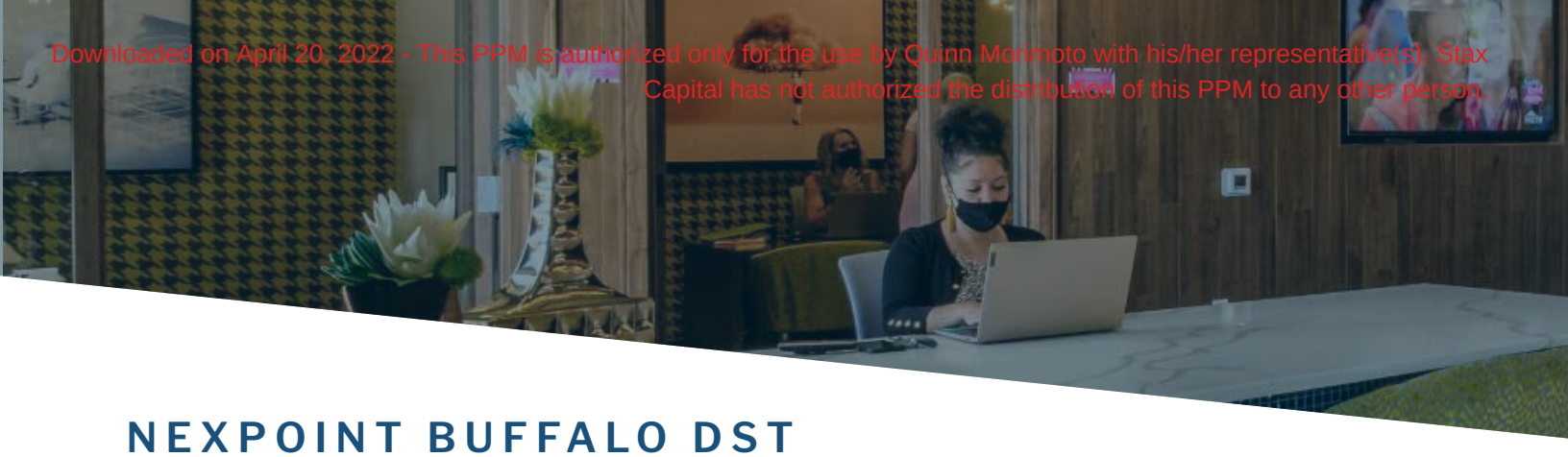
NEXPOINT

MULTIFAMILY

NexPoint Buffalo DST

LAS VEGAS, NV

This material does not constitute an offer to sell and is authorized for use only when accompanied by the Offering's Confidential Private Placement Memorandum (the "PPM"). Reference is made to the PPM for a statement of risks and terms of the Offering. The information set forth herein is qualified in its entirety by the PPM. All potential Purchasers must read the PPM and no person may invest without acknowledging receipt and complete review of the PPM. Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the PPM.



NEXPOINT BUFFALO DST

Disclosures & Risks

An investment in NexPoint Buffalo DST is highly speculative, illiquid, and involves a high degree of risk, including the potential loss of your entire investment. The photos in this brochure are of the actual Property in this Offering and Las Vegas.

There are substantial risks in any investment program. See "Risk Factors" on page 16 of the accompanying PPM for a discussion of the risks relevant to this Offering. Distributions are not guaranteed. Please review the entire PPM prior to investing. This material does not constitute an offer to sell and is authorized for use only when accompanied or preceded by the PPM. Reference is made to the PPM for a statement of risks and terms of the Offering. The information set forth herein is qualified in its entirety by the PPM. All potential investors must read the PPM and no person may invest without acknowledging receipt and complete review of the PPM.

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 a public market of the Interests;
- the holding of a beneficial interest in the Trust with no voting rights with respect to the management or operations of the Trust or in connection with the sale of the Property;
- risks associated with owning, financing, operating and leasing a multifamily apartment complex and real estate generally in the Las Vegas–Henderson-Paradise, Nevada Metropolitan Statistical Area (the "Las Vegas MSA");
- risks associated with the impact of pandemics, including the COVID-19 pandemic, on the Property and the economy 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 that capitalizes the Master Tenant;
- risks relating to the terms of the financing for the Property, including the use of leverage;
- lack of diversity of investment;
- the existence of various conflicts of interest among the Sponsor, the Trust, the Master Tenant, the Property Manager, and their affiliates;
- material tax risks, including treatment of the Interests for purposes of Code Section 1031 and the use of exchange funds to pay acquisition costs, which may result in taxable boot;
- the Interests not being registered with the Securities and Exchange Commission (the "SEC") or any state securities commissions;
- risks relating to the costs of compliance with laws, rules and regulations applicable to the Property;
- risks related to competition from properties similar to and near the Property;
- risks related to wind and other natural weather events, which increases the risk of damage to the Property; and
- the possibility of environmental risks related to the Property.

NexPoint Securities, Inc., an entity under common control with the Sponsor, serves as the Managing Broker-Dealer of the Offering. The Managing Broker-Dealer was formed in November 2013 and is registered as a broker-dealer with the SEC and is a member of FINRA/SIPC.

NEXPOINT BUFFALO DST

Offering Highlights

NexPoint believes that this Offering presents an attractive long-term investment opportunity due to favorable population growth, steady demographic income, nearby retail and entertainment drivers, continued and strengthening demand for multifamily assets, quality of the asset, and high physical occupancy, all in the entertainment capital of the world.

ACQUISITION DETAILS

Total Acquisition Cost*	$83,002,313
Supplemental Reserves	$787,500
Lender Reserves**	$218,823
Total Capitalization	$91,607,314

HIGHLIGHTS OF THE TRUST

Offering Size	$54,531,314
Minimum Purchase - Cash	$100,000
Minimum Purchase - 1031	$100,000
Suitability	Accredited Investor Only

LOAN INFORMATION

Leverage to Investors	40.47%
Interest Rate	3.52% Fixed Rate
Loan Term	10 Years
Amortization	None

** The Total Acquisition Cost includes the purchase price of the Property, Loan-Related Costs, and Other Closing Costs.*
*** Lender Reserves refers to the Replacement Reserve which was required by the Lender.*
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NEXPOINT BUFFALO DST

Las Vegas MSA

The Las Vegas MSA contains the largest concentration of people in the State of Nevada and the 26th most populous city in the United States.[1]

Rising Population

The Las Vegas MSA has experienced annual population growth of 1.6% since 2010, which exceeds population growth in the State of Nevada over that period.

Steady Income

40.4% of households in the Las Vegas MSA earn less than $50,000 annually, leading to a higher percentage of residents in need of rental solutions.

Employment Epicenter

Top employment sectors in the Las Vegas MSA include sales (12.3%), office/admin support (11.9%), and food preparation/serving (10.6%). Together, these three sectors comprise 34.9% of total employment.

