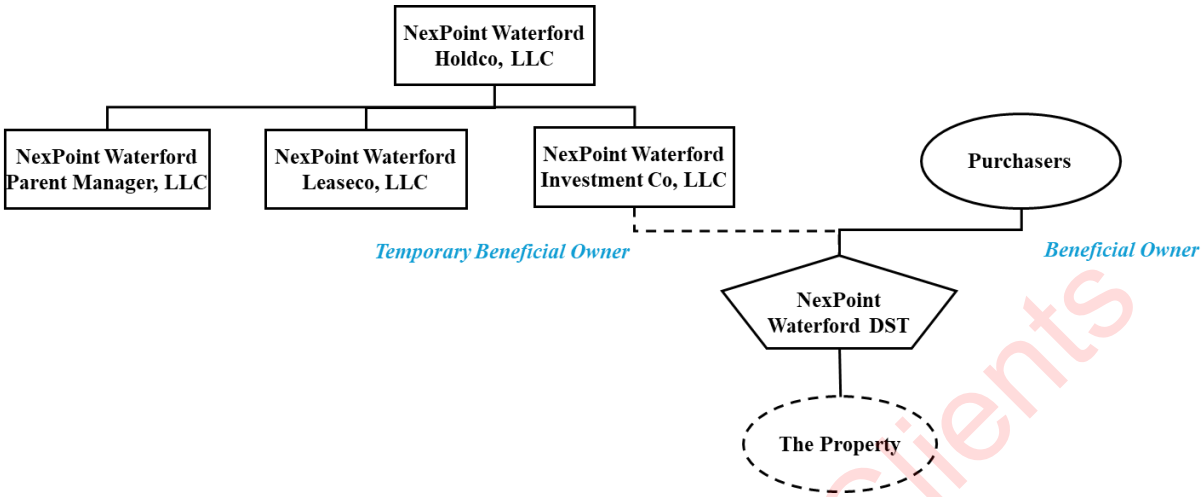
## ORGANIZATIONAL CHART

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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 this Offering is NexPoint Real Estate Advisors, an affiliate of NexPoint Advisors, L.P. NexPoint is a leading alternative investment platform that provides differentiated access to alternatives through a range of investment offerings, including publicly traded REITs, real estate private placements, Section 1031 Exchanges, closed-end funds, interval funds, and a BDC. The NexPoint group of companies is the direct sponsor of and/or investment advisor to NXRT, NREF, NRESF, NXDT (f.k.a. NHF), NHT, VBHT, NFRO, and the REIT Subsidiaries.

**Who is the Property Manager?**

The Property Manager will manage the Property. BH Companies, the parent to the Property Manager, is a fully integrated apartment management platform that provides acquisition, apartment management, design, construction and other advisory services to the Sponsor. Founded by Harry Bookey in 1993, the Property Manager has become one of the 15 largest management companies in the United States, with over 1,700 employees, over 85,000 units under management and revenues surpassing $400 million annually. The Property Manager excels at understanding the market, serving the consumer, and creating living environments of exceptional quality. The Property Manager manages 20,549 units across the Sponsor's real estate platform, including all 15,022 units for NXRT. For property owners, the Property Manager's methods translate into higher occupancy, lower turnover, and predictable return on investment. The Property Manager's platform consists of three distinct yet complimentary businesses:

- BH Equities, LLC: Provides acquisition, underwriting, capital structuring and financial analysis
- BH Management Services, LLC: Provides multifamily management services to both large investment groups and individual property owners
- BH Construction Services, LLC: Renovates, upgrades and maintains real estate assets, ensuring their long-term viability

**How is the Property owned?**

The Trust owns the Property in fee simple. This Offering is for Interests in the Trust. The Property is master leased by the Trust to the Master Tenant, and the Master Tenant sub-leases the Apartment Units to the end-user tenants. The Trust is managed by the Manager. For U.S. federal income tax purposes, when a Purchaser acquires an Interest in the Trust, the Purchaser should be deemed as acquiring a fractional interest in the Property.

**What is a Delaware statutory trust?**

An offering of DST interests is used to syndicate real estate while preserving the Purchasers' 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 (1) more favorable financing terms; (2) no personal liability for beneficiaries under the financing of the property; and (3) 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 exactly am I purchasing?**

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You are purchasing an Interest in the Trust, which owns the Property. For U.S. federal income tax purposes, an Interest should constitute an interest in replacement property and you will be treated as having assumed your pro rata share of the Trust's debt for purposes of calculating the amount of your replacement property for purposes of Code Section 1031.

**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. The Sponsor capitalized the Master Tenant with a Demand Note in the amount of $750,000 and Holdings contributed $100,000 in cash (*i.e.*, the Master Tenant Working Capital).

**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 independent 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 NexPoint Diversified Real Estate Trust Operating Partnership, L.P. exercises its Exchange Right?**

If the Operating Partnership, NexPoint Diversified Real Estate Trust Operating Partnership, L.P., a Delaware limited partnership, exercises the Exchange Right under the Trust Agreement, you will be required to either (i) exchange your Interests for units in the Operating Partnership ("**OP Units**") or (ii) accept a cash amount equal to the then fair market value of your Interests. You will be required to execute such documents and signatures as the Manager or Operating Partnership may reasonably require in connection with the exercise of the Exchange Right or the cash purchase described above and may be required, on a pro rata basis, to reimburse the Manager or the Operating Partnership for reasonable and customary expenses (including Property-related expenses) incurred with respect to the applicable transaction. If you fail to respond or fail to execute such documents and signatures as the Manager or Operating Partnership may reasonably require in connection with the exercise of the Exchange Right, you will not be

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admitted as a limited partner to the Operating Partnership and your Interests will be acquired for cash in accordance with the terms of the purchase agreement relevant to such transaction.

For 90 days following the Operating Partnership's delivery of the "**Notice of Exchange**" (the form of which is attached as an exhibit to the Trust Agreement), neither the Manager, the Trust, the Beneficial Owners, the Operating Partnership, nor any of their respective directors, officers, employees, agents or affiliates shall, directly or indirectly: (a) solicit, initiate, or encourage the submission of any proposal or offer from any person relating to, or enter into or consummate any transaction relating to, the acquisition of any of the interests in the Trust or the Trust Estate, or (b) participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in, or facilitate in any other manner relating to the acquisition of any of the interests in the Trust or the Trust Estate.

The fair market value of your interests will be determined by multiplying: (i) your percentage of Interests in the Trust by (ii) the 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 Operating Partnership cannot exercise its Exchange Right until the Purchasers have held their Interests for at least one year. Those Beneficial Owners who exchange their Interests for OP Units (a "**Contributing Beneficial Owner**") would then be limited partners in the Operating Partnership and will have the same rights and obligations as the other limited partners under the limited partnership agreement for the entity. A Contributing Beneficial Owner will also acknowledge and agree that the Manager, Operating Partnership, the dealer manager, such Contributing Beneficial Owner's broker-dealer, and/or such Contributing Beneficial Owner's registered investment advisor may charge reasonable fees for its services with respect to facilitating the Exchange Right (which fees shall not exceed 4.0% of such Contributing Beneficial Owner's investment in the Trust).

Under the limited partnership agreement, after a limited partner has held its OP Units for at least one year, it will have the right to exchange its OP Units for cash or shares in NXDT (the form of consideration to be determined in NXDT's sole discretion), provided however, that such exchange will be governed by the terms of any applicable limited partnership agreement of the Operating Partnership and offering materials for NXDT at the time of such exchange. NXDT is an externally advised, publicly traded REIT focused on the acquisition, asset management, development, and disposition of opportunistic, value-add investments in real estate properties throughout the United States. 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 OP Units or shares in NXDT may be impacted due to the general volatility of the capital markets, the limited market for OP Units and NXDT shares, and the risks associated with the market for OP Units and NXDT shares.

**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.

Following the second anniversary of the Acquisition Closing, the Sponsor or its affiliate may, but has no obligation to, periodically extend a Periodic Purchase Offer to any Beneficial Owner to purchase all or a portion of a Beneficial Owner's Interests. The Sponsor or its affiliate intends to periodically evaluate and determine whether to extend a Periodic Purchase Offer to a particular Beneficial Owner and has the sole and absolute discretion to do so. If the Sponsor or its affiliate chooses to make a Periodic Purchase Offer, the Sponsor or its affiliate, as applicable, will be responsible for providing the Beneficial Owner with notice and the terms of such Periodic Purchase Offer. The terms of effectuating such Periodic Purchase Offer are within the sole and absolute discretion of the Sponsor. A Beneficial Owner who received a Periodic Purchase Offer has no obligation to accept.

**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.

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**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 and Wick Phillips Gould & Martin, LLP, represents the Trust, the Sponsor, the Manager, the Master Tenant, the Contributor and their affiliates and does not represent, and shall not be deemed under the applicable codes of professional responsibility, to have represented or to be representing, any or all of the Purchasers.

**Delaware Statutory Trust Structure Risks**

**Beneficial Owners Possess Limited Control and Rights**. The Trust will be operated and managed solely by the Trustees and the Manager. Purchasers, as Beneficial Owners, will have no right to participate in any aspect of the operation or management of the Trust. The Trustees and the 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 the rents due from the Master Tenant under the Master Lease and make distributions therefrom in accordance with the terms of the Trust Agreement. The Delaware Trustee will seek to sell or otherwise transfer the Property in accordance with the provisions of the Trust Agreement, which provides that the Manager has sole power to determine when it is appropriate to sell the Property. The Delaware Trustee may remove the Manager only 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).

**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 Trustees and the Manager Have Limited Duties to Beneficial Owners**. The Trustees and the Manager will not owe any duties to the Beneficial Owners other than those duties set forth in the Trust Agreement. In performing its duties under the Trust Agreement, the Delaware Trustee will only be liable to the Beneficial Owners for its 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 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 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 or another 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 from a Purchaser that will be used to fund the Supplemental Trust Reserve or repurchase the Contributor's Class 2 Beneficial Interests and thereby reduce the Contributor'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

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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 against liabilities not attributable to the Delaware 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 and the Manager. Beneficial Owners will have personal, recourse liability for payment of any indemnity owed to the Delaware 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 shall 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. 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 and in such manner as the Manager determines to be in the best interests of the Trust. Further, the Beneficial Owners agree to reimburse the Manager for reasonable and customary expenses incurred with respect to foregoing pursuant to the Trust Agreement. 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 Trust Estate. The Beneficial Owners will not have the right to sell the Trust Estate. 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. Additionally, pursuant to the Exchange Right, the Operating Partnership may require that the Beneficial Owners exchange their Interests for OP Units in the Operating Partnership or cash after all Beneficial Owners have held their Interests for at least one year.

**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

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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 nevertheless means 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, Economic, and Business 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 Exhibit D (the "**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 certain occupancy levels and 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 the 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 its Local Real Estate Market**. Weaknesses 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 the value of your investment and the Property.

**The Real Estate Market is Subject to Constant Economic Fluctuations. As the Cycle Matures, Real Estate Returns May Lose Momentum Which Could Have a Negative Impact on the Performance of the Property**. The ongoing competition for high quality real estate assets and resulting upward pressure on pricing may reduce anticipated returns. Furthermore, economic growth remains fragile, and could be slowed or halted by significant external events. A negative shock to the economy could result in reduced tenant demand, higher tenancy default, and rising vacancy rates. There can be no assurance that the Property will not be adversely affected by a

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severe slowing of the economy or a recession. Tenant defaults, fluctuations in interest rates, limited availability of capital, and other economic conditions beyond the Trust's control could negatively affect the economic performance of the Trust and decrease the 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 Property Manager's ability to lease the Apartment Units of 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 the entire value of their Interests. 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 they take with 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 the entire value of their Interests. 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 its lease may give the Master Tenant the right to terminate the lease, repossess the applicable premises and enforce payment obligations under such 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

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Tenant or Property Manager, which may make it difficult and/or costly to make a desired change in the management of the Property.

**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*." There are a number of apartment communities in the surrounding region that may be more attractive to tenants. Competing apartment communities may reduce demand for the Property, increase vacancy rates in the Apartment Units, 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 tenants to the Property given these facts. For a detailed listing of competing properties nearby the Property, *see* "*Market and Location Overview*."

**The Leases for the Property Generally Have Short Terms, and the Property Manager May Be Unable to Renew the Leases or Re-Let Units as Leases Expire**. Most of the existing leases for the Apartment 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 (the "**ADA**"), 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 without leading to a commensurate increase in the value of the Property.

**Costs Associated with Complying With the ADA May Affect Cash Available for Distribution and May Not Increase the Value of the Property**. The Property will generally be subject to the ADA. Under the ADA, all places of public accommodation are required to comply with federal requirements related to access and use by disabled persons. The ADA has separate compliance requirements for "public accommodations" and "commercial facilities" that generally require that buildings and services be made accessible and available to people with disabilities. The ADA's requirements could require removal of access barriers and could result in the imposition of injunctive relief, monetary penalties or, in some cases, an award of damages. The Property may not comply with the ADA or may not be able to allocate the burden to a third party to ensure compliance with the ADA in all cases. Any construction undertaken to comply with the ADA may not increase the value of the Property.

**The Operation of the Property Will Depend 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

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prolonged interruption of these services may allow the tenants 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 more than projected 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 and may increase insurance costs. 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 exceeds the Projected Uncontrollable Costs for such year for the Property, then the Master Tenant will be responsible for payment of such excess amount per the terms of the Master Lease but shall be entitled to reimbursement of such excess by offsetting such amount against Rent payable to the Trust, 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*" for a discussion of any such agreements which may be material to a possible investment pursuant to this Memorandum.

**Dependence on Third-Party Contractors and Suppliers**. The Trust and/or the Property Manager will engage third party contractors and sub-contractors and will directly or indirectly source materials and supplies from third-party suppliers. The use of third-party contractors, sub-contractors, and suppliers may expose the Trust and/or the Property Manager to potential liabilities which may arise in cases where such third parties fail to meet pre-agreed budgets, timelines, and quality of a particular engagement or materials supplied. The materials and supplies used to operate and maintain the Property will need to conform to high quality specifications, and the work contracted to be provided by third parties must meet a minimum standard. The use of third-party contractors, sub-contractors, and suppliers will expose the Trust and/or the Property Manager to risks that the services provided by such contractors and sub-contractors, and the materials purchased from such suppliers, may not meet necessary quality standards and consequently result in delays in correcting any deficiencies. To the extent that the Trust and/or the Property Manager are unable to rely on these third party contractors, sub-contractors, and suppliers, either due to an adverse change in relationship, increases in the cost of their goods and services, or a supplier's inability to provide materials or services in a timely manner or of the necessary quality, the Trust could be adversely affected through higher costs or the resulting potential inability to operate the Property, which could have a material adverse effect on the Trust's business, financial condition, results of operations and/or prospects.

**Risks Related to Pandemics**. A pandemic can create considerable instability and disruption in the United States and world economies. The extent to which the Trust's results of operations or their overall value will be affected by a pandemic will largely depend on future developments, which are highly uncertain and cannot be accurately predicted, such as prohibitions or moratoriums on evictions. As a result of shutdowns, quarantines or actual viral health issues, the tenants may experience reduced income for a prolonged period of time and may be unable to make rent payments, which would, in turn affect the ability of the Master Tenant to make payments under the Master Lease. Market fluctuations may affect the ability to operate the Property. The occurrence of any of the foregoing events or any other similar or related matters could materially and adversely affect the financial performance and the overall value of the Trust, and the Beneficial Owners could lose all or a substantial portion of their investment in the Trust.

**Risk of Catastrophic Loss**. The Trust or the Master Tenant, as applicable, will attempt to maintain (or cause to maintain) insurance coverage against liability to third parties and property damage as is customary for similarly situated businesses. However, there can be no assurance that insurance will be available or sufficient to cover any such risks. Insurance against certain risks, such as earthquakes, floods, typhoons, pollution, acts of war or terrorism may be unavailable, available in amounts that are less than the full market value or replacement cost of investments or underlying assets or subject to a large deductible. There can also be no assurance the particular risks which are currently insurable will continue to be insurable on a commercially reasonable basis. Inflation, changes in building codes and ordinances, environmental considerations, and other factors might not make it feasible to use insurance

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proceeds to replace the Property if it is damaged or destroyed. Under such circumstances, the insurance proceeds received by the Trust or the Master Tenant might not be adequate to restore its economic position with respect to the Property.

**The Acquisition and Disposition of Real Property Carries Certain Litigation Risks at the Property-Level that May Reduce Profitability and the Return on Investment**. The acquisition and disposition of real property carries certain specific litigation risks. Litigation may be commenced with respect to the Property in relation to activities that took place prior to the Trust's acquisition of the Property. In addition, at the time of disposition of the Property, a potential buyer may claim that it should have been afforded the opportunity to purchase the asset or alternatively that such potential buyer should be awarded due diligence expenses incurred or statutory damages for misrepresentation relating to disclosure made, if such buyer is passed over in favor of another as part of the Trust's efforts to maximize sale proceeds. Similarly, successful buyers may later sue the Sponsor, the Trust, or any of their affiliates under various damage theories, including those founded in tort, for losses associated with latent defects or other problems not uncovered in due diligence.

**Real Estate Investments are Illiquid**. Real estate investments generally cannot be sold quickly. The Manager has the discretion to sell the Property subject to the Trust Agreement and the Loan Documents. However, the Manager may not be able to sell the Property promptly in response to economic or other conditions. There can be no assurance that the price and terms of any sale or other disposition of the Property will provide the Beneficial Owners with a satisfactory return on their investment, or any return at all, or that there will not be a loss on any such sale.

**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. The Property 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.

**Social Unrest May Affect the Value of the Property and Returns to Beneficial Owners**. In recent years, certain events have led to protests, demonstrations, marches and other forms of political and social activism on a local, regional, national, and international level, as well as rioting in some instances. Such activism, which has ranged from peaceful to, in some instances, violent, has resulted in curfews, the deployment of police and other local and national restrictions. This could lead to increased political and social volatility and uncertainty, which was already heightened in the wake of the COVID-19 pandemic. While the overall effect of such activism remains unknown, this type of volatility and uncertainty could materially adversely impact the investment. For example, as a result of social unrest, the Property could be affected by property damage, economic uncertainty and other byproducts of social unrest.

**Geopolitical Tensions**. Various regional and global conflicts have caused, and are currently expected to continue to cause, significant disruptions to the global financial system, international trade, and the transportation and energy sectors, among other disruptions. Such conflicts have displaced millions of people, causing an acute refugee crisis in many parts of the world and have increased the threat of nuclear accidents or attacks, cyberattacks, and further regional or global conflicts (including a potential expansion of the conflicts to other regions as well as other potential conflicts, including, but not limited to, conflicts in other geographic locations and between other state and non-state actors). The United States and certain other countries have resorted to sanctions and other severe trade restrictions and prohibitions on the activities of certain individuals and businesses connected or deemed connected to certain other parties. The sanctions and prohibitions include prohibition on trade in securities and debt, new investment, and provision of services to certain other parties. Certain private companies have also implemented restrictions that severely limit, and in some cases, reverse or cancel, business transactions in or involving certain individuals and/or businesses connected to or associated with certain other countries. The impact of global conflict and geopolitical tensions on the supply chain and commodity prices has been significant and has resulted in substantial increase in inflation. The ultimate impact of the geopolitical tensions and its effect on global economic and commercial activity and conditions, and on the operations, financial condition and performance of the Trust or any particular industry, business, currency or country and the duration and severity of those effects, is impossible to predict. Conflict,

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sanctions, trade restrictions, and related events may have a material adverse impact on, and result in significant losses to, the Trust. In particular, the Master Tenant may suffer significant increases in operating costs (including, among other reasons, as a result of the substantial increase in energy prices), decrease in revenue, and/or unexpected operational losses and liabilities. This may lead to the Master Tenant's inability to pay rent or its default under the Master Lease. Any defaults on lease payment obligations by the Master Tenant will cause the Trust to lose revenue. It may also limit the ability of the Trust to manage, finance, and sell or reposition the Property in the future.

**Inflation and Deflation**. Inflation and rapid fluctuations in inflation rates have had in the past, and may in the future have, negative effects on economies and financial markets. For example, if the Master Tenant is unable to increase its revenue in times of higher inflation, its profitability may be adversely affected. Conversely, deflation could lead to downward pressure on rents and other sources of income. The end tenants' income is linked to some extent to inflation (for example, through wages). As inflation rises, the end tenants may no longer be able to afford rents. Wages and prices of inputs increase during periods of inflation, which can negatively impact returns on investments. In an attempt to stabilize inflation, countries may impose wage and price controls or otherwise intervene in the economy. Governmental efforts to curb inflation often have negative effects on the level of economic activity. After aggressively raising rates in 2022-2023, the Federal Reserve held its benchmark rate above 5% through much of 2024 and, beginning in September 2025, the Federal Reserve began easing policy, cutting the federal funds target range with additional reductions expected. A period of sharply rising interest rates or a period of interest rate volatility could create downward pressure on the Trust's returns.

**Risks of Cyberattacks**. The Sponsor, the Manager, and the Property Manager rely on computer programs and systems (and may rely on new systems and technology in the future) for various purposes, including financial matters and generating risk management and other reports that are critical to the business and operations of the Trust and the oversight of its activities. These information technology systems may continue to increase in sophistication and frequency in the future. Cybersecurity incidents and cyber-attacks have been occurring globally at a more frequent and severe level and will likely continue to increase in frequency in the future. The systems are subject to a number of different threats or risks that could adversely affect the Trust and its Beneficial Owners. There can be no assurance that measures the Sponsor, the Manager, and the Property Manager may take to ensure the integrity of its systems will provide protection, especially because cyberattack techniques change frequently or are not recognized until successful. Cybersecurity risks could result in the loss of data, interruptions in business, damage to reputation, and subject Sponsor and the Manager to regulatory actions, increased costs and financial losses, each of which could have a material adverse effect on the Trust's business and results of operations.

Cyberattacks on the Sponsor, the Manager, the Property Manager and/or the Trust could involve attempts that are intended to obtain unauthorized access to proprietary information or personal identifying information of the Trust's Beneficial Owners, destroy data or disable, degrade or sabotage the Trust's systems, or divert or otherwise steal funds, including through the introduction of computer viruses and other malicious code. Cyberattacks and other security threats could originate from a wide variety of external sources, including cybercriminals, nation-state hackers, hacktivists, and other outside parties. Cyberattacks and other security threats could also originate from the malicious or accidental acts of insiders, such as employees, or third-party agents and consultants of the Trust.

Although the Sponsor, the Manager, and the Property Manager have implemented various measures to manage risks relating to these types of events, if these systems are compromised, become inoperable for extended periods of time or cease to function properly, the Sponsor, the Manager, the Property Manager, and/or the Trust may incur specific time or expenses to fix or replace them and to seek to remedy the effects of such issues. The failure of these systems and/or of disaster recovery plans for any reason could cause significant interruptions in the Sponsor's, the Manager's, the Property Manager's and/or the Trust's operations and result in a failure to maintain the security, confidentiality, or privacy of sensitive data, including personal information relating to the Beneficial Owners. Such a failure could harm the Sponsor's, the Manager's, the Property Manager's, and/or the Trust's reputation, subject any such entity and its respective affiliates to legal claims or otherwise adversely affect their business and financial performance.

**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 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

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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). As a result, Purchasers may be required to furnish any such identifying information and authorize the Trust to disclose it to FinCEN. 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.

**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 capitalization is supported by a Demand Note from the Sponsor in the amount equal to $750,000 and $100,000 in cash contributions by Holdings (*i.e.*, the Master Tenant Working Capital). Holdings is an affiliate of the Sponsor. Neither the Sponsor nor Holdings has any further obligation to finance the Master Tenant. The Sponsor is under no obligation to contribute capital to the Master Tenant other than the amount of the Demand Note and Holdings is under no obligation to contribute capital to the Master Tenant other than the amount of the Master Tenant Working Capital. 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 terminates the Master Lease, it may not be able to master lease the Property on terms similar to the Master Lease. If the Trust is unable to enter into a new master lease for the Property, the returns to Purchasers will likely be materially adversely affected. In addition, if the Trust is unable to enter into a new master lease, it will 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 the entire value of their investment in the Property.

**The Sponsor May Be Unable to Fulfill its Obligations Under the Demand Note**. The Master Tenant's capitalization is supported by a Demand Note from the Sponsor in the amount equal to $750,000 and $100,000 in cash contributions by Holdings (*i.e.*, the Master Tenant Working Capital). 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, including general business risks, risks of real estate

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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 its 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, may cause a default under the Loan resulting in foreclosure, and may result in the Purchasers losing the entire value of their Interests.

**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. No assurance can be given that the Master Tenant will not suffer material financial hardships, resulting in their inability to pay rent, or otherwise default on its obligations under the Master Lease. Any defaults on lease payment obligations by the tenants will cause the Master Tenant, and could cause the Trust, to lose revenue. If these defaults become significant, they may impact Rent payments to the Trust. If the Master Tenant defaults, the Trust may experience delays in enforcing their rights as landlords and may incur substantial costs in protecting their investment.

**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 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 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 its 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**. The Lender obtained the Appraisal for the Property prepared by the Appraiser, dated December 4, 2025, reflecting a market value for the Property "as is" of $51,000,000. The net aggregate purchase price of $52,778,578 for the Property (including closing costs and fees) is lower than the $61,060,817 aggregate purchase price of the Interests, which includes $31,360,817 in equity for the Interests, assuming the Maximum Offering Amount is sold, and $29,700,000 for the Loan. *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.

**The Sale of an Interest May Be Less Profitable Than the Pro Rata Share of the Proceeds the Beneficial Owners Would Receive from a Sale of the Property as a Portfolio**. The Interests will be subject to certain agreements and restrictions. Given the form of ownership, it is possible that the amount derived from a sale of Interests will be less than the pro rata share of the proceeds the Beneficial Owners would receive from aggregating the proceeds from the sale of the Property as a portfolio.

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**The Fair Market Value of Interests May Deviate from the Established Purchase Price During the Offering**. The initial purchase price of Interests determined at the outset of the Offering is based on the estimated fair market value of the Property, and includes certain fees and expenses. Among other items, the economics of the Master Lease as determined at the outset of the Offering were considered in determining the initial purchase price. While actual results may vary from the initial projections, and while the value of the Property, subject to the Master Lease, will fluctuate throughout the Offering, the purchase price of Interests will remain the same throughout the Offering. Because the purchase price will not change in response to changed economics or valuation, it is possible that, at any time throughout the Offering, the fair market value of Interests may be higher or lower than the amount a Beneficial Owner paid for such Interests.

**Property Is Not a Diversified Investment as to Asset Class and Region**. 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 in the limited geographical area of North Carolina, it is not a fully diversified investment as to asset class and region. Accordingly, the poor performance of the Property would likely materially and adversely affect a Purchaser's 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 Sponsor has received a Property Condition Assessment report dated October 30, 2025 (the "**PCA**"), prepared for the Lender by Real Estate Advisory, LLC ("**REA**"). To the Sponsor's knowledge (as informed by due diligence on the Property), the Sponsor does not believe that there have been material changes to the PCA or the condition of the Property since the PCA was issued. The PCA identified approximately $65,500 in immediate repairs relating to, among others, sidewalk misalignment, vinyl siding damage, soffit and gutter damage, wasp nest removal, retaining wall damage, tree trimming, vegetation overgrowth, a busted curb, asphalt pavement damage, frayed roof shingles, and potential radon mitigation and recommended $1,106,674 (inflated at 3%) in capital reserves for likely repairs and replacements necessary during the next 12 years.

Following completion of the sale of the Maximum Offering Amount, the Trust would have approximately $6,037,572 in reserves: $4,552,427 in the Supplemental Trust Reserve, and $461,112 from the Replacement Reserve, and $1,024,033 over the projected 10-year hold period in contributions to reserves. This total of $6,037,572 is higher than the approximately $1,106,674 in inflated estimated capital repair items estimated by the PCA. 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 reserves are 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.

The preparers of the PCA did not issue a reliance letter entitling the Trust, among others, to rely on the PCA and to enforce any claims against the preparers of the PCA if they failed to identify any particular Property deficiency. Thus, a Purchaser or the Trust may not rely on the PCA and may not enforce legal claims against parties that prepared the PCA or its underlying information. In addition, there can be no assurance that the preparers would be held liable for any losses in connection with deficiencies in the Property that were not identified in the PCA. Furthermore, there can be no assurance that financial wherewithal of such preparers would be sufficient to cover any loss that may arise, should they be held liable.

**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

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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. The Sponsor is 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. The Sponsor can provide no assurance that the Trust will not incur any material liabilities as a result of vapor intrusion at the Property.

The Property has been evaluated for environmental hazards on behalf of the Lender pursuant to the non-invasive Phase I Environmental Site Assessment Report, dated October 30, 2025 (the "**Phase I Report**") prepared by REA, based on a site visit conducted on October 22, 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, revealed no evidence of recognized environmental conditions ("**RECs**"), historical RECs ("**HRECs**"), or controlled recognized environmental condition ("**CRECs**") in connection with the Property. No further investigation was recommended. To the Sponsor's knowledge (as informed by due diligence on the Property), the Sponsor does not believe that there have been material changes to the Phase I Report or the condition of the Property since the Phase I Report was issued.

***Limitations of a Phase I Report***

The preparers of the Phase I Report did not issue a reliance letter entitling the Trust, among others, to rely on the Phase I Report and to enforce any claims against the preparers of the Phase I Report if it failed to identify the Property's deficiency. Thus, a Purchaser or the Trust may not rely on the Phase I Report and may not enforce legal claims against parties that prepared the Phase I Report or its underlying information. In addition, there can be no assurance that the preparers would be held liable for any losses in connection with deficiencies in the Property that were not identified in the Phase I Report. Furthermore, there can be no assurance that financial wherewithal of such preparers would be sufficient to cover any loss that may arise, should they be held liable.

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 would 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. The Property 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.

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**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 Phase I Report and PCA included an evaluation of mold. Based on REA's site visit and its interview with on-site Property personnel, no visual or olfactory evidence was identified to indicate current or past mold growth or moisture intrusion likely to result in mold growth at the Property. No assurance can be given either that an undetected mold condition does not presently exist at the Property or that a mold condition will not arise in the future. A mold condition 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 ability to sell the Property in the event of a mold condition could be significantly hampered if such remediation did not occur.

**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 payment 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. For example, the Property has polybutylene pipes which may suddenly fail due to chemical breakdown. The Sponsor has an operation and maintenance plan to address these issues as they arise and made reasonable reserves for these costs, but such reserves may be inadequate if there were catastrophic damages to the pipes. Further, to the extent that the aggregate of the Organization and Offering Expenses, Loan-Related Costs (as defined herein) and Other Closing Costs (as defined herein) exceed the amounts projected, then any such shortfall will be funded first from savings in other categories and may be funded next from any other available reserves of the Trust, including from the Supplemental Trust Reserve. 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, Governing Law, and Disputes**. Any disputes arising from the Purchase Agreement, Master Lease, Trust Agreement, Springing LLC Agreement, and Asset Management Agreement (as defined herein) (together the "**Offering Documents**") must be brought in a court of competent jurisdiction in Dallas, Texas. Additionally, the Purchaser waives its right to a jury trial. Accordingly, any actions brought under any of the Offering Documents in courts not located in Dallas, Texas may be dismissed for improper venue. Any disputes arising under the Purchase Agreement, Master Lease, or the Asset Management Agreement (as defined herein) will be adjudicated under Texas law. Further, should the Trust Agreement or Springing LLC Agreement be the subject of any dispute, such dispute will be adjudicated under Delaware law. If any legal action or other proceeding is brought by a Beneficial Owner for the enforcement of the Offering Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of the Offering Documents, the successful or prevailing party or parties shall be entitled to recover from the non-prevailing party, attorneys' fees, court costs, and all costs and expenses incurred in that action or proceeding in addition to any or all other relief awarded in such legal action or proceeding.

**Risks Related to Financing of the Property**

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**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 Documents 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. In either case, Beneficial Owners could lose the entire value of their Interests.

**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 contain certain events 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 and Contribution 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.

**The 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 their entire investment in the Property. 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

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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's 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.

**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. None of the arrangements or agreements described, including those relating to the purchase price of the Property or compensation, is the result of arm's-length negotiations. *See* "*Conflicts of Interest*."

**The Property Manager is Subject to Additional Conflicts of Interest**. The Property Manager, a third party with respect to the Sponsor, is subject to conflicts of interest among its activities, roles and duties for other entities and the activities, roles and duties it has assumed on behalf of the Trust. Conflicts exist in allocating

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management time, services and functions between its current and future activities and the Trust. Further, the Property Manager is a third party with respect to the Sponsor or the Trust and does not intend to invest its own funds in the Interests. Accordingly, the Property Manager's interests may not be aligned with those of the Purchasers. For example, if the Property Manager or any of its affiliates were to acquire multifamily residential properties in the vicinity of the Property, then the Property Manager could direct tenants away from renewing their rental agreements and toward leasing apartment units at such other properties.

**No Substantial Assets of the Manager or Master Tenant**. The Manager and 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 Agreement, 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 capitalized the Master Tenant with a Demand Note in the amount of $750,000 and Holdings contributed $100,000 in cash (*i.e.*, the Master Tenant Working Capital). This Memorandum does not contain financial statements for the Sponsor, the Manager, Holdings, 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*."

**Risks Relating to the United States Securities Laws and Regulations**

**Securities Act of 1933**. The Interests have not been and will not be registered under the Securities Act. The Interests are offered in reliance upon an exemption from registration under the Securities Act provided by Section 4(a)(2) thereof and the Regulation D safe harbor promulgated thereunder. Each prospective Purchaser must be an "accredited investor" (as defined in Rule 501(a) of Regulation D) and will be required to represent, among other customary private placement representations, that it is acquiring its Interest in the Trust for its own account for investment purposes only and not with a view to resale or distribution. Further, each Purchaser must be prepared to bear the risk of the investment for an indefinite period, since Interests cannot be transferred or resold except as permitted under the Securities Act and any applicable state or non-U.S. securities laws and further subject to the restrictions on transfer described in the Trust Agreement. There is no public market for the Interests, and no such market is expected to develop in the future. The Interests may not be sold or transferred except as permitted under the Trust Agreement.

**Investment Company Act of 1940**. It is anticipated that the Trust will be exempt from registration under the Investment Company Act of 1940, as amended (the "**Investment Company Act**") by qualifying for an exclusion from the definition of an "investment company" thereunder. The Trust will rely on the exemption from registration contained in (1) Section 3(c)(1) of the Investment Company Act for issuers that are not making a public offering of securities and whose outstanding securities are beneficially owned by not more than 100 persons, (2) Section 3(c)(5)(c) of the Investment Company Act as an entity primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and interests in real estate, or (3) any other exemption that may be available under the Investment Company Act. The Trust intends to obtain appropriate representations and undertakings in order to assure that the conditions of the exemption are met. If the Trust cannot comply with an exemption from such requirements, the Trust will be obligated to register as an "investment company" and will be subject to a variety of substantive requirements under the Investment Company Act. These requirements include:

- Limitations on capital structure;
- Restrictions on specified investments;
- Prohibitions on transactions with affiliates; and
- Compliance with reporting, record keeping, voting, proxy disclosure and other rules and regulations that would significantly change and increase the costs of the Trust's operations.

If the Trust is required to register as an investment company but fails to do so, the Trust will be prohibited from engaging in this Offering and criminal and civil actions could be brought against the Trust.

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**Investment Advisers Act of 1940**. The Manager is not required to register and does not anticipate registering as an investment adviser under the Investment Advisers Act of 1940 (the "**Investment Advisers Act**").

**Securities Exchange Act of 1934**. It is not expected that the Trust will be required to register the Interests under the Exchange Act. As a result, the Trust will not be subject to the periodic reporting and related requirements of the Exchange Act. Beneficial Owners should only expect to receive the information and reports required to be delivered pursuant to the Trust Agreement and applicable law.

**Regulation Best Interest**. Commencing June 30, 2020, broker-dealers and their associated persons have been required to comply with the SEC's Regulation Best Interest ("**Reg BI**"), which established a new standard of conduct for participating brokers under the Exchange Act when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer, including the following:

- the requirement that participating brokers refrain from putting the financial or other interests of the participating broker ahead of the retail customer;
- a new disclosure document, the consumer or client relationship summary, or Form CRS, which requires both investment advisers and participating brokers to provide disclosure highlighting details about their services and fee structures; and
- interpretative guidance that establishes a federal fiduciary standard for investment advisers.

Under SEC guidance concerning Reg BI, a participating broker recommending to sell Interests in the Trust should consider a number of factors, including but not limited to, cost and complexity of the investment and reasonably available alternatives, which are likely to exist, may be less costly or have a lower investment risk, in determining whether there is a reasonable basis for the recommendation. However, participating brokers may recommend a more costly or complex product as long as they have a reasonable basis to believe it is in the best interest of a particular retail customer. If participating brokers instead choose alternatives to an investment in the Trust, many of which likely exist, the Trust's ability to raise capital will be adversely affected.

**Economic Sanctions and Export Controls; Anti-Money Laundering**. Economic sanctions laws in the United States and other jurisdictions may prohibit or otherwise restrict the Manager, its professionals, the Trust, and their affiliates from engaging in transactions with companies based in, doing business with, or otherwise relating to certain countries, industry sectors, and/or certain individuals and entities. The Treasury's Office of Foreign Assets Control ("**OFAC**"), U.S. Department of Commerce, and U.S. Department of State administer and enforce laws, Executive Orders, and regulations establishing U.S. economic and trade sanctions and export controls. Such sanctions and regulations prohibit, among other things, transactions with, and the provision of certain services or goods to, certain foreign countries, territories, entities, and individuals. These entities and individuals include specially designated nationals, specially designated narcotics traffickers, and other parties the subject of sanctions programs and export control restrictions. The lists of OFAC prohibited countries, territories, persons and entities, including the List of Specially Designated Nationals and Blocked Persons, as such list may be amended from time to time, can be found on the OFAC website at ofac.treasury.gov. Certain programs administered by OFAC prohibit dealing with individuals or entities in certain countries regardless of whether such individuals or entities appear on the lists maintained by OFAC. In addition, export regulations may prohibit or require pre-approval of exports of certain restricted goods or technology to certain persons and certain jurisdictions. The economic sanctions and related laws of different jurisdictions in which the Trust and its affiliates may operate also may conflict with one another, such that compliance with all applicable laws may be difficult.

In addition, risks of sanctions violations in the banking industry are elevated, and OFAC has taken significant actions in response to U.S. and non-U.S. financial institutions' perceived failures to comply with OFAC sanctions. Failure by the Trust and its affiliates to comply with OFAC or other relevant sanctions could have serious legal and reputational consequences.

**Risks Relating to United States Anti-Money Laundering Regulation**. The Sponsor and/or the Manager may be required to comply with Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "**PATRIOT Act**"), the Bank Secrecy Act, including as amended by the PATRIOT Act, and any other relevant laws and regulations. The Trust, the Sponsor, and/or the

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Manager may be required to obtain a detailed verification of the identity of each prospective Purchaser or Beneficial Owner, and the source of funds used to subscribe for Interests in, or to make capital contributions to, the Trust or Springing LLC. Each prospective Purchaser and Beneficial Owner is required to represent that it is not a person with whom the Trust or the Sponsor is prohibited from dealing with pursuant to applicable law and regulations imposing economic and trade sanctions. Should a prospective Purchaser or Beneficial Owner refuse to provide any information required for verification purposes, the Trust may refuse to accept a subscription from such prospective Purchaser or may cause the withdrawal of any such Beneficial Owner from the Trust. The Trust, the Sponsor, and/or the Manager may request such additional information at any time from prospective Purchasers or Beneficial Owner as is necessary in order to comply with the PATRIOT Act, U.S. Executive Order 13224, and other relevant U.S. or other anti-money laundering legislation and regulations. The Trust may require such Beneficial Owner to withdraw from the Trust if the Sponsor or the Manager reasonably deem it necessary to do so in order to comply with any relevant anti-money laundering legislation and regulations applicable to the Trust, the Sponsor, the Manager, or any of the Trust's other service providers, or if so ordered by a competent court or regulatory authority. Beneficial Owners will be expected to provide additional or updated identification documents from time to time pursuant to ongoing client due diligence requirements under relevant laws and regulations. Also, the Trust, the Sponsor, and/or the Manager may from time to time be obligated to file reports with regulatory authorities in various jurisdictions with regard to, among other things, the identity of the Beneficial Owners and suspicious activities involving the Interests.

Anti-money laundering laws and regulations are likely to continue to evolve in the future and require the Trust, the Sponsor, the Manager or other service providers to the Trust to establish additional anti-money laundering procedures, collect information with respect to the Beneficial Owners, share information with governmental authorities with respect to the Beneficial Owners, and/or to implement additional restrictions on the transfer of Interests. The Sponsor and the Manager therefore reserve the right to request such information as is necessary to verify the identity of the Beneficial Owners and the source of the monies used to acquire Interests in the Trust, or as is necessary to comply with applicable sanctions and any customer identification programs required by the Treasury, the Financial Crimes Enforcement Network, the SEC, and any other applicable regulatory body, and to take such other actions that are necessary to enable it to comply with applicable anti-money laundering laws.

**Changes in Cybersecurity and Data Protection Laws and Regulations**. The adoption, interpretation, and application of consumer and data protection laws or regulations are often uncertain and in flux. The federal and state government bodies and agencies have in the past adopted, and may in the future adopt, laws and regulations affecting data privacy. These include rules and regulations promulgated under the authority of federal government bodies and agencies, state attorneys general, legislatures and consumer protection agencies.

**Offering Risks**

**No Public 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, Loan-Related Costs (as defined herein), Other Closing Costs (as defined herein), the Facilitation Fee (as defined herein), the Replacement Reserve, 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 an investor for any reason or for no reason at all and such Purchaser may therefore lose the benefit of a Section 1031 Exchange. It is suggested and anticipated that Purchasers will attempt to mitigate these risks by identifying multiple properties in connection with their Section 1031 Exchange.

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**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. Additionally, in connection with the Exchange Right, the Operating Partnership may require that the Beneficial Owners exchange their Interests for OP Units in the Operating Partnership or cash after all Beneficial Owners have held their Interests for at least one year.

**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 company 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 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.

**This is a "Best-Efforts" Offering with 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 Contributor will retain Class 2 Beneficial Interests. The ownership of beneficial interests in the Trust by the Contributor, 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 Operating Partnership may require that the Purchasers exchange their Interests for the OP Units in the Operating Partnership. A Purchaser may, however, elect to have the Operating Partnership purchase its Interests for cash in an amount equal to the then fair market value of the Purchaser's Interests in the event the

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Operating Partnership exercises the Exchange Right and such Purchaser does not desire to receive OP Units. For 90 days following the Operating Partnership's delivery of the Notice of Exchange, neither the Manager, the Trust, the Beneficial Owners, the Operating Partnership, nor any of their respective directors, officers, employees, agents, or affiliates shall directly or indirectly: (a) solicit, initiate, or encourage the submission of any proposal or offer from any person relating to, or enter into or consummate any transaction relating to, the acquisition of any of the interests in the Trust or the Trust Estate, or (b) participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in, or facilitate in any other manner relating to the acquisition of any of the interests in the Trust or the Trust Estate.

A Purchaser will be required to execute such documents and signatures as the Manager or Operating Partnership may reasonably require in connection with the exercise of the Exchange Right or the cash purchase described above and may be required, on a pro rata basis, to reimburse the Manager or the Operating Partnership for reasonable and customary expenses (including Property-related expenses) incurred with respect to the applicable transaction. If a Purchaser fails to respond or fails to execute such documents and signatures as the Manager or the Operating Partnership may reasonably require in connection with the exercise of the Exchange Right, such Purchaser will not be admitted as a limited partner to the Operating Partnership and its Interests will be acquired for cash. A Contributing Beneficial Owner will also acknowledge and agree that the Manager, Operating Partnership, the dealer manager, such Contributing Beneficial Owner's broker-dealer, and/or such Contributing Beneficial Owner's registered investment advisor may charge reasonable fees for its services with respect to facilitating the Exchange Right (which fees shall not exceed 4.0% of such Contributing Beneficial Owner's investment in the Trust). The fair market value of a Purchaser's interests will be determined by multiplying: (i) a Purchaser's percentage of Interests in a Trust by (ii) the value of the Property, as determined by an independent appraisal firm selected by the Manager in its sole discretion. Should the Operating Partnership exercise the Exchange Right, any Purchaser who accepts OP Units will no longer have a direct interest in the Trust. Once a Purchaser becomes a holder of OP Units in the Operating Partnership, such OP Units will be subject to the terms of the Operating Partnership's limited partnership agreement. After a limited partner has held its OP Units for at least one year, it has the right to exchange its OP Units for cash or shares in NXDT (the form of consideration to be determined in NXDT's sole discretion), provided however, that such exchange will be governed by the terms of any applicable limited partnership agreement of the Operating Partnership and offering materials for NXDT and/or the Operating Partnership at the time of such exchange. 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 OP Units or NXDT shares may be impacted by the general volatility of the capital markets, the limited market for OP Units and NXDT shares, and the risks associated with the market for OP Units and NXDT shares. *See* "*Summary of Trust Agreement*." On July 29, 2025, NXDT declared a quarterly distribution of $0.15 per common share of NXDT, consisting of a combination of cash and common shares of NXDT. The distribution was paid on September 30 to shareholders of record on August 14, 2025. As of November 24, 2025, the forward dividend yield for a share of NXDT was approximately 21.4% based on a forward annual dividend rate of $0.60 per share. NXDT owns and controls the general partner of the Operating Partnership and expects OP Unit holders to receive distributions substantially equivalent to those received by NXDT shareholders.

**Periodic Purchase Offer**. Following the second anniversary of the Acquisition Closing, the Sponsor or its affiliates may, but has no obligation to, periodically extend a Periodic Purchase Offer to a Beneficial Owner to purchase all or a portion of a Beneficial Owner's Interests. The Sponsor or its affiliates intends to periodically evaluate and determine whether to extend a Periodic Purchase Offer to a particular Beneficial Owner and has the sole and absolute discretion to do so. If the Sponsor or its affiliates chooses to make a Periodic Purchase Offer, the Sponsor will be responsible for providing the Beneficial Owner with notice and terms of such Periodic Purchase Offer. The terms of effectuating such Periodic Purchase Offer, including the offering price, are within the sole and absolute discretion of the Sponsor or its affiliates, as applicable. Neither the Sponsor nor any of its affiliates has any obligation to extend a Periodic Purchase Offer. Likewise, a Beneficial Owner who receives a Periodic Purchase Offer has no obligation to accept. Should the Periodic Purchase Offer result in a purchase and sale of Interests, the Beneficial Owner will no longer have a direct interest in the Trust to the extent of the Interests sold. Further, the Beneficial Owner may be subject to federal income tax, state or local income tax, transfer or other taxes.