Diverse Housing Stock

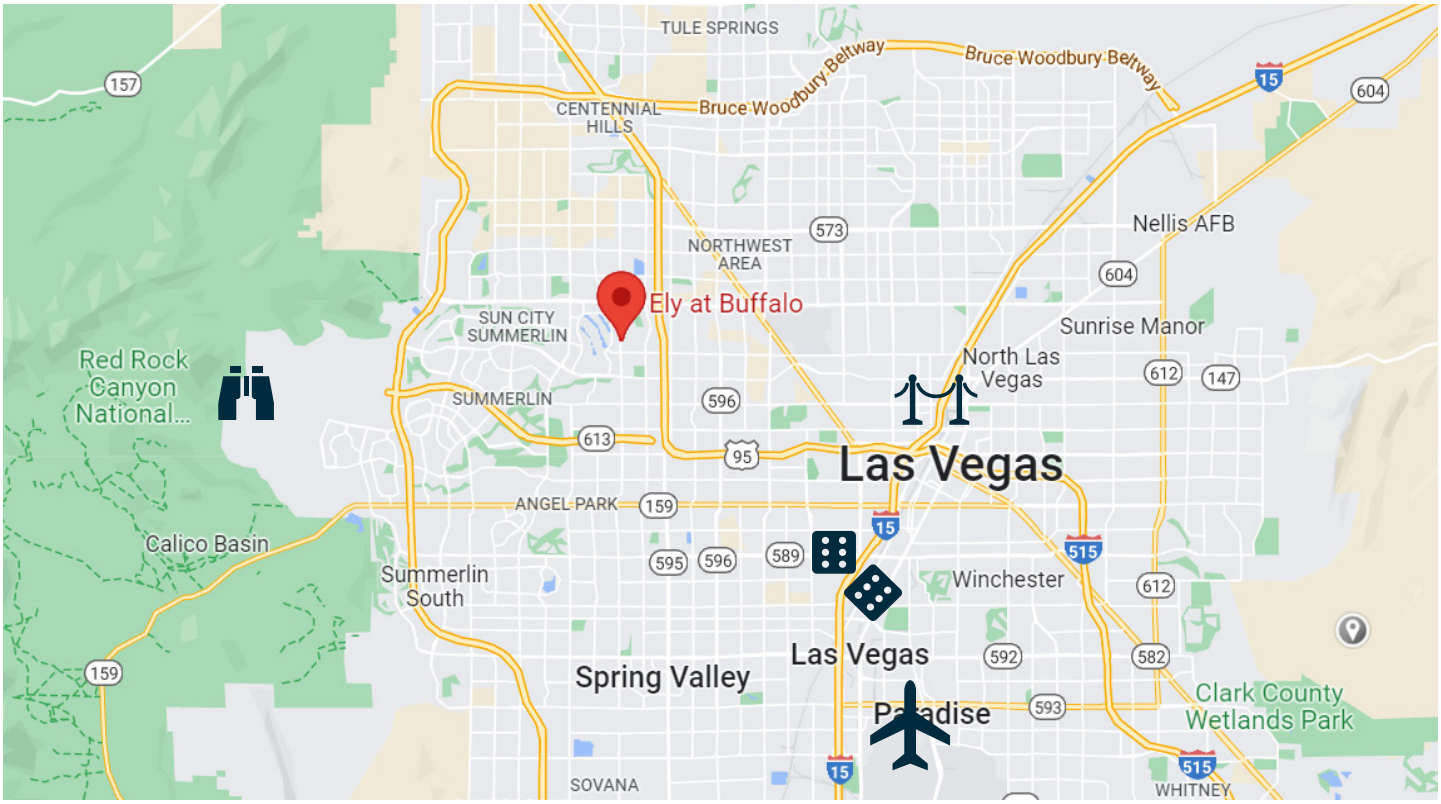
The bulk of housing in the Las Vegas MSA is concentrated in single-family homes which comprise 63.6% of the inventory. For those seeking a more urban housing option, this offering provides luxury multifamily living in the Las Vegas epicenter of nightlife.

Record Pandemic Recovery

According to MPF Research Inc., the Las Vegas MSA apartment market weathered the pandemic downturn well. Momentum carried throughout the recovery as the Las Vegas MSA apartment market achieved record rent growth and historic highs in occupancy during 2021. This is especially encouraging given that the Las Vegas MSA has one of the most prominent leisure/hospitality services industries in the nation, the sector hardest hit by job losses in the pandemic.

1. https://www.infoplease.com/us/cities/top-50-cities-us-population-and-rank

Las Vegas MSA



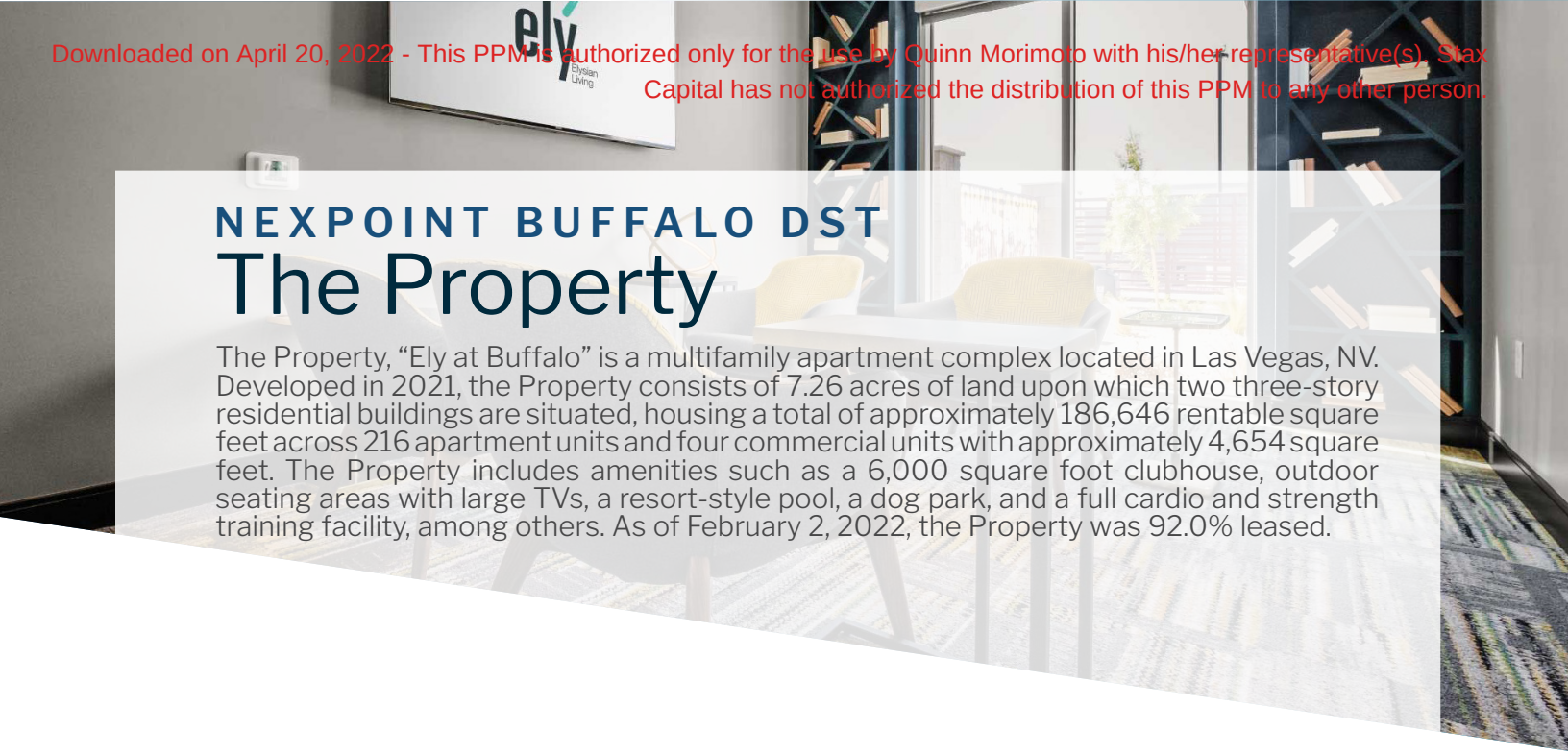
407,099
Total 2021 Population
*5 Mile

10
Miles from the Lively Las Vegas Strip

30
Minutes to McCarran International

#21
Fastest Growing Places[1]

1. Las Vegas, NV: https://realestate.usnews.com/places/nevada/las-vegas



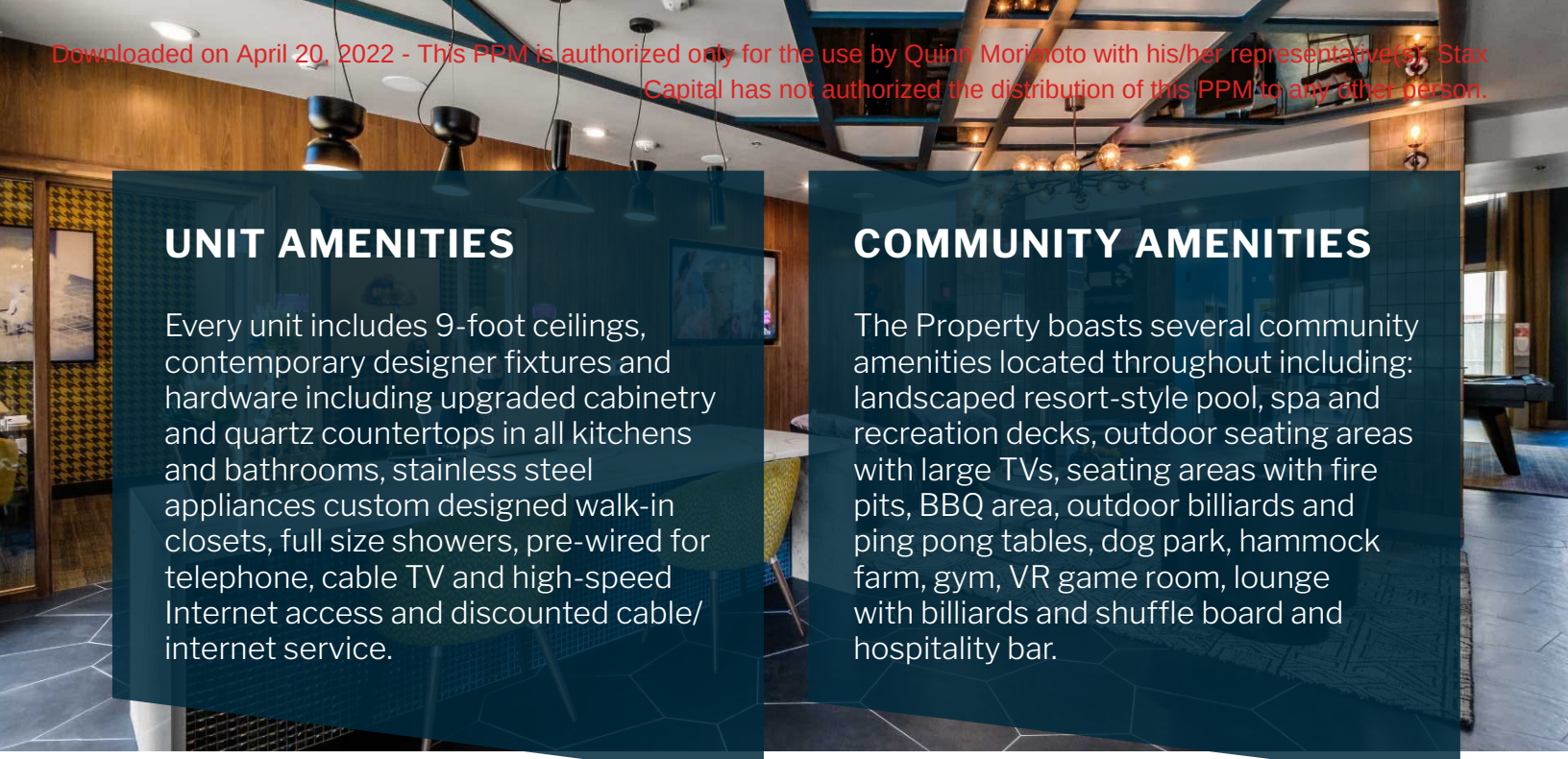
NEXPOINT BUFFALO DST

The Property

The Property, "Ely at Buffalo" is a multifamily apartment complex located in Las Vegas, NV. Developed in 2021, the Property consists of 7.26 acres of land upon which two three-story residential buildings are situated, housing a total of approximately 186,646 rentable square feet across 216 apartment units and four commercial units with approximately 4,654 square feet. The Property includes amenities such as a 6,000 square foot clubhouse, outdoor seating areas with large TVs, a resort-style pool, a dog park, and a full cardio and strength training facility, among others. As of February 2, 2022, the Property was 92.0% leased.

The Property Unit Mix

Type	# of Units	Avg. Sq. Feet	Total Sq. Feet	# Vacant	# Occupied	Avg. Rent
Studio	30	576	17,265	1	29	$1,267
1 Bed / 1 Bath	123	726	89,284	12	111	$1,363
2 Bed / 2 Bath	53	1,155	61,193	5	48	$1,688
3 Bed / 2 Bath	10	1,425	14,250	0	10	$2,148
Total /Average	**216**	**842**	**181,992**	**18**	**198**	**$1,617**



UNIT AMENITIES

Every unit includes 9-foot ceilings, contemporary designer fixtures and hardware including upgraded cabinetry and quartz countertops in all kitchens and bathrooms, stainless steel appliances custom designed walk-in closets, full size showers, pre-wired for telephone, cable TV and high-speed Internet access and discounted cable/ internet service.

COMMUNITY AMENITIES

The Property boasts several community amenities located throughout including: landscaped resort-style pool, spa and recreation decks, outdoor seating areas with large TVs, seating areas with fire pits, BBQ area, outdoor billiards and ping pong tables, dog park, hammock farm, gym, VR game room, lounge with billiards and shuffle board and hospitality bar.

CLASS-A PROPERTY

The Property features luxurious amenities including community perks such as many entertaining areas, fitness center and an outdoor pool as well as many spacious in-unit amenities.

COMMERCIAL UNITS

The Property also offers four commercial units totaling 4,654 square feet. The leases prospective tenants are anticipated to sign will be on triple net terms with an average lease rate of $22 per square foot per year.