**Exclusive Jurisdiction**. The Purchase Agreement requires Purchasers to agree to resolve any disputes arising out of, in connection with, or from the Purchase Agreement, or the transaction covered by the Purchase Agreement, within Dallas, Texas. As such, in the event of a dispute, Purchasers will not be able to select any other jurisdiction in which to resolve it.

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**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 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 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 its real property to be relinquished (each, a "**Relinquished Property**") could constitute taxable "boot" (as defined herein). 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 its 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 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 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, 2004-2 C.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: (1) the DST is treated as an entity separate from its owners (and not as a co-ownership or agency arrangement); (2) the DST is an "investment" trust and not a "business entity" for federal income tax purposes; (3) 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 (4) 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.

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**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 estate 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 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 discussions of the federal income tax consequences contained in this Memorandum are correct in all material respects; and (ix) certain judicially created doctrines should not apply to change the foregoing conclusions. The issues which are the subject of such opinion have not been definitely resolved by statutory, administrative or case law. This 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 aggregate fair market value of all 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. Prospective Purchasers will have to rely on the 200% rule or 95% rule with respect to the Offering and should seek the advice of their tax advisors prior to subscribing for the Interests or making an identification.

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 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.

For purposes of the three-property rule, the IRS has not provided direct guidance on what constitutes "one property" for identification purposes. The IRS, however, did offer an interpretation of what constitutes "one property" in the context of multiple parcels of property owned by co-owners leased to a single tenant. Although this interpretation does not specifically apply to the identification rules under Code Section 1031, in Revenue Procedure 2002-22, the IRS provided that it will generally treat contiguous parcels as comprising a single business unit or "property." Further, in Revenue Procedure 2002-22, the IRS provided that even if the parcels are not contiguous, the IRS may treat multiple parcels as comprising a single business unit where there is a close connection between the business use of one parcel and the business use of another parcel.

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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. Prospective Purchasers will have to rely on the 200% rule or 95% rule with respect to the Offering and should seek the advice of their tax advisors prior to subscribing for the Interests or making an identification.

**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 Sponsor 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. In particular, a portion of the Offering proceeds will be used to fund the Supplemental Trust Reserve. 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 as "boot" 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.

**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 estate will not be treated as an interest in real estate 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 reserves will be treated as cash boot. For example, 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 estate and may be treated as "boot" or the IRS may contend that some amounts paid into the Supplemental Trust Reserve and amounts paid in connection with the Offering constitute "boot" received by the Purchasers and not a reinvestment in real estate. 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.

**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. Thus, if these costs are paid with exchange funds, they have the effect of potentially causing taxable "boot" to the investor. Each prospective Purchaser should seek the advice of a qualified tax advisor as to the proper treatment and impact of such items.

**Potential Significant Tax Costs If Interests Were Deemed To Be Interests in a Partnership**. The IRS may assert that the Trust is a partnership for federal income tax purposes due to, among others, the Master Lease. For example, the IRS may assert that the Trust should be treated as being in a deemed partnership for federal income tax purposes because the fluctuating nature of the Rents reflects risk sharing among the parties. If the IRS were to successfully assert that the Trust is a partnership for federal income tax purposes, the Purchasers will be treated for federal income tax purposes as having purchased interests in a partnership, and 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

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would immediately recognize such gain and be subject to federal income tax thereon. Additionally, since such determination would likely come after such Purchaser had purchased 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, including but not limited to certain clawback provisions with respect to deferred gain at the state level. 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 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." *See* Code Section 1031(a)(3)(B). 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, Manager, 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 Delaware Trustee, Manager, Beneficial Owners and the Trust from exercising any of the enumerated powers that are prohibited under Revenue Ruling 2004-86.

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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 estate, 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 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 that 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

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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 generally 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. Among other exceptions, 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**. Under current law, excess business losses of a taxpayer other than a corporation are not allowed for any 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 threshold amount, which is indexed for inflation, is $313,000 for 2025 and $256,000 for 2026 (or twice the applicable threshold amount in the case of a joint return). 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**. Interest deductions for taxpayers with average annual gross receipts in excess of $31 million for taxable years beginning in 2025 and $32 million for taxable years beginning in 2026 (and subject to an annual inflation adjustment) are generally deferred to the extent that annual business interest expense exceeds business interest income plus 30% of adjusted 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**"). Although taxpayers were not allowed to take into consideration adjustments for depreciation and amortization for purposes of calculating ATI in certain previous years, these items are now included in the calculation of a taxpayer's ATI under current law and will remain so unless and until amended by subsequent law. *See* "*Federal Income Tax Consequences - Limit on Business Interest Deductions*."

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 (*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. Purchasers should consult their own tax advisors as to the applicability of the new rules to them 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 its Interest in the likely event that the Interest could not be considered Section 1231 Real Property (as defined herein)).

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**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 with respect to which such Purchaser is considered "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 Operating Partnership may require that the Beneficial Owners exchange their Interests (representing ownership in the Property) for OP Units in the Operating Partnership or cash after all Beneficial Owners have held their Interests for at least one year.

**Tax Liability in Excess of Cash Distributions; Purchasers' Tax Liquidity**. 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 nondeductible 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 its tax liability. *See* "*Federal Income Tax Consequences - Other Tax Consequences*."

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 its cash investment in the Property. If this were to occur, a Purchaser would have to use funds from other sources to satisfy its tax liability

**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.

**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. In particular, on July 4, 2025, Public Law 119-21 (commonly known as the "One Big Beautiful Bill Act" or "**OBBBA**") was signed into law. The OBBBA made many significant changes to current U.S. federal income tax laws. Certain provisions are immediately effective, while certain provisions will be prospectively effective. To date, only limited guidance exists with respect to these new provisions, and there are numerous interpretive issues that will require guidance. Technical corrections legislation and/or administrative guidance may also be needed to clarify certain aspects of the OBBBA 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. Furthermore, any such technical clarifications or changes may or may not be retroactive with respect to transactions entered into or contemplated before the effective date of such technical clarification or change, and could have a material adverse effect on an investment in an Interest.

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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 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.

**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, transfer, 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 some or all of the states where the Property is located in connection with the ownership of an Interest and any potential sale or other disposition of the Property.

**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, or (iii) any substantial valuation misstatement. 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, there is a 20% accuracy-related penalty is imposed on (i) listed or (ii) reportable transactions having a significant tax avoidance purpose. This penalty is increased to 30% if the transaction is not properly disclosed on the taxpayer's federal income tax return. Failure to disclose such a transaction can also prevent the applicable statute of limitations from running in certain circumstances and can subject the taxpayer to additional disclosure penalties ranging from $10,000 to $200,000, depending on the facts of the transaction. 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 procurement of the related financing. The Trust is offering a maximum of $31,360,817 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 Contributor 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:

| **Purchase of the Property** | **Offering Proceeds** | **Loan Proceeds** | **% of Offering Proceeds** | **% of Total Capitalization** |
|---|---|---|---|---|
| Estimated Gross Offering Proceeds | $31,360,817 | | 100.00% | 51.00% |
| Organization and Offering Expenses (1) | ($188,165) | | 0.60% | 0.31% |
| Sales Commissions (2) | ($1,881,649) | | 6.00% | 3.08% |
| Marketing/Due Diligence Expense Allowances; Managing Broker-Dealer Fee (3) (4) | ($862,422) | | 2.75% | 1.41% |
| **Proceeds Available for Investment** | **$28,428,580** | | **90.65%** | **46.56%** |
| Down Payment for Purchase of Property (5) | ($28,126,154) | ($21,373,846) | 89.69% | 81.07% |
| Loan-Related Costs (6) | | ($1,370,291) | 0.00% | 2.24% |
| Certain Lender Reserves (7) | | ($797,576) | 0.00% | 1.31% |
| Supplemental Trust Reserve (8) | ($302,427) | ($4,250,000) | 0.96% | 7.46% |
| Facilitation Fee (9) | | ($742,500) | 0.00% | 1.22% |
| Other Closing Costs (10) | | ($1,165,787) | 0.00% | 1.91% |
| **Use of Proceeds Available for Investment** | **$28,428,580** | **$29,700,000** | **90.65%** | **95.20%** |
| Total Offering Expenses & Commissions (11) | $2,932,236 | $0 | 9.35% | 4.80% |
| **Estimated Gross Offering Proceeds** | **$31,360,817** | **$29,700,000** | **100.00%** | **100.00%** |

(1) The Sponsor and its affiliates will be entitled to reimbursement for expenses incurred in connection with the Offering, on an accountable basis, 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*."

(2) The Managing Broker-Dealer and the Participating Dealers will make offers and sales of Interests on a "best efforts" basis. NexPoint Securities, Inc. as Managing Broker-Dealer will receive sales commissions of up to 6.0% of the Total Sales, which it will re-allow to the Participating Dealers; provided, however, in the event a commission rate lower than 6.0% is negotiated with a Participating Dealer, the commission rate will be the lower agreed upon rate. The Managing Broker-Dealer, in its sole discretion, may reduce or waive the Sales Commissions of a FF Offering.

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(3) The Managing Broker-Dealer will also receive a Managing Broker-Dealer Fee of up to 1.50% of the Offering proceeds, 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. The Managing Broker-Dealer, in its sole discretion, may reduce or waive the Managing Broker-Dealer Fee of a FF Offering

(4) The Managing Broker-Dealer will receive Marketing/Due Diligence Expense Allowances, on a non-accountable basis and will re-allow to Participating Dealers on a non-accountable basis, which are allowances for marketing and due diligence expenses of up to 1.25% of the Total Sales. The Managing Broker-Dealer, in its sole discretion, may reduce or waive the Marketing/Due Diligence Expense Allowances of a FF Offering (which will be evaluated on a case-by-case basis).

(5) This down payment amount is exclusive of Loan-Related Costs and Other Closing Costs. *See* "*Acquisition and Contribution of the Property and Financing Terms*."

(6) "**Loan-Related Costs**" include the costs and fees payable to the Lender, the Lender's agents, and the Sponsor. *See* "*Compensation and Fees*."

(7) The Lender deducted and escrowed from the Loan proceeds a total of $461,112 for the Replacement Reserve. As required by the Lender, the Trust also used $336,464 of the Loan proceeds to fund the Imposition Reserve.

(8) A total of $4,552,427 was funded into the Supplemental Trust Reserve of which $4,250,000 was funded from the Loan proceeds and $302,427 was funded from the Offering proceeds. Of the total of $4,552,427, $3,500,000 will be Lender-controlled. To the extent that the actual Sales Commissions and Expenses, Loan-Related Costs, and Other Closing Costs are below the amounts projected, any such savings in any such line item will be used to fund overages in other categories, with any such remainder to be contributed to the Supplemental Trust Reserve. To the extent that the aggregate of the actual Organization and Offering Expenses, Loan-Related Costs and Other Closing Costs exceed the amounts projected, then the Sponsor shall be responsible for such shortfall.

(9) The Sponsor earned a facilitation fee equal to 1.5% of the purchase price of the Property or $742,500 (the "**Facilitation Fee**") for its and its management team's services in the identification, negotiation, diligence, and acquisition of the Property.

(10) "**Other Closing Costs**" include, as applicable, transfer taxes, title charges, escrow fees, document preparation fees, legal fees (other than Lender legal fees), third-party costs, recording fees and entity formation costs, financing costs and expenses, and other related costs. *See* "*Acquisition and Contribution of the Property and Financing Terms*" and "*Compensation and Fees*." Each Purchaser will be responsible for the fees associated with their own legal, tax and other advisors.

(11) 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*."

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 $188,165 or 0.60% of the Offering amount. |
| Sales Commissions: | The Managing Broker-Dealer will receive Sales Commissions up to 6.0% of the purchase price of the 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. The Sales Commissions are estimated to be $1,881,649. |
| 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 the Total Sales. The Managing Broker-Dealer will also receive a Managing Broker-Dealer Fee of up to 1.50% of the 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 total Marketing/Due Diligence Expense Allowance and the Managing Broker-Dealer Fee is estimated to be $862,422. The Managing Broker-Dealer is an affiliate of the Sponsor. |
| Sponsor's Facilitation Fee: | The Sponsor received a Facilitation Fee equal to 1.5% of the purchase price of the Property or $742,500 for its services in the identification, negotiation, diligence, and acquisition of the Property. |
| Loan-Related Costs: | The Loan-Related Costs are $1,370,291 including (i) the fees and costs payable to Lender and its agents for the closing of the Loan, and (ii) the expenses and fees incurred by the Sponsor and its affiliates (including the Contributor), which could be viewed as compensation to the Contributor because such costs were incurred in order to enable it to cause the Trust to acquire the Property, and (iii) the Imposition Reserve. |

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|---|---|
| Redemption of Class 2 Beneficial Interests held by the Contributor; Other Costs and Reimbursements: | The Trust will redeem all of the Class 2 Beneficial Interests held by the Contributor as provided in the Contributor's Operating Agreement.<br><br>The Trust is responsible for funding the Supplemental Trust Reserve and for paying certain costs including: (i) Sales Commissions estimated at $1,881,649, (ii) Managing Broker-Dealer Fee and Marketing/Due Diligence Expense Allowances estimated at $862,422, (iii) Organization and Offering Expenses estimated at $188,165, (iv) Other Closing Costs estimated at $1,165,787, and (v) Loan-Related Costs estimated at $1,370,291. |
| Other Closing Costs: | The Contributor 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, including but not limited to legal and closing costs incurred in connection with the Acquisition Closing, estimated at $1,165,787. 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, financing costs and expenses, and other related costs. |
| **Operations:** | |
| Distributions: | The Contributor will receive its 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 applicable Master Lease. |
| Property Management Fee: | The Property Manager will receive the Property Management Fee equal to the greater of 2.85% of the monthly Gross Income (as defined in the Property Management Agreement) from the Property or a base fee of $34 per unit per month. The Property Manager may also receive set-up fees, administration fees, construction management fees, and other fees. All Property Management Fees shall be paid solely by the Master Tenant. |
| Asset Management Fee: | The Trust shall be obligated under an asset management agreement with the Asset Manager (the "**Asset Management Agreement**") to pay the Asset Manager annual asset management fees for supervising the services of the Property Manager, which will be equal to 0.30% of the purchase price of the Property or $148,500, paid ratably, monthly in arrears (the "**Asset Management Fee**"). The Asset Manager may, at its sole discretion, defer a portion or all of the Asset Management Fee. The Asset Manager intends to defer 100% of the Asset Management Fees in the first year following the Acquisition Closing and recoup such deferred fees 50% in the third year and 50% in the fourth year following the Acquisition Closing. The Asset Management Fee will be paid on a pro rata basis, monthly |

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|---|---|
| | in arrears, and if the Asset Management Agreement terminates during any calendar year, shall be pro-rated for any such partial year. Any portion of a deferred Asset Management Fee is deferred without interest and may be paid over in the discretion of the Asset Manager, prior to the termination of the Asset Management Agreement. The Asset Management Fee will be paid to the Asset 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. |
| **Liquidation:** | |
| Liquidating Distribution: | The Contributor, through its ownership of unsold Class 2 Beneficial Interests (if any), shall receive its proportional share of any proceeds from the sale, exchange or other disposition of the Property. |
| Disposition Fee: | The Asset Manager will receive a disposition fee from the Trust equal to 3.0% of the gross proceeds of the sale, exchange or other disposition of the Property (the "**Disposition Fee**") by the Trust, including, for the avoidance of doubt, pursuant to the exercise of the Exchange Right. Any sales commissions due to third-party brokers will not be paid from this amount. |

To the extent that the actual Organization and Offering Expenses, Sales Commissions, Marketing/Due Diligence Expense Allowances, Loan-Related Costs and/or Other Closing Costs are below the amounts projected or estimated for any particular line item, any such savings will be used first to fund overages in other categories and next to further fund the Supplemental Trust Reserve for the benefit of the Trust. If, however, the actual Organization and Offering Expenses, Loan-Related Costs and/or Other Closing Costs exceed the amounts projected or estimated, then the Sponsor shall be responsible for such shortfall.

The Sponsor, the Master Tenant, the Manager, the Delaware Trustee, the Property Manager and their respective affiliates shall 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

Waterford Place is a multifamily garden-style apartment development located at 101 Shore Lake Drive, Greensboro, North Carolina 27455. Developed in 1997, the Property consists of 20.64 acres of land upon which 20 residential buildings are situated, housing a total of approximately 277,296 rentable square feet across 240 apartment units. The Property includes amenities such as a clubhouse building with fitness center, business center, and package room, maintenance building, mailbox building, swimming pool, car wash station, playground, tennis court, and dog park. As of March 9, 2026, the Property was 90.0% leased.

### Property Features & Specifications

***General Specifications***

***Property Name*** Waterford Place

***Property Address*** 101 Shore Lake Drive, Greensboro, North Carolina 27455

***Year Built*** 1997

***Site Area*** Approximately 20.64 acres

***Rentable Building Area*** The Property contains 240 apartment units totaling 277,296 rentable square feet.

***Unit Sizes/Floor Plans*** The Property offers 72 one bedroom / one bathroom units at an average of 900 square feet; 120 two bedroom / two bathroom units at an average of 1,180 square feet; and 48 three bedroom / two bathroom units at an average of 1,477 square feet. The unit mix is summarized below by unit type; additional detail is provided in the Rent Roll attached as Exhibit B to this Memorandum.

**Unit Mix Summary**

| Type | Number | Average Square Feet | Total Square Feet |
|---|---|---|---|
| 1 BR/1 BA | 72 | 900 | 64,800 |
| 2 BR/2 BA | 120 | 1,180 | 141,600 |
| 3 BR/2 BA | 48 | 1,477 | 70,896 |
| **Total/Average** | **240** | **1,155** | **277,296** |

***Parking*** 425 total spaces: 405 open parking lot spaces, 20 garage spaces.

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***Property Amenities***

Property amenities include:

- Leasing office / clubhouse building with fitness center, business center, and package room
- Detached maintenance building
- Mailbox building
- Freshwater swimming pool
- Fitness center with treadmills, elliptical trainers, stationary bicycles, and weight machines / apparatus
- Car wash station with water "wand" and vacuum
- Playground with metal and plastic equipment on a mulch base
- Tennis court surrounded by chain-link fencing and pole-mounted lighting
- Dog park with synthetic turf and chain-link fencing
- Picnic areas with propane grills
- Asphalt-paved driving and parking surfaces

***Individual Unit Amenities***

Apartment Units features include:

- Vinyl plank flooring in living areas
- Laminated wood and granite countertops
- Designer brown wood cabinets
- Marble and Formica bathroom sinks and countertops
- Spacious soaking tub

**Construction Specifications**

***Buildings/Improvements***

The Property has 20 apartment buildings, a clubhouse building, a detached maintenance building, and mailbox building.

***Exterior Composition***

The building exteriors are finished with stone and vinyl siding.

***Foundation***

Reinforced concrete slab-on grade.

***Framing***

Conventional wood stud framing.

***Roofs***

Pitched roof; material is asphalt shingle.

***Doors and Windows***

Doors to the individual units are metal. Windows are insulated glass in metal frames.

***Electrical Wiring***

Copper.

***Heating/Cooling Systems***

Split systems consisting of individual electric furnace / air handlers and pad-mounted air conditioning condensers.

***Water, Waste and Vent***

Individual 40-gallon electric water heaters are provided at each unit; polybutylene plumbing supply systems.

***Fire and Life Safety***

The Property is protected by smoke detectors and carbon monoxide detectors in the units, fire extinguishers in the common areas, and security cameras and fire hydrants throughout the Property.

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|---|---|
| ***Pools and Spas*** | One resort-style pool is located at the Property. The pool is surrounded by a concrete deck and a metal fence. |

**Appraisal**

The Lender obtained the Appraisal for the Property prepared by the Appraiser reflecting a market value for the Property "as is" of $51,000,000.

A copy of the Appraisal is available in the Digital Investor Kit.

**Property Condition Assessment**

REA issued the PCA dated October 30, 2025. The PCA concluded that the Property appeared to be in overall good condition with maintenance practices consistent with the industry. The PCA identified approximately $65,500 in immediate repairs relating to, among others, sidewalk misalignment, vinyl siding damage, soffit and gutter damage, wasp nest removal, retaining wall damage, tree trimming, vegetation overgrowth, a busted curb, asphalt pavement damage, frayed roof shingles, and potential radon mitigation. The PCA estimated physical needs of $919,600 over the next 12 years (or approximately $3,832 per unit, per year). With 3.0% inflation, this amount is $1,106,674 (or approximately $4,611 per unit, per year). The physical needs over time provided for in the PCA include: (1) pool maintenance; (2) parking seal and stripe; (3) sidewalks and flatwork; (4) partial roof replacement; (5) exterior siding and stairways; (6) water heaters; (7) cooling system; (8) furnaces; (9) polybutylene piping; (10) carpet and flooring; and (11) in-unit appliances. To the Sponsor's knowledge (as informed by due diligence on the Property), the Sponsor does not believe that there have been material changes to the PCA or the condition of the Property since the PCA was issued.

A copy of the PCA is available in the Digital Investor Kit.

**Environmental Site Assessment**

The Property has been evaluated for environmental hazards on behalf of the Lender pursuant to the Phase I Report prepared by REA, based on a site visit conducted on October 22, 2025. The Phase I Report, which consisted of a walk-through observation of the accessible areas and interviews with facility personnel, local agency representatives, and other relevant personnel, limited observations of surrounding properties, and a records review including regulatory databases and historical use information was performed in compliance with the standards or ASTM Practice E 1527-13. The Phase I Report revealed no evidence of RECs, CRECs or historical HRECs in connection with the site. No further investigation was recommended. To the Sponsor's knowledge (as informed by due diligence on the Property), the Sponsor does not believe that there have been material changes to the Phase I Report or the condition of the Property since the Phase I Report was issued.

A copy of the Phase I Report is available in the Digital Investor Kit.

**Zoning**

According to the Zoning Report prepared by Armada Analytics, dated October 23, 2025 (the "**Zoning Report**"), the Property is zoned "PUD" (planned unit development). According to the Zoning Report, the Property is in a legal conforming use. The Lender has reviewed the Zoning Report.

A copy of the Zoning Report is available in the Digital Investor Kit.

**Flood Zones**

According to the PCA, based on the Federal Emergency Management Agency ("**FEMA**") map, the Property is located in the flood zone set forth in the chart below.

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| Property | Flood Zone | Definition |
|---|---|---|
| **Waterford Place** | X (non-shaded area) | Area of minimal flood hazard. |

**Seismic Zones**

The PCA indicates that, according to the 1997 Uniform Building Code, the Property is located in the seismic zone set forth in the chart below.

| Property | Seismic Zone | Probability of Damaging Ground Motion |
|---|---|---|
| **Waterford Place** | 1 | Low probability of damaging ground motion. |

**Wind Zones**

According to FEMA's Map of Wind Zones in the United States, the Property is located in the wind zone set forth in the chart below.

| Property | Wind Zone |
|---|---|
| **Waterford Place** | III-200 miles per hour, relatively moderate chance of hurricanes |

**Agreements and Other Matters Affecting the Property**

The Property is subject to various easements, encroachments, declarations, restrictions, and other agreements of record with neighboring landowners, local municipalities, and/or utility providers. The Sponsor has reviewed the agreements and other matters affecting the Property and believes that none are material to the Property's ownership and operations.

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## BUSINESS PLAN

### General

The Offering is designed for Accredited Investors seeking to participate in a Section 1031 Exchange as well as those seeking a quality, multiple-owner real estate investment. The Sponsor is pleased to present the opportunity to invest in the Property. The Sponsor believes that the Property presents an attractive long-term investment opportunity due to, in part, competitive positioning in the Greensboro MSA and North Greensboro area with proximity to North Elm Village and Battleground Avenue, an affordable rental profile, and robust amenity package. The Sponsor believes the property will see strong operational performance due to lack of comparable competition, new barriers to entry in the county, and rapid population and employment growth in the county. Furthermore, the execution of strategic market upgrades, asset management, and other operational initiatives will provide an opportunity to enhance the Property's value.

### Investment Highlights

- ✓ *High Barriers to Entry with Limited Future Supply*
- ✓ *Unmatched Connectivity and Access*
- ✓ *Value Enhancement Opportunities*
- ✓ *Unique, Differentiated Floorplans*
- ✓ *JetZero: Largest Employment Announcement in North Carolina History*
- ✓ *Toyota's $20 Billion EV Battery Manufacturing Expansion; Adding Over 5,000 Additional Jobs*

### Ownership Objectives

I. Preserve the Beneficial Owners' capital investment.
II. Make monthly distributions starting at 4.51% per annum in year one increasing to 7.64% per annum in year ten, which may be partially tax-deferred as a result of depreciation and amortization expenses.
III. Increase the net operating income of the Property through growth in rental rates, maintenance of high renter demand and occupancy, implementation and maintenance of expense controls by professional property management, and institutional-quality asset management.
IV. Perform market upgrades to units that have fallen slightly behind the market to maintain a competitive advantage, sustain renter demand, and receive a slight rental premium.
V. Profitably sell the Property within approximately five to 10 years.

*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.*

### Investment Rationale

#### *Favorable Multifamily Asset Class*

- Apartments are a commanding part of the U.S. economy, featuring:
  - High occupancy levels
  - Solid rental revenue
  - Excellent prospects for long-term renter demand
  - Growing U.S. population
  - Fundamental human need for shelter
  - Rising interest rate impact on mortgage cost
  - Short lease durations (offering a potential hedge against inflation)
  - Diversified tenant bases

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***Strong Local Economies***

- Robust population growth
- Declining vacancy rates
- Favorable business climates
- Healthy middle-class incomes
- Strong, diversified local economies

***Institutional Quality Asset Management Platform***

NexPoint Real Estate Advisors' management team has extensive experience in acquiring, owning and operating multifamily properties, with specific expertise in the execution of value-added strategies. NexPoint Real Estate Advisors targets investments in mid-size multifamily communities with favorable demographic trends and opportunity for improved performance. NexPoint Real Estate Advisors believes that the execution of this strategy in an underserved and less efficient segment of the real estate market can provide risk mitigation across the real estate market cycle. Given its significant financial resources, proprietary relationships, preferred status and transaction history with Fannie Mae and Freddie Mac, NexPoint Real Estate Advisors can benefit from creative deal structures, sourcing, and execution. NexPoint Real Estate Advisors strives to provide institutional-quality asset and investment management to individual investors in multifamily offerings that feature strong cash flows, conservative underwriting projections, value enhancement opportunities, and attractive long-term financing with healthy debt service coverage ratios.

NexPoint Real Estate Advisors and its affiliates have accumulated a significant portfolio of core-plus and value-add multifamily property through a series of opportunistic acquisitions since 2013. From 2013 through Q3 2025, NexPoint Real Estate Advisors and its affiliates invested in 384 multifamily real estate transactions with total gross real estate value exceeding $21.7 billion, of which includes over 58,000 multifamily units. Additionally, NexPoint Real Estate Advisors and its affiliates currently own and operate 2,051 multifamily units in North Carolina and 240 multifamily units in the Greensboro MSA.

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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 the Appraisal and other 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. However, the Sponsor has revised portions of this "*Market and Location Overview*" section to eliminate typographical errors, to eliminate duplicative language and to conform to the definitions contained in this Memorandum. You are encouraged to request from the Sponsor a copy of the Appraisal and the market reports referred to below, and to review them in their entirety, prior to investing in the Interests. The Appraisal is included in the Digital Investor Kit. Forecasts and other forward-looking information in the Appraisal and other sources are subject to the same qualifications and the additional uncertainties regarding other forward-looking statements in this Memorandum.

### Regional Analysis

The Greensboro MSA, part of North Carolina's Piedmont Triad region, has experienced steady growth supported by its strategic location, diversified economy, and competitive cost of living. The Greensboro MSA's population has steadily increased by 0.7% annually since 2010 with continued in-migration driven by affordability and employment opportunities. The region benefits from its proximity to major transportation corridors including Interstate 40 and Interstate 85 and the Piedmont Triad International Airport, which serves as a key logistics and aerospace hub.

According to the Bureau of Labor Statistics, the Greensboro MSA added 4,500 non-farm jobs over the past year, growing the market by 1.2%. Education and health services were the fastest-growing sector, expanding by 2.8% and adding approximately 1,500 jobs, supported by major healthcare systems such as Cone Health and Atrium Health Wake Forest Baptist. Transportation and warehousing followed with 2.3% growth, adding roughly 900 jobs, reflecting the region's strength in logistics. Manufacturing, a historic pillar of the local economy, grew by 1.5%, adding about 700 jobs, driven by advanced manufacturing and aerospace. Professional and business services also posted gains of 1.9%, adding approximately 600 jobs. The unemployment rate for the Greensboro MSA was 4.5%, consistent with the national average.

The Greensboro MSA's economic strength is attributable to North Carolina's business-friendly environment, ongoing revitalization efforts, and significant corporate investment. Aircraft manufacturer, JetZero, selected Piedmont Triad International Airport for its $4.7 billion manufacturing site, the largest employment announcement in North Carolina history, which is expected to add over 14,500 new jobs. These jobs are expected to pay an average wage of $89,340 or 48% more than Guilford County's current average. Boom Supersonic announced plans for a $500 million manufacturing facility at Piedmont Triad International Airport, expected to create 1,750 jobs over the next decade. Publix Super Markets recently opened a major distribution center in Greensboro, adding 1,000 jobs. Beyond logistics, the Greensboro MSA has a growing presence in aerospace and advanced manufacturing, anchored by employers such as Honda Aircraft Company, Volvo Trucks North America, and Haier (GE Appliances). Additionally, Toyota's battery manufacturing plant in nearby Liberty, North Carolina recently announced the largest economic development in North Carolina's history representing over $20 billion total investment and over 5,100 new jobs expected. This investment is Toyota's largest investment in North America and will support the manufacturing of 30 GWh of battery capacity per year, enough to power up to 800,000 vehicles annually.

Healthcare and education remain critical drivers of the local economy. Cone Health employs over 13,000 individuals, while Atrium Health Wake Forest Baptist continues to expand its footprint. The Greensboro MSA is home to North Carolina A&T State University, the largest historically black university in the U.S., and a national leader in engineering and STEM fields, as well as the University of North Carolina at Greensboro and High Point University, which collectively provide a robust talent pipeline for regional employers.

In addition to a strong and diversified economy, the Greensboro MSA offers a cost of living approximately 10-12% below the national average, making it attractive to young professionals and families seeking affordability without sacrificing access to urban amenities. The Greensboro MSA region's combination of advanced manufacturing, aerospace, healthcare, and logistics positions it for sustained growth and continued corporate investment.

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**Local Area Analysis**

***Economic Analysis***

| SELECTED NEIGHBORHOOD DEMOGRAPHICS | | | | |
|---|---|---|---|---|
| 101 Shore Lake Dr<br>Greensboro, NC 27455 | 1 Mile Radius | 3 Mile Radius | 5 Mile Radius | Greensboro-High Point, NC Metropolitan |
| Population | | | | |
| 2029 Total Population | 8,156 | 55,652 | 127,065 | 805,742 |
| 2024 Total Population | 8,224 | 55,711 | 126,473 | 794,559 |
| 2010 Total Population | 7,632 | 51,565 | 115,886 | 723,743 |
| 2000 Total Population | 5,955 | 42,849 | 99,982 | 643,365 |
| *Annual Growth 2024 - 2029* | *-0.17%* | *-0.02%* | *0.09%* | *0.28%* |
| *Annual Growth 2010 - 2024* | *0.54%* | *0.55%* | *0.63%* | *0.67%* |
| *Annual Growth 2000 - 2010* | *2.51%* | *1.87%* | *1.49%* | *1.18%* |
| Households | | | | |
| 2029 Total Households | 3,852 | 25,543 | 56,471 | 336,056 |
| 2024 Total Households | 3,834 | 25,228 | 55,413 | 326,727 |
| 2010 Total Households | 3,378 | 22,529 | 49,607 | 290,672 |
| 2000 Total Households | 2,589 | 18,818 | 43,145 | 256,294 |
| *Annual Growth 2024 - 2029* | *0.09%* | *0.25%* | *0.38%* | *0.56%* |
| *Annual Growth 2010 - 2024* | *0.91%* | *0.81%* | *0.79%* | *0.84%* |
| *Annual Growth 2000 - 2010* | *2.70%* | *1.82%* | *1.41%* | *1.27%* |
| Income | | | | |
| 2024 Median Household Income | $92,750 | $75,498 | $76,901 | $66,596 |
| 2024 Average Household Income | $129,566 | $116,975 | $117,344 | $93,803 |
| 2024 Per Capita Income | $60,024 | $52,874 | $51,212 | $38,681 |
| 2024 Pop 25+ College Graduates | 3,913 | 20,885 | 46,776 | 188,113 |
| Age 25+ Percent College Graduates - 2024 | 63.6% | 52.3% | 52.5% | 34.5% |

Source: ESRI

As shown above, the current population within a three-mile radius of the Property is 55,711, and average household income in the immediate three-mile radius is $116,975. The formation of new households in the one-mile radius of the Property is expected to grow by 0.09% over the next five years. In summary, the Property's neighborhood currently has an upper-middle income demographic profile. Generally, the Property's neighborhood is expected to remain stable with good, positive growth in the near future. As a result, the demand for existing developments is expected to be generally favorable around the Property.

**Multifamily Market Analysis**

The Property competes in an established submarket that offers a robust business environment, affluent residential neighborhoods, and outstanding educational opportunities. Occupancy levels within the multifamily submarket around the Property have remained high with monthly rents continuing to increase.

Additionally, the Sponsor anticipates the Greensboro MSA's multifamily market to continue to have stabilized occupancy and increasing rental rates. The local market should maintain a generally stabilized occupancy position, and the long-term projection for the submarket is for continued moderate growth. The Property is well located in the market, as many of the major employment hubs are located in the same area, and surrounding new apartment deliveries have experienced good levels of demand resulting in faster lease-ups compared to the overall market.

*Market Trends Key Takeaways*

- The Greensboro MSA multifamily market ended 2025 Q3 with a vacancy rate of 4.2% which decreased by 1.6% from year end 2024.
- Asking rents remained essentially flat year over year as of Q3 2025 in the Greensboro MSA, showing the market has maintained more pricing power than most Sunbelt markets.
- The market is forecasted to have 461 units delivered in Q4 2025 with a sharp increase in deliveries in 2026 before drastically dropping in 2027.

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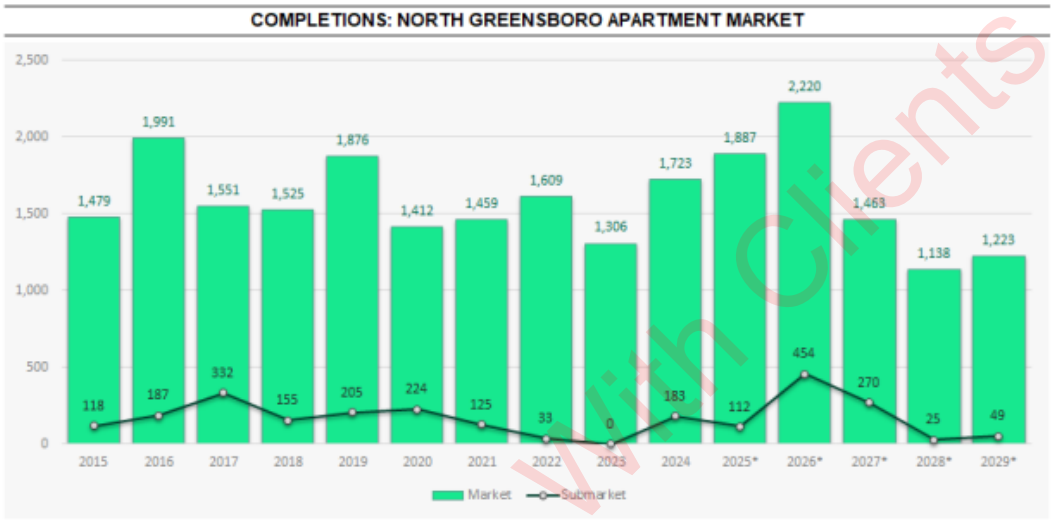
*Submarket Snapshot, Trends and Forecast*

- The submarket is North Greensboro.
- North Greensboro has experienced significantly less supply than the greater Greensboro MSA, which has resulted in properties asking rents to increase 4.68% year over year and the submarket having a stabilized vacancy rate of only 5.3%.
- With a median household income of more than $76,900 per year, the submarket's rents are within reach for many of the residents.

*Multifamily Market Construction Key Takeaways*




- Demand across the submarket remains robust, and vacancy rates have remained level despite elevated supply, proving the market's absorption remains strong.
- The Greensboro MSA's sprawling nature with employment hubs located throughout the market has meant that the core suburban areas such as North Greensboro have asking rents equal to and sometimes greater than the downtown communities.
- Deliveries in North Greensboro has increased after falling to zero in 2023. As seen above, the submarket is likely to reach its peak in deliveries in 2026. The 454 units projected to be delivered in 2026 only represent 2.3% of the current inventory in the submarket. With scheduled delivery in 2026, the delivered units should be easily absorbed due to the submarket's strong demand. In the past 12 months, only 112 units have been delivered in this strong submarket, and, as a result, occupancy has increased 2.3% in the submarket over the last two years and rents have increased 0.8%. As such, the Sponsor believes the submarket will continue to see strong occupancy and rent growth trends in 2026.

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*Comparable Rental Properties*

| Property | Year Built | Units | Average Square Feet | Average Effective Rent | Average Effective Per Square Feet |
|---|---|---|---|---|---|
| Encore North | 2017 | 237 | 1,046 | $1,437 | $1.37 |
| The Village Lofts | 2008 | 213 | 1,157 | $1,959 | $1.69 |
| The Pointe at Irving Park | 1988 | 198 | 939 | $1,210 | $1.29 |
| Country Park at Tall Oaks | 2017 | 216 | 988 | $1,500 | $1.52 |
| Yester Oaks Apartments | 1972 | 244 | 1,205 | $1,459 | $1.21 |
| The Reserve at Greenwood | 2020 | 240 | 1,058 | $1,565 | $1.48 |
| **Totals/Averages** | **2004** | **225** | **1,066** | **$1,522** | **$1.43** |
| **Waterford Place** | **1997** | **240** | **1,155** | **$1,631** | **$1.41** |

*Comparable Property Sales*

| Property | Year Built | Units | Sale Price | Sale Price Per Unit | Sale Price Per Rentable Square Feet | Sale Date |
|---|---|---|---|---|---|---|
| Reserve at Bridford | 1998 | 232 | $41,500,000 | $178,879 | $177.98 | 10/2025 |
| Carrington at Perimeter Park | 2007 | 266 | $62,386,000 | $234,534 | $210.00 | 08/2025 |
| Gramercy Square at Ayrsley Apartments | 2009 | 358 | $83,700,000 | $233,799 | $236.79 | 07/2025 |
| Audubon Parc Apartments | 1995 | 180 | $41,375,000 | $229,861 | $214.62 | 01/2025 |
| Courtney Ridge | 2000 | 460 | $104,850,000 | $227,935 | $217.04 | 10/2024 |
| Enclave at Rivergate | 2010 | 216 | $54,750,000 | $253,472 | $211.52 | 09/2024 |
| 198 Milltown | 2020 | 288 | $66,900,000 | $232,292 | $235.13 | 03/2025 |
| **Totals/Averages** | **2006** | **286** | **$65,065,857** | **$227,253** | **$214.73** | **Various** |
| **Waterford Place** | **1997** | **240** | **$49,500,000** | **$206,250** | **$178.51** | **1/16/2026** |

**Market Overview**

The low cost of doing business, availability of talent, and high affordability relative to other major areas remain key to the Greensboro MSA's ability to attract new businesses. The Greensboro MSA is expected to continue to see population growth over the next decade and should continue to benefit from its proximity to major interstates and larger metropolitan areas including Charlotte and Raleigh, North Carolina.

**Market Outlook**

Based on this analysis, the immediate area surrounding the Property is projected to experience positive growth relative to households and population into the near future. Given the area demographics, it appears that demand for both comparable surrounding area apartment units and the Property will continue to be favorable.

The Property is conveniently located with respect to employment centers and major roadways of the Greensboro MSA. Overall market conditions indicate a stable market and competing apartment communities are experiencing above average levels of demand. Overall market conditions are expected to improve over the foreseeable future as new supply is absorbed after above average levels of new construction occurred over the past three years. The Property's improvements are expected to continue to perform within market parameters going forward.

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## ACQUISITION CLOSING AND FINANCING TERMS

NREA, an affiliate of the Sponsor, was under contract to acquire the Property for $49,500,000 pursuant to the PSA. Prior to the Acquisition Closing, NREA assigned all of its rights under the Purchase Contract (which included all of NREA's rights under the PSA) to the Trust. At the Acquisition Closing, the Contributor made the Contributor Contribution, which, together with the proceeds from the Loan, enabled the Trust to acquire the Property and pay expenses and fees associated with the acquisition on January 16, 2026. In exchange for the Contributor Contribution, the Trust simultaneously issued to the Contributor all of the Class 2 Beneficial Interests in the Trust. Contemporaneously with the Acquisition Closing, the Trust obtained the Loan from the Lender in the original principal amount of $29,700,000. As part of the foregoing, the Contributor has agreed to pay the Facilitation Fee in the amount of $742,500 to the Sponsor in connection with the Sponsor's services in the identification, negotiation, diligence, and acquisition of the Property. Subsequent to the Acquisition Closing, the Contributor, the Master Tenant, the Manager, and the Asset Manager are owed by affiliates of the Sponsor.

### Financing – The Loan

The Loan Documents provide for a $29,700,000 loan, with a 10-year term, interest-only payments and a fixed interest rate of 4.86% per annum. On a fully-loaded basis, the LTC ratio is 48.6%. 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 Lender is Walker & Dunlop, LLC under the Freddie Mac Capital Markets Execution Program. 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, because the Property secures the Trust's obligations under the Loan, Beneficial Owners could lose the entire value of their investment in the Trust, 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*." The material terms of the Loan Documents, including the "**Loan Agreement**," are summarized below. Prospective Purchasers are encouraged to review a complete set of each of the Loan Documents prior to subscribing for the Interests.

| ***Summary of Loan Terms*** | |
|---|---|
| **Amount:** | $29,700,000 |
| **Term; Maturity Date:** | 120 months; February 1, 2036 |
| **Interest Rate:** | 4.86% per annum |
| **Amortization:** | None; interest-only |
| **Fees:** | The Lender will charge a late fee on any payment not made by the due date, the terms of which will be specified in the Loan Documents. Commencing upon a default (and the expiration of any applicable grace period in the event of a payment default) and continuing until the default has been cured, the interest rate on the outstanding principal balance of the Loan is set in accordance with the terms set forth in the Loan Documents. |
| **Repayment:** | The Loan requires interest payments only for the full term, resulting in monthly debt service payments of approximately $122,022 per month.<br><br>Payments under the Loan will first be applied toward the payment of amounts (other than principal and interest) due to the Lender under the Loan Documents, then to accrued but unpaid interest and the balance will be applied toward the reduction of principal. |

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**Loan Escrow:** An amount of the Loan proceeds is to be escrowed at the Acquisition Closing for future real estate taxes, insurance premiums, and similar upfront items as will be specified in the Loan documents.

**Additional Reserves from Loan Proceeds:** The Trust was required to establish the Replacement Reserve with an initial funding of $461,112 from the Loan proceeds. The Trust is also obligated to pay an additional monthly escrow payment of approximately $384 into the Replacement Reserve. The Replacement Reserve shall be available to reimburse the Trust (and the Master Tenant as permitted under the Master Lease) for repairs, replacements, and other expenditures as approved by Lender. As required by the Lender, the Trust also used $336,464 of the Loan proceeds to fund the Imposition Reserve. A total of $4,552,427 was funded into the Supplemental Trust Reserve of which $4,250,000 was funded from the Loan proceeds and $3,500,000 of which will be Lender-controlled.

**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 attorneys' fees, incurred by the Lender in connection with such a transfer and may also be entitled to a Transfer Fee (as defined in the Loan Agreement) plus processing and administrative fees associated with the transfer.

**Collateral:** The Loan is secured by (i) a first priority lien or deed of trust (the "**Mortgage**") and other security instruments in or related to the Property, and (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. The Master Tenant has entered into a separate Assignment of Management 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:** The Loan is pre-payable, subject to a yield maintenance calculation (with a floor of 1% of the then principal balance of the Loan). In addition, if prepayment is made after the expiration of such yield maintenance period but before the last calendar day of the third month prior to the month in which the Loan matures, then the prepayment premium shall be 1% of the amount of principal being prepaid. No prepayment premium is required if prepayment is made on or after the last calendar day of the third month prior to the maturity of the Loan.

**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 Additional Rent under the Master Lease.

**Insurance:** Among others, the following insurance coverages are required under the Loan Documents:

- Insurance against loss or damage from fire, wind, hail, and other related perils within the scope of a "Causes of Loss – Special Form" or "All Risk" policy.
- If any part of the Property is legal non-conforming under current building, zoning or land use laws or ordinances, then "Ordinance and Law Coverage" in the amount required by the Lender.

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- If any of the Improvements (as defined in the Loan Agreement) are located in an area identified by the Federal Emergency Management Agency (or any successor to that agency) as a "Special Flood Hazard Area," flood insurance in the amount required by the Lender.
- If windstorm and/or windstorm-related perils and/or "named storm" are excluded from the "Causes of Loss – Special Form" policy required, then separate coverage for such risks, either through an endorsement or a separate policy.
- If the Property contains a central heating, ventilation and cooling system where steam boilers and/or other pressurized systems are in operation and are regulated by the jurisdiction where the Property is located, insurance providing coverage in the amount required by Lender.
- During any period of construction or Restoration (as defined in the Loan Agreement), builder's risk Insurance (including fire and other perils within the scope of a policy known as "Causes of Loss – Special Form" or "All Risk" policy) in an amount not less than the sum of the related contractual arrangements.
- Insurance for other physical perils applicable to the Property as may be required by the Lender including earthquake, sinkhole, mine subsidence, avalanche, mudslides, and volcanic eruption. If the Lender reasonably requires any updated reports or other documentation to determine whether additional Insurance is necessary or prudent, the Trust will pay for the updated reports or other documentation at its sole cost and expense.
- All such insurance policies will be in a form approved by the Lender, and will meet certain other requirements enumerated more fully in the Loan Agreement.

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

- Failure to pay rents or security deposits owed to the Lender upon an Event of Default (as defined in the Loan Agreement) under the Loan Documents;
- The Trust fails to pay or deposit when due any amount required by the Loan Documents.
- The Trust fails to maintain the Insurance (as defined in the Loan Agreement) coverage required by Section 6.10 of the Loan Agreement.
- The Trust fails to comply with the provisions of Section 6.13 of the Loan Agreement or if any of the assumptions contained in any non-consolidation opinions delivered to the Lender at any time is or becomes untrue in any material respect.
- The Trust fails to comply with and enforce the terms of the Trust Agreement.
- The Trust fails to perform any of its material obligations under the Master Lease and such failure results in a default beyond applicable notice and cure periods.
- The Master Lease is terminated for any reason prior to the stated term of the Master Lease or during any renewal period thereof, the Master Tenant fails to exercise any or all renewal options contained in the Master Lease, the term of the Master Lease expires prior to the Maturity Date, Trustee and Master Tenant

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amend, modify, or revise in any way the Master Lease without the prior written consent of Lender, or a default occurs and is continuing under the Master Lease.