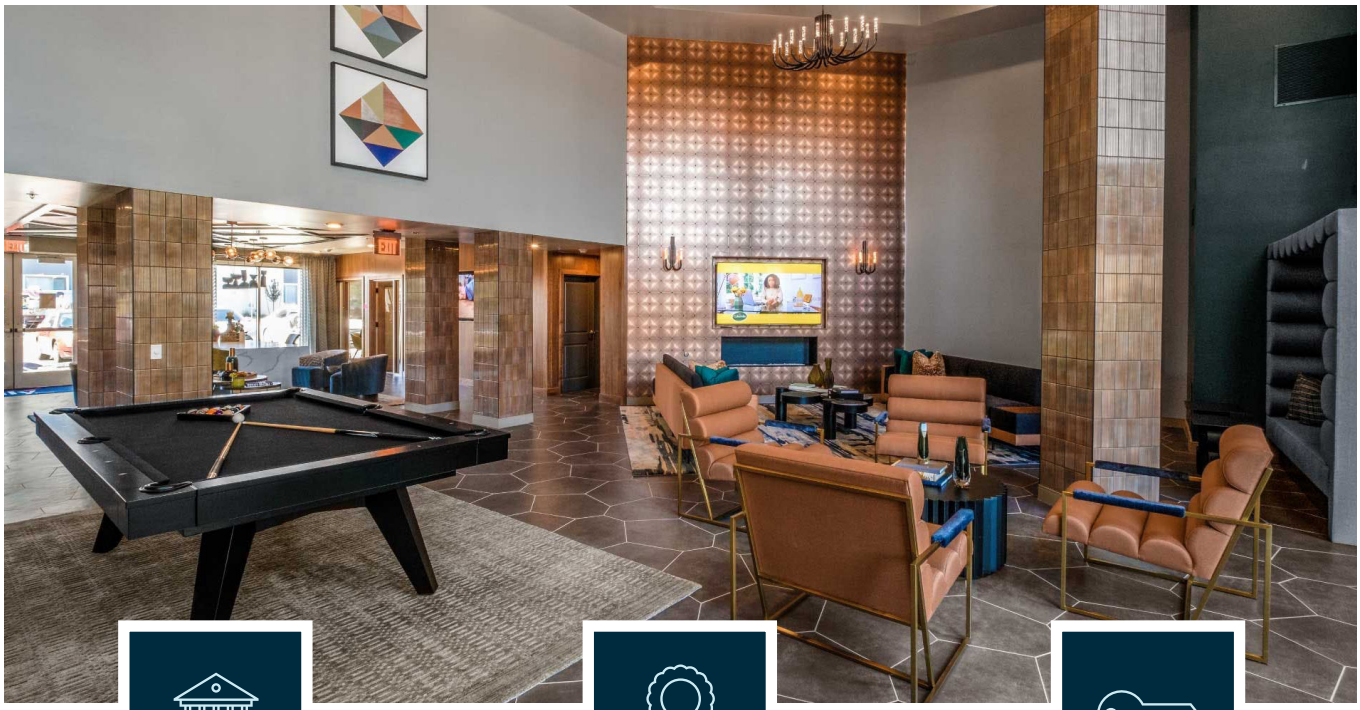
PRIME LOCATION

The Property is located in the Las Vegas MSA, a thriving market supported by tourists and residents in the region's thriving shopping and convention sectors.

THE DEVELOPER

The Calida Group[1]

The Calida Group ("Calida") and its affiliates will be involved in certain aspects of the Offering which provides an opportunity to collaborate with a proven Las Vegas apartment operator/developer. By holding itself to the highest standards of quality, design, risk management and reporting, Calida challenges the perception of apartment living by developing designs and creating experience-driven amenities that seamlessly fit into residents' fast-paced lives. Calida differentiates itself from the competition through thoughtful design and services, offering a chic, fun and urban environment not found at other luxury apartment home communities.



2007

TENURED OPERATOR

Calida has been in operation since 2007 and has forged partnerships with some of the nation's largest financial institutions.

Best of Las Vegas

"SIMPLY THE BEST"

"The Elysian Living" properties developed by Calida were named "Best Apartment Complex" in Las Vegas in the 2021 Las Vegas Review-Journal.

19,571

PORTFOLIO UNITS

Calida serves as the Operator/Developer for 19,571 total units across their platform.

[1] Thecalidagroup.com

The NexPoint Approach

Based in Dallas, Texas, NexPoint is a multibillion-dollar integrated alternative asset manager. NexPoint has extensive real estate experience, having completed **$15 billion** in gross real estate acquisitions and currently managing **$4.25 billion** of multifamily assets as of December 31, 2021, inclusive of affiliates. NexPoint's deep roots in multifamily have served as the foundation for its DST/1031 Exchange business and enabled the firm to meet the rising investor demand for tax-advantaged real estate offerings.

Professional On-Site Management

NexPoint has a history of exclusive partnerships with first-in-class property management for its multifamily assets. Cushman & Wakefield serves as Property Manager for the Property, accompanied by their 700-million-square-foot management portfolio and their team's expert knowledge of local market dynamics.

Capital Markets Expertise

Leveraging our integrated investment platform and affiliate network, NexPoint has access to a range of investment resources that complement our core real estate and credit capabilities. This is evident in our capital markets expertise, which has enabled us to bring creative financing solutions to otherwise complex transactions.

Value-Add Approach

NexPoint acquires Class B+/A multifamily real estate properties, typically with a value-add component, where we can invest capital to provide "lifestyle" amenities to workforce housing or newly developed properties. Our value-add strategy seeks to provide a safe, clean, and affordable home to our residents.

THE PROPERTY MANAGER

Cushman & Wakefield[1]

Cushman & Wakefield's property management teams make an impact for their clients with a holistic approach to management that drives real estate value and performance. Their integrated teams of property managers, engineers and client accountants collaborate to minimize operating costs, foster strong tenant relationships and create engaging workplace experiences. They leverage their experience, investor suite of services and industry-leading research and insights to propel their clients' businesses on to what's next.

[1] The Property Manager, Pinnacle Property Management Services, LLC is a subsidiary of Cushman & Wakefield.

NEXPOINT

Management Team

Brian Mitts
Chief Financial Officer

Mr. Mitts is a member of the investment committee for the Sponsor and serves in numerous roles across the NexPoint platform. Currently, Mr. Mitts leads NexPoint's financial reporting and accounting teams and is integral in financing and capital allocation decisions. Mr. Mitts was also a co-founder of NREA, as well as NXRT and NexPoint Advisors, L.P., the parent of NREA. He has worked for NREA or one of its affiliates since 2007.

Matt McGraner
President

Mr. McGraner is a member of the investment committee for the Sponsor and serves in numerous roles across the NexPoint platform. With over ten years of real estate, private equity and legal experience, his primary responsibilities are to lead the strategic direction and operations of the real estate platform at NexPoint. Mr. McGraner has led the acquisition and financing of approximately $11.2 billion of real estate investments.

DC Sauter
General Counsel

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 in Dallas, 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.