- The Trust, any of its officers, directors, trustees, general partners or managers or any Guarantor (as defined in the Loan Agreement) commits fraud or a material misrepresentation or material omission in connection with: (i) the application for or creation of the Loan, (ii) any financial statement, Rent Schedule (as defined in the Loan Agreement), or other report or information provided to the Lender during the term of the Loan, or (iii) any request for the Lender's consent to any proposed action, including a request for disbursement of funds under the Loan Agreement.
- The Trust fails to comply with the Condemnation (as defined in the Loan Agreement) provisions of Section 6.11 of the Loan Agreement.
- Any assignment, pledge or mortgaging of the Master Lease or any other deed of trust, lien or encumbrance affecting the Master Lease, other than to or in favor of Lender.
- Any failure by the Trust to cause the Master Tenant and / or to cause the Master Tenant to cause Property Manager to correct any default under the Master Lease within any applicable notice and/or cure period(s).
- Any failure by the Trust, Master Tenant, or Property Manager to comply with the covenants and agreements of the Subordination, Assignment, and Security Agreement and such failure results in a default beyond applicable notice and / or cure periods.
- A Transfer (as defined in the Loan Agreement) occurs that violates the provisions of Article VII of the Loan Agreement, whether or not any actual impairment of the Lender's security results from such Transfer.
- The Manager is removed as the manager of the Trust under the Trust Agreement.
- Any change of the Master Tenant or the Property Manager of the Property without Lender's prior written consent.
- The Master Tenant fails to perform any of its obligations under the Loan Documents beyond any applicable cure period.
- The Manager fails to be a single member limited liability company or corporation, directly or indirectly, wholly owned and controlled by Sponsor (as defined in the Loan Agreement).
- Following a Transfer Distribution, the removal of either the Sponsor or the Manager as the managing member of the Springing LLC.
- A forfeiture action or proceeding, whether civil or criminal, is commenced which could result in a forfeiture of the Property or otherwise materially impair the Lien (as defined in the Loan Agreement) created by the Security Instrument (as defined in the Loan Agreement) or the Lender's interest in the Property.
- The Trust fails to perform any of its obligations under the Loan Agreement (other than those specified in Section 9.01 of the Loan Agreement), as and when required, which failure continues for a period of 30 days after Notice (as defined in the Loan Agreement) of such failure by the Lender to the Trust. However, if the Trust's failure to perform its obligations as described in Section 9.01(h) of the Loan Agreement is of the nature that it cannot be cured within the 30-day cure period after such Notice from the Lender

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but reasonably could be cured within 90 days, then the Trust will have additional time as determined by the Lender in the Lender's Discretion (as defined in the Loan Agreement), not to exceed an additional 60 days, in which to cure such default, provided that the Trust has diligently commenced to cure such default during the initial 30-day cure period and diligently pursues the cure of such default. However, no such Notice or cure periods will apply in the case of any such failure which could, in the Lender's judgment, absent immediate exercise by the Lender of a right or remedy under the Loan Agreement, result in harm to the Lender, danger to tenants or third parties, or impairment of the Note (as defined in the Loan Agreement), the Security Instrument or the Loan Agreement or any other security given under any other Loan Document.

- The Trust fails to perform any of its obligations as and when required under any Loan Documents other than the Loan Agreement which failure continues beyond the applicable cure period, if any, specified in that Loan Document.
- The holder of any other debt instrument secured by a mortgage, deed of trust or deed to secure debt on the Property exercises any right to declare all amounts due under that debt instrument immediately due and payable.
- Any of the following occurs:
  - The Trust or Master Tenant commences a Bankruptcy (as defined in the Loan Agreement).
  - Any party other than the Lender commences a Bankruptcy (as defined in the Loan Agreement) against the Trust which (A) results in the entry of an order for relief or any such adjudication or appointment, or (B) has not been dismissed, discharged or bonded for a period of 90 days.
  - Any action or legal proceeding commenced against the Trust or Master Tenant seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of any order by a court of competent jurisdiction for any such relief which is not vacated, discharged, or stayed or bonded pending appeal within 90 days from the entry thereof.
  - The Trust or Master Tenant takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in Section 9.01(k)(i), (ii) or (iii) of the Loan Agreement.

- The Trust has made any representation or warranty in Article V of the Loan Agreement or any other section of the Loan Agreement that is false or misleading in any material respect.
- If the Loan is secured by an interest under a Ground Lease (as defined in the Loan Agreement), the Trust fails to comply with the provisions of Section 6.19 of the Loan Agreement.
- If the Loan is a Supplemental Loan (as defined in the Loan Agreement), any Event of Default (as defined in the Loan Agreement) occurs under (i) the Senior Note (as defined in the Loan Agreement), the Senior Instrument (as defined in the Loan Agreement) or any other Senior Loan Document (as defined in the Loan Agreement), or (ii) any loan document related to another loan in connection with the Property, regardless of whether the Trust has obtained Supplemental Lender's (as defined in the Loan Agreement) approval of the

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placement of such Lien on the Property. In addition, if the Loan is a Supplemental Loan, as the Trust under both the Supplemental Instrument (as defined in the Loan Agreement) and the Senior Instrument, the Trust acknowledges and agrees that if there is an Event of Default under the Supplemental Note, the Supplemental Instrument or any other Supplemental Loan Document (as defined in the Loan Agreement), such Event of Default will be an Event of Default under the terms of the Senior Instrument and will entitle the Lender to invoke any and all remedies permitted to the Lender by applicable law, the Senior Note, the Senior Instrument or any of the other Senior Loan Documents.

  - If the Property is subject to any covenants, conditions and/or restrictions, land use restriction agreements or similar agreements, the Trust fails to perform any of its obligations under any such agreement as and when required, and such failure continues beyond any applicable cure period.

- Guarantor fails to be the same entity as Sponsor.
- A Guarantor files for bankruptcy protection under the Bankruptcy Code (as defined in the Loan Agreement) or a Guarantor voluntarily becomes subject to any reorganization, receivership, insolvency proceeding or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights, or any creditor (other than the Lender) of a Guarantor commences any involuntary case against a Guarantor pursuant to the Bankruptcy Code or other federal or state law affecting debtor and creditor rights, unless each of the following conditions is satisfied:
  - The Trust or Guarantor provides Notice of such action to the Lender within 30 days after the filing of such action.
  - Either (A) the case is dismissed or discharged within 90 days after filing, or (B) within 90 days following the date of such filing or commencement, the affected Guarantor is replaced with one or more other Persons acceptable to the Lender, in the Lender's Discretion (as defined in the Loan Agreement), each of whom executes and delivers to the Lender a replacement Guaranty in form and content acceptable to the Lender, together with such legal opinions as the Lender deems necessary.
  - If the Trust must provide a replacement Guarantor, then the Trust pays the Special Transfer Processing Fee (as defined in the Loan Agreement) to the Lender.
- With respect to a Guarantor, either of the following occurs:
  - If certain individuals cease to remain a family trustee of Sponsor and cease to directly or indirectly maintain an ownership interest in Sponsor.
  - The dissolution of any Guarantor who is an entity, unless each of the following conditions is satisfied:
    - Within 30 days following the dissolution of the Guarantor, the Trust causes one or more Persons acceptable to the Lender, in the Lender's Discretion, to execute and deliver to the Lender a guaranty in a form acceptable to the Lender and in substantially the same form as the Guaranty executed on the Closing Date, without any cost or expense to the Lender.
    - The Trust pays the Special Transfer Processing Fee (as defined in the Loan Agreement) to the Lender.

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- If a Cap Agreement (as defined in the Loan Agreement) is required, the Trust fails to provide the Lender with a Replacement Cap Agreement (as defined in the Loan Agreement) prior to the expiration of the then-existing Cap Agreement.

**Remedies:** 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. In addition, the Trust agreed to indemnify the Lender and its affiliates against certain 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:** An affiliate of the Sponsor and its principal, the Dugaboy Investment Trust, has executed limited guaranties under which it will be responsible for liabilities, costs, expenses, claims, losses or damages incurred by the Lender as a result of certain non-recourse carve out events over which they 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 management team, whose members are described below.

**James Dondero**: James Dondero is the founder of NexPoint, an alternative investment platform comprised of a set of investment advisors and sponsors, a broker-dealer, and a suite of related investment vehicles. In addition to overseeing the group's business and investment activities, Mr. Dondero is the portfolio manager of NexPoint's closed-end fund and holds officer and director roles at NexPoint's publicly traded REITs. Mr. Dondero has over 30 years of experience investing across the alternative landscape. In that time, he established a number of integrated businesses to manage investments in credit, real estate, private equity, and other areas, building a global investment network. Mr. Dondero currently holds director positions at several companies within financial services, healthcare, and real estate, among other industries. He is the chairman of NexBank Capital, Inc. and a director of MGM Holdings, Inc. and Texmark Timber Treasury, L.P. A dedicated philanthropist, Mr. Dondero actively contributes to initiatives in education, veterans' affairs, and community and economic development, and has been instrumental in supporting a number of civic and cultural institutions in the Dallas-Fort Worth area. He is a member of the Southern Methodist University Cox School of Business Executive Board and the George W. Bush Presidential Center Executive Advisory Council. Mr. Dondero graduated from the University of Virginia where he earned highest honors (Beta Gamma Sigma, Beta Alpha Psi) from the McIntire School of Commerce with dual majors in accounting and finance. He has received certification as a Certified Public Accountant (CPA) and a Certified Managerial Accountant (CMA) and has earned the right to use the Chartered Financial Analyst (CFA) designation.

**Matthew McGraner**: Matthew McGraner has served as NexPoint's Executive VP and Chief Investment Officer since March 2015 and served as NexPoint's Secretary from September 2014 to March 2015. Mr. McGraner co-founded NexPoint Advisors, L.P., as well as NXRT, NREF and other real estate businesses with Mr. Dondero. Mr. McGraner has also served as the Executive VP and Chief Investment Officer of NREF since January 2020 and as Secretary of NREF from June 2019 to February 2020. Mr. McGraner has also served as Executive VP, Chief Investment Officer and Secretary of VBHT since February 2019 and as a member of the board of directors and President of NSP since November 2020. Mr. McGraner has also served as Executive Vice President and Chief Investment Officer of NXDT since January 2022 and served as Secretary of NXDT from July 2022 to December 2024. From October 2018 to February 2019, Mr. McGraner also served as Chief Executive Officer, President and Secretary of VBHT. Mr. McGraner has also served as Chief Investment Officer of NHT since December 2019 and as a Managing Director of the Sponsor since 2016. In addition, Mr. McGraner has served as Chief Investment Officer and Secretary of NXHT since June 2022. With over 15 years of real estate, private equity and legal experience, his primary responsibilities are to lead the operations of the real estate platform at the Sponsor, as well as source and execute investments, manage risk and develop potential business opportunities, including fundraising, private investments and joint ventures. Mr. McGraner is also a licensed attorney and was formerly an associate at Jones Day from 2011 to 2013, with a practice primarily focused on private equity, real estate, and mergers and acquisitions. While at Jones Day, Mr. McGraner led the acquisition and financing of over $200 million of real estate investments and advised on $16.3 billion of M&A and private equity transactions. Since 2013 through March 28, 2025, Mr. McGraner has led the acquisition and financing of over $20.1 billion of real estate investments.

**Bonner McDermett:** Mr. McDermett serves as Director, Real Estate for NexPoint Advisors, L.P. and Senior Vice President - Asset Management for NXRT. His primary responsibilities are to source, evaluate, and conduct due diligence on all new multifamily investment opportunities, lead the strategic direction and reporting on NexPoint's multifamily investment and asset management division, monitor and manage investments in the existing portfolio, and provide broad industry support for NexPoint's real estate team. During his time at NexPoint, Mr. McDermett has played an integral role in the acquisition of $4.3 billion of multifamily product across the United States. Prior to joining NexPoint in March 2015, Mr. McDermett was a Financial Analyst with Apartment Realty Advisors' (now part of Newmark Group, Inc.) ("**ARA**") multifamily brokerage group in Dallas, Texas. During his time at ARA, he evaluated over $8.1 billion of multifamily and mixed-use commercial real estate, and his team closed over $4.2 billion in multifamily and mixed-use product, single and multifamily land development opportunities, and equity investments. Mr. McDermett earned a BA from the University of Texas at Austin.

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**D.C. Sauter:** Mr. Sauter is General Counsel, Real Estate for NexPoint Advisors, L.P. Prior to joining NexPoint in February 2020, he was a partner with Wick Phillips Gould & Martin, LLP in Dallas, Texas, where his practice focused on all aspects of commercial real estate, including acquisitions, dispositions, entitlements, construction, financing, and leasing of industrial, office, retail, hotel and multifamily assets. In addition to transactional matters, Mr. Sauter has significant experience in complex commercial disputes, foreclosures, and workouts. He received a JD from Southern Methodist University Dedman School of Law and a BA from the University of Texas at Austin.

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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 Purchasers in such prior real estate programs. This Memorandum does not include any prior performance tables.**

### Experience and Background of the Sponsor and its Affiliates

Since NexPoint's inception in 2012, the NexPoint platform has acquired $21.9 billion of gross real estate assets across several real estate sectors, including multifamily, single-family rental, self-storage, hospitality, office, industrial, retail, and life sciences. As of December 31, 2025, the NexPoint platform advises or sponsors $15.97 billion of fee-earning real estate assets in various vehicles, including publicly traded REITs, closed-end funds, and private placements. As of December 31, 2025, the NexPoint platform has achieved a gross IRR of 25.1% and a multiple of capital contributed of 1.78x through 82 realized investments.

As of December 31, 2025, NexPoint's current asset mix was:

| Asset Type | Amount (in USD 000s) | % |
|---|---|---|
| Multifamily | $5,268,267 | 33.0% |
| Single-Family | $5,825,728 | 36.5% |
| Hospitality | $258,146 | 1.6% |
| Office | $342,941 | 2.1% |
| Retail | $24,040 | 0.2% |
| Self-Storage | $2,126,593 | 13.3% |
| Life Sciences | $1,361,544 | 8.5% |
| Other | $762,242 | 4.8% |
| **Total** | **$15,969,501** | **100.0%** |

Since October 2013, entities affiliated with the Sponsor have, directly and indirectly, invested in 180 apartment communities totaling 59,100 units across 19 states (AL, AR, AZ, CA, FL, GA, IA, ID, MD, MO, MS, NC, NV, OK, SC, TN, TX, VA, WA) and more than 30 distinct markets with a cumulative acquisition price in excess of $7.80 billion. For the purposes of the table below, "**AA**" notes advised assets which are under the Sponsor's management and owned through its affiliates.

As of December 31, 2025, NexPoint Real Estate Advisors' apartment portfolio consists of 81 apartment communities totaling 26,798 units held within 17 distinct funds, detailed further below. For further detail on the performance of the Sponsor and affiliates' full-cycle multifamily investments, see "*Prior Performance of the Sponsor and Affiliates – Full-Cycle Multifamily Property Investments*" noted below.

| | Entity | Property Name | City | State | Units | Year Built | Acquisition Date | Investment Type | Current as of 01/31/2026 |
|---|---|---|---|---|---|---|---|---|---|
| 1. | NXRT | Sedona at Lone Mountain | Las Vegas | NV | 321 | 1997 | 12/11/2025 | Equity | Yes |
| 2. | DST | Outlook at Greystone | Birmingham | AL | 300 | 2007 | 11/20/2025 | Equity | Yes |
| 3. | DST | Oasis at Shingle Creek | Orlando | FL | 356 | 2018 | 9/25/2025 | Equity | Yes |

Not For Use With Clients

| | Entity | Property Name | City | State | Units | Year Built | Acquisition Date | Investment Type | Current as of 01/31/2026 |
|---|---|---|---|---|---|---|---|---|---|
| 4. | NexBank | Estates at Avenstar | Houston | TX | 592 | 1977 | 9/2/2025 | Equity | Yes |
| 5. | NexBank | Woodscape | Houston | TX | 544 | 1977 | 8/11/2025 | Equity | Yes |
| 6. | NexBank | Wedgewood | Fort Worth | TX | 118 | 1969 | 8/4/2025 | Equity | Yes |
| 7. | NexBank | Villas Del Sol | Fort Worth | TX | 104 | 1979 | 8/4/2025 | Equity | Yes |
| 8. | NexBank | Hudson Montford | Charlotte | NC | 204 | 1999 | 7/22/2025 | Equity | Yes |
| 9. | NexBank | Wind Rush | Fort Worth | TX | 278 | 1984 | 7/11/2025 | Equity | Yes |
| 10. | NexBank | Marymont Apartments | Tomball | TX | 128 | 1984 | 3/19/2025 | Equity | Yes |
| 11. | NexBank | Old Farm Apartment Homes | Houston | TX | 734 | 1996/1998 | 3/1/2024 | Equity | Yes |
| 12. | NexBank | Montelena | Austin | TX | 232 | 1998 | 7/12/2023 | Equity | Yes |
| 13. | NREF | Resmark - Richmond (The Brook) | Richmond | VA | 310 | 2023 | 2/24/2023 | Preferred Equity | Yes |
| 14. | NREF | Resmark - Forney (Legacy Gateway) | Forney | TX | 336 | 2023 | 2/10/2023 | Preferred Equity | Yes |
| 15. | NexBank | Parc Plaza | Euless | TX | 486 | 1984 | 11/17/2022 | Equity | Yes |
| 16. | NexBank | Oaks of Lewisville | Lewisville | TX | 201 | 1984 | 11/17/2022 | Equity | Yes |
| 17. | NREF | SK Apartments | Kirkland | WA | 52 | 2009 | 10/5/2022 | Preferred Equity | Yes |
| 18. | NREF | Mag & May | Fort Worth | TX | 240 | 2019 | 9/30/2022 | Preferred Equity | Yes |
| 19. | NREF | Evana Grove (fka Rosemont Vista del Sol) | Plano | TX | 266 | 1970 | 8/10/2022 | Preferred Equity | Yes |
| 20. | DST | Aviation Crossing | Raleigh | NC | 298 | 2021 | 7/28/2022 | Equity | Yes |
| 21. | NREF | The Maddox (fka Center Pointe West) | Centerton | AR | 199 | 2019 | 6/9/2022 | Preferred Equity | Yes |
| 22. | NXRT | The Adair | Sandy Springs | GA | 232 | 2000 | 4/1/2022 | Equity | Yes |
| 23. | NXRT | Estates on Maryland | Phoenix | AZ | 330 | 2001 | 4/1/2022 | Equity | Yes |
| 24. | DST | Elysian at Hughes Center | Las Vegas | NV | 368 | 2021 | 2/1/2022 | Equity | Yes |

Not For Use With Clients

| | Entity | Property Name | City | State | Units | Year Built | Acquisition Date | Investment Type | Current as of 01/31/2026 |
|---|---|---|---|---|---|---|---|---|---|
| 25. | AA | Easton Village | Boise | ID | 144 | 2019 | 1/20/2022 | Equity | Yes |
| 26. | NREF | Hudson Montford | Charlotte | NC | 204 | 1999 | 12/31/2021 | Equity | No |
| 27. | DST | Ely at Buffalo | Las Vegas | NV | 216 | 2021 | 12/30/2021 | Equity | Yes |
| 28. | NREF | Palisades at Pleasant Crossing | Rogers | AR | 396 | 2017 | 12/29/2021 | Preferred Equity | Yes |
| 29. | NREF | Ridgeview Place | Irving | TX | 390 | 1984 | 12/19/2021 | Preferred Equity | Yes |
| 30. | NXRT | Hudson High House | Cary | NC | 302 | 1997 | 12/7/2021 | Equity | Yes |
| 31. | NREF | Alexander at the District | Atlanta | GA | 280 | 2007 | 10/26/2021 | Preferred Equity | Yes |
| 32. | DST | Hickory Creek Ranch | Denton | TX | 212 | 2018 | 10/4/2021 | Equity | Yes |
| 33. | AA | Olea at Viera | Melbourne | FL | 166 | 2021 | 9/17/2021 | Equity | Yes |
| 34. | NXRT | Six Forks Station | Raleigh | NC | 323 | 1986/1997 | 9/10/2021 | Equity | Yes |
| 35. | NXRT | Creekside at Matthews | Matthews | NC | 240 | 2001 | 6/30/2021 | Equity | Yes |
| 36. | NXRT | The Verandas at Lake Norman | Cornelius | NC | 264 | 2005 | 6/30/2021 | Equity | Yes |
| 37. | NXRT | The Fairways at San Marcos | Phoenix | AZ | 352 | 1986 | 11/2/2020 | Equity | Yes |
| 38. | NREF | Mezzanine Loan Pool | Various | Various | N/A | N/A | 10/1/2020 | Debt | Yes |
| 39. | NREF | Briar Forest Lofts | Houston | TX | 320 | 2012 | 6/12/2020 | Preferred Equity | Yes |
| 40. | NREF | Connection at Buffalo Pointe | Houston | TX | 352 | 2012 | 5/29/2020 | Preferred Equity | Yes |
| 41. | DST | Polo Glen | Rockledge | FL | 252 | 2008 | 12/27/2019 | Equity | Yes |
| 42. | DST | Elysian at Flamingo | Las Vegas | NV | 360 | 2019 | 11/28/2019 | Equity | Yes |
| 43. | NXRT | Bloom | Las Vegas | NV | 528 | 1989/1995 | 11/22/2019 | Equity | Yes |
| 44. | NXRT | Bella Solara | Las Vegas | NV | 320 | 1989 | 11/22/2019 | Equity | Yes |
| 45. | NXRT | Torreyana | Las Vegas | NV | 316 | 1997 | 11/22/2019 | Equity | Yes |
| 46. | NXRT | Arbors of Brentwood | Nashville | TN | 346 | 1986 | 9/10/2019 | Equity | Yes |
| 47. | NXRT | Avant at Pembroke Pines | Pembroke Pines | FL | 1,520 | 1986/1990 | 8/30/2019 | Equity | Yes |

Not For Use With Clients

| | Entity | Property Name | City | State | Units | Year Built | Acquisition Date | Investment Type | Current as of 01/31/2026 |
|---|---|---|---|---|---|---|---|---|---|
| 48. | NXRT | Residences at Glenview Reserve | Nashville | TN | 360 | 1990 | 7/17/2019 | Equity | Yes |
| 49. | NXRT | Residences at West Place | Orlando | FL | 342 | 1992 | 7/17/2019 | Equity | Yes |
| 50. | NXRT | Summers Landing | Fort Worth | TX | 196 | 1985 | 6/7/2019 | Equity | Yes |
| 51. | NXRT | The Enclave | Phoenix | AZ | 204 | 1994 | 1/28/2019 | Equity | Yes |
| 52. | NXRT | The Heritage | Phoenix | AZ | 204 | 1995 | 1/28/2019 | Equity | Yes |
| 53. | NXRT | Bella Vista | Phoenix | AZ | 248 | 1995 | 1/28/2019 | Equity | Yes |
| 54. | DST | Andros Isles | Daytona Beach | FL | 360 | 2011 | 9/26/2018 | Equity | Yes |
| 55. | DST | Arboleda | Cedar Park | TX | 312 | 2007 | 9/26/2018 | Equity | Yes |
| 56. | DST | The Manor Homes of Arborwalk | Lee's Summit | MO | 280 | 2006 | 9/26/2018 | Equity | Yes |
| 57. | AA | Landmark at Battleground Park | Greensboro | NC | 240 | 1990 | 9/26/2018 | Equity | No |
| 58. | NXRT | Brandywine I | Nashville | TN | 300 | 1985 | 9/26/2018 | Equity | Yes |
| 59. | NXRT | Brandywine II | Nashville | TN | 332 | 1985 | 9/26/2018 | Equity | Yes |
| 60. | NXRT | Versailles II (Crestmont Reserve) | Dallas | TX | 242 | 1988 | 9/26/2018 | Equity | Yes |
| 61. | DST | Estates at Vista Ridge | Lewisville | TX | 372 | 2006 | 9/26/2018 | Equity | Yes |
| 62. | DST | Fairways at Birkdale | Huntersville | NC | 180 | 1997 | 9/26/2018 | Equity | Yes |
| 63. | AA | Residences at Glenview Reserve | Nashville | TN | 360 | 1989 | 9/26/2018 | Equity | No |
| 64. | AA | Governor's Green | Bowie | MD | 478 | 1999 | 9/26/2018 | Equity | No |
| 65. | DST | Residences at Grand Oasis | Suwanee | GA | 434 | 1998 | 9/26/2018 | Equity | Yes |
| 66. | AA | Gulfstream Isles | Fort Myers | FL | 936 | 1989 | 9/26/2018 | Equity | No |
| 67. | AA | The Heights at Olde Towne | Portsmouth | VA | 148 | 1972 | 9/26/2018 | Equity | No |
| 68. | DST | Hidden Lake | San Antonio | TX | 380 | 2004 | 9/26/2018 | Equity | Yes |

Not For Use With Clients

| | Entity | Property Name | City | State | Units | Year Built | Acquisition Date | Investment Type | Current as of 01/31/2026 |
|---|---|---|---|---|---|---|---|---|---|
| 69. | AA | The Lakes at Renaissance Park Apartments | Austin | TX | 308 | 1987 | 9/26/2018 | Equity | No |
| 70. | AA | The Myrtles at Olde Towne | Portsmouth | VA | 246 | 2004 | 9/26/2018 | Equity | No |
| 71. | AA | Oak Mill | Germantown | MD | 400 | 1984 | 9/26/2018 | Equity | No |
| 72. | AA | Quail Landing | Oklahoma City | OK | 216 | 2000 | 9/26/2018 | Equity | No |
| 73. | AA | Reserve at River Walk | Columbia | SC | 220 | 1992 | 9/26/2018 | Equity | No |
| 74. | AA | Stoney Ridge | Woodbridge | VA | 264 | 1985 | 9/26/2018 | Equity | No |
| 75. | AA | Summers Landing | Fort Worth | TX | 196 | 1985 | 9/26/2018 | Equity | No |
| 76. | DST | Towne Crossing | Mansfield | TX | 268 | 2004 | 9/26/2018 | Equity | Yes |
| 77. | AA | Victoria Park | Mint Hill | NC | 380 | 1991 | 9/26/2018 | Equity | No |
| 78. | DST | Walker Ranch | San Antonio | TX | 325 | 2004 | 9/26/2018 | Equity | Yes |
| 79. | DST | Landmark at West Place | Orlando | FL | 342 | 2002 | 9/26/2018 | Equity | No |
| 80. | DST | NREA Retreat DST | McKinney | TX | 464 | 2009 | 9/17/2018 | Equity | Yes |
| 81. | NXRT | Cedar Pointe | Antioch | TN | 210 | 1988 | 8/24/2018 | Equity | No |
| 82. | DST | NREA Estates DST | Phoenix | AZ | 330 | 2001 | 7/12/2018 | Equity | No |
| 83. | NFRO/NR ESF | The Grayson | Spring | TX | 330 | 2016 | 5/25/2018 | Preferred Equity | No |
| 84. | NFRO | Royal Crest | Sacramento | CA | 95 | 1968 | 4/27/2018 | Preferred Equity | No |
| 85. | DST | NREA Meritage DST | Houston | TX | 240 | 2008 | 3/30/2018 | Equity | No |
| 86. | NREC | Sonesta on University (fka Cameron Creek) | Phoenix | AZ | 212 | 1988 | 3/1/2018 | Preferred Equity | No |
| 87. | NREC | Oaks at Northgate & Leon Court | Durham | NC | 386 | 1965 | 2/16/2018 | Preferred Equity | No |

Not For Use With Clients

| | Entity | Property Name | City | State | Units | Year Built | Acquisition Date | Investment Type | Current as of 01/31/2026 |
|---|---|---|---|---|---|---|---|---|---|
| 88. | NREF | Palmetto Creek (Ashley Village) | North Charleston | SC | 260 | 1970/1976 | 2/5/2018 | Preferred Equity | No |
| 89. | NFRO | Hue at Cityplace | Dallas | TX | 244 | 2000 | 1/12/2018 | Preferred Equity | No |
| 90. | NRESF | The Flats | Des Moines | IA | 329 | 1973 | 12/28/2017 | Preferred Equity | No |
| 91. | NREF | The Crossings at Ridgewood | Jackson | MS | 432 | 1976 | 11/28/2017 | Preferred Equity | No |
| 92. | NXRT | Atera Apartments | Dallas | TX | 380 | 1995 | 10/25/2017 | Equity | Yes |
| 93. | DST | NREA Adair DST | Sandy Springs | GA | 232 | 2000 | 10/13/2017 | Equity | No |
| 94. | NREC | Latitude #2 | Phoenix | AZ | 672 | 1979 | 7/11/2017 | Preferred Equity | No |
| 95. | NXRT | Rockledge | Atlanta | GA | 708 | 1978/1979 | 6/30/2017 | Equity | Yes |
| 96. | AA | 2747 Camelback/The Angela | Phoenix | AZ | 253 | 2019 | 2/24/2017 | Equity | No |
| 97. | NXRT | Hollister Place | Houston | TX | 260 | 1997 | 2/1/2017 | Equity | No |
| 98. | AA | Connection at Buffalo Pointe | Houston | TX | 352 | 2012 | 12/29/2016 | Equity | No |
| 99. | AA | Meritage | Houston | TX | 240 | 2008 | 12/29/2016 | Equity | No |
| 100. | NXRT | Old Farm Apartment Homes | Houston | TX | 734 | 1996/1998 | 12/29/2016 | Equity | No |
| 101. | NXRT | Stone Creek at Old Farm | Houston | TX | 190 | 1999 | 12/29/2016 | Equity | No |
| 102. | DST | NREA Gardens DST | Denton | TX | 384 | 2012/2014 | 12/12/2016 | Equity | Yes |
| 103. | NXRT | Venue on Camelback | Phoenix | AZ | 415 | 1970 | 10/11/2016 | Equity | Yes |
| 104. | DAF | Springs at Stone Oak Village | San Antonio | TX | 360 | 2013 | 8/19/2016 | Preferred Equity | No |
| 105. | NXRT | Parc500 (fka City View) | West Palm Beach | FL | 217 | 1970 | 7/27/2016 | Equity | Yes |
| 106. | NREC | Casa del Rio St. Johns | Jacksonville | FL | 458 | 1973-5 | 7/13/2016 | Preferred Equity | No |
| 107. | AA | Rundberg West | Austin | TX | 72 | 1985 | 1/29/2016 | Equity | No |
| 108. | AA | Heron Pointe | Boynton Beach | FL | 192 | 1989 | 1/27/2016 | Equity | No |
| 109. | NMCT | Bell Midtown | Nashville | TN | 170 | 2010 | 12/17/2015 | Preferred Equity | No |

Not For Use With Clients

| | Entity | Property Name | City | State | Units | Year Built | Acquisition Date | Investment Type | Current as of 01/31/2026 |
|---|---|---|---|---|---|---|---|---|---|
| 110. | AA | Yacht Club at Heritage Harbour | Bradenton | FL | 392 | 2007 | 12/15/2015 | Preferred Equity | No |
| 111. | AA | Serena Vista | Dallas | TX | 120 | 1980 | 11/25/2015 | Equity | No |
| 112. | NREC | The Columns at White Oak | Newnan | GA | 561 | 1991-2002 | 11/9/2015 | Preferred Equity | No |
| 113. | NREC | Alexan Arts | Dallas | TX | 368 | 2015 | 10/30/2015 | Preferred Equity | No |
| 114. | NXRT | Venue at 8651 (fka The Place at Vanderbilt) | Fort Worth | TX | 333 | 1984 | 10/30/2015 | Equity | Yes |
| 115. | AA | Woodcrest Village | Atlanta | GA | 344 | 1990 | 9/10/2015 | Equity | No |
| 116. | NREF | Whisperwood | Columbus | GA | 1,008 | 1980 | 8/31/2015 | Preferred Equity | No |
| 117. | AA | Summit at 860 | Nashville | TN | 389 | 1966 | 8/18/2015 | Equity | No |
| 118. | NMCT | Estates on Maryland | Phoenix | AZ | 330 | 2001 | 8/5/2015 | Equity | No |
| 119. | NXRT | Madera Point | Phoenix | AZ | 256 | 1985 | 8/5/2015 | Equity | Yes |
| 120. | NXRT | Pointe at the Foothills | Phoenix | AZ | 528 | 1986 | 8/5/2015 | Equity | No |
| 121. | NREO | Ashmore (fka Sandstone) | Houston | TX | 696 | 1978 | 7/26/2015 | Equity | Yes |
| 122. | NREC | Floresta | Jupiter | FL | 311 | 2004 | 6/4/2015 | Preferred Equity | No |
| 123. | NREC | Feathersound (fka Bay Meadows) | Clearwater | FL | 276 | 1985 | 5/6/2015 | Preferred Equity | No |
| 124. | NXRT | Seasons 704 | West Palm Beach | FL | 222 | 1986 | 4/15/2015 | Equity | Yes |
| 125. | NREC | Venue at Hometown | Dallas | TX | 209 | 2007 | 4/10/2015 | Preferred Equity | No |
| 126. | NREC | Huntington Glen | Houston | TX | 364 | 1982 | 3/31/2015 | Preferred Equity | No |
| 127. | NREC | Ashmore | Dallas | TX | 348 | 1996 | 3/13/2015 | Preferred Equity | No |
| 128. | NREC | Emory | Dallas | TX | 364 | 1998 | 3/13/2015 | Preferred Equity | No |
| 129. | NXRT | The Ashlar (fka Dana Point) | Dallas | TX | 264 | 1986 | 2/26/2015 | Equity | No |
| 130. | NXRT | Heatherstone | Dallas | TX | 152 | 1986 | 2/26/2015 | Equity | No |
| 131. | NXRT | Versailles | Dallas | TX | 388 | 1986 | 2/26/2015 | Equity | Yes |

Not For Use With Clients

| | Entity | Property Name | City | State | Units | Year Built | Acquisition Date | Investment Type | Current as of 01/31/2026 |
|---|---|---|---|---|---|---|---|---|---|
| 132. | NREC | City Park (fka Bay Park) | Clearwater | FL | 228 | 1990 | 2/12/2015 | Preferred Equity | No |
| 133. | NXRT | Preserve at Terrell Mill (fka Barrington Mill) | Atlanta | GA | 752 | 1984 | 2/6/2015 | Equity | Yes |
| 134. | AA | Willow Pond | Dallas | TX | 386 | 1974 | 2/2/2015 | Equity | No |
| 135. | NXRT | Twelve 6 Ten at the Park (fka McMillan Place) | Dallas | TX | 402 | 1984 | 1/15/2015 | Equity | No |
| 136. | NXRT | The Cornerstone | Orlando | FL | 430 | 1986 | 1/15/2015 | Equity | Yes |
| 137. | NREC | Midtown on Main | Mesa | AZ | 472 | 1985 | 1/6/2015 | Preferred Equity | No |
| 138. | NXRT | Southpoint Reserve at Stoney Creek | Fredericksburg | VA | 156 | 1986 | 12/18/2014 | Equity | No |
| 139. | NREO | The Cove at Briar Forest (fka La Mirage) | Houston | TX | 296 | 1979/1989 | 11/20/2014 | Equity | No |
| 140. | NXRT | Sabal Palm at Lake Buena Vista | Orlando | FL | 400 | 1988 | 11/4/2014 | Equity | Yes |
| 141. | NXRT | Regatta Bay | Seabrook | TX | 240 | 2003 | 11/4/2014 | Equity | No |
| 142. | NREC | Latitude #1 | Phoenix | AZ | 672 | 1979 | 10/31/2014 | Preferred Equity | No |
| 143. | NXRT | The Crossings at Holcomb Bridge | Roswell | GA | 268 | 1984 | 10/16/2014 | Equity | No |
| 144. | NXRT | The Arbors | Tucker | GA | 140 | 1985 | 10/16/2014 | Equity | No |
| 145. | NXRT | The Crossings | Marietta | GA | 380 | 1985 | 10/16/2014 | Equity | No |
| 146. | NXRT | The Knolls | Marietta | GA | 312 | 1985 | 10/16/2014 | Equity | No |
| 147. | NXRT | Timber Creek | Charlotte | NC | 352 | 1984 | 9/30/2014 | Equity | No |
| 148. | NXRT | Radbourne Lake | Charlotte | NC | 225 | 1990 | 9/30/2014 | Equity | No |
| 149. | NXRT | Belmont at Duck Creek | Dallas | TX | 240 | 2001 | 9/30/2014 | Equity | No |
| 150. | NXRT | Mandarin Reserve | Jacksonville | FL | 520 | 1983 | 9/15/2014 | Equity | No |
| 151. | NXRT | Courtney Cove | Tampa | FL | 324 | 1981 | 8/20/2014 | Equity | Yes |

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| | Entity | Property Name | City | State | Units | Year Built | Acquisition Date | Investment Type | Current as of 01/31/2026 |
|---|---|---|---|---|---|---|---|---|---|
| 152. | NXRT | Colonial Forest | Jacksonville | FL | 174 | 1969 | 8/20/2014 | Equity | No |
| 153. | NXRT | Park at Blanding | Orange Park | FL | 117 | 1968 | 8/20/2014 | Equity | No |
| 154. | NXRT | Park at Regency | Jacksonville | FL | 159 | 1985 | 8/20/2014 | Equity | No |
| 155. | NXRT | Jade Park | Daytona Beach | FL | 144 | 1985 | 8/20/2014 | Equity | No |
| 156. | NXRT | The Summit at Sabal Park | Tampa | FL | 252 | 1990 | 8/20/2014 | Equity | Yes |
| 157. | NREC | Riverside Villas | Fort Worth | TX | 192 | 2009 | 8/15/2014 | Preferred Equity | No |
| 158. | NXRT | Abbington Heights | Nashville | TN | 274 | 1986 | 8/1/2014 | Equity | No |
| 159. | NXRT | Willow Grove | Nashville | TN | 244 | 1973 | 7/21/2014 | Equity | No |
| 160. | NXRT | Woodbridge | Nashville | TN | 220 | 1980 | 7/21/2014 | Equity | No |
| 161. | NXRT | Beechwood Terrace | Nashville | TN | 300 | 1984 | 7/21/2014 | Equity | No |
| 162. | NXRT | Edgewater at Sandy Springs | Sandy Springs | GA | 760 | 1986 | 7/18/2014 | Equity | No |
| 163. | NREF | Marbella (fka Paradise Bay) | Corpus Christi | TX | 783 | 1978 | 7/14/2014 | Preferred Equity | No |
| 164. | NREC | Island Bay | Galveston | TX | 458 | 1970 | 6/10/2014 | Preferred Equity | No |
| 165. | AA | Honey Creek | Dallas | TX | 656 | 1984 | 5/29/2014 | Equity | No |
| 166. | NXRT | Willowdale Crossings | Frederick | MD | 432 | 1979 | 5/15/2014 | Equity | No |
| 167. | AA | Park Central | Dallas | TX | 144 | 1977 | 5/9/2014 | Equity | No |
| 168. | AA | Sevilla | Dallas | TX | 104 | 1983 | 3/12/2014 | Equity | No |
| 169. | NXRT | The Grove at Alban | Frederick | MD | 290 | 1986 | 3/10/2014 | Equity | No |
| 170. | AA | Lexington | Dallas | TX | 164 | 1983 | 2/10/2014 | Equity | No |
| 171. | NXRT | Cutter's Point | Grand Prairie | TX | 196 | 1978 | 1/31/2014 | Equity | Yes |
| 172. | NXRT | Eagle Crest | Irving | TX | 447 | 1982 | 1/31/2014 | Equity | No |
| 173. | NXRT | Silverbrook | Grand Prairie | TX | 642 | 1982 | 1/31/2014 | Equity | No |
| 174. | NXRT | Timberglen | Dallas | TX | 304 | 1984 | 1/31/2014 | Equity | No |
| 175. | NXRT | Arbors on Forest Ridge | Bedford | TX | 210 | 1986 | 1/31/2014 | Equity | Yes |
| 176. | NXRT | Meridian | Austin | TX | 200 | 1985 | 1/31/2014 | Equity | No |
| 177. | NXRT | Toscana | Dallas | TX | 192 | 1986 | 1/31/2014 | Equity | No |

Not For Use With Clients

| | Entity | Property Name | City | State | Units | Year Built | Acquisition Date | Investment Type | Current as of 01/31/2026 |
|---|---|---|---|---|---|---|---|---|---|
| 178. | AA | Emerson Square | Denton | TX | 192 | 2014 | 1/1/2014 | Equity | No |
| 179. | NXRT | Miramar | Dallas | TX | 314 | 1983 | 10/31/2013 | Equity | No |
| 180. | AA | Gardens of Denton | Denton | TX | 192 | 2012 | 1/1/2012 | Equity | No |
| | **Total** | | | | **59,100** | | | | |

**Real Estate Programs**

The Sponsor is an affiliate of 10 real estate-based companies directly or indirectly sponsored and/or advised by the NexPoint group of companies, including NXRT, NRESF, NXDT, NHT, NSP, VBHT, NREF, NFRO, and the REIT Subsidiaries.

***NexPoint Residential Trust, Inc.***

NXRT was incorporated on September 19, 2014, and taken public on April 1, 2015. NXRT is focused on "value-add" multifamily investments primarily located in the Southeastern and Southwestern United States. As of December 31, 2025, NXRT's portfolio consisted of 13,305 multifamily units in 36 apartment communities across 10 major U.S. markets. NXRT is externally managed by NexPoint Real Estate Advisors, through an agreement dated February 24, 2025, by and among NXRT, the NXRT operating partnership, and NexPoint Real Estate Advisors. NexPoint Real Estate Advisors conducts substantially all operations and provides asset management for real estate investments. NexPoint Real Estate Advisors is wholly-owned by NexPoint Advisors, L.P. and is an affiliate of the Sponsor. NexPoint Advisors, L.P. is an SEC-registered investment adviser under the Investment Advisers Act.

Since listing its shares on the New York Stock Exchange, NXRT management has grown the equity value from $262 million, which was the private REIT's total contributed capital prior to the spin-off on March 31, 2015, to $817 million as of December 31, 2025. NXRT delivered a 248.14% total return to shareholders from April 1, 2015, through December 31, 2025, outperforming the MSCI US REIT Index ("**RMZ**") by 155.28% since NXRT's NYSE listing (total return to shareholders assumes the reinvestment of all cash dividends paid by NXRT on its common stock in additional shares of NXRT common stock). The Sponsor believes that the RMZ is a benchmark that is commonly used by investors for purposes of comparing stock performance and stockholder returns of REITs, and, therefore, is an appropriate benchmark for the performance of NXRT. However, comparison of the return performance of NXRT to the performance of the RMZ may be limited due to the differences between NXRT and the companies represented in the RMZ, including with respect to size, asset type, geographic concentration, and investment strategy.

***NexPoint Real Estate Strategies Fund***

NRESF is a Delaware statutory trust and is registered with the SEC under the Investment Company Act as a non-diversified, closed-end management investment company that operates as an interval fund. NRESF commenced operations on July 1, 2016. NRESF's investment objective is to seek long-term total return, with an emphasis on current income, by primarily investing in a broad range of real estate-related debt, equity and preferred equity investments across multiple real estate sectors. NRESF pursues its investment objective by investing, under normal circumstances, at least 80% of its assets (defined as net assets plus the amount of any borrowing for investment purposes) in real estate and real estate related securities. NexPoint Advisors, L.P., is the investment advisor to NRESF. As of June 30, 2025, NRESF held net assets valued at approximately $1.1 billion.

***NexPoint Diversified Real Estate Trust (f.k.a. NexPoint Strategic Opportunities Fund or NHF)***

NXDT (NexPoint Diversified Real Estate Trust) is a diversified REIT formerly known as NexPoint Strategic Opportunities Fund. NXDT was created for the purpose of generating current income and capital appreciation through the ownership of real estate assets. NXDT invests across substantially all commercial real estate property types and

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across the capital structure. Target underlying property types include single-family rentals, multifamily, self-storage, and life sciences. As of December 31, 2025, NXDT's portfolio held net assets of $702,433,000.

***NXDT's Real Estate Subsidiaries: NexPoint Real Estate Opportunities, LLC & NexPoint Real Estate Capital, LLC***

NXDT seeks to gain exposure to the real estate markets, in whole or in part, through investing in certain REIT Subsidiaries of NXDT. NXDT invests in NREO, organized under the laws of Delaware on September 17, 2012, and NREC, organized under the laws of Delaware on March 31, 2014. Each subsidiary of NXDT has elected to be taxed as a REIT.

***NexPoint Hospitality Trust***

NHT is an unincorporated, open-ended REIT established pursuant to a declaration of trust under the laws of the Province of Ontario. NHT is traded on the Toronto Venture Stock Exchange under the symbol "NHT.U." NHT was created for the purpose of acquiring a portfolio of 11 hospitality assets located in the United States, to raise capital to acquire additional U.S. located hospitality assets that meet its investment objectives and criteria, and to own, renovate and operate its portfolio of income-producing hotel properties.

As of December 31, 2025, NHT's portfolio consists of four properties, and one life sciences investment. The properties are comprised of 690 rooms throughout the United States in the full-service and select-service hospitality categories.

***JCAP/NSP***

Jernigan Capital, Inc., or JCAP, started in October 2014 and became a publicly traded self-storage REIT (NYSE: JCAP). JCAP's initial business model provided capital to developers to build facilities and take their projects to the next level of leasing, while including an established exit. In November 2020, the NexPoint platform took JCAP private in an all-cash transaction worth approximately $900 million. The transaction was financed with debt, preferred equity, and converted common stock. JPMorgan Chase Bank, N.A. provided the debt, Extra Space Storage Inc. (NYSE: EXR), a leading self-storage REIT, provided the preferred equity, and companies within the NexPoint platform provided the converted common stock. JCAP delisted from the New York Stock Exchange and will do business as NexPoint Storage Partners, Inc. (*i.e.*, NSP).

As of December 31, 2025, the NSP platform consists of 61 wholly-owned self-storage facilities, as well as seven other facilities in which NSP has invested. Substantially all of the facilities are located within the top-75 MSAs.

As a newly private company, NSP management believes it will be more creative with product structure, providing value for investors. In the long-term, NSP management believes there are several opportunities for liquidity including: (1) an initial public offering, (2) recapitalization, (3) a merger with a larger self-storage REIT, (4) a sale to a private equity firm, or (5) continued operation of the company in current form.

***VineBrook Homes Trust, Inc.***

VBHT is a Maryland corporation taxed as a REIT beginning with the taxable year ending December 31, 2018. The manager has an operating history dating back to 2008. At the time of formation, VBHT owned approximately 4,000 homes in Cincinnati, Dayton, Columbus, and Indianapolis. VBHT's investment objectives are to (1) generate current income in the form of distributions, estimated to be 8% of the initial sale price on an annualized basis, (2) increase the regular distribution of income produced by VBHT's operating partnership, (3) preserve and protect investor capital, and (4) generate long-term capital appreciation through an initial public offering of VBHT common stock or other liquidity event.