REAL ESTATE TRACK RECORD[1]

$15.0 Billion
in Gross Real Estate Acquisitions[2]

$3.6 Billion
in Real Estate Transactions in the Last 12 Months[2]

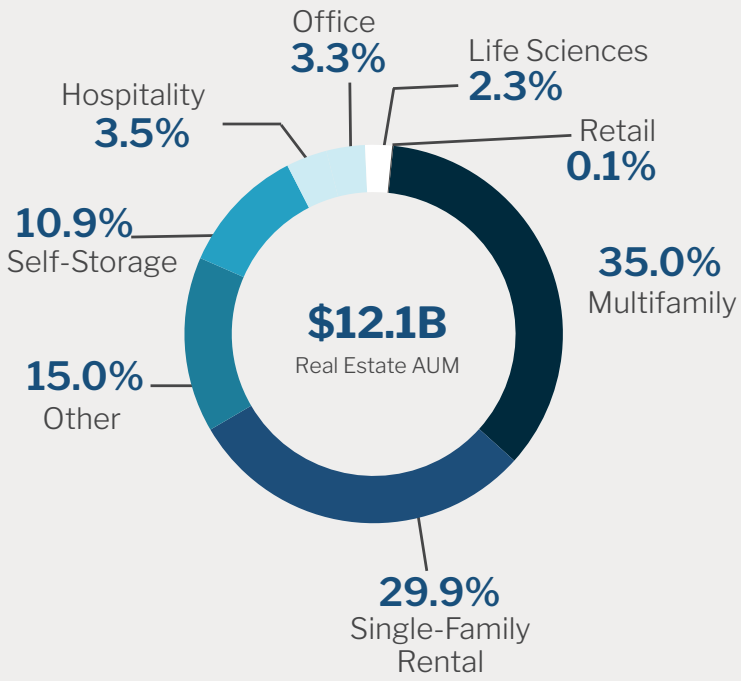
290
Real Estate Acquisitions[2]

33
States Nationwide

2.27x
Multiple of Invested Capital[2]

$663.4 Million
Realized Value Total[2]

ASSET MIX



.[1]Real estate assets as of December 31, 2021, inclusive of affiliates
.[2]Real estate assets acquired from January 1, 2012 to December 31, 2021, inclusive of affiliates

NEXPOINT

300 Crescent Ct, Ste 700
Dallas, Texas 75201
NexPoint Securities, Inc. Member FINRA/SIPC

WWW.NEXPOINT.COM

Offeree Name:_____ Memorandum Number:_____

NEXPOINT BUFFALO DST

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

Minimum Purchase: 0.183% Interest ($100,000 of equity and $67,990 of debt)

Maximum Offering Amount: $54,531,314 of equity

The date of this Memorandum is March 9, 2022

Investing in DST Interests involves a high degree of risk. Before investing you should review the entire Confidential Private Placement Memorandum, including the "Risk Factors" beginning on page 16.

NEXPOINT BUFFALO DST

CONFIDENTIAL PRIVATE PLACEMENT MEMORANDUM

Class 1 Beneficial Interests in a Delaware Statutory Trust
Minimum Purchase: 0.183% Interest ($100,000 of equity and $67,990 of debt)
Maximum Offering Amount: $54,531,314 of Interests (100% ownership of the Trust)

The Trust

NexPoint Buffalo 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 below) in the Trust (the "**Interests**") to Accredited Investors (as defined below) pursuant to the terms of this Confidential 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 below), closed-end funds, interval funds, and a business development company ("**BDC**"). NexPoint is based in Dallas, Texas. NexPoint and its affiliates had approximately $13.3 billion in assets under management as of September 30, 2021 and have completed over $13.2 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 closed-end fund which is currently being converted to a REIT); NexPoint Hospitality Trust ("**NHT**"), an externally managed, publicly traded REIT listed on the TSX Venture Exchange, that manages a portfolio of hospitality assets located in the United States; VineBrook Homes Trust, Inc. ("**VBHT**"), an externally managed, private REIT 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 below) 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; and GAF REIT, LLC (the wholly-owned subsidiaries are collectively referred to herein as the "**REIT Subsidiaries**").

The Manager of the Trust

NexPoint Buffalo Manager, LLC, a Delaware limited liability company (the "**Manager**") and 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, which team is described below. The Manager is also the Signatory Trustee (as defined below) of the Trust.

The Property

Ely at Buffalo is a multifamily apartment complex located at 2660 North Buffalo Drive, Las Vegas, Nevada 89128 (the "**Property**"). Developed in 2021, the Property consists of 7.26 acres of land upon which two three-story

residential buildings are situated housing a total of approximately 181,992 rentable square feet across 216 apartment units (the "**Apartment Units**") and four commercial units with approximately 4,654 square feet (the "**Commercial Units**"). The Property includes amenities such as a 6,000 square foot clubhouse, outdoor seating areas with large TVs, a resort-style pool, a dog park, and a full cardio and strength training facility, among others. As of February 2, 2022, the Property was 92.0% leased.

The Acquisition Closing

The Trust closed on the acquisition of the Property on February 1, 2022 (the "**Acquisition Closing**"). Prior to the Acquisition Closing, the Property was owned by Buffalo Property Owner SPE LLC, a Delaware limited liability company (the "**SPE**"). The SPE was indirectly owned by unaffiliated third parties including entities that are affiliated with The Calida Group, LLC, a Nevada limited liability company ("**Calida**"; together with the other owners of the SPE Owner, the "**Sellers**").

The transactions comprising of the Acquisition Closing were based on an $81,000,000 valuation of the SPE (the "**Purchase Price**") agreed upon by the Sellers and the JV Entity (as defined below). On December 30, 2021, NexPoint CR MW DST, LLC, a Delaware limited liability company (the "**JV Entity**"), made a cash contribution to the SPE and, concurrently, Highland Income Fund placed a first mortgage loan on the Property in the amount of $80,337,570 (together, the "**Acquisition Bridge**"). The Acquisition Bridge proceeds were used to pay off an existing mortgage loan on the Property, to pay transactional costs, and to redeem certain Sellers (directly or indirectly) from the SPE. As part of the foregoing, certain Sellers contributed their interests in the SPE to the JV Entity (resulting in the JV Entity being the 100% owner of the SPE) and the SPE transferred tenancy-in-common interests in the Property valued at $1,570,000 (the "**TIC Interests**") to certain Sellers.

At the Acquisition Closing on February 1, 2022, the JV Entity caused NexPoint Buffalo Investment Co, LLC (the "**Contributor**") to contribute to the SPE sufficient cash (collectively, the "**Contributor Contribution**"), which, together with the proceeds from the Loan (as defined below): (1) enabled the SPE to acquire the TIC Interests and pay expenses and fees associated with the overall acquisition, and (2) enabled the SPE to pay off the Acquisition Bridge. As a result of the foregoing, the SPE became the sole owner of the Property. In connection with the Contributor Contribution, on February 1, 2022, the SPE converted into a Delaware statutory trust under Delaware law (i.e., the Trust) and 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 $37,076,000 (the "**Loan**") from KeyBank National Association, a national banking association (the "**Lender**") under the Federal National Mortgage Association ("**Fannie Mae**") Delegated Underwriting Service ("**DUS**") loan program.

In connection with the Acquisition Closing, the Lender obtained an appraisal for the Property prepared by National Valuation Consultants, Inc. ("**NVC**"), dated January 21, 2022 (the "**Appraisal**"), reflecting a market value "as is" for the Property of $83,000,000.

The Lease

Concurrent with the acquisition of the Property, the Trust leased the Property to an affiliate of the Sponsor, NexPoint Buffalo Leaseco, LLC, a newly formed Delaware limited liability company (the "**Master Tenant**"), pursuant to a Master Lease Agreement dated as of February 1, 2022 (the "**Master Lease**"). The Master Tenant sub-leases the Apartment Units and the Commercial Units to the end-user tenants pursuant to residential leases.