VBHT continues to focus on acquiring high yield, workforce single family rental ("**SFR**") homes located in secondary and tertiary markets as well as newly-constructed Build to Rent ("**BTR**") communities in high growth MSA's. VBHT's experienced management team and strong asset management capabilities provide the ability to easily scale as the company enters new markets and increases acquisitions in existing markets. Management believes SFRs and BTRs provide defensive, diversified asset-backed yields with a potential for an inflation hedge. As of December 31, 2025, VBHT owns 20,355 units comprised of SFRs and BTRs in 26 markets, primarily located in the Midwestern, Heartland and Southeastern U.S., through the VBHT reportable segment. Additionally, through its

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consolidated investment in NexPoint Homes Trust, Inc., VBHT indirectly owns 2,035 homes in 18 markets, primarily located in the Heartland and Southeastern U.S.

***NexPoint Real Estate Finance, Inc.***

NexPoint Real Estate Finance, Inc. is an externally managed commercial real estate finance company, with its shares listed on the New York Stock Exchange under the symbol "NREF." NREF's investment objective is to generate attractive, risk-adjusted returns for stockholders over the long term, primarily through dividends and secondarily through capital appreciation. The current portfolio consists of senior loans, mezzanine debt, preferred equity and preferred stock investments in short-duration lease-term assets (multifamily, SFR, self-storage) that are geographically diverse in the United States. The portfolio has no exposure to construction loans, heavy transitional loans, land loans, or for-sale loans.

As of December 31, 2025, NREF's portfolio consisted of loans with an aggregate unpaid principal balance of $1.2 billion backed by single-family rental homes, multifamily apartment communities, self-storage facilities, and life science assets, had an average remaining term of 3.1 years (excluding common stock), with a weighted average loan to value of 63.6% (excluding common stock).

**Full-Cycle Multifamily Property Investments**

***NexPoint Residential Trust, Inc. – Equity Investments in Value-Add Multifamily Properties***

Meridian (Austin, TX) – levered internal rate of return ("**IRR**"): 43.0%, equity multiple: 2.16x

- 200-unit multifamily property acquired in January 2014
- $738 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 93 units, increased effective rent per unit by $58 per month and achieved 20.8% ROI on interior value-add program
- Sold for $17.25 million gross sale proceeds, May 2016
- $831 effective rent per occupied unit at the sale date (12.5% increase since acquisition)

NXRT Jacksonville, FL Portfolio – levered IRR: 31.5%, equity multiple: 1.62x

Park at Regency (Jacksonville, FL)

- Acquired in August 2014
- $712 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 43 units; increased effective rent per unit $89 per month and achieved 19.5% ROI on interior value-add program
- Sold with Mandarin Reserve for $47.0 million in gross sale proceeds, June 2016
- $776 effective rent per occupied unit at the sale date (9.0% increase since acquisition)

Mandarin Reserve (Jacksonville, FL)

- Acquired in September 2014 (f.k.a. Victoria Park)
- $664 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 117 units, increased effective rent per unit $80 per month and achieved 18.6% ROI on interior value-add program
- Sold with Park at Regency for $47.0 million in gross sale proceeds, June 2016
- $736 effective rent per occupied unit at the sale date (10.8% increase since acquisition)

Colonial Forest (Jacksonville, FL)

- Acquired in August 2014
- $594 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 60 units, increased effective rent per unit by $47 per month and achieved 25.0% ROI on interior value-add program
- Sold for $7.4 million in gross sale proceeds, August 2016
- $663 effective rent per occupied unit at the sale date (11.6% increase since acquisition)

Park at Blanding (Jacksonville, FL)

- Acquired in August 2014
- $743 effective rent per occupied unit at the date acquired by NXRT

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- Completed interior upgrades on 34 units, increased effective rent per unit $80 per month and achieved 18.6% ROI on interior value-add program
- Sold for $7.1 million in gross sale proceeds, August 2016
- $799 effective rent per occupied unit at the sale date (7.6% increase since acquisition)

Jade Park (Jacksonville, FL)

- Acquired in August 2014 (f.k.a. Wood Forest)
- $683 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 42 units, increased effective rent per unit $93 per month and achieved 21.3% ROI on interior value-add program
- Sold for $10.0 million in gross sale proceeds, September 2016
- $781 effective rent per occupied unit at the sale date (14.3% increase since acquisition)

Willowdale Crossing (Frederick, MD) – levered IRR: 9.40%, equity multiple: 1.21x

- Acquired in May 2014
- $976 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 34 units, increased effective rent per unit $71 per month and achieved 13.2% ROI on interior value-add program
- Sold for $45.2 million in gross sale proceeds, September 2016
- $1,005 effective rent per occupied unit at the sale date (3.0% increase since acquisition)

Miramar (Richardson, TX) – levered IRR: 61.93%, equity multiple: 4.52x

- Acquired in October 2013
- $469 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 54 units, increased effective rent per unit $53 per month and achieved 20.7% ROI on interior value-add program
- Sold for $16.55 million in gross sale proceeds, April 2017
- $616 effective rent per occupied unit at the sale date (31.5% increase since acquisition)

Toscana (Dallas, TX) – levered IRR: 68.42%, equity multiple: 4.97x

- Acquired in January 2014
- $596 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 93 units, increased effective rent per unit $75 per month and achieved 20.8% ROI on interior value-add program
- Sold for $13.25 million in gross sale proceeds, April 2017
- $705 effective rent per occupied unit at the sale date (18.2% increase since acquisition)

The Grove at Alban (Frederick, MD) – levered IRR: 15.02%, equity multiple: 1.47x

- Acquired in March 2014
- $933 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 82 units, increased effective rent per unit $36 per month and achieved 11.4% ROI on interior value-add program
- Sold for $27.5 million in gross sale proceeds, April 2017
- $986 effective rent per occupied unit at the sale date (5.7% increase since acquisition)

Twelve 6 Ten at the Park (Dallas, TX) – levered IRR: 14.55%, equity multiple: 1.34x

- Acquired in January 2015
- $663 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 106 units, increased effective rent per unit $72 per month and achieved 15.3% ROI on interior value-add program
- Sold for $26.6 million in gross sale proceeds, April 2017
- $702 effective rent per occupied unit at the sale date (5.8% increase since acquisition)

Regatta Bay (Seabrook, TX) – levered IRR: 42.75%, equity multiple: 1.89x

- Acquired in November 2014
- $930 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 160 units, increased effective rent per unit $115 per month and achieved 27.8% ROI on interior value-add program
- Sold for $28.2 million in gross sale proceeds, July 2017
- $1,041 effective rent per occupied unit at the sale date (12.0% increase since acquisition)

North Atlanta Value-Add Portfolio – approx. levered IRR: 47.32%, approx. equity multiple: 2.89x

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The Crossings at Holcomb Bridge (Roswell, GA)

- Acquired in October 2014 (f.k.a. The Crossings at Wood Bridge)
- $712 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 165 units; increased effective rent per unit $86 per month and achieved 19.1% ROI on interior value-add program
- Sold for $27.3 million in gross sale proceeds, September 2017
- $899 effective rent per occupied unit at the sale date (26.4% increase since acquisition)

The Knolls (Marietta, GA)

- Acquired in October 2014 (f.k.a. Madison the Knolls)
- $745 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 203 units, increased effective rent per unit $103 per month and achieved 20.4% ROI on interior value-add program
- Sold for $36.9 million in gross sale proceeds, September 2017
- $948 effective rent per occupied unit at the sale date (27.3% increase since acquisition)

The Crossings (Marietta, GA)

- Acquired in October 2014 (f.k.a. The Crossings at Wood Station)
- $684 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 200 units, increased effective rent per unit by $72 per month and achieved 18.9% ROI on interior value-add program
- Sold for $39.5 million in gross sale proceeds, September 2017
- $832 effective rent per occupied unit at the sale date (21.6% increase since acquisition)

The Arbors (Tucker, GA)

- Acquired in October 2014 (f.k.a. Madison the Arbors)
- $696 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 72 units, increased effective rent per unit $68 per month and achieved 23.2% ROI on interior value-add program
- Sold for $12.3 million in gross sale proceeds, September 2017
- $865 effective rent per occupied unit at the sale date (24.4% increase since acquisition)

Timberglen (Dallas, TX) – levered IRR: 45.4%, equity multiple: 2.82x

- Acquired in January 2014
- $685 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 145 units, increased effective rent per unit $64 per month and achieved 19.4% ROI on interior value-add program
- Sold for $30 million in gross sale proceeds, January 2018
- $840 effective rent per occupied unit at the sale date (22.6% increase since acquisition)

NXRT Sunbelt Portfolio (AZ/GA/TN/TX) – approximate levered IRR: 26.7%, approximate equity multiple: 2.68x

Edgewater at Sandy Springs (Sandy Springs, GA)

- Acquired in July 2014
- $755 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 412 units, increasing effective rent per unit $110 per month and achieving 17.6% ROI
- Sold for approximately $101.3 million in gross sale proceeds, August 2019
- $983 effective rent per occupied unit at the sale date (30.2% increase since acquisition)

Belmont at Duck Creek (Dallas, TX)

- Acquired in September 2014
- $795 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 194 units, increasing effective rent per unit $92 per month and achieving 30.1% ROI
- Sold for $29.5 million in gross sale proceeds, August 2019
- $1,063 effective rent per occupied unit at the sale date (33.7% increase since acquisition)

The Ashlar (Dallas, TX)

- Acquired in February 2015 (f.k.a. Dana Point)
- $777 effective rent per occupied unit at the date acquired by NXRT

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- Completed interior upgrades on 325 units, increasing effective rent per unit $69 per month and achieving 23.3% ROI
- Sold for $29.4 million in gross sale proceeds, August 2019
- $877 effective rent per occupied unit at the sale date (12.8% increase since acquisition)

Heatherstone (Dallas, TX)

- Acquired in February 2015
- $744 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 163 units, increasing effective rent per unit $76 per month and achieving 22.3% ROI
- Sold for approximately $16.3 million in gross sale proceeds, August 2019
- $889 effective rent per occupied unit at the sale date (19.5% increase since acquisition)

The Pointe at the Foothills (Phoenix, AZ)

- Acquired in August 2015
- $818 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 63 units, increasing effective rent per unit $34 per month and achieving 20.6% ROI
- Sold for $85.4 million in gross sale proceeds, August 2019
- $926 effective rent per occupied unit at the sale date (13.2% increase since acquisition)

Abbington Heights (Nashville, TN)

- Acquired in August 2014
- $708 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 183 units, increasing effective rent per unit $100 per month and achieving 25.7% ROI
- Sold for approximately $28.1 million in gross sale proceeds, August 2019
- $898 effective rent per occupied unit at the sale date (26.8% increase since acquisition)

Southpoint Reserve at Stoney Ridge (Fredericksburg, VA) – levered IRR: 22.3%, equity multiple: 2.50x

- Acquired in December 2014
- $977 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 63 units, increasing effective rent per unit $106 per month and achieving 17.1% ROI
- Sold for approximately $23.5 million in gross sale proceeds, March 2020
- $1,176 effective rent per occupied unit at the sale date (20.3% increase since acquisition)

Willow Grove (Nashville, TN) – levered IRR: 41.9%, equity multiple: 4.92x

- Acquired in July 2014
- $675 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 174 units, increasing effective rent per unit $99 per month and achieving 26.4% ROI
- Sold for approximately $31.3 million in gross sale proceeds, March 2020
- $1,018 effective rent per occupied unit at the sale date (50.9% increase since acquisition)

Woodbridge (Nashville, TN) – levered IRR: 35.8%, equity multiple: 4.64x

- Acquired in July 2014
- $799 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 188 units, increasing effective rent per unit $99 per month and achieving 21.3% ROI
- Sold for approximately $31.7 million in gross sale proceeds, March 2020
- $1,058 effective rent per occupied unit at the sale date (32.4% increase since acquisition)

Eagle Crest (Irving, TX) – levered IRR: 45.1%, equity multiple: 5.96x

- Acquired in January 2014
- $739 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 166 units, increasing effective rent per unit $77 per month and achieving 46.4% ROI
- Sold for approximately $55.5 million in gross sale proceeds, September 2020
- $973 effective rent per occupied unit at the sale date (31.7% increase since acquisition)

Beechwood Terrace (Antioch, TN) – levered IRR: 38.6%, equity multiple: 5.82x

- Acquired in July 2014

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- $756 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 175 units, increasing effective rent per unit $117 per month and achieving 20.1% ROI
- Sold for approximately $53.6 million in gross sale proceeds, November 2021
- $1,112 effective rent per occupied unit at the sale date (50.5% increase since acquisition)

Cedar Pointe (Antioch, TN) – levered IRR: 26.7%, equity multiple: 2.06x

- Acquired in August 2018
- $1,107 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 42 units, increasing effective rent per unit $179 per month and achieving 21.2% ROI
- Sold for approximately $37.7 million in gross sale proceeds, November 2021
- $1,228 effective rent per occupied unit at the sale date (10.9% increase since acquisition)

Hollister Place (Houston, TX) – levered IRR: 13.5%, equity multiple: 2.02x

- Acquired in February 2017
- $983 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 202 units, increasing effective rent per unit $151 per month and achieving 24.4% ROI
- Sold for approximately $36.75 million in gross sale proceeds, December 2022
- $1,211 effective rent per occupied unit at the sale date (23.3% increase since acquisition)

Silverbrook (Grand Prairie, TX) – levered IRR: 33.9%, equity multiple: 6.14x

- Acquired in January 2014
- $661 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 485 units, increasing effective rent per unit $87 per month and achieving 25.6% ROI
- Sold for approximately $70.0 million in gross sale proceeds, September 2023
- $1,173 effective rent per occupied unit at the sale date (77.4% increase since acquisition)

Timber Creek (Charlotte, NC) – levered IRR: 25.8%, equity multiple: 4.45x

- Acquired in September 2014
- $659 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 250 units, increasing effective rent per unit $144 per month and achieving 23.2% ROI
- Sold for approximately $49.0 million in gross sale proceeds, December 2023
- $1,202 effective rent per occupied unit at the sale date (82.3% increase since acquisition)

Old Farm (Houston, TX) – levered IRR: 22.1%, equity multiple: 2.98x

- Acquired in December 2016
- $1,213 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 0 units
- Sold for approximately $103.0 million in gross sale proceeds, March 2024
- $1,307 effective rent per occupied unit at the sale date (7.8% increase since acquisition)

Radbourne Lake (Charlotte, NC) – levered IRR: 19.2%, equity multiple: 3.64x

- Acquired in September 2014
- $896 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 381 units, increasing effective rent per unit $71 per month and achieving 29.9% ROI
- Sold for approximately $39.25 million in gross sale proceeds, April 2024
- $1,420 effective rent per occupied unit at the sale date (58.5% increase since acquisition)

Stone Creek at Old Farm (Houston, TX) – levered IRR: 14.8%, equity multiple: 2.19x

- Acquired in December 2016
- $1,217 effective rent per occupied unit at the date acquired by NXRT
- Completed interior upgrades on 0 units
- Sold for approximately $24.5 million in gross sale proceeds, October 2024
- $1,350 effective rent per occupied unit at the sale date (10.9% increase since acquisition)

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**Currently Operating DST Programs**.

The following table presents programs sponsored by the Sponsor that were operating as of March 10, 2026. The table reflects the date on which the property owned by the program was originally offered to investors, the property type and geographic location, the acquisition price, the original LTC stated in the private placement memorandum for that program (if the property is encumbered by a loan), and total equity raised by the program (or to be raised in the case of ongoing offerings). The table also reflects the actual annualized cash-on-cash return for the calendar year ending December 31, 2026, as compared to the cash-on-cash return projected for the calendar year ending December 31, 2026 (as set forth in the private placement memorandum for that program).

The following terms as used in the table below shall have the meanings set forth in this paragraph. A "cash-on-cash return" is calculated by dividing the amounts distributed to investors over the indicated period by such investors' capital invested in the program, less any proceeds returned in a refinance. All cash-on-cash returns set forth herein represent distributions to investors solely from property operations and not from other sources, except as otherwise described in the notes. With respect to properties subject to a master lease, the cash-on-cash return takes into account additional rents, but not supplemental rents, consistent with the original projections for such program. Supplemental rents have been excluded from this calculation because they are not paid until after the end of the calendar year. The "**Acquisition Price**" represents the price paid by the program for the property or properties, plus all estimated costs and expenses related to the acquisition, all estimated costs and expenses related to the offering and any initial contribution to the reserve account, if applicable.

| Program Name* | Program Offering Date | Property Type / Location | Acquisition Price | Original LTC | Total Equity Raised | 2026 Actual Annualized Cash-on-Cash Return | 2026 PPM Projected Cash-on-Cash Return |
|---|---|---|---|---|---|---|---|
| NREA Gardens, DST | 12/16/2016 | Multifamily Denton, TX | $48,207,733 | 49.65% | $24,633,987 | 6.00% | 8.22% |
| NREA Retreat, DST | 10/3/2018 | Multifamily McKinney, TX | $70,379,976 | 53.55% | $35,125,712 | 6.00% | 7.11% |
| NREA Southeast Portfolio Three, DST | 11/26/2018 | Multifamily GA, NC, TX | $140,197,031 | 54.70% | $72,403,877 | 4.64% | 7.99% |
| NREA Southeast Portfolio One, DST | 4/1/2019 | Multifamily TX, MO, FL | $187,301,600 | 53.44% | $98,108,244 | 5.14% | 7.63% |
| NexPoint Texas Multifamily Portfolio DST | 10/7/2019 | Multifamily TX | $121,009,892 | 49.62% | $60,961,892 | 5.09% | 7.25% |
| NexPoint Flamingo DST | 2/12/2020 | Multifamily Las Vegas, NV | $107,805,976 | 49.02% | $58,277,704 | 4.20% | 6.79% |
| NexPoint Polo Glen DST | 2/28/2020 | Multifamily Rockledge, FL | $57,060,303 | 53.34% | $29,944,929 | 5.76% | 7.04% |
| NexPoint Gamma DST | 12/9/2020 | Industrial Mansfield, TX | $13,640,708 | 0.00% | $13,640,708 | 5.89% | 5.89% |
| NexPoint Storage I DST | 5/3/2021 | Self-Storage GA, FL | $140,015,940 | 43.08% | $85,892,414 | 5.20% | 5.06% |
| NexPoint Hickory DST | 10/26/2021 | Multifamily Denton, TX | $56,929,069 | 48.40% | $27,859,460 | 4.85% | 5.48% |
| NexPoint Storage II DST | 10/27/2021 | Self-Storage GA, FL, CT | $84,015,966 | 30.13% | $66,105,324 | 3.65% | 4.15% |

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| Program Name* | Program Offering Date | Property Type / Location | Acquisition Price | Original LTC | Total Equity Raised | 2026 Actual Annualized Cash-on-Cash Return | 2026 PPM Projected Cash-on-Cash Return |
|---|---|---|---|---|---|---|---|
| NexPoint Life Sciences DST | 12/6/2021 | Life Sciences Stamford, CT | $163,369,074 | 39.43% | $5,478,833 | 5.74% | 5.74% |
| NexPoint Storage III DST | 12/31/2021 | Self-Storage Florida | $173,703,174 | 49.16% | $95,155,013 | 5.50% | 6.08% |
| NexPoint Hughes DST | 3/9/2022 | Multifamily Las Vegas, NV | $204,896,632 | 43.75% | $99,429,686 | 2.00% | 3.81% |
| NexPoint Buffalo DST | 3/9/2022 | Multifamily Las Vegas, NV | $91,607,314 | 40.47% | $53,907,580 | 2.00% | 4.29% |
| NexPoint Aviation DST | 8/4/2022 | Multifamily Morrisville, NC | $120,000,000 | 42.12% | $77,258,899 | 2.00% | 4.17% |
| NexPoint Storage IV DST | 3/24/2023 | Self-Storage Florida | $70,344,106 | 0.00% | $49,241,003 | 3.25% | 4.22% |
| NexPoint Life Sciences II DST | 5/24/2023 | Life Sciences Philadelphia, PA | $65,478,553 | 35.10% | $6,480,756 | 4.65% | 4.65% |
| NexPoint Small Bay I DST | 8/3/2023 | Office/Industrial Florida | $86,000,000 | 41.5% | $4,226,754 | 3.53% | 5.46% |
| NexPoint Semiconductor Manufacturing DST | 10/11/2023 | Industrial Temecula, CA | $190,000,000 | 35.4% | N/A | 5.67% | 5.67% |
| NexPoint Life Sciences III DST | 1/3/2024 | Life Sciences Woodbury, MN | $57,750,000 | 50.5% | $26,586,365 | 3.97% | 3.97% |
| NexPoint Storage V DST | 6/7/2024 | Self-Storage Florida, Maryland | $40,000,000 | 0% | $46,439,932 | 3.50% | 4.66% |
| NexPoint Small Bay II DST | 7/8/2024 | Small Bay Industrial Florida | $60,200,000 | 49.80% | $38,775,526 | 4.64% | 4.81% |
| NexPoint Storage VI DST | 12/13/2024 | Self-Storage Tennessee, Maryland | $39,200,000 | 0% | $45,340,000 | 4.50% | 4.30% |
| NexPoint Lodging I DST | 6/17/2025 | Lodging, Salt Lake City, UT | $21,500,000 | 0% | $27,934,800 | 6.13% | 6.13% |
| NexPoint Small Bay III DST | 10/10/2025 | Small Bay Industrial FL, TX | $71,700,000 | 44.87% | $17,857,870 | 4.62% | 4.62% |
| NexPoint Oasis DST | 10/27/2025 | Multifamily Kissimmee, FL | $87,250,000 | 53.1% | $17,748,025 | 4.36% | 4.36% |
| NexPoint Outlook DST | 12/15/2025 | Multifamily Birmingham, AL | $54,500,000 | 49.85% | $1,460,000 | N/A | 4.43% |
| NexPoint Marina DST | 3/2/2026 | Marina OK, IL | $36,000,000 | 0% | $0 | N/A | 7.01% |

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**Full-Cycle DST Programs**

The following list presents the completed full-cycle DST programs of the Sponsor through June 30, 2025. The list reflects the date on which the property was originally acquired, the effective rent of the property at the time of the acquisition, the date and approximate value of the property disposition, and the effective rent at the time of the property disposition. For purposes of the list below, "**Annualized Rate of Return**" is calculated based on equity-weighted investment date across all investors, cash flow from property operations, and proceeds from the sale, among other items, and is a common performance metric for real estate investments taking into account the duration of the program.

- NREA Adair DST – Annualized Rate of Return: 17.1%, equity multiple: 1.70x
  - Acquired in October 2017
  - $1,384 effective rent per occupied unit at the date acquired
  - Acquired by NXRT's operating partnership for approximately $38.4 million in gross sale proceeds, April 2022
  - $1,585 effective rent per occupied unit at the sale date (14.5% increase since acquisition)
- NREA Estates DST – Annualized Rate of Return: 28.8%, equity multiple: 2.0x
  - Acquired in July 2018
  - $1,034 effective rent per occupied unit at the date acquired
  - Acquired by NXRT's operating partnership for approximately $49.1 million in gross sale proceeds, April 2022
  - $1,232 effective rent per occupied unit at the sale date (19.1% increase since acquisition)
- NREA Meritage DST – Annualized Rate of Return: 4.6%, equity multiple: 1.24x
  - Acquired in March 2018
  - $1,442 effective rent per occupied unit at the date acquired
  - Sold to an independent third party for approximately $43.7 million in gross sale proceeds, November 2023
  - $1,524 effective rent per occupied unit at the sale date (5.7% increase since acquisition)

**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 PRIOR SPONSOR 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 shall 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 Delaware Trustee 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 Delaware Trustee 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.

### Facilitation Fee

The Sponsor received a Facilitation Fee equal to $742,500 in connection with its services in the identification, negotiation, diligence, and the acquisition of the Property and in securing the financing for the Acquisition Closing.

### 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. For example, the Sponsor or its affiliates may in the future own, finance or represent properties in the same market as the Property, which may compete for tenants with respect to the Property.

### Potential Competition with Other Properties Owned or Managed by the Sponsor or its Affiliates

Neither the Sponsor nor its affiliates own or operate additional properties that compete with the Property.

### 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 Operating Partnership

The Operating Partnership may, in its sole and absolute discretion, require that the Beneficial Owners exchange their Interests for OP Units 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 Operating Partnership, its general partner, and its limited partners, and NXDT, 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.

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**Sale of the Property**

If the Manager decides to sell the Property, the Asset Manager, the Sponsor, or its affiliates may be paid the Disposition Fee or other fees and compensation on the sale, exchange or other disposition of the Property by the Trust (including the exercise of the Exchange Right). The right to receive or participate in the Disposition Fee or other fees and compensation may provide the Sponsor, the Manager, and the Asset Manager, 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.

**The Property Manager**

The Property Manager, a third party unrelated to the Sponsor, is subject to conflicts of interest among its activities, roles and duties for other entities, and roles and duties it has assumed on behalf of the Trust. Conflicts exist in allocating management time, services and functions between its current and future activities and the Trust. Further, the Property Manager is unaffiliated with the Sponsor or the Trust and does not intend to invest its own funds in the Interests. Accordingly, the Property Manager's interests may not be aligned with those of the Purchasers. For example, if the Property Manager or any of its affiliates were to acquire multifamily residential properties in the vicinity of the Property, then the Property Manager could direct tenants away from renewing their rental agreements and toward leasing apartment units at such other properties.

**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 are 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 pursuant to the Master Lease. 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 with respect to the Master Lease.

This summary is qualified in its entirety by reference to the full text of the Master Lease. Each prospective Purchaser should carefully review the entire Master Lease before investing. A copy of the Master Lease is available in the Digital Investor Kit.

### Term

The Master Lease commenced on the date of the Acquisition Closing, and shall 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 and necessary deposits into all Lender-required reserve funds; (2) Additional Rent in an amount equal to 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; and (3) 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). 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 Projected Uncontrollable Costs. In the event that the Projected Uncontrollable Costs for any calendar year exceed the actual Uncontrollable Costs for such calendar year, the Master Tenant shall pay to the Trust, as additional Rent, the amount of such excess. If, however, the actual Uncontrollable Costs for any calendar year exceed the Projected Uncontrollable Costs for such calendar year, then the Master Tenant shall be responsible for payment of such excess, but shall be entitled to reimbursement of such excess Uncontrollable Costs by offsetting such amount against Rent payable to the Trust.

The monthly Base Rent and breakpoints and ceilings for the calculation of monthly Additional Rent and annual 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 | $1,463,468 | $3,400,000 | $1,254,000 | $4,654,000 |
| Year 2 | $1,463,468 | $3,482,000 | $1,402,500 | $4,884,500 |
| Year 3 | $1,467,477 | $3,555,000 | $1,476,750 | $5,031,750 |
| Year 4 | $1,463,468 | $3,604,000 | $1,476,750 | $5,080,750 |

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| | | | | |
|---|---|---|---|---|
| Year 5 | $1,463,468 | $3,679,000 | $1,402,500 | $5,081,500 |
| Year 6 | $1,463,468 | $3,784,000 | $1,402,500 | $5,186,500 |
| Year 7 | $1,467,477 | $3,836,000 | $1,402,500 | $5,238,500 |
| Year 8 | $1,463,468 | $3,882,000 | $1,402,500 | $5,284,500 |
| Year 9 | $1,463,468 | $4,007,000 | $1,402,500 | $5,409,500 |
| Year 10 | $1,463,468 | $4,059,000 | $1,402,500 | $5,461,500 |

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 annual 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. 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 - 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 (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 PCA, or similar engineering report, performed in connection with the acquisition of the Property (including minor deferred maintenance or immediately needed repairs); and (5) 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 ("**Property Expenses**").

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 reduce 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, (1) provide 30 days' advance written notice to the Trust setting forth the details of such alterations so that the Trust may effectuate a

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Transfer Distribution, if necessary, or (2) 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 twelve 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 Additional 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 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 twelve 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 monthly Additional Rent and annual 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, Assignment and Security Agreement**

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In connection with the Loan Documents, the Lender requires the Trust and the Master Tenant to enter into the Subordination, Assignment and Security Agreement, pursuant to which the Trust and the Master Tenant subordinated their rights in and to the Master Lease to the Mortgage and 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) Master Tenant's failure to pay any monthly installment of Base Rent or Additional Rent (subject to its right to defer payment of monthly Additional Rent and annual Supplemental Rent); (ii) 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 via execution 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 any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief or its acquiescence to the appointment of a trustee or a receiver for it; (v) the levy on the Master Lease or any other agreement of the Master Tenant 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) Master Tenant makes a general assignment, or takes other action, for the benefit of creditors; or (viii) 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 costs and 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 hold harmless, indemnify and defend the Trust (and its agents and affiliates) against any and all claims related to the operation and/or management of the Property arising from the willful misconduct, gross negligence, or fraud of: (i) the Master Tenant or any property manager hired by Master Tenant, and (ii) any agent or employee of the Master Tenant or any agent or employee of any property manager hired by the Master Tenant.

**Supplemental Trust Reserve and Minimum Balance**

The Trust is required under the Master Lease to maintain a Supplemental Trust Reserve for the Property, which will be funded from the Loan proceeds and the Offering proceeds. At the end of any calendar year, if the balance in a Supplemental Trust Reserve is less than $72,000 (the "**Reserve Minimum Balance**"), the Trust will be required to make a contribution to the Supplemental Trust Reserve so that it contains at least an amount equal to the Reserve Minimum Balance (and if such contribution is not made, the Master Tenant may withhold Additional Rent and Supplemental Rent until such Supplemental Trust Reserve contains at least an amount equal to the Reserve Minimum Balance). The Trust has no obligation to fund the Supplemental Trust Reserve at any time the account contains more than the Reserve Minimum Balance. If funds in the Supplemental Trust Reserve exceed the Reserve Minimum Balance, the Trust, in its sole discretion, may withdraw such excess funds.

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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 and Springing LLC Agreement before investing. A copy of the Trust Agreement and Springing LLC Agreement are available in the Digital Investor Kit.

## 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 Contributor'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 thereafter will be used by the Trust, in accordance with the Trust Agreement, to (subject to the Loan Documents) fund any reimbursements, compensation and fees owed to the Sponsor and/or its affiliates in connection with the Offering, including the Facilitation Fee. With regard to the above, the "net proceeds" from the sale of Class 1 Beneficial Interests shall be equal to the purchase price of each Class 1 Beneficial Interest, less the Facilitation Fee and Sales Commissions and Expenses allocable to each such sale. *See* "*Estimated Use of Proceeds*" and "*Compensation and Fees*."

### Term

In addition to the Exchange Right, 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 Manager or any Beneficial Owner will not result in the termination or dissolution of the Trust.

### The Delaware 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 Manager has appointed itself as the initial Signatory Trustee of the Trust. The Signatory Trustee is appointed 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 Manager may appoint additional Signatory Trustees and replace any Signatory Trustee subject to the requirements of the applicable Loan.

The Trustees only 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 Signatory Trustee serves for the limited purpose of executing any documentation that may require the signature of an authorized representative of the Trust. The Delaware Trustee shall take such actions as may be directed in writing by the Manager, provided however, the Delaware Trustee is not permitted or required to take any action that is contrary to the Trust Agreement or applicable law. The Delaware Trustee has no duty to take any action except as expressly provided for in the Trust Agreement.

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The Signatory Trustee receives no compensation for its services. The Delaware Trustee will receive compensation for its services under the Trust Agreement and be reimbursed for out-of-pocket expenses, fees and disbursements, and fees and expenses of counsel. 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 it takes on behalf of the Trust except for any involving 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 willful misconduct, bad faith, or fraud; provided that the Manager may not remove the Delaware Trustee without the consent of the Lender while the Loan is outstanding.

**The Manager**

NexPoint Waterford Parent Manager, LLC, an affiliate of the Sponsor, will serve as the Manager of the Trust. The Manager will be managed by senior members of the Sponsor's management team, the members of whom are described above. The Manager is also the Signatory Trustee (as defined herein) 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 power and authority is materially consistent with the power 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 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 it takes on behalf of the Trust except for those involving fraud or gross negligence. The Manager will not have any liability to any person except for any actions it may take that constitute 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, as long as the Loan is outstanding, the Lender.

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, which will occur prior to the initial closing of Class 1 Beneficial Interests, 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 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 Contributor's Class 2 Beneficial Interests and thereby reduce the Contributor'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.

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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 Agreement*" below.

**Transfer Rights; Right of First Refusal; Right of First Offer**

The Beneficial Owners' right to transfer or assign their Interests is subject to Section 6.4 of the Trust Agreement. If a Beneficial Owner intends to sell its Interests in a transfer other than a Permitted Transfer (as defined in the Trust Agreement), then such Beneficial Owner (the "Offeror") shall first offer to sell its Interests in accordance with the following:

- The Offeror shall first deliver written notice to the Manager of the intention to sell any or all of its Interests (the "**Initial ROFO Offer**"), which shall specify the amount of Interests the Offeror wishes to sell (the "**Offered ROFO Interests**"), the price (on a gross basis) at which the Offeror is willing to sell the Offered ROFO Interests, and any other material terms or conditions proposed.

- After receipt of the Initial ROFO Offer, the Offeror and the Manager will have 10 business days to negotiate exclusively, in good faith, mutually agreeable terms and conditions for the sale of the Offered ROFO Interests. No later than the end of such 10 business day period, the Manager must deliver a proposal to the Offeror (the "**Manager ROFO Proposal**"), which must specify: (i) the Manager's proposed purchase price (on a gross basis) for the Offered ROFO Interests, (ii) a proposed date for the closing of the purchase and sale of the Offered ROFO Interests, and (iii) all other material terms and conditions of the proposal to purchase the Offered ROFO Interests. The Manager will have the right to assign the right to purchase the Offered ROFO Interests to its affiliates, successors, or assigns.

- The Offeror has the right to sell all, but not less than all, of the Offered ROFO Interests on the terms and subject to the conditions set forth in the Manager ROFO Proposal. The Offeror may exercise such right only by delivering, to the Manager (or its affiliates, successors, or assigns), within five business days following its receipt of the Manager ROFO Proposal, a written notice electing to sell the Offered ROFO Interests upon the terms and conditions set forth in the Manager ROFO Proposal (the "**Offeror Election**"). If the Offeror fails to provide the Offeror Election, then the Offeror will be deemed to have declined to sell any of the Offered ROFO Interests on the terms contained in the Manager ROFO Proposal and the Manager will be under no obligation to purchase any of the Offered ROFO Interests. If the Offeror does provide the Offeror Election, then (i) the Offeror will be required to sell to the Manager (or its affiliates, successors, or assigns) the Offered ROFO Interests in accordance with the terms of the Manager ROFO Proposal, and (ii) the Manager (or its affiliates, successors, or assigns) will be obligated to purchase the Offered ROFO Interests in accordance with the Manager ROFO Proposal.

- If the Offeror does not provide the Offeror Election, but the Offeror desires to continue with the sale of the Offered ROFO Interests, then the Offeror must (within 10 business days of the Offeror's deadline to respond to the Manager ROFO Proposal) provide the Manager with a term sheet specifying its intended proposed sale price for the Offered ROFO Interests, a proposed date for the closing of the sale of the Offered ROFO Interests, and other material terms and conditions of the proposal to sell the Offered ROFO Interests (the "**Offeror Term Sheet**"). The economics and terms and conditions of the Offeror Term Sheet must not be more favorable to the buyer of the Offered ROFO Interests than those specified in the Manager ROFO Proposal.

The Manager will, within 10 days after the Manager's receipt of the Offeror Term Sheet, provide a copy of the Offeror Term Sheet to each of the Beneficial Owners (the "**ROFO Offerees**") listed in the Ownership Records (as defined in the Trust Agreement), indicating the date on which the Manager received such Offeror Term Sheet. The ROFO Offerees will have the right, but not the obligation, within 30 days after the Manager's receipt of the Offeror

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Term Sheet, to elect to purchase all, but not less than all, of the Offered ROFO Interests for the price and upon the terms and conditions as are contained in the Offeror Term Sheet by providing a notice of such election to the Offeror and the Manager. If more than one ROFO Offeree elects to purchase the Offered ROFO Interest, then the Offered ROFO Interests will be sold to the participating ROFO Offerees on a pro rata basis according to their respective Percentage Shares (as defined in the Trust Agreement). If none of the ROFO Offerees elect to purchase all of the Offered ROFO Interests, then the Manager or its designee may, but are not obligated to, within 10 days of the deadline for the ROFO Offerees to respond, give written notice to Offeror of Manager's, or its designee's, election to purchase the Offered ROFO Interests in accordance with the terms and conditions of the Offeror Term Sheet and, if it does not make such election, the Offeror will then be free to sell the Offered ROFO Interests to any one or more bona fide third-party purchasers and such sale of the Offered ROFO Interests shall not be subject to the right of first refusal discussed below.

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 which such Selling Beneficial Owner desires to accept, 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 (such date, the "**ROFR Final Date**") 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 a Non-Selling Beneficial Owner or the Manager or its designee elects to exercise its right of first refusal as described herein, the purchase and sale of the Offered Interests shall close by the later of: (i) the proposed closing date as set forth in the third-party offer, or (ii) 30 days from the ROFR Final Date. 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 attorneys' 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 shall 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) shall 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 exists, under the DST Act to seek a judicial dissolution of the Trust, to terminate the Trust or, to the fullest extent permit 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.

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**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, shall be invested by the Manager only in short-term obligations of (or guaranteed by) the United States, or any agency or instrumentality thereof and in certificates of deposit or interest-bearing bank accounts of 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 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 ninety (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 shall 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 available to Beneficial Owners in the Digital Investor Kit). As part of the Transfer Distribution, the Manager shall 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 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 shall only require the approval of the Manager and shall 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* "*Summary of Certain Provisions of "Springing LLC" Limited Liability Company Agreement*."

**Sale of the Property**

Pursuant to Section 3806(b)(3) of the DST Act, the Manager shall 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. 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 and in such manner as the Manager determines to be in the best interests of the Trust. Further, the Beneficial Owners will agree to reimburse the Manager for reasonable and customary expenses incurred with respect to the foregoing pursuant to the Trust Agreement. The Manager shall 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 upon 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 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) 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. After paying all amounts due to the Delaware Trustee and the Lender, if any, the Manager shall 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. Additionally,

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in connection with the Exchange Right, the Operating Partnership may require that the Beneficial Owners exchange their Interests for OP Units in the Operating Partnership or cash after all Beneficial Owners have held their Interests for at least one year.

**Exchange Right**

The Operating Partnership, a Delaware limited partnership, which acts as the operating partnership for NXDT (*i.e.*, NexPoint Diversified Real Estate Trust), has the right, but not the obligation, to require that each Beneficial Owner exchange its Interests for OP Units in the Operating Partnership in a transaction intended to qualify as a tax-deferred exchange under Code Sections 721 or 351. *See* "*Risk Factors*." The Operating Partnership will exercise this right, if at all, only after the Beneficial Owners have held their Interests for one year. Each Beneficial Owner will receive an amount of OP Units with an aggregate value equal to the then fair market value of such Beneficial Owner's Interests as of the date the Exchange Right is exercised. In order to exercise the Exchange Right, the Operating Partnership will provide each Beneficial Owner with a Notice of Exchange, the form of which is attached as an exhibit to the Trust Agreement. For 90 days following the Operating Partnership's delivery of the Notice of Exchange, neither the Manager, the Trust, the Beneficial Owners, the Operating Partnership, nor any of their respective directors, officers, employees, agents or affiliates shall, directly or indirectly: (a) solicit, initiate, or encourage the submission of any proposal or offer from any person relating to, or enter into or consummate any transaction relating to, the acquisition of any of the interests in the Trust or the Trust Estate, or (b) participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in, or facilitate in any other manner relating to the acquisition of any of the interests in the Trust or the Trust Estate.

Should any Beneficial Owner not wish to exchange its Interests for OP Units, such Beneficial Owner ("**Dissenting Beneficial Owner**") may elect to have the Operating Partnership acquire the Beneficial Owner's Interests for cash rather than exchange such Interests for OP Units. The purchase price for a Dissenting Beneficial Owner's Interests ("**Cash Amount**") will be the then fair market value of the Dissenting Beneficial Owner's Interests as of the date the Exchange Right is exercised. If a Dissenting Beneficial Owner elects to exercise its right to have the Operating Partnership purchase its Interests, it is required to notify the Operating Partnership in writing within 30 days after the date on which the Manager mails the Notice of Exchange to the Beneficial Owner (the "**Dissenting Notice**"). If any Beneficial Owner does not provide a Dissenting Notice to the Operating Partnership within 30 days after the mailing date of the Notice of Exchange, such Beneficial Owner will be deemed to have agreed to the exercise of the Exchange Right by the Operating Partnership for cash.

The fair market value of a Beneficial Owner's Interests will be determined by multiplying: (i) the percentage of Interests owned by the Beneficial Owner by (ii) the 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 year of the date the Exchange Right is exercised. No discounts for lack of liquidity or minority interests shall be considered in determining the value of the Interests.

Each Beneficial Owner will be required to execute such documents and signatures as the Manager or Operating Partnership may reasonably require in connection with the exercise of the Exchange Right or the cash purchase described above and may be required, on a pro rata basis, to reimburse the Manager or the Operating Partnership for reasonable and customary expenses (including Property-related expenses) incurred with respect to the applicable transaction. If a Beneficial Owner fails to respond or fails to execute such documents and signatures as the Manager or Operating Partnership may reasonably require in connection with the exercise of the Exchange Right, such Beneficial Owner will not be admitted as a limited partner to the Operating Partnership and its Interests will be acquired for cash. For a Beneficial Owner who will be contributing its Interests to the Operating Partnership for OP Units (a "**Contributing Beneficial Owner**"), the Operating Partnership may, but is under no obligation to, provide a tax protection agreement (a "**Tax Protection Agreement**") in which the Operating Partnership: (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 Beneficial Owner to recognize any gain under Code Section 704(c) (any such transaction, a "**Triggering Event**"), and (ii) will agree to pay a Contributing Beneficial Owner's damages equal to the aggregate federal, state and local income taxes incurred by such Contributing Beneficial Owner in connection with a Triggering Event. For the avoidance of doubt, the Operating Partnership 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 Operating Partnership. A Contributing

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Beneficial Owner will also acknowledge and agree that the Manager, Operating Partnership, the dealer manager, such Contributing Beneficial Owner's broker-dealer, and/or such Contributing Beneficial Owner's registered investment advisor may charge reasonable fees for its services with respect to facilitating the Exchange Right (which fees shall not exceed 4.0% of such Contributing Beneficial Owner's investment in the Trust). Upon receipt of any and all documents and signatures required by the Manager or Operating Partnership (the first date upon which all such materials have been received, the "**Receipt Date**"), the Manager will distribute (i) to any Beneficial Owner that is not a Dissenting Beneficial Owner, the OP Units within 60 business days of the Receipt Date and (ii) to any Dissenting Beneficial Owner the Cash Amount within 180 days of the Receipt Date.

**Periodic Purchase Offer**

Following the second anniversary of the Acquisition Closing, the Sponsor or its affiliates may, but have no obligation to, periodically extend a Periodic Purchase Offer to a Beneficial Owner to purchase all or a portion of a Beneficial Owner's Interests. The Sponsor or one of its affiliates intends to periodically evaluate and determine whether to extend a Periodic Purchase Offer to a particular Beneficial Owner and has the sole and absolute discretion to do so. If the Sponsor or its affiliates chooses to make a Periodic Purchase Offer, the Sponsor or its affiliates will be responsible for providing the Beneficial Owner with notice and the terms of such Periodic Purchase Offer. The terms upon which such Periodic Purchase Offer is to be effectuated, including the offering price, are within the sole and absolute discretion of the Sponsor or its affiliates, as applicable.

**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 Beneficial Owners 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, receive once a quarter 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 otherwise obtaining under applicable law, and limits such liabilities and duties to those expressly set forth in the Trust Agreement; provided, however, that no provision in the Trust Agreement is intended to or shall 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 its Interests in the Trust in a manner that is consistent with the foregoing.

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**Summary of Certain Provisions of**
**"Springing LLC" Limited Liability Company Agreement**

The following is a summary of some of the more significant provisions of the form of Limited Liability Company Agreement of the Springing LLC (the "**Springing LLC Agreement**") to be entered into upon a Transfer Distribution, and is qualified in its entirety by reference to the full text thereof. A form of the Springing LLC Agreement is attached to the Trust Agreement (which is available to Beneficial Owners in the Digital Investor Kit) 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 Agreement and is qualified in its entirety by the full text thereof. Prospective Purchasers should carefully review the Springing LLC 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 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 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 Agreement, subject to certain limitations specified in the Springing LLC Agreement, with the consent of the manager, (ii) remove the manager for cause (as defined in the Springing LLC Agreement), (iii) elect a successor manager, with the consent of the manager, (iv) elect a successor partnership representative, 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.

**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 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, as applicable. Moreover, any transfer of a membership interest will be subject to a right of first offer and the right of first refusal, similar to that which are described in 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 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.

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**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 shall 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:

- The manager of the Springing LLC determines to terminate the Springing LLC;
- The sale, exchange or other disposition of the Property;
- The occurrence of any event of dissolution in the Springing LLC's Certificate of Formation; or
- 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 its duly authorized attorney-in-fact. Certain matters that require the action and implementation of the manager require the majority approval of the members.

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 members holding, in aggregate, more than 50% of the membership interests. However, at any time the Loan is outstanding, consent of the Lender shall 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 shall be entitled to receive an administrative fee and additional compensation for any additional services 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 shall 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 shall not be paid from these fees).

**Books and Records**. The Springing LLC 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.

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**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 gross negligence, willful misconduct or intentional wrongdoing 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 THE ASSET MANAGEMENT AGREEMENT

The Asset 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 available to Beneficial Owners in the Digital Investor Kit.

*Term*

Each Asset Management Agreement commenced on the date of the applicable Acquisition Closing and shall continue until termination by one of the parties.

*Rights and Duties of the Asset Manager*

In general, 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.

*Compensation*

As compensation for its services, the Asset Manager will receive the Asset Management Fee equal to 0.30% of the purchase price of the Property or $148,500 paid ratably, monthly in arrears. The Asset Manager may, at its sole discretion, defer a portion or all of the applicable Asset Management Fee. The Asset Manager intends to defer 100% of the Asset Management Fees in the first year following the Acquisition Closing and recoup such deferred fees 50% in the third year and 50% in the fourth year following the Acquisition Closing. The Asset Management Fees will be paid on a pro rata basis, monthly in arrears, and if the Asset Management Agreement terminates during any calendar year, shall be pro-rated for any such partial year. The Asset Management Fees will be paid to the Asset Manager, which is an affiliated entity of the Sponsor. The Asset Management Fees are subordinate in all respects in lien and payment to the lien and payment of the Loan.