Calida

Calida and its affiliates will be involved in certain aspects of the Offering. For its services relating to the identification, diligence, and other aspects relating to the Property, the JV Entity, the Asset Manager (as defined below), and an affiliate of Calida entered into a Fee Sharing Agreement as of February 1, 2022 (the "**Fee Sharing Agreement**") whereby the affiliate of Calida is entitled to receive 100% of the "Other Fee Based Revenues" (as defined in the Fee Sharing Agreement) and 33.33% of certain fees relating to the Offering such as the Asset

Management Fee (as defined below), the Disposition Fee (as defined below), and the Facilitation Fee (as defined below).

The Trust

The Trust is governed by that certain Trust Agreement dated February 1, 2022, (the "**Trust Agreement**"), by and among the Contributor, the Manager (also in its capacity as Signatory Trustee (as defined below)), and the Corporation Trust Company, as the Delaware trustee (the "**Delaware Trustee**"; together with the Signatory Trustee, the "**Trustees**").

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**" or "**Interests**") is being made through the Managing Broker-Dealer (as defined below) on a "best efforts" basis through the broker dealers participating in the offering ("**Participating Dealers**"), who are members of the Financial Industry Regulatory Agency ("**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 until the Maximum Offering Amount (as defined below) of Interests is sold or, if earlier, until March 1, 2023 (the "**Offering Termination Date**"). *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; Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (Nevada); Assignment of Security Instrument and Security Instrument; Assignment of Leases and Rents; Assignment of Management Agreement; Master Lessee Estoppel Certificate; Environmental Indemnity Agreement; Subordination Agreement; Multifamily Note; and additional loan documents (collectively, the "**Loan Documents**"), entered into as of the Closing.

The Loan Documents provide for a "Replacement Reserve Escrow" (referred to herein as "**Replacement Reserve**") and the Trust used $109,962 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 $255 per apartment unit per year. In addition to the Lender-controlled Replacement Reserve, the Trust will establish (and control) a reserve funded from the Loan proceeds for costs and

expenses associated with the Property, in the amount of $787,500 (the "**Supplemental Trust Reserve**"). As required by the Lender, the Trust also used $108,861 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**"). Finally, the Trust established an "**Interest Reserve**" to meet future debt service and the Trust used $2,500,000 of the Loan proceeds to fund the initial contribution to the Interest Reserve.

The Loan Documents provide for a $37,076,000 Loan, with a 10-year term, interest-only payments and a fixed interest rate of 3.52% per annum. On a fully-loaded basis, the loan-to-capitalization ("**LTC**") ratio is 40.47%. 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 a public market of the Interests;
- the holding of a beneficial interest in the Trust with no voting rights with respect to the management or operations of the Trust or in connection with the sale of the Property;
- risks associated with owning, financing, operating and leasing a multifamily apartment complex and real estate generally in the Las Vegas–Henderson-Paradise, Nevada Metropolitan Statistical Area (the "**Las Vegas MSA**");
- risks associated with the impact of pandemics, including the COVID-19 pandemic, on the Property and the economy 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 (as defined below) engaged by the Master Tenant, to manage the Property;
- risks associated with the Sponsor funding the Demand Note (as defined below) that capitalizes the Master Tenant;
- risks relating to the terms of the financing for the Property, including the use of leverage;
- lack of diversity of investment;
- the existence of various conflicts of interest among the Sponsor, the Trust, the Master Tenant, the Property Manager, and their affiliates;
- material tax risks, including treatment of the Interests for purposes of Code Section 1031 and the use of exchange funds to pay acquisition costs, which may result in taxable boot;
- the Interests not being registered with the Securities and Exchange Commission (the "**SEC**") or any state securities commissions;
- risks relating to the costs of compliance with laws, rules and regulations applicable to the Property;
- risks related to competition from properties similar to and near the Property;

- risks related to wind and other natural weather events, which increases the risk of damage to the Property; and
- the possibility of environmental risks related to the Property.

You must carefully consider the risk factors beginning on page 16 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.

	Cash Price To Purchasers	Sales Commissions and Expenses[1]	Proceeds to the Trust[2]
Per 0.183% Interest (minimum purchase)[3]	$100,000	$9,350	$90,650
Maximum Offering Amount	$54,531,314	$5,098,678	$49,432,636

The date of this Memorandum is March 9, 2022

(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 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 1.50% 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 Organization and Offering Expenses, Sales Commissions, 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 $54,531,314 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 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 $67,990 represents a 0.183% 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, tax and related matters concerning an investment in Interests. None of the Trust, the Sponsor, nor any of their affiliates makes any representation or warranty of any kind with respect to the acceptance by the IRS or any state taxing authority of your treatment of any item on your tax return or the tax consequences if you are investing in Interests as part of a Section 1031 Exchange.

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

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

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

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

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A WARNING ABOUT FORWARD-LOOKING STATEMENTS

This Memorandum contains statements about operating and financial plans, 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 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

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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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 972-628-4129 .

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

- Appraisal
- Asset Management Agreement
- Trust Agreement (including the "**Springing LLC Agreement**")
- Loan Documents
- Master Lease Agreement
- Phase I Environmental Site Assessment
- 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.

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 $54,531,314 in Class 1 Beneficial Interests in the Trust, which is the owner of the Property (the owners of such Interests along with the Contributor will be Beneficial Owners). The Interests being sold in this Offering will represent 100% of the outstanding beneficial interests in the Trust if the Maximum Offering Amount of Interests is sold. The minimum purchase price is $100,000 in cash, which represents a 0.183% 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 $67,990 of mortgage debt for each 0.183% 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, Organization and Offering Expenses, Sales Commissions, Marketing/Due Diligence Expense Allowances, Managing Broker-Dealer Fee, Loan-Related Costs (as defined below), Other Closing Costs (as defined below), the Facilitation Fee (as defined below), Replacement Reserve, Supplemental Trust Reserve, and 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 3.35% per annum in year one, and projected to range from 3.97% to 5.28% 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 investment in the Interests involves substantial risks. *See* "*Risk Factors.*"
The Property:	The Property is a multifamily apartment complex located at 2660 North Buffalo Drive, Las Vegas, Nevada 89128. Developed in 2021, the Property consists of 7.26 acres of land upon which two three-story residential buildings are situated housing a total of approximately 186,646 gross square feet across 216 apartment units and four commercial units. The Property includes amenities such as a 6,000 square foot clubhouse, outdoor seating areas with large TVs, a resort-style pool, a dog park, and a full cardio and strength training facility, among others. As of February 2, 2022, the Property was 92% leased.
The Acquisition Closing:	Prior to the Acquisition Closing, the Property was owned by the SPE which was, in turn, indirectly owned by the Sellers. In connection with the Acquisition Closing, on December 30, 2021, the SPE entered into the Acquisition Bridge which was used to pay off an existing mortgage loan on the Property, to pay transactional costs, and to redeem certain Sellers (directly or indirectly) from the SPE. As part of the foregoing, certain Sellers contributed their interests in the SPE to the JV Entity (resulting in the JV Entity being the 100% owner of the SPE) and the SPE transferred the TIC Interests to certain Sellers. At the Acquisition Closing on February 1, 2022, the JV Entity caused the Contributor to make the Contributor Contribution, which, together with the proceeds from the Loan: (1) enabled the SPE to acquire the TIC Interests and pay expenses and fees associated with the overall acquisition, and (2) enabled the SPE to pay off the Acquisition Bridge. As a result of the foregoing, the SPE became the sole owner of the Property and converted into a Delaware statutory trust under Delaware law (i.e., the Trust). The transactions comprising of the Acquisition Closing was based on the Purchase Price of $81,000,000 agreed upon by the Sellers and the JV Entity. The cash portion of the Contributor Contribution included proceeds of bridge financing (the "**Bridge Financing**"), including a bridge loan from KeyBank National Association. The Bridge Financing is not secured by a lien on or direct interest in the Trust, the Property, the Master Lease, the Master Tenant or any of the Class 2 Beneficial Interests. Under the Trust Agreement, the Trust is obligated to use net proceeds from the sale of Class 1 Beneficial Interests to redeem a proportionate amount of the Contributor's Class 2 Beneficial Interests.
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 $10.2 billion in