In addition, each Asset Manager will receive the Disposition Fee from the applicable Trust equal to 3.0% of the gross proceeds of the sale, exchange or other disposition of the Property by the Trust, including, for the avoidance of doubt, pursuant to the exercise of the Exchange Right. Any sales commissions due to third-party brokers will not be paid from this amount.

*Indemnification*

The Trust will hold the Asset Manager harmless from claims arising directly or indirectly out of any action taken by the Asset 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 Asset Manager. This indemnity extends to and protects the agents, officers, directors, shareholders, affiliated companies and employees of the Asset Manager. Each Asset Manager agrees to indemnify the Trust and hold it harmless from all claims arising directly or indirectly out of any action taken by the Asset Manager that is not within the scope of its authority under the Asset Management Agreement.

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## SUMMARY OF THE 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 initially is BH Management Services, 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 available to Beneficial Owners in the Digital Investor Kit.

| | |
|---|---|
| *Term* | The Property Management Agreement has an initial term of two years and automatically renews on a month-to-month basis until otherwise terminated. |
| *Rights and Duties of the Property Manager* | In general, the Property Manager will manage, coordinate and supervise the ordinary and usual business and affairs pertaining to the operation, maintenance, leasing, licensing and management of the Property. |
| *Compensation* | As compensation for its services, the Property Manager will receive a fee equal to the greater of 2.85% of the monthly Gross Income (as defined in the Property Management Agreement) from the Property or a base fee of $34 per unit per month. In addition, the Property Manager shall be reimbursed for its expenses. The Property Manager may also receive set-up fees, administration fees, construction management fees, and other fees. The Property Management Fee payable to the Property Manager shall be payable solely by the Master Tenant out of the income it receives from the Property. |
| *Indemnification* | The Master Tenant will hold the Property Manager, as its agent, harmless from liability, except for willful misconduct or gross negligence of the Property Manager. |
| *Budget* | The Property Manager will prepare and deliver each year to the Master Tenant an annual approved operating budget for the Property. |

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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 A.

### 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 the Escrow Agent. 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 its own investigations and analysis of the Property and is encouraged to seek the advice of its own independent legal counsel, accountants, and real estate advisors. Each prospective Purchaser will be required to acknowledge that the Trust, the Sponsor, and their affiliates (including the Managing Broker-Dealer) make no representation or warranty of any kind regarding the suitability of an investment in the Interests by a prospective Purchaser. Further, each prospective Purchaser acknowledges and agrees that it has not relied upon any investment advice or recommendation of the Trust, the Sponsor, or any of their affiliates (including the Managing Broker-Dealer) as a basis for the decision to invest in the Interests.

### 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 Contributor 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 C.

Each Purchaser should consult its 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*."

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**Bad Actor Addendum**

Purchasers who subscribe for a 20% or more beneficial interest in the Trust, as determined in accordance with the Trust Agreement as of the date of the Purchaser's subscription, shall be required to complete a "bad actor addendum" in the form attached to the Purchase Agreement (the "**Bad Actor Addendum**"). Purchasers acquiring a 20% or more beneficial interest in the Trust ("**20% Investors,**" and each a "**20% Investor**") shall be further required to complete and deliver to the Manager, concurrently with the execution and delivery of the Bad Actor Addendum, an irrevocable proxy granting the Manager the right to vote any and all Interests held by such 20% Investor (the "**Bad Actor Proxy**") upon the effectiveness of the Bad Actor Proxy. A Bad Actor Proxy shall become effective at such time as a 20% Investor becomes subject to a "disqualification event" as described in Rule 506(d) of Regulation D. Once effective, a Bad Actor Proxy shall remain in effect until the date upon which the applicable 20% Investor is no longer subject to any disqualification event.

**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 Dallas, Texas, and voluntarily waives any right he, she or it may have to a jury trial in such proceeding. If any legal action or other proceeding is brought by a Beneficial Owner for the enforcement of the Offering Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of the Offering Documents, the successful or prevailing party or parties shall be entitled to recover from the non-prevailing party, attorneys' fees, court costs, and all costs and expenses incurred in that action or proceeding in addition to any or all other relief awarded in such legal action or proceeding.

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## 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 since the income tax consequences of an investment in an Interest are uncertain and complex. Also, the tax consequences will not be the same for all taxpayers. You should be aware that the following discussion necessarily condenses or eliminates many details that might adversely and/or significantly affect you and does not address the tax issues that may be important to you if you are subject to special tax treatment, such as a Non-U.S. Person 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 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 its own tax advisor about the specific tax consequences to him 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 OBBBA has recently revised certain provisions of the federal income tax law that affect the tax consequences of real estate investments. Many of these provisions are complex and their scope and interpretations are presently uncertain.

Accordingly, there is uncertainty concerning certain tax aspects discussed herein, and there can be no assurance that the IRS 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 OBBBA. 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 estate, 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,

(iv) are a U.S. Person, and

(v) 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 estate and not

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either an interest in a partnership, a security or a certificate of trust or beneficial interest. If an Interest was 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 discussions of the federal income tax consequences contained in this Memorandum are correct in all material respects; and (ix) certain judicially created doctrines should not apply to change the foregoing conclusions. The issues which are the subject of such opinion have not been definitely resolved by 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 estate must be aware that in order to qualify any of its gain realized in such exchange for tax deferral under Code Section 1031, the Interest must be treated as an interest in real estate.

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 owner of an "investment trust" is considered to own an undivided fractional interest in the trust assets attributable to that interest for federal income tax purposes, the exchange of real property for an interest in an "investment trust" that holds only real property through a qualified intermediary 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 its federal income tax liability, 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 in the Trust.

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 corpus and will be automatically entitled to receive its proportionate share of the income of the Trust. Further, and in light of the fact that the Beneficial Owners should be treated as grantors of the Trust, each Beneficial Owner should be treated as a grantor with respect to the Trust because the Trust has been structured such that it should comply with the fixed investment trust rules and Revenue Ruling 2004-86. Therefore, the Beneficial Owners should be treated, for federal income tax purposes, as if they own the Property 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 Trust and the Sponsor have not received and will not request a private ruling from the IRS regarding the federal income tax classification of the Trust. After examining the relevant cases, Treasury Regulations and rulings (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" or instead as a business entity taxable as a corporation or partnership.

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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 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 its Interest, such Purchaser would have no cash from the disposition of its original interests in real estate with which to pay the tax. Given the illiquid and long-term nature of an investment in the Interests, there would be no practical means of generating cash from an investment in the Interests to pay the tax. In such a case, a Purchaser would have to use funds from other sources to satisfy 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 (the "**Identification Period**") that begins on the date that the taxpayer transfers its Relinquished Property and ends at midnight on the 45th day thereafter (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 of the identified properties.

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

The Offering consists of one property for purposes of Code Section 1031. The Property must be specifically identified for a Section 1031 Exchange. With respect to the Offering, when a Purchaser acquires an Interest in the Trust, the Purchaser should be deemed as acquiring a fractional interest in 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.

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For purposes of the three-property rule, the IRS has not provided direct guidance on what constitutes "one property" for identification purposes. The IRS, however, did offer an interpretation of what constitutes "one property" in the context of multiple parcels of property owned by co-owners leased to a single tenant. Although this interpretation does not specifically apply to the identification rules under Code Section 1031, in Revenue Procedure 2002-22, the IRS provided that it will generally treat contiguous parcels as comprising a single business unit or "property." Further, in Revenue Procedure 2002-22, the IRS provided that even if the parcels are not contiguous, the IRS may treat multiple parcels as comprising a single business unit where there is a close connection between the business use of one parcel and the business use of another parcel.

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.

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. Prospective Purchasers will have to rely on the 200% rule or 95% rule with respect to the Offering and should seek the advice of their tax advisors prior to subscribing for the Interests or making an identification.

***Other Requirements of Code Section 1031***. Code Section 1031 provides for non-recognition of gain or loss only if real property held for use in a trade or business or for investment is exchanged for other real property of like-kind held for use in a trade or business or for investment. There are numerous requirements contained in the applicable provisions of the Code and Treasury Regulations concerning qualification for non-recognition under Code Section 1031. For instance, prospective 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 its own tax advisors whether an exchange 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***. Under the Tax Cuts and Jobs Act of 2017 (the "**TCJA**"), subject to certain transition rules, Section 1031 Exchanges only apply to "real property" effective after December 31, 2017. Thus, tangible personal property and intangible property (even if associated with the real property) are no longer eligible for Section 1031 Exchanges under the TCJA. The TCJA, however, provided no guidance on the definition of "real property" for purposes of Code Section 1031. The existing Treasury Regulations defined "real property" by reference to local law. On June 12, 2020, proposed regulations were issued under Code Section 1031 and provided a broad definition of "real property" for purposes of Code Section 1031. Subsequently, on November 23, 2020, the Treasury and the IRS released final regulations (the "**Final 1031 Regulations**") defining "real property" for purposes of Code Section 1031. Under the Final 1031 Regulations, 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 Final 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 Final 1031 Regulations. The Final 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.

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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 its own tax advisors whether an exchange engaged in by the prospective Purchaser satisfies the requirements of Code Section 1031.

***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 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

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consulted with Tax Counsel, have concluded that that 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***. Taxpayers are eligible for a 20% deduction on certain "qualified business income." Although this deduction was originally scheduled to sunset for the taxable year ending December 31, 2025, the OBBA made this deduction permanent. 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).

Under current law, taxpayers may aggregate certain real estate activities engaged in through multiple partnerships or S corporations, or otherwise held directly or indirectly, if certain requirements are satisfied. In addition, certain taxpayers who meet specific requirements may be allowed trade or business income treatment from certain "rental real estate enterprises." However, this treatment is not available where the property used by the taxpayer is subject to a triple net lease. For this purpose, the IRS has 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 their own tax advisor 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 owned directly the portion of the Property proportionate to the Interest owned by the Beneficial Owner and as if it paid directly its share of expenses paid by the Trust.

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

***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 its 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 Code 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 U.S. federal income tax law allows an owner of improved real property to take depreciation deductions based on the entire cost of the depreciable improvements, even though such improvements are financed in part with borrowed funds. If, however, the purchase price of an Interest and the non-

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recourse 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 Code provides separate cost recovery rules for certain "qualified improvement property." Qualified improvement property is any improvement to an interior portion of a building that is non-residential real property if the improvement is placed in service after the date the building itself was first placed in service. Despite Congressional intent to afford qualified improvement property to a more favorable recovery period, the Code as written subjects qualified improvement property to the 39-year recovery period that generally applies to real property.

Up to $2,500,000 for 2025 and $2,560,000 for 2026 of certain improvements made to non-residential real property first placed into service in a taxable year may be expensed and currently deducted for tax purposes (subject to certain limitations). Due to the limitations on expenditures for improvements imposed on the Trust, the Manager does not anticipate that the Trust will incur a significant amount of any such expenses. The amount of depreciation 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 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 nondepreciable 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 prospective 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 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 a 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 its proportionate share of the liabilities that encumber the Property at the time of the acquisition of an Interest.

***Payments to 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 prospective 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 purchase of real estate, but instead as a nondeductible 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. Real estate brokerage commissions (whether or not paid to affiliates of the Sponsor) paid upon the sale, exchange or other disposition of the Property will be treated as an adjustment to 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, including the Facilitation Fee. In addition, a portion of the proceeds of the Offering may be treated as having been used to purchase an interest in reserves established by the Sponsor rather than for real estate. Because the tax treatment of certain expenses of the Offering, closing costs, financing costs or reserves is unclear and may vary depending upon the circumstances, no advice or opinion of Tax Counsel will be given regarding the tax treatment of such costs and the treatment of proceeds attributable to the reserves, which may be taxable as "boot" 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.

In addition, a portion of the Offering proceeds will be used to fund the Supplemental Trust Reserve. Exchange proceeds used to fund the Supplemental Trust Reserve will not be treated as reinvested in qualifying

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Replacement Property for purposes of Code Section 1031. As a result, a Purchaser may be required to make additional investments (in addition to Section 1031 Exchange proceeds) to avoid recognition of gain on a Section 1031 Exchange. For federal income tax purposes, each Purchaser will be deemed to have funded a pro rata share of the Supplemental Trust Reserve out of the Offering Proceeds in proportion to its Interest regardless of whether the funds paid by the Purchaser to acquire its Interest are used to fund the Supplemental Trust Reserve or redeem the Class 2 Beneficial Interests from the Contributor.

***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 estate 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 the prospective Purchaser. 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 estate 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 prospective Purchaser.

***Deductibility of Trust's Fees and Expenses***. In computing their U.S. federal income tax liability, Purchasers will be entitled to deduct, consistent with their method of accounting, their share of reasonable administrative fees, trustee fees and other fees, if any, paid or incurred by the Trust as provided in Section 162 or 212 of the Code, which may be subject to the limitations applicable to miscellaneous itemized deductions. All miscellaneous itemized deductions (except for certain "educator expenses") are permanently disallowed under current law. As such, a Beneficial Owner will not be able to deduct as a miscellaneous itemized deduction its share of such fees paid by the Trust. However, if a Beneficial Owner owns its Interests 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 interests in the Springing LLC resulting from the Trust will be held by 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 generally would 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 existing 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 of the Trust. **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, interests in the Springing LLC will not be treated as direct ownership interests in real property for federal

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income tax purposes including for purposes of the like-kind exchange provisions of Code Section 1031. **THUS, IF THE PROPERTY IS TRANSFERRED TO A SPRINGING LLC IN A TRANSFER DISTRIBUTION, IT IS UNLIKELY THAT ANY OF THE BENEFICIAL OWNERS WHO RECEIVE INTERESTS IN SUCH SPRINGING LLC WILL THEREAFTER BE ABLE TO DEFER THE RECOGNITION OF GAIN UNDER SECTION 1031.**

***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: (1) trade or business activities in which the taxpayer does not materially participate, and (2) 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 limitations.

Losses (or credits that exceed the regular tax allocable to passive activities) from passive activities that exceed passive activity income are disallowed and can be carried forward and treated as deductions and credits from passive activities in subsequent taxable years. Disallowed losses from an activity, except for certain dispositions to related parties, are allowed in full when the taxpayer disposes of 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 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 its own net income or loss from the Property and the Trust for income tax purposes. Each Purchaser will be required to pay its share of expenses of the Property and the Trust, and will be entitled to its share of income therefrom. Certain expenses, such as depreciation, will be different for different Purchasers. The Manager will keep 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 its income.

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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 Interest is not considered either a capital asset or real property held by Purchaser for more than one year and used by 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 an asset under Code Section 1231, gain or loss attributable to such asset 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 assets 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 its tax basis in 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 its Interests, and 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

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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 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 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 its tax advisors 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 estate 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 with respect to which such Purchaser is considered "at risk." A Purchaser's initial amount at risk will generally equal the sum of (1) the amount of cash paid for the Interest, (2) the amount, if any, of recourse financing obtained by the Purchaser to acquire its Interest, and (3) 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

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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 or herself own tax-exempt obligations or stock of a regulated investment company that distributes exempt interest dividends but rather such obligations or stock are owned by a person, entity or other intermediary related to the 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***. Under current law, excess business losses of a taxpayer other than a corporation are not allowed for the taxable year. This limitation currently applies for taxable years beginning after December 31, 2020, and before January 1, 2029. Such losses are carried forward and treated as part of the taxpayer's net operating loss carryforward in subsequent taxable years. An excess business loss for the taxable year is the excess of aggregate deductions of the taxpayer attributable to trades or businesses of the taxpayer over the sum of aggregate gross income or gain of the taxpayer plus a threshold amount. The threshold amount, which is indexed for inflation, is $313,000 for 2025 and $256,000 for 2026 (or twice the applicable threshold amount in the case of a joint return). 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" or ATI (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 or ATI 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. Under previous law, taxpayers were not permitted to include depreciation, amortization, and depletion in determining a taxpayer's ATI for taxable years beginning after December 31, 2024. Accordingly, for taxable years beginning after December 31, 2024, interest deductions for taxpayers with average annual gross receipts in excess of $31 million for taxable years beginning in 2025 and $32 million for taxable years beginning in 2026 (and subject to an annual inflation adjustment) are generally deferred to the extent that annual business interest expense exceeds business interest income plus 30% of ATI, subject to certain adjustments. However, the OBBBA also established a new ordering rule requiring that the Code Section 163(j) limitation be determined before the application of any interest capitalization provisions, except for interest capitalized under Sections 263A and 263(g), which may impact the availability of Code Section 163(j) business interest deductions for certain taxpayers.

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 election by a real property trade or business is to be made at such time and in such manner as the IRS shall prescribe and, once made, is irrevocable. An electing real property trade or business is required to use the alternative depreciation system for any nonresidential 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 nonresidential real property (which would then be depreciable by the straight line method over 20 years). Revenue Procedure 2020-22 provides election relief for taxpayers to, retroactively, either make or withdraw the real estate trade or business elections with respect to this limitation. Each prospective Purchaser should consult

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with its tax advisors concerning the possible application of Code Section 163(j) to his, her, or its particular circumstances.

***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 nondeductible 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 its share of cash distributions from the Trust, in which case a Purchaser would have to use funds from other sources to satisfy 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 20% accuracy-related penalty is imposed on (i) listed or (ii) reportable transactions having a significant tax avoidance purpose. This penalty is increased to 30% if the transaction is not properly disclosed on the taxpayer's federal income tax return. Failure to disclose such a transaction can also prevent the applicable statute of limitations from running in certain circumstances and can subject the taxpayer to additional disclosure penalties ranging from $10,000 to $200,000, depending on the facts of the transaction. 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). The 10% threshold is reduced to 5% for taxpayers claiming the deduction for "qualified business income" under Code Section 199A.

A substantial valuation misstatement occurs if the value of any property (or the adjusted basis) is 150% or more of the amount determined to be the correct valuation or adjusted basis. The penalty 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). For a C corporation, a substantial understatement generally occurs if the amount of the understatement exceeds the lesser of: (i) 10% of the tax required to be shown on the return for that tax year (or $10,000, if that is greater); or (ii) $10,000,000.

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

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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 shall be made in the same manner as if the doctrine had never been codified. In the case of any transaction to which the economic substance doctrine is relevant, the transaction is treated as having economic substance if (1) the transaction changes in a meaningful way (apart from federal income tax effects) the taxpayer's economic position, and (2) the taxpayer has a substantial purpose (apart from federal income tax effects) for entering into such transaction. In rendering its opinion, Tax Counsel 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 U.S. federal income tax consequences described above, each prospective Purchaser should consider the state and local tax consequences of the purchase of, and 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. Under current law, an individual or married filers may deduct up to $40,000 of combined state and local income and property taxes for the 2025 taxable year. 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 increase by 1% (so $40,400 for the 2026 taxable year). Then, the maximum deductible state and local income and property taxes decrease to $10,000 for any taxable year beginning after 2029. Taxes attributable to income earned from the Interests should count towards the applicable limitation described in the foregoing sentences. A prospective Purchaser must seek the advice of its own independent tax advisor as to state and local tax issues.

***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, 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 OBBBA 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 law and give proper effect to Congressional intent. There can be no assurance, however, that technical clarifications or changes needed to prevent unintended or unforeseen tax consequences will be enacted by Congress in the near future.

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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 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 U.S. federal income tax counsel and securities 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 $31,360,817 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 shall 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 shall 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 "Participating 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 Participating 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 6.0% of Total Sales, which it will re-allow to the Participating Dealers; provided, however, in the event a commission rate lower than 6.0% is negotiated with a Participating Dealer, the commission rate will be the lower agreed upon rate. In addition, the Managing Broker-Dealer shall 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 the Total Sales. The Managing Broker-Dealer will also receive a Managing Broker-Dealer Fee of up to 1.50% of the 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. The total aggregate amount of Sales Commissions and Expenses will not exceed 9.35% 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.

In connection with a FF Offering, the Managing Broker-Dealer, the Participating Dealers, or any RIAs may waive fees or selling commissions on such sales. In addition, as part of a FF Offering, the Trust may waive minimum investment requirements or fees as it deems appropriate or as are otherwise waived by the applicable party who would receive such fees. The Trust, however, does not intend to waive or reduce any part of the fees relating to the on-going operation of the Trust.

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.

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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 the Initial Closing at any time after one or more subscriptions for Interests have been accepted by the Trust. Following the Initial Closing, the remaining 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 March 31, 2027. The Offering Termination Date may be extended at the Sponsor's 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 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 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 other broker/dealers selling Interests, we will provide this same 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 a U.S. Person;

For purposes of the foregoing, a U.S. Person shall mean:

- an individual citizen or resident of the United States (including a United States permanent resident),

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- a corporation or any entity taxable as a corporation created or organized in or under the laws of the United States, any state or political subdivision thereof or the District of Columbia,
- an estate the income of which is subject to U.S. federal income taxation regardless of its source, and
- a trust if (a) it is subject to the primary supervision of a U.S. court and one or more U.S. Persons have the authority to control all substantial decisions of the trust, or (b) that has a valid election in effect under applicable Treasury Regulations to be treated as a United States person.

**If you desire to purchase the Interests and are an entity or arrangement treated as a partnership for U.S. federal income tax purposes, contact the Sponsor immediately.** The tax treatment of the partnership and a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. Prospective Purchasers who are partnerships, or that invest in the Interests through a partnership, should consult with their tax advisors regarding the tax consequences to them.

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

(j) 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:

- a person named on the list of "specially designated nationals" or "blocked persons" maintained by OFAC at http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx, or as otherwise published from time to time, or
- (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**" shall mean a country subject to a sanctions program identified on the list maintained by OFAC and available on the Department of the Treasury website at http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx, or as otherwise published from time to time.

**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 Non-U.S. 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 Non-U.S. Person.**

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**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 and the Digital Investor Kit, 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 Purchase Agreement and Purchaser Questionnaire attached hereto as Exhibit A (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 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 shall 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

The Sponsor is subject to litigation from time to time, but in the opinion of the Sponsor, there are no actions pending against the Sponsor or the Manager or, to the knowledge of the Manager and Sponsor, contemplated, that, based on facts and circumstances, are expected to have a material adverse effect on the Trust, the Manager, the Sponsor or the Property, their financial condition or their operations.

**HCMLP Bankruptcy.** The Sponsor was historically affiliated, through common control, with Highland Capital Management, L.P. ("**HCMLP**"), an SEC-registered investment adviser that filed for Chapter 11 bankruptcy protection on October 16, 2019. On January 9, 2020, the United States Bankruptcy Court for the Northern District of Texas approved a change of control of HCMLP, which involved the appointment of an independent board to HCMLP's general partner. As a result of these changes, the Sponsor is no longer under common control with HCMLP and, therefore, is no longer affiliated with HCMLP. HCMLP is a separate legal entity with no right to control the Sponsor, the Trust, the Manager, the Managing Broker-Dealer, and the Master Tenant. In addition to not being affiliated with HCMLP, the Sponsor, the Trust, the Manager, the Managing Broker-Dealer, and the Master Tenant are not debtors in the bankruptcy proceeding or plaintiffs or defendants in the associated adversary proceedings.

HCMLP's plan of reorganization was approved by the bankruptcy court in February 2021, and on August 11, 2021, HCMLP's plan became effective. The confirmed and effective HCMLP bankruptcy plan is not expected to have a material impact on the Offering, the Sponsor, the Trust, the Manager, the Managing Broker-Dealer, or the Master Tenant.

**UBS Litigation.** On February 8, 2022, UBS Securities LLC and its affiliate filed a lawsuit in the Supreme Court of the State of New York, County of New York against James Dondero and a number of other persons and entities, seeking to collect on $1.3 billion in judgments UBS obtained against entities that were managed indirectly by HCMLP (the "**UBS Lawsuit**"). The UBS Lawsuit does not include claims related to the business, assets or operations of the Offering, the Sponsor, the Trust, the Manager, the Managing Broker-Dealer, or the Master Tenant. While the foregoing parties are not parties to the UBS Lawsuit, these proceedings could expose them, their affiliates, and/or their management teams, to negative publicity, which might adversely affect their reputations and/or investor confidence, and/or future debt or equity capital raising activities. In addition, the UBS Lawsuit may be both time-consuming and disruptive to their operations and cause significant diversion of management attention and resources, which may materially and adversely affect the business, financial condition and results of operations for the Trust. Mr. Dondero

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has advised us that he believes the UBS Lawsuit has no merit, and the Sponsor was advised that the defendants to the UBS Lawsuit intend to vigorously defend against the claims.

## 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 Trust will prepare and send to each Beneficial Owner unaudited quarterly financial and operational reports and an annual report containing a cash basis unaudited trust-level year-end balance sheet and income statement. 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*."

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**EXHIBIT A**

**PURCHASE AGREEMENT**

**[ATTACHED]**

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**COPY NO. _____**

# NEXPOINT WATERFORD DST
# PURCHASER QUESTIONNAIRE

Instructions for Purchase of Beneficial Interests in NexPoint Waterford DST

**PLEASE COMPLETE AND RETURN**

Dear Prospective Purchaser:

Thank you for your interest in the offering of Class 1 Beneficial Interests ("**Interests**") in NexPoint Waterford DST (the "**Trust**"), a Delaware statutory trust, sponsored by NexPoint Real Estate Advisors IV, L.P. (the "**Sponsor**"). We would like to provide you every opportunity to review the accompanying offering materials before deciding to invest. Once your review of all of the offering materials is complete, please complete and return the following documents:

☐ **Purchaser Questionnaire** (attached)

☐ **Copy of Entity Documentation, if applicable** (i.e. trust document, partnership agreements, and certification of partnership, articles of incorporation and bylaws, articles of organization and operating agreement, etc.; must include documents authorizing signing authority)

☐ **Purchase Agreement** (attached as Appendix A)

☐ **Joinder to the Trust Agreement** (attached to Appendix B)

☐ **Irrevocable Proxy** (attached as Appendix C)

☐ **Accreditation Letter of Accredited Investor Status** (attached as Appendix D)

**ALL DOCUMENTS SHOULD BE DELIVERED TO:**

NexPoint Real Estate Advisors IV, L.P.
c/o LODAS Transfer
1710 Keller Parkway #1981
Keller, TX 76248
Fax: 972.752.3654
Email: nexpoint@lodasmarkets.com

**QUESTIONS?**

For questions or assistance, please contact Brian Fuentes, Director of Shareholder Services, at 214-550-8274.

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Before deciding to subscribe, please read carefully the Private Placement Memorandum dated March 18, 2026, and all exhibits and supplements thereto (collectively, the "**Memorandum**") for the Interests in the Trust formed for the purpose of acquiring and owning the real property commonly known as "Waterford Place" located at 101 Shore Lake Drive, Greensboro, North Carolina 27455 (the "**Property**"). The Trust will be managed by NexPoint Waterford Parent Manager, LLC, a Delaware limited liability company (the "**Manager**"). Defined terms used herein and not otherwise defined shall have the meaning ascribed to them in the Memorandum.

**EACH PROSPECTIVE PURCHASER SHOULD EXAMINE THE SUITABILITY OF THIS TYPE OF INVESTMENT 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 AS TO THE RISK AND POTENTIAL GAIN INVOLVED. ALSO, 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 INVESTMENT.**

This Offering is limited to a purchaser who is established to have met all of the qualifications set forth in the Memorandum. If you satisfy these qualifications and desire to purchase the Interests, please complete, execute, and deliver the following: (i) this Purchaser Questionnaire, (ii) if you are an entity (as opposed to a natural person), the entity documents described herein, and (iii) the Accreditation Letter of Accredited Investor Status.

Upon receipt of the signed Purchaser Questionnaire, verification of your investment qualifications, and acceptance of your subscription, the Manager will notify you of receipt and acceptance of your subscription. The Manager reserves the right, in its sole discretion, to accept or reject a subscription for any reason whatsoever.

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**This document relates to the undersigned's intention to purchase Interests in the Trust.** To induce the Manager to accept the Purchase Agreement and as further consideration for such acceptance, I hereby make the following representations, warranties and acknowledgments, with the full knowledge that the Manager will expressly rely thereon in making a decision to accept or reject my Purchase Agreement:

## 1. SUBSCRIPTION INFORMATION

**NAME FOR REGISTRATION OF CLASS 1 OWNERSHIP:**

_____

Print name of purchaser exactly as you would like title to be vested. If this is a Section 1031 Exchange, the name should match that of the relinquished property owner.

**MY EQUITY INVESTMENT AMOUNT:**

**$**_____

The minimum purchase for Purchasers is $100,000 (representing $100,000 of equity and $94,704 of debt), subject to the terms, conditions, acknowledgments, representations and warranties stated herein and in the Memorandum.

**Memorandum #:**_____

Please insert the copy number of the Memorandum that you reviewed/received (located on the top right corner of the Memorandum).

**FUNDS TO CLOSE:**

☐ I have enclosed a check, in the amount of my equity investment indicated above, payable to "UMB Bank, N/A, as Escrow Agent for NexPoint Waterford DST."

☐ I am conducting a Section 1031 Exchange for this investment, and my accommodator will wire funds once requested by escrow.

☐ Funds will be wired by me once requested by escrow.

## 2. PURCHASER INFORMATION

Address: _____

City:_____ State_____ Zip Code:_____

Mailing Address (if different) _____

City:_____ State_____ Zip Code:_____

Contact Phone No.:_____ Secondary Contact Number: _____

E-mail Address:_____

My Primary State of Residence (or if entity, state of formation): _____

**Authorization for Electronic Delivery (Optional)**

If you would like to authorize the Sponsor to provide statements, updates and/or reports electronically, please provide a valid email address below. If you would prefer to receive this information through the mail, proceed to Section 3 below. You may change your electronic delivery preferences and the email address we have on file for you at any time.

Email Address: _____

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## 3. OWNERSHIP INFORMATION

Choose from the ownership structures listed below and fill in the requested information.

(*Note: The Trust's transfer agent's anti-money laundering program, formulated under U.S. Patriot Act regulations, requires the gathering of personal information requested below for any authorized signatory of an entity investing into securities offerings and receiving distributions.)*

**IF AN INDIVIDUAL(S)**

Name:_____

FinCEN ID (if applicable):_____

Residential Address:_____

Occupation:_____ Name and Address of Employer: _____

Social Security No.: _____ Date of Birth: _____

Co-Investor/Spouse Name: _____

FinCEN ID (if applicable):_____

Residential Address:_____

Occupation:_____ Name and Address of Employer: _____

Social Security No.: _____ Date of Birth:_____

Please check one:
☐ A single person
☐ As joint tenants (joint tenants have right of survivorship)
☐ Spouses, as joint tenants
☐ Spouses, as community property
☐ A married person, as his/her sole and separate property (*Note: If a spouse is not an Investor, see Section 10 of this Purchaser Questionnaire*)

**IF A TRUST**

Please enclose a COMPLETE copy of the trust documents, as amended to date, and, as necessary, the resolutions of the trustees authorizing the purchase of the Interests.

Name of Trust: _____

Trust Tax ID #: _____ Date of Trust: _____

Trustee Name: _____

Trustee Social Security No.:_____ Date of Birth: _____

Co-Trustee Name: _____

Co-Trustee: Social Security No.: _____ Date of Birth: _____

**IF A LIMITED LIABILITY COMPANY**

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Please enclose a COMPLETE copy of (i) the operating agreement, as amended to date, (ii) the certificate of formation, as amended to date, (iii) a current and complete list of all members and managers, and (iv) the resolutions of the members and/or managers authorizing the purchase of the Interests and providing authority to execute documents on behalf of the company.

Name of Entity: _____

Entity's Tax ID Number: _____ State of Formation: _____

Name of Signatory: _____

Title: ☐ Member ☐ Manager ☐ Managing Member

Signatory's Social Security No.: _____ Date of Birth: _____

Name of Signatory: _____

Title: ☐ Member ☐ Manager ☐ Managing Member

Signatory's Social Security No.: _____ Date of Birth: _____

**IF A CORPORATION**

Please enclose a COMPLETE copy of (i) the articles of incorporation, as amended to date, (ii) the bylaws, as amended to date, (iii) a list of all directors and shareholders of the corporation, and (iv) the resolutions of the board of directors authorizing the purchase of the Interests and providing authority to execute documents on behalf of the corporation.

Name of Corporation: _____

Entity's Tax ID Number: _____ State of Formation: _____

Name of Signatory: _____

Title: ☐ President ☐ Vice President ☐ Secretary ☐ Other _____

Signatory's Social Security No.: _____ Date of Birth: _____

Name of Signatory: _____

Title: ☐ President ☐ Vice President ☐ Secretary ☐ Other _____

Signatory's Social Security No.: _____ Date of Birth: _____

**IF A PARTNERSHIP**

Please enclose a COMPLETE copy of (i) the partnership agreement, as amended to date, (ii) a list of all partners (both general and limited), and (iii) the resolutions of the partnership authorizing the purchase of the Interests and providing authority to execute documents on behalf of the partnership.

Name of Partnership: _____

Entity's Tax ID Number: _____ State of Formation: _____

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Name of Signatory: _____

Title: ☐ General Partner ☐ Other _____

Signatory's Social Security No.: _____ Date of Birth: _____

Name of Signatory: _____

Title: ☐ General Partner ☐ Other _____

Signatory's Social Security No.: _____ Date of Birth: _____

## 4. ACCREDITED INVESTOR CERTIFICATION

**I hereby represent and warrant that I am an "*accredited investor*" as defined in Rule 501(a) of Regulation D promulgated under the Securities Act of 1933, as amended (the "Securities Act")**

(*Check all that apply under the appropriate ownership structure for your investment*)**:**

**INDIVIDUAL INVESTORS**:

☐ I have a net worth, or joint net worth with my spouse[1] of more than $1,000,000.[2]

☐ I have individual income in excess of $200,000, or joint income with my spouse in excess of $300,000, in each of the two most recent years, and I have a reasonable expectation of reaching the same income level in the current year.

☐ I am a director, executive officer, manager, or person serving in a similar capacity of (1) the Trust; (2) the Manager; or (3) any of the Manager's managing affiliates.

☐ I am an employee of (1) the Trust, the Manager, or any of the Manager's affiliates who in such role has participated in investment activities of the Trust 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 Trust, in either case for at least the past 12 months in connection with my regular job duties.

☐ I am a natural person (1) holding a Series 7, 65 or 82 license administered by the Financial Industry Regulatory Authority ("**FINRA**"); and (2) whose license remains in good standing.[3]

**TRUST INVESTORS**:

☐ The Trust is a revocable trust, and all of the grantors meet one of the qualifications under "*Individual Investors*" above.

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[1] The term "spouse" includes a "spousal equivalent" which is defined as a cohabitant occupying a relationship generally equivalent to that of a spouse.

[2] For purposes of calculating such net worth: (1) your primary residence **shall not** be included as an asset, (2) indebtedness secured by your primary residence, up to the estimated fair market value of the primary residence as of the date on which an Interest is purchased, **shall not** be included as a liability (**except** that if the amount of such indebtedness outstanding as of the date on which an Interest is purchased exceeds the amount outstanding 60 days before such date, other than as a result of the acquisition of the primary residence, the amount of such excess shall be included as a liability), and (3) indebtedness that is secured by your primary residence in excess of the estimated fair market value of the primary residence as of the date on which an Interest is purchased **shall** be included as a liability.

[3] Purchasers making this election must enclose with their completed Purchaser Questionnaire and Purchase Agreement a detailed report from FINRA's BrokerCheck website (https://brokercheck.finra.org/) (i) verifying that the subscriber passed a Series 7, Series 65 or Series 82 exam, and (ii) confirming that his or her license remains in good standing.

☐ The Trust has total assets in excess of $5,000,000 and was not formed for the specific purpose of acquiring Interests, and the purchase is directed by a person who has such knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of an investment in the Interests as described in Rule 506(b)(2)(ii) under the Securities Act; ***OR*** the trustee or co-trustee of the trust is a bank, insurance company, registered investment company, business development company, or small business investment company (under Rule 501(a)(1) of Regulation D promulgated under the Securities Act).

☐ The Trust is an irrevocable trust (1) that has all of the characteristics set forth in Question 255.24 of the SEC's Compliance and Disclosure Interpretations; and (2) whose grantor satisfies one or more of the accreditation standards set forth under this Purchase Questionnaire.

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**CORPORATION, PARTNERSHIP, LLC, OR OTHER ENTITY INVESTORS**:

☐ The subscribing entity 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 not formed for the specific purpose of acquiring the Interests, owning investments[4] in excess of $5,000,000.

☐ The subscribing entity is a broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended.

☐ The subscribing entity is either (1) registered with the United States Securities and Exchange Commission as an investment adviser or exempt from such registration under Section 203(l) or (m) of the Investment Advisers Act of 1940, as amended (the "**Advisers Act**"); or (2) registered as an investment adviser or equivalent under the laws of any state of the United States of America.

☐ The subscribing entity is an investment company registered under the Investment Company Act of 1940, as amended.

☐ The subscribing entity is a business development company (as defined in Section 2(a)(48) of the Investment Company Act of 1940, as amended).

☐ The subscribing entity is a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958, as amended.

☐ The subscribing entity is a private business development company (as defined in Section 202(a)(22) of the Advisers Act).

☐ The subscribing entity is a "rural business investment company" as defined in Section 384A of the Consolidated Farm and Rural Development Act, as amended.

☐ The subscribing entity is a bank as defined in Section 3(a)(2) of the Securities Act, any savings and loan association or other institution as defined in Section 3(a)(5)(A) of the Securities Act whether acting in its individual or fiduciary capacity, or any insurance company as defined in Section 2(a)(13) of the Securities Act.

☐ The subscribing entity is a "family office" or "family client" (each as defined in Rule 202(a)(11)(G)-1 of the Advisers Act) of a family office that: (1) in excess of $5,000,000 in assets under management; (2) was not formed for the specific purpose of acquiring the Interests; and (3) whose purchase of Interests 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.

☐ All of the equity owners of the subscribing entity are "accredited investors" as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act.

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[4] For purposes of this provision, "investments" is defined in Rule 2a51-1(b) under the Investment Company Act of 1940, as amended.

## 5. ACCREDITED INVESTOR REPRESENTATIONS

**FOR ALL INVESTORS**

I have such knowledge and experience in financial and business matters that I am capable of evaluating the merits and risks of a purchase of the Interests. The following is a description of my experience in financial and business matters:

_____

_____

THE INTERESTS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR THE SECURITIES LAWS OF ANY STATES AND ARE BEING OFFERED AND SOLD IN RELIANCE ON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF SAID ACT AND SUCH LAWS. THE INTERESTS ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER SAID ACT AND SUCH LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. THE INTERESTS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE 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 MEMORANDUM. ANY REPRESENTATION TO THE CONTRARY IS UNLAWFUL.

I have read the Memorandum, and I have specifically read, and specifically acknowledge and agree to the matters set forth in the section titled "FEDERAL INCOME TAX CONSEQUENCES." I have also read Section 6.1 of the Purchase Agreement which provides, in relevant part, that the Purchaser: "**i) 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 FEDERAL INCOME TAX PURPOSES AND HAS READ THE ENTIRE MEMORANDUM AND FULLY UNDERSTANDS THAT THERE IS A RISK THAT THE UNDERSIGNED'S INTEREST WILL NOT BE TREATED AS AN INTEREST IN REAL PROPERTY FOR FEDERAL INCOME TAX PURPOSES; ii) 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 PURCHASED INTEREST PURSUANT TO THIS AGREEMENT 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 SELLER; iii) IS AWARE THAT ALTHOUGH THE IRS HAS ISSUED REVENUE RULING 2004-86, 2004-2 C.B. 191 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 INTEREST WILL NOT BE PARTNERSHIP INTERESTS FOR FEDERAL INCOME TAX PURPOSES; iv) UNDERSTANDS THAT NEITHER CONTRIBUTOR, SELLER NOR SPONSOR HAS OBTAINED, AND WILL NOT REQUEST, A RULING FROM THE IRS THAT THE UNDERSIGNED'S INTEREST WILL BE TREATED AS AN UNDIVIDED INTEREST IN REAL PROPERTY AS OPPOSED TO AN INTEREST IN A PARTNERSHIP; v) UNDERSTANDS THAT THE TAX CONSEQUENCES OF AN INVESTMENT IN THE UNDERSIGNED'S INTEREST, ESPECIALLY THE TREATMENT OF THE TRANSACTION DESCRIBED HEREIN UNDER CODE SECTION 1031 AND THE RELATED RULES, ARE COMPLEX AND VARY WITH THE FACTS AND CIRCUMSTANCES OF EACH INDIVIDUAL BUYER; vi) UNDERSTANDS THAT, NOTWITHSTANDING THE OPINION OF TAX COUNSEL ISSUED TO SELLER STATING THAT AN INTEREST PURCHASED IN THIS OFFERING '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 vii) SHALL, FOR FEDERAL INCOME TAX PURPOSES, REPORT THE PURCHASE OF THE PURCHASED INTEREST BY THE UNDERSIGNED PURSUANT TO THIS AGREEMENT AS A PURCHASE BY THE UNDERSIGNED OF A DIRECT OWNERSHIP INTEREST IN THE PROPERTY.**"

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I hereby agree to indemnify, defend and hold harmless the Sponsor, the Manager, the Trust and all of their members, managers, officers, affiliates and advisors, of and from any and all damages, losses, liabilities, costs and expenses (including attorneys' fees and costs) that they may incur by reason of my failure to fulfill all of the terms and conditions of the associated Purchase Agreement or by reason of the untruth or inaccuracy of any of the representations, warranties or agreements contained herein or in any other documents I have furnished 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 and costs) incurred by the Sponsor, the Manager, the Trust or any of their members, managers, officers, affiliates or advisors, in defending against any alleged violation of federal or state securities laws which is based upon or related to any untruth of, or inaccuracy in, any of the representations, warranties or agreements contained herein or in any other documents I have furnished to any of the foregoing in connection with this transaction.

In connection with this Purchaser Questionnaire, a consumer report may be requested. Upon my request, I will be informed whether or not such a report was requested, and, if so, the name and address of the consumer reporting agency that furnished the report. I hereby authorize such reports and verification of my employment history.

To the extent I am purchasing an Interest in connection with a Section 1031 Exchange, I agree to provide the Sponsor (including its representatives and agents), upon request, any documentation relating to my identification of replacement properties with respect to such tax-deferred exchange.

Neither I nor any subsidiary, affiliate, owner, shareholder, partner, member, indemnitor, guarantor or related person or entity:

(a) is a Sanctioned Person (as defined below);
(b) has more than 15% of its assets in Sanctioned Countries (as defined below); or
(c) 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" shall mean (a) 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 (b) (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.

* * * * * * * * * * *

**Escrow Representation: I acknowledge that UMB Bank, N.A., as the Escrow Agent, is acting solely as a depository in connection with the Offering and makes no recommendation or endorsement with respect to such Offering, and the Escrow Agent has made no investigation regarding the Offering, the Trust or its affiliates, the Property or any other related person or entity.**

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## 6. ACCOMMODATOR (QUALIFIED INTERMEDIARY) INFORMATION / AUTHORIZATION

**For Investors Conducting a Section 1031 Exchange:**

I hereby confirm that the acquisition of Interests is part of a tax-deferred exchange pursuant to Section 1031 of the Internal Revenue Code, pursuant to an Exchange Agreement between Buyer and my qualified intermediary (the "**Accommodator**") whose address, telephone number and contact person are as follows (**Please complete in full**):

Name: _____

Company: _____

Street Address: _____

City:_____ Zip Code: _____

Phone No.: _____

Email Address: _____

**Types of Funds for Equity Investment are as Follows:**

☐ My entire equity investment, as denoted in Section 1, is derived from Section 1031 Exchange proceeds.

☐ My equity investment will be both exchanged equity and cash, as indicated below:

Section 1031 Exchange Funds: $_____

Cash to be Contributed: $_____

Total Equity Investment: $_____

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**Authorization of Inquiry.**

☐ By checking the box, I acknowledge my understanding, that by signing this form, I am authorizing the Trust and its authorized representatives to contact the Accommodator (the qualified intermediary) to obtain and confirm the following information:

- Funds available for exchange;
- Expiration date of 45-day identification period; and
- Expiration date of 180-day exchange period.

The Trust will use this information solely for the purpose of approving the undersigned's investment in the Interest and establishing the required time period for completing the exchange.

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## 7. DISTRIBUTION INFORMATION

Elect which distribution option you prefer from the following three choices:

☐ **Direct Deposit – please attach a pre-printed, voided check and fill in information below.** *(Note: The account must be ACH-eligible, and the investor must be the direct recipient of those funds. You may not direct deposit to a brokerage account.)* An automated deposit entry shall constitute the receipt for each transaction. This authority is to remain in force until the Trust has received written notification from you of its termination in a manner acceptable to the Trust. In the event that the Trust deposits funds erroneously into your account, the Trust is authorized to debit your account for the amount of the erroneous deposit.

Name of Institution: _____

Institution Address: _____

City: _____ State: _____ Zip Code: _____

Name on Account: _____

Routing Number: _____ Account Number: _____

☐ **Check to be mailed to a brokerage account or party other than the registered owner.** Please provide applicable information below.

Name of Institution: _____ Account Number: _____

Institution Address: _____

City: _____ State: _____ Zip Code: _____

Name on Account: _____

☐ **Check to be mailed to investor's address of record, as listed in Section 2 of this Purchaser Questionnaire.**

## 8. INFORMATION RELEASE

**Authorization of Release Information to Registered Representative and Broker-Dealer**

By signing this Purchaser Questionnaire, I/we hereby authorize the Trust and its affiliates, as well as any property manager or asset manager, to release to my registered representative and the broker-dealer listed herein (i) any tax reporting information related to the Interests, and (ii) any ongoing information related to the operation and performance of any assets held by the Trust.

The Trust and its affiliates, as well as any property manager, asset manager or tenant, shall be authorized to release such information and documentation throughout the holding period of the Interests, which includes the release of information regarding the eventual sale of my Interests.

Please note: Your registered representative and the broker-dealer named herein will receive all information regarding your initial purchase of the Interests. You may revoke your authorization to the release of information to your registered representative and broker-dealer by providing written notice of such revocation to the Trust for any information to be released thereafter.

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**Election Not to Authorize Release**

If you do not wish to authorize the release of the information as stated above, please check the appropriate boxes below:

☐ I/We do not authorize the Trust, its affiliates, and any property manager or asset manager, to release to the registered representative or the broker-dealer named in Section 12 of this Purchaser Questionnaire the following information (*check all that apply*):

☐ Tax reporting information related to my/our Interests.

☐ Ongoing information related to the operation and performance of any assets held by the Trust, including the eventual sale of my/our Interests.