fee-earning assets under management as of December 31, 2021, and has completed over $15.3 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 managed by the JV Entity which is 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 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 the Sales Commissions, Marketing/Due Diligence Expense Allowances, Managing Broker-Dealer Fee and Organization and Offering 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 "**Signatory Trustee**"). The Manager has appointed itself as the initial Signatory Trustee of the Trust.

The Beneficial Owners may be required to exchange their Interests for units in NexPoint Residential Trust Operating Partnership, L.P., a Delaware limited partnership (the "**Operating Partnership**") or elect to have their Interest purchased, 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 (a "**Periodic Purchase Offer**"). *See "Summary of the Trust Agreement"* and *"Risk Factors."*

Management of the Trust:

NexPoint Buffalo Manager, LLC serves as the Manager of the Trust. The Manager has the power and authority to manage substantially all of the affairs and limited investment activities of the Trust, the primary responsibility for performing administrative actions in connection with the Trust, and the sole power to determine when it is appropriate to sell the Property, all of such power and authority limited to the extent such powers and authority are materially consistent with the powers and authority conferred upon the trustee in Revenue Ruling 2004-86. The Manager is managed by the JV Entity, an affiliate of the Sponsor. *See "Management."*

The Trust will terminate upon the first to occur of (i) the sale of the Property or (ii) a Transfer Distribution (as defined below). 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.

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*."

Calida:

Calida and its affiliates will be involved in certain aspects of the Offering. The JV Entity, the Asset Manager (as defined below), and an affiliate of Calida entered into the Fee Sharing Agreement whereby the affiliate of Calida is entitled to receive part or all of certain fees relating to the Offering for its services relating to the identification, diligence, and other aspects relating to the Property.

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 below), an "absolute net" lease, allocating to the Master Tenant all expenses and debt service obligations associated with the Property; provided, however, the Trust is obligated under the Master Lease to reimburse the Master Tenant for any expenses incurred to make repairs to maintain the Property and for capital expenditures (as determined under generally accepted accounting principles) with respect to (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 (as defined in the Master Lease) 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 which is expected to be capitalized with a demand note from the Sponsor in the amount of $475,000 (the "**Demand Note**") and $200,000 in cash, but does not have other substantial assets except its leasehold interest in the Property under the Master Lease. *See "Risk Factors."*

Pursuant to the Master Lease, the Master Tenant pays to the Trust the following amounts as "**Rent**" on a monthly basis: (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) when Base Rent and Additional Rent have been fully paid, an amount equal to 90% of the amount by which annual gross revenues exceed the

Supplemental Rent Breakpoint (as defined in the Master Lease and set forth in the table below) ("**Supplemental Rent**"). The difference between the Base Rent and the Additional Rent Breakpoint for the Property for a given month, if any, after taking into account any expenses of the Property, will inure to the benefit of the Master Tenant, and will not be available for distributions to the Trust or the Purchasers.

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

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

The following table sets forth certain amounts included in the calculation of anticipated Rent including the amount of projected Supplemental Rent for the Property. 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	$1,323,201	$2,783,000	$1,772,000	$4,555,000
Year 2	$1,323,201	$2,931,000	$1,832,750	$4,763,750
Year 3	$1,326,826	$2,992,000	$2,015,000	$5,007,000
Year 4	$1,323,201	$3,046,000	$2,075,750	$5,121,750
Year 5	$1,323,201	$3,110,000	$2,136,500	$5,246,500
Year 6	$1,323,201	$3,177,000	$2,136,500	$5,313,500
Year 7	$1,326,826	$3,249,000	$2,075,750	$5,324,750

Year 8	$1,323,201	$3,317,000	$2,075,750	$5,392,750
Year 9	$1,323,201	$3,391,000	$2,015,000	$5,406,000
Year 10	$1,323,201	$3,468,000	$2,015,000	$5,483,000

Property Management:

Concurrently with the Acquisition Closing, the Master Tenant entered into a property management agreement with respect to the Property (the "**Property Management Agreement**") with Pinnacle Property Management Services, LLC (the "**Property Manager**"). The property management fee payable under the Property Management Agreement will be equal to the greater of 2.00% of the monthly Gross Receipts (as defined in the Property Management Agreement) from the Property or a base fee of $6,500 per month (the "**Property Management Fee**").

In addition, the Property Manager is entitled to an additional fee which shall be equal to 15% of the difference between the annual Actual Property Net Operating Income (as defined in the Property Management Agreement) and the Budgeted Net Operating Income (as defined in the Property Management Agreement) (the "**Incentive Fee**").

The Master Tenant is solely responsible for all costs associated with property management services; *see "Summary of Property Management Agreement."* A copy of the Property Management Agreement is available in the Digital Investor Kit.

Asset Management:

NexPoint Buffalo 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-Controlled Reserves:

In connection with the Acquisition Closing, the Trust entered into the Loan in the original principal amount of $37,076,000 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 $109,962. The Lender will require additional monthly deposits to the Replacement Reserve at a required rate of approximately $255 per apartment unit per year. As required by the Lender, the Trust also used $108,861 of the Loan proceeds to fund the Imposition Reserve. Finally, the Trust established the Interest Reserve to meet future debt service and the Trust used $2,500,000 of the Loan proceeds to fund the initial contribution to the Interest Reserve.

The Loan Documents provide for a $37,076,000 Loan, with a 10-year term, interest-only payments and a fixed interest rate of 3.52% 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."*

The Property is leveraged with a LTC ratio of approximately 40.47%, 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."*

Trust-Controlled Reserves:

In addition, to the Replacement Reserve, the Trust will establish and control the Supplemental Trust Reserve in the amount of $787,500, which was funded from the Loan 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 below). *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 United States 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 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 1, 2023, whichever is earlier. If any Interests in the Trust cannot be sold, the Contributor or its affiliate will own the remaining Interests. 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, in connection with the Offering and sale of Interests, and the management, financing, leasing, operation and disposition of the Property, which may include, but are not limited to, rents from the Property in excess of the amounts the Master Tenant is required to pay to the Trust under the Master Lease, the Asset Management Fee (as defined below), financing fees, the Facilitation Fee (as defined below), and the Disposition Fee (as defined below). *See "Compensation and Fees."* Calida and its affiliates are entitled to part or all of these fees pursuant to the Fee Sharing Agreement.