**Notwithstanding anything to the contrary contained herein, I/we acknowledge that all information regarding my/our initial purchase of the Interests will be provided to my/our registered representative.**

## 9. EXECUTION

I attest to the foregoing Accredited Investor Representations and hereby represent and warrant to Seller that all representations and warranties contained herein are true and correct

**EXECUTED ON THIS _____ DAY OF _____, 20_____**

**IF INDIVIDUAL INVESTORS**

(*Note: If a spouse is not an Investor, see Section 10 of this Purchaser Questionnaire*)

Signature: _____

Name: _____

Co-Investor Signature *(if applicable)*: _____

Name: _____

**IF A LIMITED LIABILITY COMPANY**

The undersigned hereby represents, warrants and agrees that (i) the undersigned is either the authorized manager or authorized representative of the limited liability company named below (the "**LLC**"), (ii) the undersigned has been duly authorized by the LLC to acquire the Interests and has all requisite power and authority to acquire the Interests, and (iii) the undersigned has all requisite authority to execute this Purchaser Questionnaire and the Purchase Agreement.

Name of LLC: _____

Signature: _____

Co-Investor Signature *(if applicable)*: _____

Name: _____

Title: _____

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**IF A PARTNERSHIP**

The undersigned hereby represents, warrants and agrees that (i) the undersigned is a general partner of the partnership named below (the "**Partnership**"), (ii) the undersigned general partner has been duly authorized by the Partnership to acquire the Interests and the general partner has all requisite power and authority to acquire the Interests, and (iii) the undersigned has all requisite authority to execute this Purchaser Questionnaire and the Purchase Agreement.

Name of Partnership:_____

Signature: _____

Co-Investor Signature *(if applicable)*: _____

Name: _____

Title: _____

**IF A CORPORATION**

The undersigned hereby represents, warrants and agrees that (i) the undersigned has been duly authorized by all requisite action on the part of the corporation listed below (the "**Corporation**") to acquire the Interests, (ii) the Corporation has all requisite power and authority to acquire the Interests, and (iii) the undersigned has all requisite authority to execute this Purchaser Questionnaire and the Purchase Agreement.

Name of Corporation: _____

Signature: _____

Co-Investor Signature *(if applicable)*: _____

Name: _____

Title: _____

**IF A TRUST**

The undersigned hereby represents, warrants and agrees that (i) the undersigned trustee is duly authorized by the terms of the trust instrument for the trust set forth below to acquire the Interests, (ii) the undersigned, as trustee, has all requisite power and authority to acquire the Interests for the trust, and (iii) the undersigned trustee has all requisite authority to execute this Purchaser Questionnaire and the Purchase Agreement.

Name of Trust: _____

Signature: _____

Name: _____

Title: _____

Signature (Co-Trustee): _____

Name: _____

Title:_____

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## 10. SPOUSAL CONSENT FOR INDIVIDUAL PURCHASERS

*This section is applicable to the following community property states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Alaska, Florida, Kentucky, Tennessee, and South Dakota are opt-in community property states that give both parties the option to make their property community property.*

I, _____, spouse of _____ have read and approved the foregoing Purchaser Questionnaire. I hereby appoint my spouse as my attorney-in-fact with respect to the exercise of any rights related to the Interests and agree to be bound by the provisions of the Purchase Agreement, Trust Agreement, and any other document related to such Interests (collectively, the "**Purchase Documents**") insofar as I may have any rights in said Purchase Documents or any property 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 the signing of this Purchaser Questionnaire or the Purchase Documents.

**Executed on this _____ day of _____, 20_____**

Signature: _____

Name: _____

## 11. SUBSTITUTE FORM W-9

I declare that the information supplied herein is true and correct and may be relied upon by the Trust in connection with my investment. Under penalties of perjury, by signing this Purchaser Questionnaire, I hereby certify that (a) I have provided herein my correct Taxpayer Identification Number; (b) I am not subject to backup withholding as a result of a failure to report all interest or dividends, or the IRS has notified me that I am no longer subject to backup withholding, and (c) except as otherwise expressly indicated above, I am a U.S. person (including a U.S. resident alien). **If the IRS has notified you that you are subject to backup withholding, then you must strike out the language in clause (b) in the certificate above.**

Definition of a U.S. person – For U.S. federal tax purposes, you are considered a "**U.S. person**" if you are:

- an individual who is a U.S. citizen or U.S. resident alien,
- a partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Treasury Regulations Section 301.7701-7).

If you desire to purchase the Interests and are an entity or arrangement treated as a partnership for U.S. federal income tax purposes, **stop completing this Purchaser Questionnaire and contact the Sponsor immediately**. The tax treatment of the partnership and a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. Prospective Purchasers who are partnerships, or that invest in the Interests through a partnership, should consult with their tax advisers regarding the tax consequences to them.

**The IRS does not require your consent to any provisions of this document other than the certifications required to avoid backup withholding.**

Signature: _____

Name: _____

Name of Investing Entity (*if applicable*): _____

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Signer's Title (*if Investor is an Entity*): _____

Date: _____

Signature (of spouse or second investor): _____

Name: _____

Date: _____

## 12. BROKER-DEALER AND RIA REPRESENTATIONS

Purchaser suitability requirements have been established by the Trust and fully disclosed in the Memorandum under "WHO MAY INVEST" and in the Purchaser Questionnaire. Before recommending the purchase of an Interest, we have reasonable grounds to believe, on the basis of information supplied by the subscriber concerning his, her, or its investment objectives, other investments, financial situation and needs, and other pertinent information that: (i) the subscriber is an Accredited Investor as defined in Section 501(a) of Regulation D promulgated under the Securities Act and meets the investor suitability requirements set forth in the Memorandum and the Purchaser Questionnaire, (ii) the subscriber has a net worth and income sufficient to sustain the risks inherent in the Interests, including loss of investment and lack of liquidity, (iii) the Interests are otherwise a suitable purchase for the subscriber, and (iv) the undersigned has taken all steps necessary to verify the Accredited Investor status as required pursuant to Rule 506(c) of Regulation D. The undersigned certifies that it has complied with all of the requirements of Rule 506(c) of Regulation D, including with respect to the determination and verification of the Accredited Investor status of any investor recommended by the broker-dealer for the purchase of Interests. The undersigned hereby certifies that the investor is an Accredited Investor and that the undersigned has verified the Accredited Investor status within the past three months. We will maintain in our files documents disclosing the basis upon which the suitability of this subscriber was determined.

We verify that the above subscription either does not involve a discretionary account or, if so, that the subscriber's prior written approval was obtained relating to the liquidity and marketability of the Interests during the term of the purchase.

Name of Purchaser: _____

Broker-Dealer/Registered Investment Adviser ("**RIA**") Firm Name:_____

Registered Representative Name:_____

Registered Representative's CRD Number:_____

Registered Representative's Company: _____

Registered Representative's Rep & Branch Number: _____

Branch Address, City, State, Zip: _____

Branch Fax Number: _____

Email Address:_____

We affirm the Broker-Dealer/RIA and Registered Representative noted above are properly licensed in the state of residence of the Purchaser.

We hereby certify that the Registered Representative noted above is not or has not been:

(a) Convicted, within 10 years of the date hereof (the "**Effective Date**") of any felony or misdemeanor that was:

(i) In connection with the purchase or sale of any security;

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(ii) Involving or making of any false filing with the Securities and Exchange Commission (or "**SEC**"); or

(iii) Arising out of the conduct of the business of an RIA, underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities.

(b) Subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before the Effective Date, that restrains or enjoins such person from engaging or continuing in any conduct or practice:

(i) In connection with the purchase or sale of any security;

(ii) Involving the making of any false filing with the SEC; or

(iii) Arising out of the conduct of the business of an RIA, underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities.

(c) Subject to a final order of a state securities commission (or an agency or officer of a state performing like functions), a state authority that supervises or examines banks, savings associations or credit unions, a state insurance commission (or an agency or officer of a state performing like functions), an appropriate federal banking agency, the U.S. Commodity Futures Trading Commission or the National Credit Union Administration that:

(i) As of the Effective Date, bars the person from:

(1) Association with an entity regulated by such commission, authority, agency or officer;

(2) Engaging in the business of securities, insurance or banking; or

(3) Engaging in savings association or credit union activities.

(ii) Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative or deceptive conduct entered within 10 years before the Effective Date.

(d) Subject to an order of the SEC pursuant to sections 15(b) or 15B(c) of the Exchange Act or section 203(e) or (f) of the Advisers Act that, at the time of such sale:

(i) Suspends or revokes such person's registration as an RIA, broker, dealer, municipal securities dealer or investment advisor;

(ii) Places limitations on the activities, functions or operations of such person; or

(iii) Bars such person from being associated with any entity or from participating in the offering of any penny stock.

(e) Subject to any order of the SEC entered within five years before the Effective Date, as of the date hereof, that orders the person to cease and desist from committing or causing a violation or future violation of:

(i) Any scienter-based anti-fraud provisions of the federal securities laws including, without limitation, section 17(a)(1) of the Securities Act, section 10(b) of the Exchange Act and 17 CFR 240.10b-5, section 15(c)(1) of the Exchange Act and section 206(1) of the Investment Advisers Act, or any other rule or regulation thereunder; or

(ii) Section 5 of the Securities Act.

(f) Suspended or expelled from membership in, or suspended or barred from association with, a member of a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade.

(g) Filed (as a registrant or issuer), or was named as an underwriter in, any registration statement or Regulation A offering statement filed with the SEC that, within five years of the Effective Date, was the subject of a refusal order,

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stop order or order suspending the Regulation A exemption, or is, at the time of such sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued.

(h) Subject to a United States Postal Service false representation order entered within five years before the Effective Date, or is, at the Effective Date, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

The representations and warranties above are and shall be continuing representations and warranties throughout the term of the Offering. In the event that any of these representations or warranties become untrue, the Registered Representative and Broker-Dealer/RIA will immediately notify the Trust in writing of the fact which makes the representation or warranty untrue.

| | |
|---|---|
| Signature of Registered Representative | Broker-Dealer/RIA (if applicable) Principal Approval Signature |
| Name | Name |
| Date | Date |

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**APPENDIX A**

**NEXPOINT WATERFORD DST**
**PURCHASE AGREEMENT**

THIS PURCHASE AGREEMENT ("**Agreement**") is made and effective as of the date Seller (as defined herein) executes this Agreement ("**Effective Date**"), by and between NexPoint Waterford DST, a Delaware statutory trust ("**Seller**"), and the undersigned buyer ("**Buyer**"), with reference to the facts set forth below. All terms with initial capital letters not otherwise defined herein shall have the meanings set forth in the Memorandum (as defined below).

**RECITALS**

- NexPoint Waterford Investment Co, LLC ("**Contributor**"), NexPoint Waterford Parent Manager, LLC ("**Manager**"), and The Corporation Trust Company (the "**Delaware Trustee**") have entered into that certain First Amended and Restated Trust Agreement of Seller dated January 16, 2026 (the "**Trust Agreement**").
- NexPoint Real Estate Advisors IV, L.P. ("**Sponsor**") is sponsoring the offering of Class 1 beneficial interests in Seller ("**Interests**") to purchasers who will become beneficial owners ("**Beneficial Owners**") in Seller.
- Seller desires to sell and Buyer desires to buy Interests on the terms and conditions set forth in this Agreement. The Interests are being offered for sale pursuant to the Private Placement Memorandum dated March 18, 2026 (together with any amendments and supplements thereto, the "**Memorandum**").
- Contributor owns one hundred percent (100%) of the Class 2 Beneficial Interests in Seller.
- Buyer understands that the Purchase Price (as defined below) will be distributed to the Contributor in whole or partial redemption of the Class 2 beneficial interest in Seller held by the Contributor.
- Seller is the owner of a real property commonly known as "Waterford Place" located at 101 Shore Lake Drive, Greensboro, North Carolina 27455 (the "**Property**").
- The Property is subject to the Master Lease and the Loan Documents.

NOW, THEREFORE, in consideration of the covenants and mutual agreements set forth herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

1. Agreement of Purchase and Sale.

1.1. Sale and Purchase Price. Seller hereby agrees to issue and sell, and Buyer hereby agrees to purchase, $_____ (the "**Purchase Price**") worth of Interests in Seller (the "**Purchased Interest**"), and agrees to pay a total cost of $100,000 for each 0.319% Interest to be acquired, which shall be allocated $100,000 in cash (for each 0.319% ownership interest in Seller purchased) (the "**Cash Portion**") and $94,704 in the nature of the attributed Loan debt (for each 0.319% ownership interest in Seller purchased). The Interests are being purchased pursuant to the terms and conditions of the Memorandum, receipt of which is hereby acknowledged. The Purchase Price shall include the compensation and fees payable to Seller and its affiliates as set forth in the Memorandum.

1.2. Payment. Buyer shall pay the Cash Portion of the Purchase Price as follows:

1.2.1. Purchase Price. The execution and delivery of this Agreement shall be deemed to constitute Buyer's offer to purchase the Purchased Interest and shall constitute the Buyer's confirmation of its capacity to fund the entirety of the Cash Portion of its Purchase Price. Upon Seller's acceptance of the offer and written demand to close, the Buyer shall deliver to Seller (either directly or indirectly through Buyer's Accommodator identified on the Purchaser Questionnaire ("**Accommodator**")) by wire or by check payable to "NexPoint Waterford DST" or another mutually agreed upon escrow party, as applicable ("**Escrow Agent**") the full amount of the Cash Portion, to be received by Seller at least two (2) business days prior to the Closing, to commence the closing of the sale of the Purchased Interest.

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1.3. Buyer's Deliveries. Concurrently with the delivery of the Cash Portion, Buyer shall execute, acknowledge (where appropriate) and deliver to Seller: i) an executed signature page or joinder to the Trust Agreement and ii) such other documents as may reasonably be requested by Seller and/or Escrow Agent. The Trust Agreement (including all executed signature pages thereto) shall not be effective until one or more subscriptions of Class 1 Beneficial Interests have been processed in the Initial Closing (as defined below).

1.4. Buyer's Intent to Exchange. If Buyer's acquisition is part of a tax-deferred exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended ("**Code**"), it is a condition precedent to the closing of the purchase and sale of the Purchased Interest (the "**Closing**") that Buyer is able to complete an exchange for all or a portion of its relinquished property pursuant to an exchange agreement between Buyer and _____ ("**Accommodator**"). Seller agrees to execute such documents or instruments as may be necessary or appropriate to evidence such exchange, provided that Seller's cooperation in such regard shall be at no additional cost, expense or liability whatsoever to Seller, and that no additional delays in the Closing are incurred unless mutually agreed upon by Buyer and Seller. Buyer may assign its rights under this Agreement to Accommodator pursuant to an exchange agreement between Buyer and Accommodator (the "**Exchange Agreement**") to affect such exchange.

1.5. Advisors. Buyer has consulted with a qualified attorney or other knowledgeable professional as to the tax and real estate issues associated with a purchase of an Interest.

2. Closing.

2.1. Cash Portion. At least two (2) business days prior to the Closing, to commence the Closing, Buyer shall deliver the Cash Portion to the Escrow Agent and, upon Seller's demand in order to close, the Escrow Agent shall deliver Buyer's Cash Portion to Seller. Seller shall provide escrow instructions to the Escrow Agent consistent with the terms of this Agreement and, pending the Closing, the Buyer and Seller shall execute additional escrow instructions not inconsistent with the terms of this Agreement if reasonably required by Escrow Agent or the Accommodator.

2.2. Seller's Deliveries. Prior to the Closing, Seller shall deposit into escrow applicable certificates regarding federal and state withholding taxes and execute other customary documents in the appropriate form conveying the Purchased Interest to Buyer as of the Closing.

2.3. Closing Date. Seller agrees that so long as it has received one or more subscriptions of Class 1 Beneficial Interests and payments, there will be (i) an initial closing at any time after one or more subscriptions of Class 1 Interests have been processed (the "**Initial Closing**"), and (ii) daily closings thereafter (the "**Closing Date**") until all Class 1 Interests to be issued in the Offering have been sold or until the Offering terminates, provided that each of the Initial Closing and these daily closings shall be referred to as a "**Closing**" and, collectively, as the "**Closings**." Closings shall occur IF AND ONLY IF all funds and instruments required pursuant to Sections 1 and 2 have been delivered to Seller or Escrow Agent, as the case may be. Seller is instructed to insert the Closing Date as the closing date of the other Purchase Documents (as defined in the Purchaser Questionnaire).

2.4. Latest Closing. If the Closings have not occurred by 5:00 p.m. on the business day after the Closing Date, for any reason other than the default of either Buyer or Seller under this Agreement, either party may terminate this Agreement by written notice to the other party and to Escrow Agent. If this Agreement is so terminated for any reason other than the default of Buyer or Seller hereunder, i) Buyer and Seller shall promptly execute and deliver any cancellation instructions reasonably requested by Escrow Agent; ii) Escrow Agent shall return the Cash Portion to Buyer or Buyer's Accommodator, as the case may be; and iii) Buyer and Seller shall be released from their obligations under this Agreement, other than any obligations of Buyer that survive termination of this Agreement. If all conditions to the Closing have been satisfied or waived by the Closing Date and Buyer fails to consummate the purchase of the Purchased Interest, in addition to any other rights or remedies that Seller may have, Seller shall be entitled to terminate this Agreement and, upon such termination, Seller shall be released from all obligations under this Agreement.

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3. Closing Cancellation. If Closing fails to occur due to Buyer's default under this Agreement, Buyer shall pay all escrow cancellation charges. If Closing fails to occur for any other reason other than the foregoing, Seller shall pay any cancellation charges.

4. Distribution of Funds and Documents.

   4.1. Transfer Agent. The Escrow Agent has engaged LODAS Transfer (the "**Processing Agent**") to receive and facilitate subscriptions into and out of an escrow account, as further described herein, and to serve as the record keeper, maintaining on behalf of the Escrow Agent the ownership records for the Escrow Account

   4.2. Deposit of Funds. Completed subscriptions and checks in payment for the purchase price shall be remitted to the address designated for the receipt of such agreements and funds; and, drafts, wires or Automated Clearing House ("**ACH**") payments shall be transmitted directly to the Escrow Account. The Processing Agent will promptly deliver all monies received in good order from subscribers (or from the Managing Broker-Dealer or other Participating Dealers transmitting monies and subscriptions from subscribers) for the payment of Interests to the Escrow Agent for deposit in the Escrow Account. All cash received hereunder by Escrow Agent shall, until the Closing, be kept on deposit with other funds in Escrow Agent's general account(s), in any state or national bank, and may be transferred to any other such general account(s).

   4.3. Disbursements. In accordance with the Escrow Agreement, Escrow Agent at the Closings will hold for personal pickup, or if requested, wire transfer to an account designated by the party receiving such funds, the following: i) to Seller, or order, the Cash Portion, plus any proration or other credits to which Seller will be entitled less any appropriate proration or other charges due Buyer, and ii) to Buyer or Buyer's Accommodator, as the case may be, or order, the Cash Portion and any excess funds previously delivered to Escrow Agent by Buyer. All other disbursements by Escrow Agent shall be made by checks of Escrow Agent in accordance with the Escrow Agreement.

5. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer as of the Effective Date and the Closing Date that:

   5.1. This Agreement has been duly authorized, executed and delivered by Seller.

   5.2. Seller is duly formed and validly existing as a Delaware Statutory Trust under Chapter 38 of Title 12 of the Delaware Code (the "**Statutory Trust Act**") and has all requisite power and authority under the Trust Agreement and the Statutory Trust Act to enter into and carry out the terms of this Agreement and to conduct its activities as described in the Trust Agreement.

   5.3. Neither Sponsor, Manager, Contributor nor Seller has ever filed for or been involved as a debtor in bankruptcy proceedings. There is no legal action, suit, arbitration or other legal, administrative or other governmental investigation, inquiry or proceeding (whether federal, state, local, or foreign) pending or, to the knowledge of Seller, threatened against Sponsor, Manager, Contributor or Seller that, individually or in the aggregate, if adversely determined, is reasonably likely to impair or otherwise affect such Seller's ability to perform its obligations under this Agreement or the Trust Agreement or is reasonably likely to have a material adverse effect on either such Seller's financial condition.

   5.4. This Agreement constitutes legal, valid and binding agreements enforceable against Seller in accordance with its terms, except as such enforceability may be limited by the effect of i) bankruptcy, insolvency, reorganization, receivership, conservatorship, moratorium or other similar debtor relief laws from time to time in effect under state or federal law; ii) general principles of equity, whether considered in a proceeding in equity or at law; iii) the exercise of the discretionary powers of any court or other authority before which may be brought any proceeding seeking equitable remedies, including, without limitation, specific performance and injunctive relief, iv) applicable fraudulent conveyance laws from time to time in effect; and v) public policy considerations underlying the securities laws, to

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the extent that such public policy considerations limit the enforceability of the provisions of this Agreement that purport or are construed to provide indemnification from securities law liabilities.

5.5. The execution and delivery by Seller of this Agreement and the sale of the Purchased Interests hereunder, and the fulfillment of and compliance with the respective terms hereof and thereof by Seller, do not and shall not i) conflict with or result in a breach of the terms, conditions, or provisions of, ii) constitute a material default under, iii) result in the creation of any lien or encumbrance upon Seller's assets pursuant to, iv) give any third party the right to modify, terminate, or accelerate any obligation under, v) result in a violation of, or vi) require any authorization, consent, approval, exemption, or other action by or notice or declaration to, or filing with any court or administrative or governmental body or agency pursuant to, the organizational documents of Seller, or any law, statute, rule or regulation, order, judgment or decree to which Seller is subject, or any material agreement or instrument to which Seller is subject.

5.6. On and after the Closing Date, Seller shall, for federal income tax purposes, treat Seller as an investment trust pursuant to Treasury Regulations Section 301.7701-4(c) and each Beneficial Owner as a "grantor" within the meaning of Code Section 671, except on and after a Transfer Distribution. Seller agrees to report Contributor's and Buyer's interest in Seller in a manner consistent with the foregoing and otherwise not to take any action that would be inconsistent with the foregoing. Accordingly, the Contributor and Seller shall, for federal income tax purposes, report the sale of the Purchased Interest to the Buyer pursuant to this Agreement as a sale to Buyer of a direct ownership interest in the Property.

6. Buyer Representations and Warranties. The Buyer, as of the Effective Date and the Closing Date:

6.1. Represents and warrants that the undersigned: i) 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 federal income tax purposes and has read the entire Memorandum and fully understands that there is a risk that the undersigned's Interest will not be treated as an interest in real property for federal income tax purposes; ii) 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 Purchased Interest pursuant to this Agreement 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 Seller; iii) is aware that although the IRS has issued Revenue Ruling 2004-86, 2004-2 C.B. 191 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 Interest will not be partnership interests for federal income tax purposes; iv) understands that neither Contributor, Seller nor Sponsor has obtained, and will not request, a ruling from the IRS that the undersigned's Interest will be treated as an undivided interest in real property as opposed to an interest in a partnership; v) understands that the tax consequences of an investment in the undersigned's Interest, especially the treatment of the transaction described herein under Code Section 1031 and the related rules, are complex and vary with the facts and circumstances of each individual Buyer; vi) understands that, notwithstanding the opinion of Tax Counsel issued to Seller stating that an Interest purchased in this offering "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 vii) shall, for federal income tax purposes, report the purchase of the Purchased Interest by the undersigned pursuant to this Agreement as a purchase by the undersigned of a direct ownership interest in the Property.

6.2. Acknowledges that the undersigned i) has received and reviewed the Memorandum and the Trust Agreement, and their exhibits and other documents incorporated by reference therein; and ii) is familiar with and understands each of the foregoing including, without limitation, the "Risk Factors" set forth in the Memorandum.

6.3. Represents and warrants that the undersigned, in determining to purchase an Interest, has relied solely upon the Memorandum (including the exhibits thereto and other documents incorporated by reference

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therein) and the advice of the undersigned's legal counsel and accountants or other financial advisors with respect to the tax and other consequences involved in purchasing Interests.

6.4. Acknowledges that the Purchased 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 by the Trust Agreement, both of which the undersigned accepts and by which the undersigned agrees by execution.

6.5. Represents and warrants that the undersigned either i) is an Accredited Investor, or ii) is purchasing in a fiduciary capacity for a person meeting such condition.

6.6. Represents and warrants that the Purchased 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 any Interests or any portion thereof to any other Person.

6.7. Represents and warrants that the undersigned i) can bear the economic risk of the purchase of the Purchased Interest including the total loss of the undersigned's investment; and 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 Interests, or that the undersigned is being advised by others (acknowledged by the undersigned as being the "Buyer Representative(s)" of the undersigned) such that they and the undersigned together are capable of making such evaluation.

6.8. Understands that the undersigned will be required to provide current financial and other information to the Trust to enable it to determine whether the undersigned is qualified to purchase the Purchased Interest.

6.9. Understands that the Purchased 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, which restrictions are in addition to certain other restrictions set forth in the Trust Agreement.

6.10. Agrees that the undersigned will not sell or otherwise transfer or dispose of the Purchased Interest or any portion thereof unless, among other things, i) such Interest is registered under the Securities Act and any applicable state securities laws or, if required by Trust, the undersigned obtains an opinion of counsel that is satisfactory to Trust that such 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.

6.11. Agrees that the transfer of the Purchased Interest is subject to a right of first offer, a right of first refusal, and/or the approval of the Manager and the Purchased Interest may not be transferred if the transfer would cause there to be more than 499 owners.

6.12. Agrees that the undersigned will not sell or transfer the Purchased Interest 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; ii) any person that is directly or indirectly acquiring the Purchased 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 non-U.S. Person (defined herein).

6.13. Acknowledges that the undersigned's overall commitment to investments that are not readily marketable is not disproportionate to the undersigned's individual net worth, and the undersigned's purchase of the Purchased Interest will not cause such overall commitment to become excessive. The

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undersigned has adequate means of providing for the undersigned's financial requirements, both current and anticipated, and has no need for liquidity in this investment. Buyer can bear and is willing to accept the economic risk of losing the undersigned's entire investment in the Purchased Interest.

6.14. Understands that i) the Trust has no obligation or intention to register any 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 Interest or any portion thereof for an indefinite period of time or at any particular time.

6.15. Acknowledges that the undersigned has been encouraged to rely upon the advice of the undersigned's legal counsel and accountants or other financial advisors with respect to the tax and other considerations relating to the purchase of the Purchased Interest and has been offered, during the course of discussions concerning the purchase of the Purchased Interest, the opportunity to ask such questions and inspect such documents concerning the Interests, the Trust, the Property and the offering as the undersigned has requested so as to understand more fully the nature of the investment and to verify the accuracy of the information supplied.

6.16. Agrees that the information in the Memorandum, including but not limited to property or tenant financial information, property reports or summaries, and other agreements, documents, materials, and oral and/or written information with respect to the proposed purchase of the Purchased Interest is confidential "**Business Information**"; agrees that the Business Information is confidential and is intended solely for the undersigned's limited use and benefit in determining the undersigned's desire to purchase the Purchased Interest; and agrees to keep the Business Information permanently confidential, and not to disclose or divulge any Business Information to, or reproduce any Business Information for the benefit of, any Person other than those individuals who are actively and directly participating in the analysis of the proposed investment on behalf of the undersigned (to the extent reasonably required for such analysis) and who have been informed of the confidential nature of such information.

6.17. Represents and warrants that, if an individual, i) the undersigned is at least 19 years of age; ii) the undersigned is a U.S. Person (as defined below); iii) the undersigned has adequate means of providing for the undersigned's current needs and personal contingencies; iv) the undersigned has no need for liquidity in the undersigned's investments; v) the undersigned maintains the undersigned's principal residence at the address previously disclosed to Seller; vi) all investments in and commitments to non-liquid investments are, and after the purchase of the Purchased Interest will be, reasonable in relation to the undersigned's net worth and current needs; vii) any financial information that is provided by the undersigned, or is subsequently submitted by the undersigned at the request of Seller, does or will accurately reflect the undersigned's financial condition with respect to which the undersigned does not anticipate any material adverse change; viii) the execution, delivery and performance by the Buyer of this Agreement and the Trust Agreement are within such person's legal right and power, require no action by or in respect of, or filing with, any governmental body, agency or official, or any third party (except as disclosed in writing to Seller as of the date that this Agreement is signed by the Buyer), and do not and will not contravene, or constitute a default under, any provision of applicable law, rule or regulation or of any agreement, judgment, injunction, order, decree or other instrument binding upon such Buyer or any material agreement or other instrument to which the Buyer is a party or by which the Buyer or any of its respective properties is bound, other than contraventions or defaults that do not impair or otherwise affect the Buyer's ability to perform its obligations under this Agreement or the Trust Agreement or are not material to the Buyer's financial condition; and ix) this Agreement and the Trust Agreement constitute the legal, valid and binding obligations of the Buyer enforceable against the Buyer in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or to general principles of equity.

6.18. Represents and warrants that if an entity, i) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; ii) the execution, delivery and performance by it of

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this Agreement and the Trust Agreement are within its powers, have been duly authorized by all necessary action on its behalf, require no action by or in respect of, or filing with, any governmental body, agency or official, or any third party (except as disclosed in writing to Seller as of the date that this Agreement is signed by the Buyer) and do not and will not contravene, or constitute a default under, (a) any provision of its certificate of incorporation, by-laws, limited liability company operating agreement, limited partnership agreement or other comparable organizational documents or (b) any provision of applicable law, rule or regulation or of any agreement, judgment, injunction, order, decree or other instrument binding upon such Buyer or any material agreement or other instrument to which the Buyer is a party or by which the Buyer or any of its respective properties is bound, or any material license, permit or franchise applicable to the Buyer or its business, properties or rights other than such contraventions or defaults that do not impair or otherwise affect the Buyer's ability to perform its obligations under this Agreement or the Trust Agreement or are not material to the Buyer's financial condition; and (c) this Agreement and the Trust Agreement constitute the legal, valid and binding obligations of the Buyer enforceable against the Buyer in accordance with their respective terms, subject to any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or to general principles of equity.

6.19. The Buyer has never filed for or been involved as a debtor in bankruptcy proceedings. There is no legal action, suit, arbitration or other legal, administrative or other governmental investigation, inquiry or proceeding (whether federal, state, local, or foreign) pending or, to the knowledge of the Buyer, threatened against the Buyer that, individually or in the aggregate, if adversely determined, is reasonably likely to impair or otherwise affect the Buyer's ability to perform its obligations under this Agreement or the Trust Agreement or is reasonably likely to have a material adverse effect on the Buyer's financial condition.

6.20. 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 Interests, passed upon or endorsed the merits of the Offering or the accuracy or adequacy of the Memorandum, or made any finding or determination as to the fairness of the Interests for public investment.

6.21. Acknowledges that Seller has the unconditional right to accept or reject any offer to purchase the Interests.

6.22. Understands that the Purchased Interest is being offered and sold in reliance on specific exemptions from the registration requirements of federal and state laws and that Seller is relying upon the truth and accuracy of the representations, warranties, agreements, acknowledgments and understandings set forth herein and in the Purchaser Questionnaire in order to determine the suitability of the undersigned to purchase the Purchased Interest.

6.23. Represents, warrants and agrees that, if the undersigned is acquiring the Purchase 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 Purchased Interest is being acquired, ii) the name of such person or persons is indicated below the Buyer's name, and iii) such further information as Seller deems appropriate shall be furnished regarding such person or persons.

6.24. Represents and warrants that the Purchaser Questionnaire delivered to Seller is true and complete and agrees that Seller may rely on the truth and accuracy of the information for purposes of assuring Seller that it may rely on the exemptions from the registration requirements of the Securities Act afforded by Section 4(a)(2) of the Securities Act and Regulation D promulgated under the Securities Act, and of any applicable state statutes or regulations; and, further, agrees that Seller may present such information to such parties as they deem appropriate if called upon to verify the information provided or to establish the availability of an exemption from registration under Section 4(a)(2) of the Securities Act, Regulation D or any state securities statutes or regulations or if the contents are relevant to any issue in any action, suit or proceeding by which it is or may be bound.

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6.25. The Buyer will furnish Sponsor, Contributor, Manager, Delaware Trustee, or Seller with any information, representations and forms as shall reasonably be requested by such parties from time to time to assist them in complying with any applicable legal or tax requirements or determining the extent of, and in fulfilling, its withholding obligations. The Buyer agrees to furnish Sponsor, Contributor, Manager, Delaware Trustee, or Seller with any representations and forms as shall reasonably be requested by Sponsor, Contributor, Manager, Delaware Trustee, or Seller to assist them in obtaining any exemption, reduction or refund of any withholding or other taxes imposed by any taxing authority or other governmental agency upon Seller or amounts paid to Seller. The Buyer confirms that i) the Buyer is obligated to pay Seller any amounts that Seller is required to withhold or pay with respect to or on behalf of the Buyer and that exceed amounts then available for distribution to the Buyer, whether or not Seller has terminated or dissolved, ii) to the extent that the Buyer owes any amounts to Seller hereunder, the Buyer understands and agrees that Sponsor, Contributor, Manager, Delaware Trustee, or Seller may withhold such amounts from any distributions that otherwise would be made to the Buyer under the Trust Agreement in satisfaction thereof (it being understood that such amounts shall be deemed distributed for purposes of the Trust Agreement), without waiver of any other rights Seller may have hereunder or thereunder, and iii) the Buyer is responsible for compliance with all tax, exchange control, reporting and other laws and regulations applicable to its investment in the Buyer, and will indemnify Seller with respect to any losses or expenses it incurs because of non-compliance by the Buyer.

6.26. Acknowledges and agrees that counsel, including Tax Counsel, to Seller, the Contributor, Sponsor, the Manager, the Master Tenant 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 or all of the Buyers in any way in connection with the purchase of the Purchased Interest and the entering into of the related Purchase Documents (as defined in the Purchaser Questionnaire).

6.27. Represents and warrants that it has not dealt with any finder, real estate broker or realtor in connection with this Agreement.

6.28. Agrees to indemnify, defend and hold harmless the Seller, the Sponsor, the Contributor, the Manager, the Master Tenant, sales agents, soliciting dealers and each of their respective trustees, members, managers, shareholders, officers, directors, employees, consultants, affiliates and advisors (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 the undersigned has furnished to any of the foregoing in connection with this transaction or breach of this Agreement. 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 this Agreement, 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.

6.29. Acknowledges and agrees that if requested by Seller, the undersigned will execute and deliver the Bad Actor Addendum attached as Addendum A hereto, together with the Irrevocable Proxy attached as Appendix C thereto, and if the undersigned is an entity, the undersigned will have each of its beneficial owners who by virtue of ownership thereof would own twenty percent (20%) or more of the Interests, as determined by Seller, execute and deliver a Bad Actor Addendum. The undersigned understands that if Seller requests that the undersigned execute and deliver a Bad Actor Addendum, such execution and delivery shall be a condition to its purchase of the Purchased Interest.

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6.30. Represents and warrants that: (1) the undersigned is a U.S. Person (as defined below) for purposes of U.S. income taxation; (2) that the following information contained elsewhere in the Purchase Agreement or the Purchaser 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 non-U.S. Person (i.e., 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. For the purposes of this Agreement, the term "**U.S. Person**" shall mean: (1) an individual citizen or resident of the United States, (2) a corporation or any entity taxable as a corporation created or organized in or under the laws of the United States, any state or political subdivision thereof or the District of Columbia, (3) an estate the income of which is subject to U.S. federal income taxation regardless of its source, and (4) a trust if (i) it is subject to the primary supervision of a U.S. court and one or more U.S. Persons have the authority to control all substantial decisions of the trust, or (ii) that has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. Person.

6.31. Represents and covenants that Buyer does not, to the best of Buyer's knowledge, have existing claims, rights (including rights of indemnification, contribution and other similar rights, from whatever source, whether under contract, law or otherwise), causes of action, protests, suits, disputes, orders, obligations, debts, demands, proceedings, liabilities, or controversies against Sponsor or its affiliates ("**Sponsor Claims**"). Further, Buyer voluntarily and unconditionally agrees to release and forever discharge Sponsor, its affiliates, their directors, officers, employees, agents, shareholders, successors, and assigns from existing Sponsor Claims (if any) as of the date of this Agreement.

6.32. Acknowledges and agrees that the Interests are subject to the right of first offer, right of first refusal, the Exchange Right, and the Periodic Purchase Offer as described in the Trust Agreement and Memorandum.

6.33. Acknowledges and agrees that Buyer has not relied upon any investment advice or recommendation of Seller, Sponsor, or any of their affiliates as a basis for the decision to invest in the Purchased Interest, and Buyer has examined the suitability of the investment in the Purchased Interest in the context of its own needs, purchase objectives, and financial capabilities to make its own independent investigation and decision (in its sole discretion) as to suitability and as to the risk and potential gain involved.

6.34. Confirmations Relating to USA PATRIOT Act and Other Laws and Regulations.

6.34.1. If the Buyer is an *individual*, the Buyer represents and warrants that the Buyer (a) is not, and is not acting on behalf of any other person in connection with this subscription that is (i) an individual, entity or organization named on the List of Specially Designated Nationals and Blocked Persons maintained by the U.S. Office of Foreign Assets Control ("**OFAC**") (the "**SDN List**") or in the Annex to Executive Order No. 13224 (2001) issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit or Support Terrorism); (ii) a non-U.S. shell bank or providing banking services indirectly to a non-U.S. shell bank; (iii) a senior non-U.S. political figure or an immediate family member or close associate of such figure; or (iv) otherwise prohibited from investing in Seller pursuant to the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "**USA PATRIOT Act**"), Executive Order 13224, the U.S. Bank Secrecy Act, or other applicable anti-money laundering, anti-terrorism, embargo or trade sanctions, and asset control statutes, laws, regulations, rules or orders, including, without limitation, any other statutes, rules or regulations in effect under the laws of the United States pertaining to prohibitions on money laundering or anti-terrorist financing or to transacting business or dealing in property that may be blocked or may belong to Specially Designated Nationals as those terms are used by OFAC) (collectively, "**Government Regulations**") (categories (i) through (iv) together, a "**Prohibited Investor**") and (b) does not control, is not controlled by or under common control with any such Prohibited Investor.

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6.34.2. If Buyer is an *entity* and is NOT acting on behalf of one or more clients, Buyer represents and warrants that (a) neither it nor any of its principals, beneficial owners, management officials, investors, or authorized contact persons are Prohibited Investors; (b) it does not control, is not controlled by or under common control with any Prohibited Investor; and (c) if it is a financial institution subject to the anti-money laundering ("**AML**") program requirements of the USA PATRIOT Act, it has adopted and implemented AML programs required by the USA PATRIOT Act and the regulations promulgated thereunder.

6.34.3. If Buyer is an *entity* and is acting on behalf of one or more clients in connection with this subscription, Buyer represents and warrants that Buyer is a financial institution subject to the anti-money laundering program requirements of the USA PATRIOT Act, and Buyer further represents that it has (a) implemented a customer identification program as required under section 326 of the USA PATRIOT Act and the regulations promulgated thereunder; (b) conducted the required due diligence on client(s) on whose behalf the Buyer is acting; (c) determined that such client(s) are not Prohibited Investors; and (d) retained and will continue to retain evidence of any such identities, any such source of funds or any such diligence as required by the USA PATRIOT Act and related regulations.

6.34.4. Represents and covenants that (1) the Buyer is not, to the best of Buyer's knowledge, (2) (i) the target of any sanction, regulation, or law promulgated by OFAC or any other U.S. governmental entity (such sanctions, regulations and laws, together with any supplement or amendment thereto, the "**U.S. Sanctions Laws**") such that the entry into this Agreement or the performance of any of the transactions contemplated hereby would contravene such U.S. Sanctions Laws; or (ii) owned or controlled by or acting on behalf of any person or entity that is the target of any U.S. Sanctions Laws such that the entry into this Agreement or the performance of any of the transactions contemplated hereby would contravene such U.S. Sanctions Laws; (3) the monies used to fund the Buyer's acquisition of an Interest have not been and will not be derived from or related to any illegal activities, including but not limited to, money laundering activities, and the proceeds from the Buyer's acquisition of an Interest will not be used to finance any illegal activities; and (4) the acceptance of this Agreement, together with related payments, will not breach any applicable Requirements (as defined below).

6.34.5. Buyer acknowledges and agrees that: i) the U.S. and other jurisdictions are in the process of changing the Government Regulations or creating new Government Regulations, or similar laws, regulations, requirements (whether or not with force of law) or regulatory policies and many financial intermediaries are in the process of changing or creating responsive disclosure and compliance policies (collectively, with the Government Regulations, the "**Requirements**"), and ii) Seller or the Manager could be requested or required to obtain certain assurances from Buyer, disclose information pertaining to Buyer to governmental, regulatory or other authorities or to financial intermediaries or engage in due diligence or take other related actions in the future. Buyer acknowledges that Seller and Manager seek to comply with all applicable laws concerning money laundering and related activities, and that it is Seller's and Manager's policy to comply with Requirements to which it is or may become subject and to interpret them broadly in favor of disclosure. Buyer hereby agrees to provide promptly additional information or take such other actions as may be necessary or advisable for Seller (as determined by the Manager, in its reasonable discretion, to be in the best interests of Seller) to comply with any Requirements, related legal process or appropriate requests; and Buyer hereby consents, to the extent deemed appropriate, in the reasonable discretion of the Manager, to disclosure to relevant third parties of any information provided by Buyer or its affiliates to Seller or the Manager for these purposes.

6.34.6. The Buyer acknowledges that if, following Buyer's investment in the Trust, the Manager in good faith believes that the Buyer is a Prohibited Investor or otherwise engaged in suspicious activity, or if Buyer refuses to provide promptly information that the Manager requests, the Manager has the right or may be obligated to report such action or confidential information relating to Buyer to the regulatory authorities, prohibit additional investments, segregate the

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assets constituting the investment in accordance with applicable regulations or immediately require the redemption or withdrawal of Buyer from Seller. If the Buyer is redeemed or required to completely withdraw from Seller, the Buyer shall bear any and all fees and expenses incurred by the Manager or Seller to effect such redemption or withdrawal. The Buyer further acknowledges that, to the fullest extent permitted by law, the Buyer will have no claim against the Manager or any of its affiliates or agents for any form of damages as a result of any of the foregoing actions.

6.34.7. The Buyer hereby understands that to help the United States government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each Buyer who opens an account, all as set forth on the Purchaser Questionnaire. The responses provided on such Purchaser Questionnaire, are deemed to be made in this Agreement as if expressly set forth herein.

7. Survival of Representations. The representations and warranties of Buyer set forth in Section 6 shall survive the Closing Date or termination of this Agreement and in the event of a Transfer Distribution and the issuance of LLC membership units in complete satisfaction of the Interests, these representations and warranties shall be deemed given as of the date thereof.

8. General Provisions.

8.1. Interpretation. The use herein of i) one gender includes the masculine and the feminine, ii) the singular number includes the plural, whenever the context so requires, and iii) the words "I" and "me" include "we" and "us" if Buyer is more than one person. Captions in this Agreement are inserted for convenience of reference only and do not define, describe, or limit the scope or the intent of this Agreement or any of the terms hereof. All exhibits referred to herein and attached hereto are incorporated by reference. This Agreement together with the other Purchase Documents (as defined in the Purchaser Questionnaire) contain the entire agreement between the parties relating to the transactions contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged herein.

8.2. Modification. No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement thereof is or may be sought.

8.3. Cooperation. Buyer and Seller acknowledge that it may be necessary to execute documents other than those specifically referred to herein to complete the acquisition of the Purchased Interests as provided herein. Buyer and Seller agree to cooperate with each other in good faith by executing such other documents or taking such other action as may be reasonably necessary to complete this transaction in accordance with the parties' intent evidenced in this Agreement. Further, Buyer hereby covenants and agrees on behalf of itself and its successors and assigns, without further consideration, to prepare, execute, acknowledge, file, record, publish and deliver such other information, instruments, documents, tax forms and statements (including any information required under applicable laws, regulations, rules, guidance, treaties, directors or similar measures) requested by Seller and to take such other actions as may be necessary, advisable, or appropriate to enable Seller and Sponsor to effectively carry out the Trust Agreement and exercise its rights thereunder and fulfill its obligations thereunder (including compliance with applicable laws, regulations, rules, guidance, treaties, directors or similar measures).

8.4. Assignment. Buyer shall not assign its rights under this Agreement except to Accommodator without first obtaining Seller's written consent, which consent may be withheld in Seller's sole and absolute discretion. No such assignment shall operate to release the assignor from the obligation to perform all obligations of Buyer hereunder. Seller shall have the absolute right to assign its rights and obligations under this Agreement.

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8.5. Notices. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be addressed as follows: If to Seller, to:

NexPoint Real Estate Advisors IV, L.P.
300 Crescent Court, Suite 700
Dallas, TX 75201
Fax: 214.550.8274

If to Buyer, to the address listed under Buyer's name on the signature page to this Agreement.

Either party may change such address by written notice to Escrow Agent and the other party. Unless otherwise specifically provided for herein, all notices, payments, demands or other communications given hereunder shall be deemed to have been duly given and received: (i) upon personal delivery, or (ii) as of the third business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth above, or (iii) the immediately succeeding business day after deposit with Federal Express or other similar overnight delivery system.

8.6. Periods of Time. All time periods referred to in this Agreement include all Saturdays, Sundays and state or United States holidays, unless business days are specified, provided that if the date or last date to perform any act or give any notice with respect to this Agreement falls on a Saturday, Sunday or state or national holiday, such act or notice may be timely performed or given on the next succeeding business day.

8.7. Counterparts. This Agreement may be executed in counterparts, all of which when taken together shall be deemed fully executed originals.

8.8. Attorneys' Fees. If any legal action or other proceeding is brought by Buyer for the enforcement of the Trust Agreement or this Agreement, or because of a dispute or alleged breach, default or misrepresentation in connection with any provisions of the Trust Agreement or this Agreement, the successful or prevailing party or parties shall be entitled to recover from the non-prevailing party, attorneys' fees, court costs, and all costs and expenses incurred in that action or proceeding in addition to any or all other relief awarded in such legal action or proceeding.

8.9. Joint and Several Liability. If any party consists of more than one person or entity, the liability of each such person or entity signing this Agreement shall be joint and several.

8.10. Choice of Law. This Agreement shall be construed and enforced in accordance with the internal laws of the State of Texas, without regard to its conflicts of laws principles. All actions arising out of or relating to this Agreement shall be heard and determined exclusively by a court of competent jurisdiction located in Dallas, Texas, and each party hereto expressly and irrevocably consents and submits to personal jurisdiction therein. The parties hereby knowingly, voluntarily, and intentionally waive any right to a trial by jury with respect to any litigation arising out of or relating to this Agreement.

8.11. Time. Time is of the essence with respect to all dates set forth in this Agreement.

8.12. Third Party Beneficiaries. Buyer and Seller do not intend to benefit any party (including any other Beneficial Owner), other than the Indemnified Parties, that is not a party to this Agreement and no such party shall be deemed to be a third party beneficiary of this Agreement or any provision hereof.

8.13. Severability. If any term, covenant, condition, provision or agreement herein contained is held to be invalid, void or otherwise unenforceable by any court of competent jurisdiction, such fact shall in no way affect the validity or enforceability of the other portions of this Agreement.

8.14. Binding Agreement. Subject to any limitation on assignment set forth herein, all terms of this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective legal representatives, successors and assigns.

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8.15. ACCEPTANCE OR REJECTION OF BUYER'S OFFER. THIS AGREEMENT DOES NOT CONSTITUTE AN OFFER OF ANY KIND BY SELLER AND SHALL NOT BIND SELLER UNLESS DULY EXECUTED AND DELIVERED BY SELLER. TO SUBMIT AN OFFER TO PURCHASE AN INTEREST, BUYER SHALL COMPLY WITH THE REQUIREMENTS OF SECTIONS 1 AND 2. SELLER SHALL HAVE THIRTY (30) DAYS TO EITHER ACCEPT OR REJECT BUYER'S OFFER. IF SELLER DOES NOT ACCEPT BUYER'S OFFER WITHIN SUCH THIRTY (30)-DAY PERIOD, THE OFFER SHALL BE DEEMED REJECTED.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, this Agreement has been executed as of the Effective Date.

**SELLER:**

**NexPoint Waterford DST, a Delaware statutory trust**

By: NexPoint Waterford Parent Manager, LLC, its Manager and Signatory Trustee

Signature: _____
Name: _____
Title: _____
Date: _____

**BUYER:** _____
(Please print Name)

Signature: _____
Name: _____
Title: _____
Date: _____
Address: _____
_____

Signature: _____
Name: _____
Title: _____
Date: _____
Address: _____
_____

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**ADDENDUM A**

**NEXPOINT WATERFORD DST**
**BAD ACTOR ADDENDUM**

The undersigned purchaser ("**Purchaser**"), in connection with Purchaser's purchase (the "**Purchase**") of Interests in NexPoint Waterford DST (the "**Trust**") dated as of _____, 20__ (the "**Purchase Date**") and as a material inducement for the Trust to accept such Purchase, hereby represents, warrants and covenants to the Trust the following.

1. Representations and Warranties.

1.1. Purchaser has not been convicted, within ten years before the Purchase Date, of any felony or misdemeanor:

(A) In connection with the purchase or sale of any security;

(B) Involving the making of any false filing with the United States Securities Exchange Commission (the "**Commission**"); or

(C) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

1.2. Purchaser is not subject to any order, judgment or decree of any court of competent jurisdiction, entered within five years before the Purchase Date that, at such time, restrains or enjoins such person from engaging or continuing to engage in any conduct or practice:

(A) In connection with the purchase or sale of any security;

(B) Involving the making of any false filing with the Commission; or

(C) Arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser or paid solicitor of purchasers of securities;

1.3. Purchaser is not subject to a final order of a state securities commission (or an agency or officer of a state performing like functions); a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission (or an agency or officer of a state performing like functions); an appropriate federal banking agency; the U.S. Commodity Futures Trading Commission; or the National Credit Union Administration that:

(A) As of the Purchase Date, bars the Purchaser from:

(i) Association with an entity regulated by such commission, authority, agency, or officer;

(ii) Engaging in the business of securities, insurance or banking; or

(iii) Engaging in savings association or credit union activities; or

(B) Constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ten years before the Purchase Date;

1.4. Purchaser is not subject to an order of the Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(b) or 78*o*-4(c)) or section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(e) or (f)) that, as of the Purchase Date:

(A) Suspends or revokes Purchaser's registration as a broker, dealer, municipal securities dealer or investment adviser;

(B) Places limitations on the activities, functions or operations of Purchaser; or

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(C) Bars Purchaser from being associated with any entity or from participating in the offering of any penny stock;

1.5. Purchaser is not subject to any order of the Commission entered within five years before the Purchase Date, as of the Purchase Date, which orders Purchaser to cease and desist from committing or causing a violation or future violation of:

(A) Any scienter-based anti-fraud provision of the federal securities laws, including without limitation section 17(a)(1) of the Securities Act of 1933 (15 U.S.C. 77q(a)(1)), section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j(b)) and 17 CFR 240.10b-5, section 15(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78*o*(c)(1)) and section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-6(1)), or any other rule or regulation thereunder; or

(B) Section 5 of the Securities Act of 1933 (15 U.S.C. 77e).

1.6. Purchaser is not suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

1.7. Purchaser has not filed (as a registrant or issuer), or was not named as an underwriter in, any registration statement or Regulation A offering statement filed with the Commission that, within five years before the Purchase Date, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, as of the Purchase Date, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or

1.8. Purchaser is not subject to a United States Postal Service false representation order entered within five years before the Purchase Date, or is, as of the Purchase Date, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

2. Covenants.

2.1. Purchaser shall immediately notify the Trust in writing if Purchaser becomes subject to any of the events set forth in Section 1 of this Bad Actor Addendum (a "**Disqualification Event**") following the Purchase Date. Such notice shall be referred to as a "Bad Act Notice" and shall set forth in sufficient detail the nature of the Disqualification Event to which Purchaser has become subject and the date of the Disqualification Event's occurrence (the "**Disqualification Notice**").

2.2. Concurrently with Purchaser's execution and delivery of this Bad Actor Addendum, Purchaser's shall execute and deliver to the Trust an Irrevocable Proxy, in the form attached to this Addendum as Appendix C (the "**Proxy**"), granting NexPoint Waterford Parent Manager, LLC (the "**Manager**") the right to vote, in the manner as determined by the Manager in its sole discretion, all Interests in the Trust held by Purchaser on all matters requiring action by holders of Interests in the Trust. The Proxy shall automatically become effective as of the date of any Disqualification Event and shall cease to be effective as of the date the Purchaser ceases to be subject to any Disqualification Event, as determined in good faith by the Manager.

2.3. Purchaser agrees to execute, make, acknowledge and deliver such other instruments, agreements and documents as may be required to fulfill the purposes of this Bad Actor Addendum and the Proxy.

[Remainder of Page Intentionally Left Blank]

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**IN WITNESS WHEREOF**, the undersigned Purchaser has executed this Bad Actor Addendum as of _____, 20__.

**If Purchaser is an Entity:**

_____
(print entity name)

By: _____(signature)

Name: _____(print)

Title: _____(print)

By: _____(signature)

Name: _____(print)

Title: _____(print)

**If Purchaser is an Individual:**

_____
(print name)

_____
(signature)

_____
(print name)

_____
(signature)

**Accepted By:**

**NexPoint Waterford DST, a Delaware statutory trust**

By: _____(signature)

Name: _____(print)

Title: _____(print)

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**APPENDIX B**

**JOINDER TO THE TRUST AGREEMENT**

This Joinder to the First Amended and Restated Trust Agreement of NexPoint Waterford DST (this "**Joinder**") is effective as of _____, 20____, by the undersigned party designated as the Subscriber (the "**Subscriber**").

**RECITALS**

WHEREAS, reference is made to that certain Purchase Agreement (the "**Purchase Agreement**"), dated as of _____, 20____, by and between the Subscriber and NexPoint Waterford DST, a Delaware statutory trust (the "**Trust**");

WHEREAS, the Subscriber now desires to become a Class 1 Beneficial Owner (as such term is defined in the First Amended and Restated Trust Agreement of the Trust dated January 16, 2026 (the "**Trust Agreement**"), by and among NexPoint Waterford Investment Co, LLC, as contributor, NexPoint Waterford Parent Manager, LLC, as manager (the "**Manager**"), The Corporation Trust Company and each party who from time to time, becomes a Class 1 Beneficial Owner in accordance with the terms of the Trust Agreement);

WHEREAS, the Subscriber has made a contribution to the Trust, in exchange for consideration consisting of a beneficial interest ("**Interest**") in the Trust, upon the terms and subject to the conditions set forth in the Purchase Agreement;

WHEREAS, the Manager of the Trust has determined it is advisable and in the best interests of the Trust to admit the Subscriber as a Class 1 Beneficial Owner of the Trust, effective as of the date of this Joinder; and

WHEREAS, capitalized terms used and not defined herein shall have the meanings ascribed to them in the Trust Agreement.

NOW, THEREFORE, the undersigned acknowledges the adequacy of the consideration provided through its representations, warranties, conditions, rights and promises contained in this Joinder and, intending to be legally bound, agrees as provided below.

1. The Subscriber shall become, and does hereby become, a party to the Trust Agreement as a Class 1 Beneficial Owner and shall, and hereby agrees to be bound by all of the terms and conditions set forth in the Trust Agreement applicable to the Subscriber as a Class 1 Beneficial Owner, including, but not limited to, the power of attorney set forth in Section 5.1 of the Trust Agreement.

2. The Subscriber is hereby admitted to the Trust as a Class 1 Beneficial Owner effective as of the date of this Joinder.

3. This Joinder is binding upon the undersigned and its or their personal representatives, heirs, distributees, successors and assigns. This Joinder shall be governed by the laws of Delaware, without regard, to the fullest extent permitted by law, to the conflicts of laws provisions thereof which might result in the application of the laws of any other jurisdiction.

4. This Joinder may be executed in several counterparts, each of which shall be deemed an original, but all of which when taken together, shall constitute one and the same instrument.

*[Signature Page to Follow]*

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IN WITNESS WHEREOF, the party below has caused this Joinder to be signed as of the day and year first above written.

If Purchaser is an Entity:

_____
(print entity name)

By: _____ (signature)

Name: _____ (print)

Title: _____(print)

By: _____ (signature)

Name: _____ (print)

Title: _____(print)

If Purchaser is an Individual:

_____
(print individual name)

By: _____

(signature)

By: _____

(signature)

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**APPENDIX C**

**NEXPOINT WATERFORD DST**
**IRREVOCABLE PROXY**

The undersigned Purchaser (the "**Purchaser**") of Class 1 beneficial interests in NexPoint Waterford DST, a Delaware statutory trust (the "**Trust**"), irrevocably authorizes NexPoint Waterford Parent Manager, LLC (the "**Manager**") to act as his or her proxy and to represent and vote all of Purchaser's Class 1 beneficial interests in the Trust ("**Interests**") at any meeting of the holders of Interests in the Trust, or in respect of any action taken by the holders of Interests in the Trust without a meeting during the Effective Period (as defined below) of this irrevocable proxy to the same extent and with the same effect as the Purchaser might or could do under the First Amended and Restated Trust Agreement of the Trust dated January 16, 2026, and any applicable laws or regulations governing the rights or powers of a holder of an interest in a Delaware statutory trust. This proxy is irrevocable and shall be effective for any matter brought before a meeting or set forth in a written consent of the holders of Interests in the Trust. This proxy shall become effective as of the date (the "**Effective Date**") of any Disqualification Event, as such term defined in that certain Bad Actor Addendum dated as of _____, 20__, between the Purchaser and the Trust (the "**Addendum**"), and shall terminate as of the date (the "**Termination Date**") that the Manager determines, in good faith, that the Purchaser is no longer subject to any Disqualification Event. The period beginning on the Effective Date and ending on the Termination Date is referred to in this irrevocable proxy as the "**Effective Period**".

The undersigned Purchaser hereby affirms that this irrevocable proxy is given as a condition of the Purchase Agreement between the Purchaser and the Trust dated _____, 20__ and as such is coupled with an interest that is irrevocable.

If Purchaser is an Entity:

_____
(print entity name)

By: _____ (signature)

Name: _____ (print)

Title: _____(print)

By: _____ (signature)

Name: _____ (print)

Title: _____(print)

If Purchaser is an Individual:

_____
(print individual name)

By: _____

(signature)

By: _____

(signature)

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**APPENDIX D**

**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 SUBSCRIBER.**

**TO BE PREPARED BY THE SUBSCRIBER'S THIRD-PARTY LICENSED ATTORNEY, CERTIFIED PUBLIC ACCOUNTANT, AN SEC-REGISTERED INVESTMENT ADVISER, A REGISTERED BROKER-DEALER, OR SUCH OTHER THIRD PARTY PROFESSIONAL (I) WHO SHALL TAKE REASONABLE STEPS TO VERIFY AND HAS DETERMINED THAT SUCH SUBSCRIBER IS AN ACCREDITED INVESTOR AND (II) THE SPONSOR HAS A REASONABLE BASIS TO RELY ON SUCH VERIFICATION.**

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 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 (including, but not limited to, Form W–2, Form 1099, Schedule K–1 of Form 1065, and Form 1040) or such other documentation that provides me with a reasonable basis to verify that purchaser has the income level necessary to qualify as an "accredited investor" during the current year;

_____ With respect to **Net Worth**: Such asset and liability documentation that provides me with a reasonable basis to verify that purchaser has the net worth level necessary to qualify as an "accredited investor" during the current year. Documentation may include bank statements, brokerage statements and other statements of securities holdings, certificates of deposit, tax assessments, appraisal reports issued by independent third parties, and/or such other comparable documentation to determine real property and other asset valuation and debt, as applicable; liabilities may be determined through 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, or third party professional). If applicable, my license number is _____ and, I am in good standing in the state of _____.

Sincerely,

_____

Printed Name: _____

Date: _____

Phone Number: _____

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**EXHIBIT B**

**RENT ROLL**

**NexPoint Waterford DST**

**Waterford Place located in Greensboro, North Carolina**
**(As of March 9, 2026)**

| *Unit Type* | *Average Square Feet* | *% of Units* | *Occupied Units* | *Total Units* | *Average Rent and Fees* |
|---|---|---|---|---|---|
| 1 BR / 1 BA | 900 | 30% | 68 | 72 | $1,483 |
| 2 BR / 2 BA | 1,180 | 50% | 104 | 120 | $1,634 |
| 3 BR / 2 BA | 1,477 | 20% | 44 | 48 | $1,941 |
| **Total / Overall** | | | **216** | **240** | **$1,649** |

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**EXHIBIT C**

**TAX OPINION**

**[ATTACHED]**

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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

March 18, 2026

NexPoint Real Estate Advisors IV, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

**RE: NexPoint Waterford DST**

Dear Ladies and Gentlemen,

NexPoint Real Estate Advisors IV, L.P., a Delaware limited partnership (the "**Company**"), and NexPoint Waterford 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 First Amended and Restated Trust Agreement (the "**Trust Agreement**"); (iii) the form Limited Liability Company Agreement accompanying the Trust Agreement; (iv) the Master Lease; (v) the Purchase Agreement and Purchaser Questionnaire; and (vi) the Loan Documents (collectively, the "**DST Transaction Documents**"). We have also assumed that the representations set forth in the letter addressed to us and signed on behalf of the Company on March 18, 2026 (the "**Representation Letter**"), are true, complete, and correct in all respects as of the date hereof.

Based on our review of the DST Transaction 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 Purchasers, as Beneficial Owners in the Trust, 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 Master Lease should be treated as a true lease and not a financing for federal income tax purposes; (vii) the Master Lease should be treated as a true lease and not a deemed partnership for federal income tax purposes; (viii) the discussions of the federal income tax consequences contained in the Memorandum are correct in all material respects; and (ix) certain judicially created doctrines should not apply to change the foregoing conclusions.

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[1] All section references provided for herein refer to the Internal Revenue Code of 1986 (the "**Code**"), as amended, and the treasury regulations promulgated thereunder (the "**Treasury Regulations**").

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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 nonrecognition 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." Nonrecognition treatment does not apply 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 ("**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 owns real estate will be treated as owning a direct interest in such real estate for purposes of the nonrecognition 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.

### I. <u>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).</u>

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

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[2] Treas. Reg. § 1.1031(a)-1(a)(1); former Section 1031(a)(2)(C)-(E) (1984). On December 22, 2017, the Tax Cuts and Jobs Act ("**TCJA**") was signed into law. 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, TCJA eliminated specific language providing that exchanges of certain types of property (stock in trade or other property held primarily for sale, stocks, bonds, 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] 2004-2 C.B. 191.

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 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

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4 Treas. Reg. § 301.7701-1(a)(1).
5 Treas. Reg. § 301.7701-1(a)(3).
6 *See Moline Props., Inc. v. Comm'r*, 319 U.S. 436 (1943).
7 485 U.S. 340 (1988).
8 1992-2 C.B. 204.

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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 Trustees 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 thereof.[12]

Additionally, the Trust Agreement requires the Manager to cause the Trust to, among others: (i) not engage in any business or activity, other than the ownership or operation and maintenance of the Trust Estate (as defined in the Trust Agreement), (ii) not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets other than the Trust Estate and such personalty as may be necessary for the operation of the Trust Estate, (iii) preserve its existence as an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation or organization, (iv) not merge or consolidate with any Person (as defined in the Trust Agreement), except as a result of a conversion or Transfer Distribution, (v) except as a result of a conversion or Transfer Distribution or with respect to transfers permitted under the Loan Documents, not take any action to dissolve, wind-up, terminate or liquidate in whole or in part, to sell, transfer or otherwise dispose of all or substantially all of its assets, to change its legal structure,

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9 2004-2 C.B. 191.

10 *Id*. (citing to Del. Code Ann. tit. 12, §§ 3801-3824).

11 *See* Trust Agreement at § 6.13.

12 *Id*.

transfer or permit the direct or indirect transfer of any partnership, membership or other equity interests, as applicable, other than transfers permitted under the Loan Documents, issue additional membership or equity interests, or seek to accomplish any of the foregoing, (vi) not own any subsidiary or make any investment in, any other Person, (vii) except as permitted under the Loan Documents, not commingle its assets with the assets of any other Person, (viii) not incur any debt, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than the Loan and customary unsecured trade payables incurred in the ordinary course of owning and operating the Trust Estate, (ix) maintain its records, books of account, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person and not list its assets as assets on the financial statement of any other Person, (x) except for capital contributions or capital distributions permitted under the terms and conditions of its organizational documents, only enter into any contract or agreement with any general partner, member, shareholder, principal or affiliate of the Trust, Master Tenant or any guarantor, (xi) file its own tax returns separate from those of any other Person, (xii) hold itself out to the public as a legal entity separate and distinct from any other Person and conduct its business solely in its own name, (xiii) maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations and will pay its debts and liabilities from its own assets as the same become due, and (xiv) pay its own liabilities from its own funds.[13] Further, the Trust Agreement requires the Manager to cause the Trust to (i) manage, control, dispose of, or otherwise deal with the Trust Estate (as defined in the Trust Agreement) in its discretion, and (ii) prepare or cause to be prepared separate financial statements.[14]

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.[15] A trust with a single class of ownership interests that provides no power to vary the

[13] *See* Trust Agreement at § 3.2(b).
[14] *See id.* at §§ 5.3 & 7.4.
[15] Treas. Reg. § 301.7701-4(a).

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investments of the trust is classified as an investment trust that is treated as a "trust" for federal income tax purposes.[16] 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.[17] As discussed in greater detail below, 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).

**1. No power exists under the Trust Agreement for the Trustees 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 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 Trustees 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*,[18] 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

[16] Treas. Reg. § 301.7701-4(c)(1).
[17] *Id*.
[18] 122 F.2d 540 (2d Cir. 1941).

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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."[19]

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*,[20] the court recognized that, although the trust arrangement was similar to the trust in *Chase National Bank*, the trust instrument was slightly different because it provided the depositor with the power "in effect to change the investment of certificate holders at his discretion."[21] In making up new units, the depositor was not confined to the same bonds he had selected for the previous units. Additionally, the bonds of all units constituted a single pool in which each certificate holder shared according to his proportion of all the certificates issued. As a result, the money from new investors could be used to purchase new bond issues that would in turn reduce the existing certificate holders' interests in the old bond issues. The depositor thus could take advantage of market variations in a manner that could improve the investment of the original investors through dilution of the original investment. Based on these facts, the court held that the depositor "had power, though a limited power, to vary the existing investments of all certificate holders at will . . ."[22] and, accordingly, that the trust was treated as taxable as an association rather than as a fixed investment trust.

**(ii) Revenue Ruling 2004-86.**

The analyses and conclusions of the IRS in Revenue Ruling 2004-86 are consistent with the Second Circuit's holdings in the cases discussed above. Revenue Ruling 2004-86 considered the situation in which an individual (John) borrowed money from an unrelated lender (Bank) and signed a 10-year, interest-bearing nonrecourse 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.[23] 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

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19 *Id.* at 543.
20 122 F.2d 545 (2d Cir. 1941), *cert. denied* 314 U.S. 701 (1942).
21 *Id.*
22 *Id*. at 546.
23 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.

net profits derived from Blackacre.[24]

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 nonrecourse 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 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.[25] In addition, the trustee could make only minor non-structural modifications to Blackacre,

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[24] 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.

[25] 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.

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 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

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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.

**(iii) Other Revenue Rulings.**

The IRS also addressed the classification of trust arrangements in several other revenue rulings. Revenue Ruling 75-192[26] involved a trust agreement that required the trustee to invest cash on hand between quarterly distribution dates only in specified short-term obligations maturing prior to the next distribution date and to hold such obligations until maturity. The IRS concluded that, because the restrictions on the types of permitted investments limited the trustee to a fixed return similar to that earned on a bank account and eliminated any opportunity to profit from market fluctuations, the power to invest in such assets was not a power to vary the trust's investments.

Similarly, the IRS classified the trust arrangement described in Revenue Ruling 79-77,[27] 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 nonstructural 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

[26] 1975-1 C.B. 384.
[27] 1979-1 C.B. 448.

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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[28] 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.

The existence of a power to sell trust assets does not always give rise to a power to vary the trust's investments.[29] 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."[30] 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 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." From and after the issuance of the Conversion Notice (as defined in the Trust Agreement), the Trust Agreement authorizes the Manager to (a) receive the contribution of the Purchase Contract, acquire the Property subject to the terms of the leases, and enter into the Master Lease and Loan; (b) comply with the terms of the Loan Documents; (c) collect rents 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; (e)

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[28] 1978-2 C.B. 344.

[29] *Id*.

[30] *See Comm'r v. N. Am. Bond Trust*, 122 F.2d 545 (2d Cir. 1941), *cert denied* 314 U.S. 701 (1942); *Pa. 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. 424.

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notify the relevant parties of any defaults by them under the DST 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 Treasury 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 secured by the Property (including, without limitation, the Loan).[31]

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).[32] Moreover, the Trust agreement expressly denies the Trustees, 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) and Revenue Ruling 2004-86.[33] Furthermore, the Trust Agreement provides that 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 Treasury Regulations Section 301.7701-4 and not treated as a "business entity" within the meaning of Treasury Regulations Section 301.7701-3.[34] The Trust Agreement expressly prohibits the Manager from exercising any of the enumerated powers that are prohibited under Revenue Ruling 2004-86.[35] Finally, as noted above, the Beneficial Owners generally have no right or power to make decisions for, or to operate or manage, the Trust.[36]

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 the Operating Partnership 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.[37] The Manager and the Trustees do not have the power to purchase replacement investments with the proceeds from the sale of the Property.[38] Additionally, the power of the Manager to

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31 *See* Trust Agreement at § 5.3(b).
32 *See id.*
33 *See id.* at § 3.3(c)(7).
34 *See id.* at § 3.3(c).
35 *See id.*
36 *See id.* at § 6.13.
37 *See id.* at §§ 7.3 & 9.1.
38 *See id.* at §§ 3.3(c)(2) & 9.1.

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cause a sale of the Property is not unfettered, and it is the intent of the parties to the Trust Agreement that the Trust Estate (as defined in the Trust Agreement) will be held for at least two years.[39] Similarly, the Exchange Right cannot be exercised by the Operating Partnership until all Beneficial Owners have held their Interests for at least one year.[40]

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 Trustees 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.[41] All cash reserves will be invested only in the types of debt instruments expressly permitted under Revenue Ruling 2004-86.[42] 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.

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 offer and a right of first refusal upon the receipt of a bona fide Third-Party Offer (as defined in the Trust Agreement).[43] As discussed in further detail in Part VII hereof, we believe that the right of first offer and the right of first refusal are 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 Contributor, 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 Contributor, Trust, and Manager that the occurrence of such an event would be unanticipated.

In addition, the Exchange Right provided in the Trust Agreement 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 Beneficial Owner's Interest at such time in exchange for Units in the Operating Partnership (or cash,

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39 *See id.* at § 9.3.
40 *See id.* at § 10.1.
41 *See id.* at §§ 3.2(b)(2) & 7.2.
42 *See id.* at § 7.2.
43 *See id.* at § 6.4.

as the case may be).[44] 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.[45] 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 Manager functioning in a role similar to a trust 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) an affiliate of the Company has executed certain limited guaranties 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.

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 (after payment for the costs of sale) be distributed to the Contributor.[46] 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 Contributor (or its affiliate) for federal income tax purposes.[47] 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 an affiliate of the Company has executed a certain limited guaranty with respect to the Loan. Under the limited guaranty, the guarantor 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

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44 *See id.* at §§ 10.1, 10.2 & 10.4.
45 *See id.* at § 10.4.
46 *See id.* at § 6.14.
47 *See id.* at § 3.3(a).

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recourse liabilities with respect to the Loan. The occurrence or non-occurrence of these events will largely be within the Company's and its affiliates' control. Since this limited guaranty otherwise generally imposes liability only for actions which are within the control of the Company and its affiliates, it should not constitute an impermissible guaranty of the Loan for these purposes. Nor should these guaranties be viewed as an obligation of the guarantor and the Company to contribute additional capital to the Trust. Accordingly, we do not view the existence of such limited guaranty as inconsistent with Revenue Ruling 2004-86.

Because none of these provisions permit the Trustees or the 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 Master Lease.**

Under the terms of the Master 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 or materially reduce the market value of the Property, or violate the terms of any sublease.[48] 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.[49] 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 Master Lease should not be attributed to the Trustees or the Manager and, therefore, are not inconsistent with treating the Trust as an investment trust for federal income tax purposes. The terms of the Master Lease do not provide the Trustees 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 borne 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 Master Lease should not violate the intent and purpose of Revenue Ruling 2004-86 or the underlying cases and rulings governing whether the Trustees or the Manager possess 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 Interest is incidental to that purpose.**

The oft-cited principle that the economic substance of a transaction, and not its mere form,

[48] *See* Master Lease at § 11.1.
[49] *See* Trust Agreement at § 3.3(c)(5).

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governs the tax treatment of a given transaction is a well-established doctrine of federal tax law.[50] Treasury Regulations describing an investment trust apply 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.[51] 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 investment in a portfolio of residential mortgages.[52] 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 (class C and class D) 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, another example illustrates a circumstance where multiple classes of ownership interests in a trust merely facilitate direct investment in the assets held by the trust.[53] 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 existence and redemption of the Contributor's

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[50] *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").

[51] Treas. Reg. § 301.7701-4(c).

[52] *See* Treas. Reg. § 301.7701-4(c)(2), Example 2.

[53] *See* Treas. Reg. § 301.7701-4(c)(2), Example 4.

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Class 2 Beneficial Interests upon the issuance of Class 1 Beneficial Interests gives rise to multiple classes of ownership interests,[54] even though the rights of a Class 2 Beneficial Owner otherwise will be identical to the rights of the Class 1 Beneficial Owners immediately upon a Purchaser investment in the Trust.[55] Consistent with the facts in the examples discussed above, however, we believe that the redemption right of the Contributor also should be treated as existing simply to facilitate the Beneficial Owners' investment in the Class 1 Beneficial Interests in the Trust.

Immediately upon the issuance of the Conversion Notice, which must occur prior to a Purchaser's investing in the Trust, the rights of a Class 2 Beneficial Owner (other than the redemption right) will be identical to the rights of the Class 1 Beneficial Owners.[56] The redemption simply replaces the Contributor'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 Contributor selling directly to the Purchasers its Class 2 beneficial interest or the Contributor (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 Contributor's interest in the Property is transferred to the Class 1 Beneficial Owners should not affect the tax consequences of the underlying transaction.

This analysis is consistent with the IRS position 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 Contributor 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 Contributor retains any Class 2 Beneficial Interests.

The use of this formal mechanism of redemption is the economic equivalent of the Beneficial Owners purchasing a direct interest in the Property from the Contributor and then contributing the purchased interests in the Property to the Trust. Under these circumstances, it is our view that no impermissible multiple classes of ownership interests in the Trust should exist.

Based on the foregoing discussion, the Trust: (i) should be recognized as an entity separate from the 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).

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[54] *See* Trust Agreement at § 6.14.
[55] *See* Trust Agreement at §§ 6.12 & 6.13.
[56] *See* Trust Agreement at § 6.12.

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## II. The Purchasers, as Beneficial Owners in the Trust, 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.[57] A gratuitous transfer to a trust includes a transfer of cash to the trust in exchange solely for an interest in the trust.[58] 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).[59]

The Beneficial Owners will transfer cash 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, the Beneficial Owners 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.[60] Sections 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.[61] 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, a non-adverse party, or both, may be distributed to the grantor or held or accumulated for future distribution to the grantor.[62]

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

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57 Treas. Reg. § 1.671-2(e)(1).

58 Treas. Reg. § 1.671-2(e)(1)-(2).

59 Treas. Reg. § 1.671-2(e)(3).

60 *See* Rev. Rul. 88-103, 1988-2 C.B. 304; Rev. Rul. 85-45, 1985-1 C.B. 183; and Rev. Rul. 85-13, 1985-1 C.B. 184; *see also* Treas. Reg. § 1.1001-2(c), Example 5.

61 Treas. Reg. § 1.671-2(a).

62 Code § 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).

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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 nonrecognition treatment on the involuntary conversion of property into similar or related-use property.[63] 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.[64]

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 income received by the Trust without the approval, consent, or exercise of discretion by any person.[65] 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 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.[66] For the reasons discussed below, the Interests should not constitute securities for purposes of Section 1031.[67]

### A. Legislative History of Section 1031.

The exclusion of securities from Section 1031 was added to the predecessor to Section 1031 in 1923.[68] The legislation amended the predecessor to Section 1031 to include the

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63 *See* Code § 1033(a).

64 *See* Rev. Rul. 88-103, 1988-2 C.B. 304; Rev. Rul. 70-376, 1970-2 C.B. 164.

65 *See* Trust Agreement at § 7.2.

66 Code § 1001.

67 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.

68 *See*, *e.g.*, H.R. 13774, Public No. 545, 67th Cong., 4th Sess., ch. 294.

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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 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 of a like kind without the realization of taxable income. Under this section, a taxpayer who purchases a bond of $1,000 which appreciates in value may exchange that bond for another bond of the value of $1,000, together with $100 in cash (the $100 in cash representing the increase in the value of the bond while held by the taxpayer), without the realization of taxable income. This provision of the act is being widely abused. Many brokers, investment houses and bond houses have established exchange departments and are advertising that they will exchange securities for their customers in such a manner as to result in no taxable gain. Under this section, therefore, taxpayers owning securities which have appreciated in value are exchanging them for other securities and at the same time receiving a cash consideration without the realization of taxable income, but if the securities have fallen in value since acquisition 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.[69]

In response to the concern expressed in the letter above, Congress amended the predecessor to Section 1031 to exclude securities.[70]

### B. Use of the term "securities" in the Code.

The term "securities" is not defined in either Section 1031 or the Treasury Regulations

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[69] H.R. REP. NO. 67-1432, at 1-2 (1923); S. REP. NO. 67-1113, at 1-2 (1923), *reprinted in* 1939-1 C.B. (Part 2) 845-46.

[70] H.R. 13774, Public No. 545, 67th Cong., 4th Sess., ch. 294.

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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.");[71] 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.").

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 the term "securities" (as used in such other Sections) can be relevant by analogy for purposes of Section 1031.[72]

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) ("[s]o 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

[71] Code § 1083 was repealed by the Gulf Opportunity Zone Act of 2005. *See* Pub. L. No. 109-135, § 402(a)(1), 119 Stat. 2577, 2610 (2005).

[72] *See*, *e.g.*, I.R.S. Gen. Couns. Mem. 35,242 (Feb. 16, 1973).

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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*,[73] 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 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.[74]

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,[75] 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 nonrecognition 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

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[73] 4 T.C. 600 (1945).
[74] *Id.* at 608 (internal citation omitted).
[75] I.R.S. Gen. Couns. Mem. 35,242 (Feb. 16, 1973).

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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.[76] The IRS further noted, in the proposed revenue ruling attached to the general counsel memorandum, that the "securities" exception to nonrecognition treatment was added to "preclude brokers, investment houses, and bond houses from arranging the tax free exchanges of appreciated securities for their clients."[77]

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.

The nonrecognition rules of Section 1031 do not apply to an exchange of certificates of trust or beneficial interests.[78] 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 should be 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 Master Lease should be treated as a true lease and not a financing for federal income tax purposes.

### A. Generally.

We believe that the Master Lease has the hallmarks of a bona fide, true lease and, therefore, should be treated as such for federal income tax purposes. The economic substance of a

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[76] *Plow Realty Co.*, 4 T.C. at 608-09 (concluding that mineral deeds were not securities for purposes of the predecessor to Code § 543 (personal holding company income) despite the fact that they were securities under securities and exchange acts).

[77] I.R.S. Gen. Couns. Mem. 35,242 (Feb. 16, 1973), (citing S. REP. NO. 67-1113 (1927), *reprinted in* 1939-1 (Part 2) C.B. 845-46).

[78] Treas. Reg. § 1.1031(a)-1(a)(1)(v); former Code § 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 qualifying real property for federal income tax purposes.

leasing transaction is analyzed in light of all of the facts and circumstances.[79] Transactions structured as leases may be recharacterized for federal income tax purposes to reflect their economic substance.[80] For example, in appropriate circumstances a purported lease may be recharacterized as a conditional sales contract. Recharacterization of the Master Lease as a financing or other arrangement for federal income tax purposes would have significant adverse tax consequences. For example, if the Master Lease were recharacterized as a financing, then for federal income tax purposes, the Beneficial Owners would be treated as having 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 or her 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 Beneficial Owners, 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 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 Master 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,[81] 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 a 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.[82] The business purpose test has been described as a subjective

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[79] STAFF OF THE JOINT COMM. ON TAX'N, JCX-18-10, TECH. EXPLANATION OF THE REVENUE PROVISIONS OF THE "RECONCILIATION ACT OF 2010," AS AMENDED, IN COMBINATION WITH THE "PATIENT PROT. AND AFFORDABLE CARE ACT" 153 n.350 (2010) [hereinafter "**Joint Committee Report**"].

[80] *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*, *Inc. v. Comm'r*, 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, *aff'd* 949 F.2d 841 (6th Cir. 1991).

[81] 2001-1 C.B. 1156.

[82] *See Rice's Toyota World*, 752 F.2d at 91; *Van Roekel v. Comm'r*, T.C. Memo 1989-74, *appeal dismissed* 905 F.2d 80 (5th Cir. 1990); *Offermann v. Comm'r*, T.C. Memo 1988-236; *L. W. Hardy Co. Inc. v.*

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analysis examining the motivations for entering into a transaction,[83] 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).[84] 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.[85] 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[86] sets forth advance ruling guidelines for "true lease" status. The Trust has not sought, and does not expect to request, a ruling from the IRS under Revenue Procedure 2001-28. These ruling guidelines provide certain criteria that the IRS will require to be satisfied in order to issue a private letter ruling that a lease is a true lease for federal income tax purposes. In the event of an examination by the IRS, the IRS and, ultimately, the courts of applicable jurisdiction, would consider these ruling guidelines, together with existing cases and other rulings, in determining whether the Master Lease qualifies as a true lease for federal income tax purposes. However, we do not believe that strict compliance with Revenue Procedure 2001-28 is required to conclude that the Master Lease should be characterized as a true lease for federal income tax purposes. Rather, we believe that satisfying most of the material ruling guidelines should be sufficient for 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.[87]

### 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.[88] We believe that satisfying the required Minimum Investment pursuant to the guidelines is also indicative of a lessor's

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*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).

83 *Levy v. Comm'r*, 91 T.C. 838, 854 (1988).

84 *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*, T.C. Memo 1989-74; *Offermann*, T.C. Memo 1988-236; *Larsen v. Comm'r*, 89 T.C. 1229 (1987), *aff'd in part, rev'd in part sub nom. Casebeer v. Comm'r.*, 909 F.2d 1360 (9th Cir. 1990).

85 *See Emershaw*, T.C. Memo 1990-246; *Rubin*, T.C. Memo 1989-484; *Pearlstein v. Comm'r*, T.C. Memo 1989-621; *Moser*, T.C. Memo 1989-142; *Van Roekel*, T.C. Memo 1989-74; *Levy*, 91 T.C. at 860.

86 2001-1 C.B. 1156. The guidelines were designed with equipment, rather than real estate, leveraged leases as a primary concern.

87 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.

88 Rev. Proc. 2001-28, 2001-1 C.B. 1156 at § 4.01.

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retention of downside risk as required under the framework established by the case law.[89]

**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**").[90] Each of the Beneficial Owners will acquire his or her Interest in the Property (through the Trust) for an unconditional Equity Investment equal to approximately 51.4% of the aggregate cost of his or her Interest in the Property. None of the Beneficial Owners will be entitled to demand the return of his or her Equity Investment from 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).[91] The Trust and the Manager have represented to us that they anticipate that the equity invested in the Property by the Beneficial Owners will equal at least 20% of the cost of the Property to the Trust at all times throughout the term of the Master Lease (disregarding fluctuations in value) and that, to their knowledge, no plan or intention exists to reduce such equity through distributions or refinancings 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 Master Lease as a true lease for federal income tax purposes.

**3. Residual Investment.**

Under Revenue Procedure 2001-28, the fair market value of the property at the end of the lease term must be estimated to be an amount equal to at least 20% of the original cost of the property. For this purpose, fair market value must be determined (i) without including in such value any increase or decrease for inflation or deflation during the lease term, and

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[89] For example, courts have treated a lessor as the owner of property when the lessor has made cash investments substantially smaller than the 20% required by the Revenue Procedure 2001-28 guidelines. *See*, *e.g.*, *Emershaw*, T.C. Memo 1990-246 (6% investment); *Greenbaum 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).

[90] Rev. Proc. 2001-28, 2001-1 C.B. 1156 at § 4.01(1).

[91] *Id*. at § 4.01(2).

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(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.[92] The Trust and the Manager have represented that the Property is expected to have a value at the end of the Master 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 Master Lease term or the anticipated time of sale are not based on increases or decreases in inflation or deflation during the Master 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 the Master Lease term should equal the longer of one year or 20% of the originally estimated useful life of the Property.

**D. Master 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.[93] Because both the Equity Investment of the Beneficial Owners and the Master 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 terms of the Master Lease. One could also argue that the entire term of the Master 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.

**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.[94] 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.[95] 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.[96] 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

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92 *Id*. at § 4.01(3).
93 *Id*. at § 4.02.
94 *Id*. at § 4.03.
95 *Id*.
96 *Id*.

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estimate of the fair market value of the leased property as of the option date, or was not nominal in relation to such value.[97] The Master Lease and other DST Transaction 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 Operating Partnership under the Trust Agreement is only exercisable for a purchase price equal to the then fair market value of a Beneficial Owner's Interest at such time in exchange for Units in the Operating Partnership (or cash, as the case may be). 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 Master Lease to fail to be 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.[98]

**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.[99]

While the Master Tenant may incur some obligations to construct improvements under one or more subleases, this should not affect the characterization of the Master Lease for federal income tax purposes. Under the Master 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 Master 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 Master Lease, and make all necessary repairs of whatsoever kind or nature.[100] We believe that any such improvements required to be constructed by the Master Tenant under the Master Lease are in the nature of maintenance and repairs consistent with ordinary commercial practice and, therefore, should not prevent the Master Lease from qualifying as a true lease for federal

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97 *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 COMM. ON TAX'N, JCS-41-84, GEN. EXPLANATION OF THE DEFICIT REDUCTION ACT OF 1984 AT 37 (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.").

98 *See* Trust Agreement at §§ 10.1 & 10.4.

99 Rev. Proc. 2001-28, 2001-1 C.B. 1156 at § 4.04.

100 *See* Master Lease at § 6.1.

income tax purposes.[101]

### 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.[102] A guarantee by any member of the Lessee Group of the lessee's obligation to pay rent, properly maintain the property, or pay insurance premiums or other similar conventional obligations of a net lease does not constitute a guarantee of the indebtedness of the lessor.[103] There are no guarantees under the Master Lease or other DST Transaction Documents that violate this requirement.[104]

### 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.[105] 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.[106] The Trust and the Manager have

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101 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. 36,727 (May 13, 1976) ("We, too, have found no statutory or judicial law reclassifying a lease transaction as a purchase because of lessee improvements.").

102 Rev. Proc. 2001-28, 2001-1 C.B. 1156 at § 4.05.

103 *Id*.

104 The Dugaboy Investment Trust, an affiliate of the Company, has provided the Lender with a limited, non-recourse carveout guaranty under which it will be responsible for liabilities, costs, expenses, claims, losses, or damages incurred by the Lender as a result of certain non-recourse carve out events over which they and their affiliates exercise relative control. The limited guaranty 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 a limited guaranty is distinguishable from a full guaranty of the Trust's entire indebtedness.

105 Rev. Proc. 2001-28, 2001-1 C.B. 1156 at § 4.06.

106 While the "Uncontrollable Costs" feature of the Master 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 Master Lease), we believe that the limited categories included therein (*i.e.*, real estate taxes and similar impositions, insurance, and utilities) are sufficiently tied to historic and anticipated costs and discrete in nature such that the Master Lease should still be properly viewed as a true lease and not an agency or a financing arrangement. As such, the

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represented to us that the profit requirement is expected to be satisfied.

### I. Conclusion.

In light of the above factors, the Master 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 Master Lease bears the hallmarks of a bona fide lease. Accordingly, we believe that the Master Lease should be treated as a true lease rather than as a financing for federal income tax purposes.

## VII. The Master Lease should be treated as a true lease and not as a deemed partnership for federal income tax purposes.

It also is necessary to consider whether the Master Lease could be re-characterized 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.[107] Case law provides that certain factors are indicative that a purported lease may in fact be a partnership for federal income tax purposes.[108]

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Uncontrollable Costs adjustment mechanism in the Master 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.

[107] Because the Manager will not be in privity of contract with the Trust, there should be little doubt that there is not a partnership between the Manager and the Trust.

[108] *See Haley v. Comm'r*, 203 F.2d 815, 818 (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, 1077-78 (1964) (outlining factors that will aid in the determination of whether a partnership exists for federal income tax purposes: "The 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, receiving for his services contingent compensation in the form of a percentage of income; whether business was conducted in the joint names of the parties; whether the parties filed Federal partnership returns or otherwise represented to . . . persons with whom they dealt 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, 460 (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 intending 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

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### A. Applicable Standards.

The courts have focused on the following factors when analyzing this issue:

#### 1. Intent.

The test set forth in *Culbertson* is applicable in determining whether an agreement is treated as a partnership or as a lease.[109] The Master Lease specifically states that the parties do not intend to form a partnership or joint venture.[110] Likewise, the Master Lease provides that it is intended to be characterized as a true lease and that the parties shall reflect the Master Lease as such in all applicable books, records, and reports, including income tax filings.[111]

#### 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.[112] 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 their 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 Master Lease).

#### 3. Joint Capital and Ownership of Capital and Earnings.

Another factor is whether the participants will have joint control over the capital and earnings of the venture.[113] The Master Tenant will have control over cash from the Property. However, the Master Tenant should not be deemed to have an ownership interest

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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 the 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.

109 *Comm'r v. Culbertson*, 337 U.S. 733 (1949).

110 *See* Master Lease at §§ 3.5 & 23.15.

111 *See* Master Lease at § 3.5.

112 *Bussing*, 88 T.C. at 460; *Alhouse v. Comm'r*, T.C. Memo 1991-652.

113 *Luna*, 42 T.C. at 1077-78. Courts have found that control over capital and earnings of the venture may exist where one party can exercise *de facto* control over the purported venture's assets by, for example, refusing to act when the results of such refusal could forcibly effect disposition of the venture's assets. *See Deitch*, T.C. Memo 2022-86 (lender could have refused loan terms extensions that would have caused loan principal to fall due, and because the property encumbered by the loan was the purported venture's only asset, the venture would have been forced to sell the property to satisfy loan obligations).

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in the funds to which the Trust is entitled, and the Master Tenant does not have the power to spend such funds except pursuant to the specific terms provided under the Master Lease. The Trust and the Master Tenant will each earn a separate and distinct profit stream. 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).[114] The Master 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 and unique 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 enterprise if the requisite element of co-ownership is not established.[115] 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 Master 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

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[114] *See* Master Lease at § 4.1.

[115] *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 income 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); *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); *Trust U/W Emily Oblinger 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. 36,113 (Dec. 19, 1974); Rev. Rul. 75-43, 1975-1 C.B. 383.

to create a partnership arrangement.[116] The only sharing involved in the present case is the fact that the Trust might share in certain gross percentage rent, as landlords and not as partners, only to the extent such rent exceeds a set base.[117] 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, especially when there was no agreement to share losses.[118] 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 Master 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.[119] 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.[120] Under the terms of the Master 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 Master Lease.[121] 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

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[116] 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).

[117] *See* Master Lease at §§ 4.1.2 & 4.1.3. 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) are sufficiently tied to historic and anticipated costs and discrete in nature such that the Master Lease should still be properly viewed as a true lease and not as a deemed partnership. As such, the Uncontrollable Costs adjustment mechanism in the Master Lease should not be viewed as a sharing of profits or losses and, therefore, is not indicative of a deemed partnership.

[118] *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 the mere sharing of profit, but not loss, was not the critical factor in such determination).

[119] *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).

[120] *See*, *e.g.*, *Grandview Mines*, 282 F.2d at 700; *Haley v. Comm'r*, 203 F.2d 815 (5th Cir. 1953).

[121] *See* Master Lease at § 19.4.

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Beneficial Owners, or the Manager if no Beneficial Owner exercises its right, a right of first offer and a right of first refusal upon the receipt by any Beneficial Owner of a bona fide Third-Party Offer.[122] The right of first offer is only operative if a Beneficial Owner wishes to sell its Interests. Then, the right of first offer is subject to an arm's length negotiation process with the Manager or other Beneficial Owners which may not materialize into a sale. As such, the right of first offer should not be viewed as a shared control arrangement. Similarly, the right of first refusal 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 Master Lease specifically states that the parties do not intend to create a partnership or joint venture.[123] Additionally, we believe the terms of the Master Lease are not indicative of a financing arrangement, joint venture, or management arrangement. 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.[124]

**8. Maintenance of Separate Books.**

The Master Tenant will not keep books or records on behalf of the Trust; such tasks will be performed by the Manager on behalf of the Trust. Under the Master Lease, the Master Tenant will keep records as required to report and pay rental payments to the Trust so that the Trust will separately report its separate rental income.[125]

**9. Filing of Tax Returns or Other Partnership Action.**

Pursuant to the Master Lease, no partnership returns will be filed and the parties are prohibited from otherwise acting or holding themselves out as partners in a partnership.[126] Each party is specifically required to reflect the transactions represented by the Master 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

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122 *See* Trust Agreement at § 6.4.

123 *See* Master Lease at § 23.15.

124 *See Sun Cap. Partners III, LP v. New England Teamsters & Trucking Indus. Pension Fund*, 943 F.3d 49 (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 v. Comm'r*, T.C. Memo 2022-86 ("[L]oan 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.").

125 *See* Master Lease at § 23.20.

126 *See* Master Lease at § 23.15; *Sun Capital,* 943 F.3d at 60 (applying the *Luna* factors, recognized that "[t]he Funds also filed separate tax returns . . . [a] fact[] which tend[s] to rebut partnership formation."). *Deitch*, T.C. Memo 2002-86.

relationship between a landlord and tenant).[127]

**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,[128] 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.**

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 discussion 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.

## IX. 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, 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.[129] 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,

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127 *See* Master Lease at § 3.5.

128 *See*, *e.g.*, *Levy v. Comm'r*, 91 T.C. 838 (1988); *Casebeer v. Comm'r*, 909 F.2d 1360 (9th Cir. 1990).

129 *See Gregory v. Helvering*, 293 U.S. 465 (1935); *Rice's Toyota World, Inc. v. Comm'r*, 81 T.C. 184, 196 (1983), *aff'd in part, rev'd in part, rem'd* 752 F.2d 89 (4th Cir. 1985).

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regardless of whether the taxpayer also intended to reduce taxes.[130] In *Frank Lyon Co. v. United States*,[131] the Supreme Court stated:

> [W]here . . . 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.[132]

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.*,[133] 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."[134] 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.[135] 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

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130 *Gregory*, 293 U.S. at 469; *see also Superior Oil Co. v. Mississippi*, 280 U.S. 390, 395-96 (1930) ("The only purpose of the [taxpayer] was to escape taxation. . . . The fact that it desired to evade the law, as it is called, is immaterial, because the very meaning of a line in the law is that you intentionally may go as close to it as you can if you do not pass it."); *Knetsch v. United States*, 364 U.S. 361, 365 (1960) (citing *Gregory* regarding the legal right of a taxpayer to decrease or altogether avoid taxes); *ACM Partnership v. Comm'r*, 157 F.3d 231, 248 n.31 (3d Cir. 1998) ("[I]t is also well established that where a transaction objectively affects the taxpayer's net economic position, legal relations, or non-tax business interests, it will not be disregarded merely because it was motivated by tax considerations. . . . In analyzing both the objective and subjective aspects of [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.") (internal citation omitted); *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.").

131 435 U.S. 561 (1978).

132 *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).

133 81 T.C. 184 (1983).

134 *Rice's Toyota World, Inc. v. Comm'r*, 752 F.2d 89, 91 (4th Cir. 1985); *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).

135 *Casebeer v. Comm'r*, 909 F.2d 1360, 1363 (9th Cir. 1990); *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").

has sufficient substance, apart from its tax consequences, to be respected.[136]

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.[137] Other courts, however, have been reluctant to propose a threshold amount.[138]

In *United Parcel Service of America, Inc. v. Commissioner*,[139] the Eleventh Circuit reversed the Tax Court[140] 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."[141]

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.[142] 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."[143] For example, the Joint Committee Report

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136 *Casebeer*, 909 F.2d 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 "practicable 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); *N. Ind. Pub. Serv. Co. v. Comm'r*, 115 F.3d 506, 512 (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 v. Comm'r*, 89 T.C. 1229 (1987); *cf. Kirchman v. Comm'r*, 862 F.2d 1486 (11th Cir. 1989) (existence of a nontax business purpose does not mandate the recognition of a transaction that otherwise lacks economic substance); *Goldstein v. Comm'r*, 364 F.2d 734 (2d Cir. 1966) (the court denied the taxpayer a prepaid interest deduction on debt incurred by the taxpayer solely to generate a deduction because the taxpayer could not reasonably have had any purpose in entering the transactions other than to reduce taxes).

137 *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).

138 *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).

139 254 F.3d 1014 (11th Cir. 2001), *rev'g* T.C. Memo 1999-268.

140 T.C. Memo 1999-268.

141 *United Parcel Serv.*, 254 F.3d at 1019.

142 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." Code § 7701(o)(5)(A).

143 *See also* Joint Committee Report, *supra* note 79, at 152 ("[T]he provision does not change present law standards in determining when to utilize the economic substance analysis.").

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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."[144] This suggests that the economic substance doctrine as codified will be applied as it historically has been applied under the case law. However, taxpayers should anticipate that the courts and the IRS could apply the specific language of the statute.

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."[145] Regarding the first category of transactions to which the economic substance doctrine is not relevant, the Joint Committee Report states that "[i]f 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."[146] 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."[147] The Joint Committee Report further provides that the economic substance doctrine does not apply to the following four basic business transactions:

> (1) the choice between capitalizing a business enterprise with debt or equity; (2) a U.S. person's choice between utilizing a foreign corporation or a domestic corporation to make a foreign investment; (3) the choice to enter a transaction or series of transactions that constitute a corporate organization or reorganization under subchapter C [of the Code]; and (4) 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.[148]

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."[149] The House Report goes on to note that, "[a]s under present

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144 *Id.* at 153.
145 *Id.* at 152-53.
146 *Id.* at 152 n.344.
147 *Id.* at 152.
148 *Id.* at 152-53.
149 H.R. REP. NO. 111-443, at 296 (2010).

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law, whether a particular transaction meets the requirements for specific treatment under any of these provisions can be a question of facts and circumstances."[150]

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**").[151] The LB&I Directive lists factors tending to show that it likely would be inappropriate to apply the economic substance doctrine, such as if (i) the transaction was not highly structured, (ii) the 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.[152]

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."[153] 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 Delaware statutory trusts 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

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150 *Id.*

151 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 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).

152 *Id.*

153 *See*, *e.g.*, *Klamath Strategic Inv. Fund v. United States*, 568 F.3d 537 (5th Cir. 2009); *Coltec Indus., Inc. v. United States*, 454 F.3d 1340 (Fed. Cir. 2006); *United Parcel Serv. of Am., Inc. v. Comm'r*, 254 F.3d 1014 (11th Cir. 2001).

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 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 Trust's 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.[154] In contrast, an economic sham is a transaction that has occurred, but is devoid of economic substance.[155] In general, the economic sham doctrine will not be applied if the taxpayer can prove that there is either a business purpose for, or

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[154] *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 (2000).

[155] *Gregory v. Helvering*, 293 U.S. 465 (1935); *Knetsch v. United States*, 364 U.S. 361, 366 (1960) ("There may well be single-premium annuity arrangements with nontax 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 v. Comm'r*, 364 F.2d 734, 742 (2d Cir. 1966) ("[T]ransactions that lack all substance, utility, and 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.

economic substance to, the given transaction.[156]

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.[157] 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.[158] The Third Circuit nevertheless recognized that "it is . . . well established that where a transaction objectively affects the taxpayer's net economic position, legal relations, or non-tax business interests, [a transaction] will not be disregarded merely because it was motivated by tax considerations."[159] The transaction at issue in *Boca Investerings Partnership v. United States*[160] 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 Corp. v. Commissioner*[161] 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.[162] As a result, Compaq could credit the foreign taxes associated with the dividend.[163] The Eighth Circuit came to a similar conclusion in *IES Industries, Inc. v. United States*,[164] 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

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156 *Rice's Toyota World, Inc. v. Comm'r*, 81 T.C. 184, 203 (1983) ("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. v. United States*, 435 U.S. 561 (1978).

157 157 F.3d 231, 263 (3d Cir. 1998).

158 *Id.* at 247.

159 *Id.* at 248 n.31 (internal citation omitted).

160 167 F. Supp. 2d 298 (D.D.C. 2001).

161 277 F.3d 778 (5th Cir. 2001), *rev'g* 113 T.C. 214 (1999).

162 *Id*. at 786-87.

163 *Id*. at 788.

164 *IES Indus., Inc. v. United States*, 253 F.3d 350 (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).

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.[165]

**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 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.[166] 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."[167]

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.'"[168] "To determine the substance of the transactions, we consider all of their aspects that shed any light upon their true character."[169]

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.[170] 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

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165 69 F.2d 809, 810 (2d Cir. 1934) ("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."), *aff'd* 293 U.S. 465 (1935).

166 *See Gregory v. Helvering*, 293 U.S. 465 (1935); *Rice's Toyota World, Inc. v. Comm'r*, 81 T.C. 184, 196 (1983).

167 *AWG Leasing Trust v. United States*, 592 F. Supp. 2d 953, 975 (N.D. Ohio 2008).

168 *Principal Life Ins. Co. v. United States*, 70 Fed. Cl. 144, 166 (2006).

169 *Commc'ns Satellite Corp. v. United States*, 625 F.2d 997, 1000 (Ct. Cl. 1980).

170 *Comm'r v. Court Holding Co.*, 324 U.S. 331 (1945).

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.[171] 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."[172]

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.[173] 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.[174]

The Tax Court applied both the end result and mutual interdependence tests in *Andantech*. 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.[175] 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.[176] 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.[177] 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*.[178] The IRS in *Grove* attempted to reorder a donation of stock followed by

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171 *See*, *e.g.*, *ACM Partnership v. Comm'r*, 157 F.3d 231, 263 (3d Cir. 1998); *Boca Investerings Partnership v. United States*, 167 F. Supp. 2d 298 (D.D.C. 2001).

172 69 F.2d 809, 810 (2d Cir. 1934) *aff'd* 293 U.S. 465 (1935).

173 Stephen S. Bowen, *The End Result Test*, 72 TAXES 722 (1994).

174 *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 to Mobil followed by a self-tender. This recharacterization does not simply combine steps; it invents new ones. Courts have refused to apply the step-transaction doctrine in this manner."), *aff'd without published opinion* 886 F.2d 1318 (7th Cir. 1989).

175 *Andantech, LLC v. Comm'r*, T.C. Memo 2002-97.

176 *Id*.

177 *Id*.

178 490 F.2d 241, 247 (2d Cir. 1973).

a redemption as a redemption of the stock followed by a gift of cash.[179] 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.[180] The only effect of the IRS's recast would be to create a tax liability in a transaction form that was no more direct than the form chosen by the taxpayer. Thus, the mere fact that a taxpayer considers the federal income tax effects of a transaction in its planning should not transform a non-taxable event into a taxable event.

**2. Analysis.**

The Trust's contractual arrangements should be respected according to their form because their form is consistent with the underlying substance, *i.e.*, 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 Beneficial Owners 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 Beneficial Owners) can only be achieved if the intermediate steps of (i) the Trust acquiring the Property, and (ii) offering the Interests for sale to the Beneficial Owners is 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 Beneficial Owners) should not significantly change the resulting federal income tax effect of the Trust's contractual arrangements.

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179 *Id*. at 245.

180 *Id.* at 247 ("We are not so naive as to believe that tax considerations played no role in Grove's planning. But foresight and planning do not transform a non-taxable event into one that is taxable. Were we to adopt the Commissioner's view, we would be required to recast two actual transactions—a gift by Grove to RPI and a redemption from RPI by the Corporation—into two completely fictional transactions—a redemption from Grove by the Corporation and a gift by Grove to RPI. Based upon the facts as found by the Tax Court, we can discover no basis for elevating the Commissioner's 'form' over that employed by the taxpayer in good faith.").

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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 its own tax counsel about the tax consequences of an investment in an Interest, including the tax consequences applicable to such prospective Purchaser under the TCJA.

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 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 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 DST Transaction 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.

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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.

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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

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**EXHIBIT D**

**FINANCIAL FORECAST**

The following Financial Forecast is intended to supplement the disclosures contained in this Memorandum. The Financial Forecast was prepared based upon the Sponsor's assumptions, including current estimates of income and expenses relating to the operation of the Property. We believe these assumptions are reasonable and we are not aware of any material factors other than as set forth in the Memorandum of which this Exhibit D forms a part that would necessarily cause the financial information contained in the Financial Forecast to fail to be indicative of future operating results. However, if the assumptions with respect to the Property do not prove correct, the Property will have difficulty in achieving its anticipated results. Some of the other underlying assumptions may not materialize, and unanticipated events and circumstances may occur. Therefore, the actual results achieved during the period covered are likely to vary from the Financial Forecast, and the variation may be material. As a result, a Beneficial Owner's rate of return may be higher or lower than that set forth herein. A Beneficial Owner's return on its investment in the Interests will depend upon economic factors and conditions beyond the Sponsor's control.

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## ASSUMPTIONS AND NOTES FOR THE FORECAST

### 1 Acquisition

| Trust | Purchase Price | Acquisition Date | Appraised As-Is Value | Date of Value |
|---|---|---|---|---|
| NexPoint Waterford DST | $49,500,000 | 1/16/2026 | $51,000,000 | 10/17/2025 |

### 2 Financing

| Borrower | Lender | Loan Amount | Interest Rate | Term | Amortization |
|---|---|---|---|---|---|
| NexPoint Waterford DST | Walker & Dunlop, LLC | $29,700,000 | 4.86% | 10-years | Interest-only |

### 3 Maximum Offering Amount

| Total Acquisition Costs[1] | Total Offering Proceeds | Total Capitalization[2] | Total Class 1 & Class 2 Interests |
|---|---|---|---|
| $52,778,578 | $31,360,817 | $61,060,817 | $31,360,817 |

1. Includes the purchase price under the PSA, the Loan-Related Costs, the Other Closing Costs, and the payment of the Facilitation Fee.
2. Includes the Contributor's share of the Interests, all estimated costs and expenses related to the Offering, marketing, and transferring of the Interests, the Lender Reserves and the Supplemental Trust Reserve.

### 4 Operating Assumptions

The income forecast for the Property is based on the rent roll, recent leases, market conditions, other income (*e.g.*, parking, service, or utilities), and expense estimates. Underlying assumptions include:

| Income / Expense | Year 1 | Year 2 | Year 3 | Thereafter |
|---|---|---|---|---|
| Initial Gross Potential Rent | $4,779,167 | $4,989,777 | $5,213,985 | $5,454,587+ |
| *Organic Rent Growth Factor* | 2.75% | 2.65% | 3.30% | ~3.00% |
| Deductions | | | | |
| *Vacancy* | 6.25% | 6.25% | 6.25% | 6.0% |
| *Other Rent Deductions* | 1.33% | 1.36% | 1.33% | 1.26% |
| Miscellaneous Income | $443,160 | $604,985 | $672,574 | $692,752+ |
| *Misc. Income Growth* | Lease Up Period | 3.0% | 3.0% | 3.0% |
| Controllable Expenses | $785,690 | $818,956 | $844,916 | $870,263+ |
| Utility Expenses | $267,600 | $292,867 | $316,609 | $326,107+ |
| Insurance Expenses | $91,200 | $93,936 | $96,754 | $99,657+ |
| Real Estate Taxes | $633,104 | $639,435 | $645,829 | $652,287+ |

### 5 Management Fees

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| Fee | Rate | Annual Estimate | Recipient |
|---|---|---|---|
| Asset Management | 0.30% of Purchase Price | $148,500 | Asset Manager |
| Property Management | 2.85% of Gross Revenue | Variable | Property Manager |

## 6 Master Lease Rent Schedule

| Fee | Annual | Payable |
|---|---|---|
| (1) Base Rent | $1,467,477 (maximum) | Monthly in arrears |
| (2) Additional Rent[1] | $1,476,750 (maximum) | Monthly in arrears; year-end reconciliation within 90 days after end of each year |
| *Additional Rent Breakpoint* | Year 1: $3,400,000<br>-<br>Year 10: $4,059,000 | |
| (3) Supplemental Rent | 90% of the amount by which annual Gross Income (as defined in the Master Lease) exceeds the Supplemental Rent Breakpoint | Monthly in arrears; year-end reconciliation within 90 days after end of each year |
| *Supplemental Rent Breakpoint* | Year 1: $4,654,000<br>-<br>Year 10: $5,461,500 | |

1. The Trust will be responsible for (and Rent will be reduced by) the amount by which the actual Uncontrollable Costs (with "uncontrollable costs" being comprised of property taxes, utility and insurance costs) exceed the Projected Uncontrollable Costs. In the event that the Projected Uncontrollable Costs for any calendar year exceed the actual Uncontrollable Costs for such calendar year, the Master Tenant shall pay to the Trust, as additional Rent, the amount of such excess.

## 7 Reserve Accounts

The Loan proceeds were used at the outset to fund the Replacement Reserve in the amount of $461,112. The Lender will require additional monthly deposits to the Replacement Reserve at a required rate of approximately $384 per apartment unit per year. As required by the Lender, the Trust also used $336,464 to fund the Imposition Reserve. The Trust also established the Supplemental Trust Reserve in the initial amount of $4,552,427 which was funded from the Loan proceeds and the Offering proceeds.

| Account | Initial Deposit | Future Funding |
|---|---|---|
| Replacement Reserve | $461,112 | $922,220* |
| Supplemental Trust Reserve | $4,552,427 | $1,024,033 |
| Imposition Reserve | $336,464 | $0 |
| **Total** | **$5,350,003** | **$1,946,253** |
| **The Trust intends that the Lender-required additional monthly deposits to the Replacement Reserve will be funded through the Supplemental Trust Reserve.* | | |

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## 8 Capital Expenditures and Improvements

| Category | $ Needed | Notes |
|---|---|---|
| Immediate Needs | $65,500 | Among others, sidewalk misalignment, vinyl siding damage, soffit and gutter damage, wasp nest removal, retaining wall damage, tree trimming, vegetation overgrowth, a busted curb, asphalt pavement damage, frayed roof shingles, and potential radon mitigation. |
| Short Term Needs | $0 | None |
| Estimated Long-Term Needs | $1,106,674 | Capital reserves for likely repairs and replacements necessary during the next 12 years including flooring and appliances. |
| **Total Anticipated Needs** | **$1,172,174** | |

## 9 Depreciable Basis for Non-1031 Investors

The forecasted statement of cash flows depicts the effective tax equivalent yield for Purchasers who are not engaged in a Section 1031 Exchange, based on the following depreciation assumptions. Allocations to buildings and land are derived based on the Appraisal value and historical assessments provided by the Guilford County Tax Assessor as indicated in the chart below. The building allocation amount is depreciated over 27.5 years according to the Modified Accelerated Cost Recovery System method of accelerated asset depreciation required by the Code. The calculations are also based on an assumed effective tax rate of 37% of taxable income.

| | Buildings | Land |
|---|---|---|
| Allocation ($) | $46,725,636 | $4,274,364 |

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NEXPOINT
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# Investment Summary
## Waterford Place

### OFFERING SUMMARY

| Offering Price | |
|---|---|
| First Year Pro Forma Net Operating Income | $ 2,944,164 |
| Capitalization Rate [1] | 5.28% |
| **Offering Price** | **$ 61,060,817** |
| Loan Proceeds @ 48.64% | 29,700,000 |
| Offering Proceeds @ 51.36% | $ 31,360,817 |

| Financing Terms | |
|---|---|
| Mortgage Principal | $ 29,700,000 |
| Interest Rate | 4.86% |
| Amortization | Full Term Interest Only |
| Annual Interest Only Payment | $ 1,463,468 |
| Maturity Date | March 1, 2036 |

| Forecasted Year 1 Return | |
|---|---|
| Additional Rent | $ 1,254,000 |
| Asset Management Fee [2] | - |
| **Cash from Additional Rent** | $ 1,254,000 |
| Supplemental Rent | 186,027 |
| Trust Reserve Contribution | - |
| Trust Expense | 25,000 |
| **Net Cash Flow** | **$ 1,415,027** |
| **Annualized Cash on Cash Return** | **4.51%** |

### ESTIMATED USES OF PROCEEDS

| Sources | |
|---|---|
| Offering Proceeds | $ 31,360,817 |
| Loan Proceeds | $ 29,700,000 |
| **Total Sources** | **$ 61,060,817** |

| Application | | % of Offering Proceeds | % of Total Proceeds |
|---|---|---|---|
| *Selling Commissions and Fees* | | | |
| Selling Commission | $ 1,881,649 | 6.00% | 3.08% |
| Managing Broker-Dealer Fee | 470,412 | 1.50% | 0.77% |
| Marketing/ DD Expense Allowances | 392,010 | 1.25% | 0.64% |
| Organization and Offering Expenses | 188,165 | 0.60% | 0.31% |
| Total | $ 2,932,236 | 9.35% | 4.80% |
| *Costs of Acquisition* | | | |
| Total Acquisition Costs | $ 52,778,578 | | 86.44% |
| Plus Trust Reserves | 4,552,427 | | 7.46% |
| Plus Lender Reserves | 797,576 | | 1.31% |
| Total | $ 58,128,580 | | 95.20% |
| **Total Application** | **$ 61,060,817** | | |

| Total Acquisition Costs | | |
|---|---|---|
| Real Estate Acquisition Price | | $ 49,500,000 |
| Contribution Fee | | 742,500 |
| | | $ 50,242,500 |
| Acquisition Closing Costs | | |
| Title & Recording Costs | $ 38,126 | |
| Acquisition & Due Diligence Costs | 871,661 | |
| Legal Costs | 256,000 | |
| | | $ 1,165,787 |
| Financing Closings Costs | | |
| Loan-Related Costs | $ 1,287,641 | |
| Lender & Acquisition Finance Expenses | 82,650 | |
| | | $ 1,370,291 |
| **Total Acquisition Costs** | | **$ 52,778,578** |

[1] *The Capitalization Rate equals the quotient of (a) the First Year Proforma Net Operating Income divided by (b) the Offering Price less any amounts initially allocated to the Reserve accounts.*

[2] *The Asset Management Fee is deferred in year 1 and will be paid in subsequent years.*

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## Net Operating Income Summary
## Waterford Place

| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Year 8 | Year 9 | Year 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| **Gross Potential Rent** | $ 4,779,167 | $ 4,989,777 | $ 5,213,985 | $ 5,454,587 | $ 5,649,788 | $ 5,816,339 | $ 5,993,248 | $ 6,175,538 | $ 6,363,373 | $ 6,556,922 |
| Deductions | (362,051) | (379,651) | (395,313) | (398,456) | (411,726) | (423,168) | (435,299) | (447,798) | (460,678) | (473,949) |
| **Total Rent** | $ 4,417,116 | $ 4,610,126 | $ 4,818,672 | $ 5,056,131 | $ 5,238,063 | $ 5,393,171 | $ 5,557,950 | $ 5,727,740 | $ 5,902,695 | $ 6,082,972 |
| | **7.58%** | **7.61%** | **7.58%** | **7.30%** | **7.29%** | **7.28%** | **7.26%** | **7.25%** | **7.24%** | **7.23%** |
| Miscellaneous Income | 443,160 | 604,985 | 672,574 | 692,752 | 713,534 | 734,940 | 756,988 | 779,698 | 803,089 | 827,182 |
| **Effective Gross Income** | $ 4,860,276 | $ 5,215,111 | $ 5,491,247 | $ 5,748,882 | $ 5,951,597 | $ 6,128,111 | $ 6,314,938 | $ 6,507,438 | $ 6,705,784 | $ 6,910,154 |
| Repairs and Maintenance | 217,890 | 234,122 | 242,537 | 249,813 | 257,307 | 265,026 | 272,977 | 281,166 | 289,601 | 298,289 |
| Payroll | 354,200 | 364,826 | 375,771 | 387,044 | 398,655 | 410,615 | 422,933 | 435,621 | 448,690 | 462,151 |
| Advertising and Promotions | 86,400 | 88,992 | 91,662 | 94,412 | 97,244 | 100,161 | 103,166 | 106,261 | 109,449 | 112,732 |
| General and Administrative | 127,200 | 131,016 | 134,946 | 138,995 | 143,165 | 147,460 | 151,883 | 156,440 | 161,133 | 165,967 |
| **Total Controllable Expenses** | $ 785,690 | $ 818,956 | $ 844,916 | $ 870,263 | $ 896,371 | $ 923,262 | $ 950,960 | $ 979,489 | $ 1,008,873 | $ 1,039,140 |
| Utilities | 267,600 | 292,867 | 316,609 | 326,107 | 335,890 | 345,967 | 356,346 | 367,036 | 378,047 | 389,389 |
| Taxes | 633,104 | 639,435 | 645,829 | 652,287 | 681,640 | 740,252 | 740,252 | 740,252 | 814,277 | 814,277 |
| Insurance | 91,200 | 93,936 | 96,754 | 99,657 | 102,646 | 105,726 | 108,898 | 112,164 | 115,529 | 118,995 |
| **Total Non-Controllable Expenses** | $ 991,904 | $ 1,026,238 | $ 1,059,192 | $ 1,078,051 | $ 1,120,177 | $ 1,191,944 | $ 1,205,495 | $ 1,219,452 | $ 1,307,854 | $ 1,322,661 |
| Property Management Fee | 138,518 | 148,631 | 156,501 | 163,843 | 169,621 | 174,651 | 179,976 | 185,462 | 191,115 | 196,939 |
| **Total Other Expenses** | $ 138,518 | $ 148,631 | $ 156,501 | $ 163,843 | $ 169,621 | $ 174,651 | $ 179,976 | $ 185,462 | $ 191,115 | $ 196,939 |
| **Total Operating Expenses** | $ 1,916,112 | $ 1,993,825 | $ 2,060,608 | $ 2,112,157 | $ 2,186,168 | $ 2,289,858 | $ 2,336,431 | $ 2,384,403 | $ 2,507,842 | $ 2,558,740 |
| **Net Operating Income** | **$ 2,944,164** | **$ 3,221,286** | **$ 3,430,639** | **$ 3,636,725** | **$ 3,765,429** | **$ 3,838,254** | **$ 3,978,507** | **$ 4,123,035** | **$ 4,197,942** | **$ 4,351,414** |

### Exit & Return Scenarios for DST Investors

| | | | | | | |
|---|---|---|---|---|---|---|
| **Cumulative Cash Returned to DST Investors Pre-Sale** | **8,089,535** | **10,028,350** | **12,088,435** | **14,280,854** | **16,539,339** | **18,934,598** |
| Investors Breakeven Cap Rate (Excluding Distributions) | 5.86% | 5.97% | 6.19% | 6.41% | 6.53% | 6.81% |

**Sponsor's Sale Exit Forecast: Base Case [1]**

| | | | | | | |
|---|---|---|---|---|---|---|
| Sale Price | 62,757,144 | 63,970,894 | 66,308,451 | 68,717,250 | 69,965,708 | 72,523,569 |
| Cap Rate | 6.00% | 6.00% | 6.00% | 6.00% | 6.00% | 6.00% |
| Sale Price per Unit | 261,488 | 266,545 | 276,285 | 286,322 | 291,524 | 302,182 |
| Sale Price per NRSF | 226.32 | 230.70 | 239.13 | 247.81 | 252.31 | 261.54 |
| Sale Price per Land SF | 69.80 | 71.15 | 73.75 | 76.43 | 77.82 | 80.66 |
| Annual Property Value Appreciation/Depreciation | 0.6% | 0.8% | 1.2% | 1.6% | 1.6% | 1.9% |
| Projected Cost of Sale (lender/broker/disposition fees) | 5.0% | 5.0% | 5.0% | 5.0% | 5.0% | 4.5% |
| Loan Repayment | (29,700,000) | (29,700,000) | (29,700,000) | (29,700,000) | (29,700,000) | (29,700,000) |
| **Return on Sale to DST Investors** | **29,919,287** | **31,072,349** | **33,293,029** | **35,581,387** | **36,767,423** | **39,560,008** |
| **Total Return to DST Investors** | **38,008,823** | **41,100,700** | **45,381,464** | **49,862,241** | **53,306,761** | **58,494,607** |
| **Annual Capital Appreciation** | **4.2%** | **5.2%** | **6.4%** | **7.4%** | **7.8%** | **8.7%** |
| **Equity Multiple** | **1.21x** | **1.31x** | **1.45x** | **1.59x** | **1.7x** | **1.87x** |

[1] *Actual results will vary based on a number of assumptions, including assumptions relating to relevant capitalization rates. Forecasting future capitalization rates involves a high degree of uncertainty. In an effort to inform the prospective Purchasers about the range of potential outcomes, the projections included herein show a "base", "aggressive", and "conservative" case, each reflecting varying assumptions as to the future capitalization rates. In the opinion of the Sponsor as of the date of this Memorandum, each of the "base case", "aggressive case", and "conservative case" constitutes a plausible scenario for the Property for the following reasons: in our experience, capitalization rates are driven by interest rates as well as investor demand for cash flowing assets and availability and total volume of money supply. While the Sponsor maintains a view on these future drivers of capitalization rates, forecast outcomes vary. It is our belief that the range of outcomes presented herein represent a reasonable range of potential exit outcomes for investors given all known variables as of the date of this Memorandum.*

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## Net Operating Income Summary
## Waterford Place

| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Year 8 | Year 9 | Year 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| **Net Operating Income** | **$ 2,944,164** | **$ 3,221,286** | **$ 3,430,639** | **$ 3,636,725** | **$ 3,765,429** | **$ 3,838,254** | **$ 3,978,507** | **$ 4,123,035** | **$ 4,197,942** | **$ 4,351,414** |

**Exit & Return Scenarios for DST Investors**

| | | | | | | |
|---|---|---|---|---|---|---|
| **Cumulative Cash Returned to DST Investors Pre-Sale** | **8,089,535** | **10,028,350** | **12,088,435** | **14,280,854** | **16,539,339** | **18,934,598** |
| **Sponsor's Sale Exit Forecast: Aggressive Case [1]** | | | | | | |
| Sale Price | 71,722,451 | 73,109,593 | 75,781,087 | 78,534,000 | 79,960,809 | 82,884,079 |
| Cap Rate | 5.25% | 5.25% | 5.25% | 5.25% | 5.25% | 5.25% |
| Sale Price per Unit | 298,844 | 304,623 | 315,755 | 327,225 | 333,170 | 345,350 |
| Sale Price per NRSF | 258.65 | 263.65 | 273.29 | 283.21 | 288.36 | 298.90 |
| Sale Price per Land SF | 79.77 | 81.32 | 84.29 | 87.35 | 88.94 | 92.19 |
| Annual Property Value Appreciation/Depreciation | 3.5% | 3.3% | 3.4% | 3.6% | 3.4% | 3.6% |
| Projected Cost of Sale (lender/broker/disposition fees) | 5.0% | 5.0% | 5.0% | 5.0% | 5.0% | 4.5% |
| Loan Repayment | (29,700,000) | (29,700,000) | (29,700,000) | (29,700,000) | (29,700,000) | (29,700,000) |
| **Return on Sale to DST Investors** | **38,436,328** | **39,754,114** | **42,292,033** | **44,907,300** | **46,262,769** | **49,454,295** |
| **Total Return to DST Investors** | **46,525,864** | **49,782,464** | **54,380,468** | **59,188,153** | **62,802,108** | **68,388,894** |
| **Annual Capital Appreciation** | **9.7%** | **9.8%** | **10.5%** | **11.1%** | **11.1%** | **11.8%** |
| **Equity Multiple** | **1.48x** | **1.59x** | **1.73x** | **1.89x** | **2.x** | **2.18x** |
| **Sponsor's Sale Exit Forecast: Conservative Case [1]** | | | | | | |
| Sale Price | 62,757,144 | 63,970,894 | 66,308,451 | 68,717,250 | 69,965,708 | 72,523,569 |
| Cap Rate | 6.00% | 6.00% | 6.00% | 6.00% | 6.00% | 6.00% |
| Sale Price per Unit | 261,488 | 266,545 | 276,285 | 286,322 | 291,524 | 302,182 |
| Sale Price per NRSF | 226.32 | 230.70 | 239.13 | 247.81 | 252.31 | 261.54 |
| Sale Price per Land SF | 69.80 | 71.15 | 73.75 | 76.43 | 77.82 | 80.66 |
| Annual Property Value Appreciation/Depreciation | 0.6% | 0.8% | 1.2% | 1.6% | 1.6% | 1.9% |
| Projected Cost of Sale (lender/broker/disposition fees) | 5.0% | 5.0% | 5.0% | 5.0% | 5.0% | 4.5% |
| Loan Repayment | (29,700,000) | (29,700,000) | (29,700,000) | (29,700,000) | (29,700,000) | (29,700,000) |
| **Return on Sale to DST Investors** | **29,919,287** | **31,072,349** | **33,293,029** | **35,581,387** | **36,767,423** | **39,560,008** |
| **Total Return to DST Investors** | **38,008,823** | **41,100,700** | **45,381,464** | **49,862,241** | **53,306,761** | **58,494,607** |
| **Annual Capital Appreciation** | **4.2%** | **5.2%** | **6.4%** | **7.4%** | **7.8%** | **8.7%** |
| **Equity Multiple** | **1.21x** | **1.31x** | **1.45x** | **1.59x** | **1.7x** | **1.87x** |

[1] *Actual results will vary based on a number of assumptions, including assumptions relating to relevant capitalization rates. Forecasting future capitalization rates involves a high degree of uncertainty. In an effort to inform the prospective Purchasers about the range of potential outcomes, the projections included herein show a "base", "aggressive", and "conservative" case, each reflecting varying assumptions as to the future capitalization rates. In the opinion of the Sponsor as of the date of this Memorandum, each of the "base case", "aggressive case", and "conservative case" constitutes a plausible scenario for the Property for the following reasons: in our experience, capitalization rates are driven by interest rates as well as investor demand for cash flowing assets and availability and total volume of money supply. While the Sponsor maintains a view on these future drivers of capitalization rates, forecast outcomes vary. It is our belief that the range of outcomes presented herein represent a reasonable range of potential exit outcomes for investors given all known variables as of the date of this Memorandum.*

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## Forecasted Statement of Cash Flows
## Waterford Place

| | | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Year 8 | Year 9 | Year 10 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| **EFFECTIVE GROSS REVENUE** | | **$ 4,860,276** | **$ 5,215,111** | **$ 5,491,247** | **$ 5,748,882** | **$ 5,951,597** | **$ 6,128,111** | **$ 6,314,938** | **$ 6,507,438** | **$ 6,705,784** | **$ 6,910,154** |
| **Total Expenses** | | 1,916,112 | 1,993,825 | 2,060,608 | 2,112,157 | 2,186,168 | 2,289,858 | 2,336,431 | 2,384,403 | 2,507,842 | 2,558,740 |
| **NET OPERATING INCOME** | | $ 2,944,164 | $ 3,221,286 | $ 3,430,639 | $ 3,636,725 | $ 3,765,429 | $ 3,838,254 | $ 3,978,507 | $ 4,123,035 | $ 4,197,942 | $ 4,351,414 |
| ***Master Lease Rent*** | | | | | | | | | | | |
| **BASE RENT** | | | | | | | | | | | |
| (Debt Service) | | 1,463,468 | 1,463,468 | 1,467,477 | 1,463,468 | 1,463,468 | 1,463,468 | 1,467,477 | 1,463,468 | 1,463,468 | 1,463,468 |
| Master Tenant Base Income [1] | | $ 20,000 | $ 25,000 | $ 26,500 | $ 28,000 | $ 29,500 | $ 31,000 | $ 32,500 | $ 34,000 | $ 35,500 | $ 37,000 |
| **ADDITIONAL RENT** | | | | | | | | | | | |
| *Additional Rent Breakpoint* | | $ 3,400,000 | $ 3,482,000 | $ 3,555,000 | $ 3,604,000 | $ 3,679,000 | $ 3,784,000 | $ 3,836,000 | $ 3,882,000 | $ 4,007,000 | $ 4,059,000 |
| Additional Rent | | 1,254,000 | 1,402,500 | 1,476,750 | 1,476,750 | 1,402,500 | 1,402,500 | 1,402,500 | 1,402,500 | 1,402,500 | 1,402,500 |
| Asset Management Fee [2] | 0.30% | - | (148,500) | (222,750) | (222,750) | (148,500) | (148,500) | (148,500) | (148,500) | (148,500) | (148,500) |
| **Additional Rent Cash Flow [3]** | | $ 1,254,000 | $ 1,254,000 | $ 1,254,000 | $ 1,254,000 | $ 1,254,000 | $ 1,254,000 | $ 1,254,000 | $ 1,254,000 | $ 1,254,000 | $ 1,254,000 |
| **Additional Rent Cash on Cash Return** | **4.00%** | **4.00%** | **4.00%** | **4.00%** | **4.00%** | **4.00%** | **4.00%** | **4.00%** | **4.00%** | **4.00%** | **4.00%** |
| **SUPPLEMENTAL RENT** | | | | | | | | | | | |
| *Supplemental Rent Breakpoint* | | $ 4,654,000 | $ 4,884,500 | $ 5,031,750 | $ 5,080,750 | $ 5,081,500 | $ 5,186,500 | $ 5,238,500 | $ 5,284,500 | $ 5,409,500 | $ 5,461,500 |
| Master Tenant Suppplemental [4] | 10% | 20,670 | 33,032 | 45,991 | 66,851 | 86,996 | 94,129 | 107,603 | 122,307 | 129,647 | 144,845 |
| Supplemental Rent | 90% | 186,027 | 297,286 | 413,920 | 601,657 | 782,965 | 847,158 | 968,427 | 1,100,761 | 1,166,827 | 1,303,602 |
| Trust Reserve Account | | - | - | - | (100,000) | (237,321) | (137,342) | (137,342) | (137,342) | (137,342) | (137,342) |
| **Supplemental Rent Cash Flow [5]** | | **$ 186,027** | **$ 297,286** | **$ 413,920** | **$ 501,657** | **$ 545,644** | **$ 709,815** | **$ 831,085** | **$ 963,418** | **$ 1,029,485** | **$ 1,166,260** |
| **Supplemental Rent Cash on Cash Return** | | **0.59%** | **0.95%** | **1.32%** | **1.60%** | **1.74%** | **2.26%** | **2.65%** | **3.07%** | **3.28%** | **3.72%** |
| Trust Expenses | | $ (25,000) | $ (25,000) | $ (25,000) | $ (25,000) | $ (25,000) | $ (25,000) | $ (25,000) | $ (25,000) | $ (25,000) | $ (25,000) |
| Total Cash Flow | | $ 1,415,027 | $ 1,526,286 | $ 1,642,920 | $ 1,730,657 | $ 1,774,644 | $ 1,938,815 | $ 2,060,085 | $ 2,192,418 | $ 2,258,485 | $ 2,395,260 |
| Total Cash on Cash Return | | **4.51%** | **4.87%** | **5.24%** | **5.52%** | **5.66%** | **6.18%** | **6.57%** | **6.99%** | **7.20%** | **7.64%** |
| **FORECASTED PRINCIPAL AMORTIZATION** | | | | | | | | | | | |
| Beginning Loan Balance | | $ 29,700,000 | $ 29,700,000 | $ 29,700,000 | $ 29,700,000 | $ 29,700,000 | $ 29,700,000 | $ 29,700,000 | $ 29,700,000 | $ 29,700,000 | $ 29,700,000 |
| Principal Amortization | | - | - | - | - | - | - | - | - | - | - |
| Ending Balance | | $ 29,700,000 | $ 29,700,000 | $ 29,700,000 | $ 29,700,000 | $ 29,700,000 | $ 29,700,000 | $ 29,700,000 | $ 29,700,000 | $ 29,700,000 | $ 29,700,000 |
| Yield | | **4.51%** | **4.87%** | **5.24%** | **5.52%** | **5.66%** | **6.18%** | **6.57%** | **6.99%** | **7.20%** | **7.64%** |
| **TAX ANALYSIS FOR NON-1031 INVESTOR** | | | | | | | | | | | |
| Estimated Taxable Income (Loss) | | (441,032) | (329,773) | (213,139) | (125,402) | (81,415) | 82,756 | 204,025 | 336,359 | 402,426 | 539,200 |
| Estimated Tax Refund / Benefit | @ 37.0% rate | (163,182) | (122,016) | (78,861) | (46,399) | (30,124) | 30,620 | 75,489 | 124,453 | 148,898 | 199,504 |
| Yield Net of Tax Benefit | | 1,578,209 | 1,648,302 | 1,721,782 | 1,777,056 | 1,804,768 | 1,908,195 | 1,984,595 | 2,067,966 | 2,109,588 | 2,195,755 |
| Effective Tax Equivalent Yield [6] | | 7.99% | 8.34% | 8.71% | 8.99% | 9.13% | 9.66% | 10.04% | 10.47% | 10.68% | 11.11% |

1 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 inurse to the benefit of the Master Tenant and, therefore, NexPoint Waterford Holdco, LLC as the sole member of the Master Tenant. Such amounts will not be available for distributions to the Trust or the Investors. Amounts shown are rounded to the nearest thousands.
2 The Asset Management Fee may be deferred or waived at the sole discretion of the Asset Manager.
3 The Additional Rent will be estimated and paid on a monthly basis with year-end reconciliation.
4 Under the Master Lease, the Master Tenant will earn 10% of Effective Gross Revenue exceeding the Supplemental Rent Breakpoint, as provided in the Master Lease.
5 The Supplemental Rent will be estimated and paid on an annual basis with year-end reconciliation within 90 days of the end of the calendar year.
6 Effective Taxable Equivalent Yield represents the yield required to achieve equivalent after tax cash flow on an interest-bearing investment, which has no shelter from depreciation and would be taxed at a marginal tax rate of 37.0%.

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**Forecasted Statement of Cash Flows**
**Waterford Place**

**FORECASTED LENDER RESERVE ACCOUNTS**

| ***Replacement Reserve Account*** | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Beginning Balance | | $ 461,112 | $ 388,234 | $ 313,554 | $ 234,364 | $ 155,914 | $ 158,883 | $ 178,534 | $ 163,173 | $ 132,285 | $ 145,208 |
| Contribution from Trust Reserve | | 92,222 | 92,222 | 92,222 | 92,222 | 92,222 | 92,222 | 92,222 | 92,222 | 92,222 | 92,222 |
| Recurring Replacements (per the PCA) | | (60,100) | (61,903) | (66,412) | (65,673) | (89,253) | (72,571) | (107,584) | (123,110) | (79,300) | (78,417) |
| Poly Piping | | (105,000) | (105,000) | (105,000) | (105,000) | | | | | | |
| Interest Income | 0.00% | - | - | - | - | - | - | - | - | - | - |
| Ending Balance | | $ 388,234 | $ 313,554 | $ 234,364 | $ 155,914 | $ 158,883 | $ 178,534 | $ 163,173 | $ 132,285 | $ 145,208 | $ 159,013 |

| **FORECASTED SUPPLEMENTAL TRUST RESERVE ACCOUNT** | | | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Beginning Balance | | *per unit* | $ 4,552,427 | $ 3,074,608 | $ 1,714,689 | $ 1,145,018 | $ 408,042 | $ 72,000 | $ 72,000 | $ 72,000 | $ 72,000 | $ 72,000 |
| Reserve Contribution from Cash Flow | | | - | - | - | 100,000 | 237,321 | 137,342 | 137,342 | 137,342 | 137,342 | 137,342 |
| Contribution to Lender Reserves | $ | 384 | (92,222) | (92,222) | (92,222) | (92,222) | (92,222) | (92,222) | (92,222) | (92,222) | (92,222) | (92,222) |
| Recurring Capital Improvements | $ | 200 | (48,000) | (48,000) | (48,000) | (48,000) | (48,000) | (48,000) | (48,000) | (48,000) | (48,000) | (48,000) |
| Value-Add CapEx - Interior Upgrades | $ | 8,775 | (634,114) | (375,776) | (375,776) | (375,776) | (344,462) | - | - | - | - | - |
| Value-Add CapEx - Common Area & Amenit | $ | 10,194 | (885,580) | (966,904) | (122,259) | (366,778) | (105,000) | - | - | - | - | - |
| Interest Income | | 4.00% | 182,097 | 122,984 | 68,588 | 45,801 | 16,322 | 2,880 | 2,880 | 2,880 | 2,880 | 2,880 |
| Ending Balance | | | $ 3,074,608 | $ 1,714,689 | $ 1,145,018 | $ 408,042 | $ 72,000 | $ 72,000 | $ 72,000 | $ 72,000 | $ 72,000 | $ 72,000 |
| | | | | | | | | | | | | |
| Total Capital Expenditure | | | 1,627,794 | 1,452,584 | 612,448 | 856,228 | 586,715 | 120,571 | 155,584 | 171,110 | 127,300 | 126,417 |
| Total Capital Expenditure per unit | | | 6,782 | 6,052 | 2,552 | 3,568 | 2,445 | 502 | 648 | 713 | 530 | 527 |

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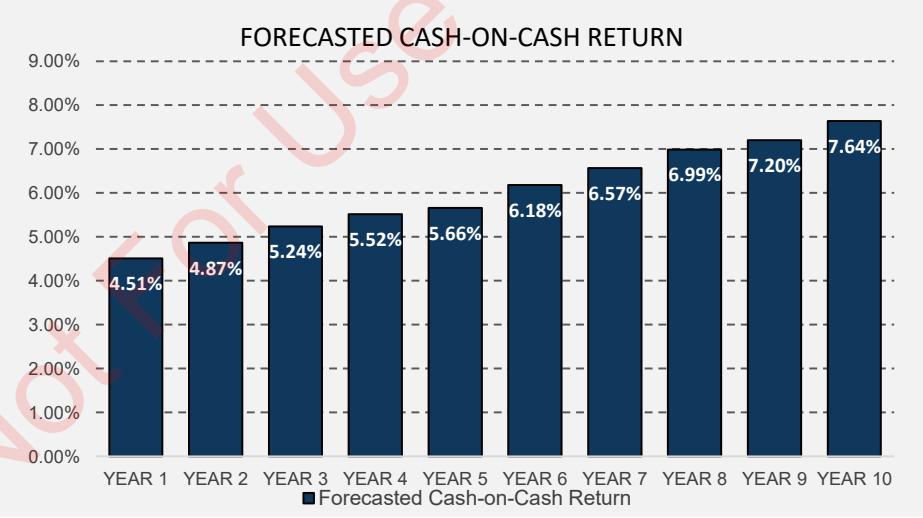
**MASTER LEASE SUMMARY** **Waterford Place**

**Estimated Gross Offering Proceed** $31,360,817

| Lease Period | Base Rent (Debt Service) | Additional Rent Breakpoint | Additional Rent Annual Maximum | Supplemental Rent Breakpoint | Projected Supplemental Rent |
|---|---|---|---|---|---|
| Year 1 | $1,463,468 | $3,400,000 | $1,254,000 | $4,654,000 | $186,027 |
| Year 2 | $1,463,468 | $3,482,000 | $1,402,500 | $4,884,500 | $297,286 |
| Year 3 | $1,467,477 | $3,555,000 | $1,476,750 | $5,031,750 | $413,920 |
| Year 4 | $1,463,468 | $3,604,000 | $1,476,750 | $5,080,750 | $501,657 |
| Year 5 | $1,463,468 | $3,679,000 | $1,402,500 | $5,081,500 | $545,644 |
| Year 6 | $1,463,468 | $3,784,000 | $1,402,500 | $5,186,500 | $709,815 |
| Year 7 | $1,467,477 | $3,836,000 | $1,402,500 | $5,238,500 | $831,085 |
| Year 8 | $1,463,468 | $3,882,000 | $1,402,500 | $5,284,500 | $963,418 |
| Year 9 | $1,463,468 | $4,007,000 | $1,402,500 | $5,409,500 | $1,029,485 |
| Year 10 | $1,463,468 | $4,059,000 | $1,402,500 | $5,461,500 | $1,166,260 |

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