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

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

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

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

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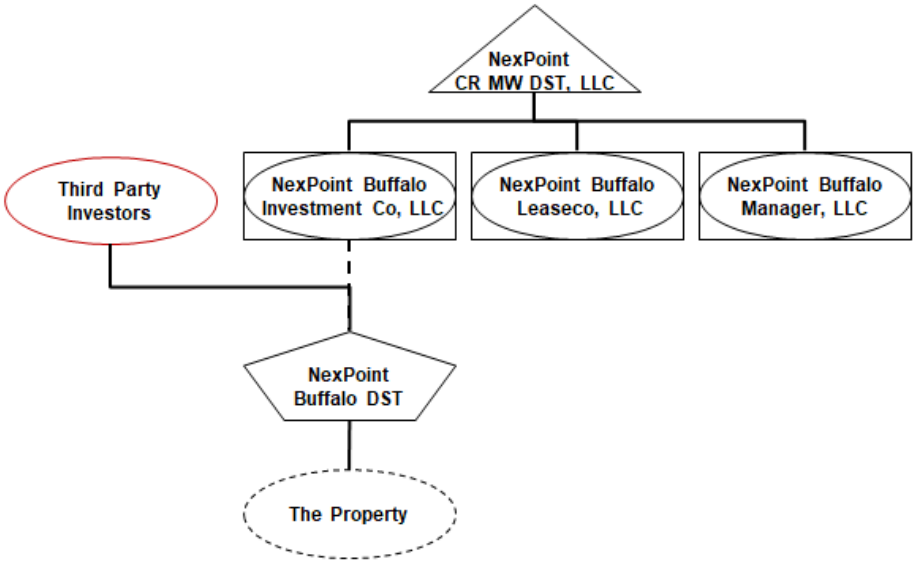
ORGANIZATIONAL CHART



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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, NHF, NHT, VBHT, and the REIT Subsidiaries.

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 and the Commercial Units to the end-user tenants. The Trust is managed by the Manager.

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?

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 intends to capitalize the Master Tenant with a Demand Note in the amount of $475,000 and $200,000 in cash.

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 Residential Trust Operating Partnership, L.P. exercises its Exchange Right?

If the Operating Partnership, NexPoint Residential 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 to reimburse the Manager or the Operating Partnership for reasonable and customary 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 admitted as a limited partner to the Operating Partnership and your Interests will be acquired for cash.

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 option to exchange its OP Units for cash or shares in NXRT (the form of consideration to be determined in NXRT'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 NXRT at the time of such exchange. NXRT is an externally managed, publicly traded REIT that manages a portfolio of "Class B" value add multifamily properties. 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 NXRT may be impacted due to the general volatility of the capital markets, the limited market for OP Units and NXRT shares, and the risks associated with the market for OP Units and NXRT 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.

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.

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 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

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.

Rev. Rul. 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 Rev. Rul. 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 Rev. Rul. 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. 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. *See "Summary of the Trust Agreement."*

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

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

In the Event of an Adverse Effect on the Income of the Trust, the Trust Is Not Permitted to Obtain Additional Funds Through Additional Borrowings or Additional Capital, and Therefore Could Be Required to Effectuate a Transfer Distribution so as to Seek to Raise Capital through the Springing LLC. If, after a Transfer Distribution, additional funds are not available from any source, the Springing LLC may be forced to dispose of all or a portion of the Property on terms that may not be favorable to the Beneficial Owners. Further, apart from potential adverse economic consequences of a Transfer Distribution, a Transfer Distribution may have adverse tax consequences for the Beneficial Owners. *See "Federal Income Tax Consequences."*

The Trust Agreement Restricts Beneficial Owners' Rights to Information. The Trust Agreement eliminates certain rights to information the Beneficial Owners would have otherwise had under the Delaware Statutory Trust Act (the "**DST Act**"). While the Sponsor believes this is reasonable, necessary and prudent to protect the interests of legitimate Purchasers in the Trust from "greenmail" or other attacks by parties such as so-called "vulture investors" that are potentially harmful to the investment program, this 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 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. Weakness or declines in the local economy and real estate market could cause vacancy rates at the Property to increase and could adversely affect the Trust's ability to sell the Property under favorable terms. The factors which could affect economic conditions in the market generally include business layoffs, industry slowdowns, relocations of businesses, changing demographics, infrastructure quality and any oversupply of or reduced demand for real estate. Declines in the condition of the market could diminish the value of your investment and 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, the availability and rental rates of competing commercial 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 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 his or her lease may give the Master Tenant the right to terminate the lease, repossess the applicable premises and enforce payment obligations under the lease. However, the cost and effort involved in pursuing these remedies and collecting damages from a defaulting tenant could be greater than the value of the lease. There can be no assurance that the Master Tenant will be able to successfully pursue and collect from defaulting tenants or re-let the premises to new tenants without incurring substantial costs, if at all. If other tenants are found, the Property Manager may not be able to enter into new leases on favorable terms. The financial projections assume a minimum occupancy rate and certain net rental rates for the Property to enable the Master Tenant to comply with its obligations under the Master Lease, but there can be no assurance that the Property will maintain the minimum occupancy rate or that the minimum net rental rates will be achieved. The Loan Documents provide that the Lender must approve any change of the Master Tenant or 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 renters. 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 residents to the Property given these facts. For a detailed listing of competing properties nearby the Property, *see "Market Location and Overview."*

Leases for the Property Generally Have Short Terms, and the Property Manager May Be Unable to Renew Leases or Re-Let Units as Leases Expire. Most of the existing leases for the 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.

Market Volatility and Risk Relating to the Commercial Units. Although the Commercial Units comprise a minor portion of the overall Property (2.5% in square feet), the Commercial Units are currently vacant. Volatility in the fair market value and operating performance of commercial real estate may make estimating cash flows from the Commercial Units of the Property difficult, since such estimates are dependent upon judgment regarding numerous factors, including, but not limited to, potential future debt financing and/or refinancing availability, fluctuations in regional or local real estate values and fluctuations in regional or local rental or occupancy rates, real estate tax rates and other operating expenses. The business environment and market for commercial retail space have previously been, and could again be, adversely affected by weakness in the national, regional and local economies, the level of consumer spending and consumer confidence, the adverse financial condition of some large retail companies, the consolidation of retail operators that occurs from time to time in the retail sector, any excess amount of retail space in a number of markets and increasing competition from discount retail operators, outlet malls, internet or e-commerce retail businesses and other online businesses. We cannot predict with certainty what current or future end tenants will require to operate their business, what future demands will be made for the build-out or improvement of the Commercial Units of the Property, and how much revenue will be continue to be generated at traditional "brick and mortar" locations. Any of the foregoing factors could adversely affect the financial condition of current and future end tenants and could impact the willingness of new or replacement end tenants to rent space at the Commercial Units of the Property.

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

Risk Relating to the Acquisition Closings. Unlike a direct acquisition of real property by the Trust, the Acquisition Closing involved the acquisition of a property-owning special purpose entity (i.e., the SPE). As a result, there is a risk that inherent and latent liabilities of the acquired entity could attach to the Trust in connection with the Acquisition Closing.

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 Sponsor intends to capitalize the Master Tenant with a Demand Note in the amount of $475,000 and $200,000 in cash. The Sponsor is under no obligation to contribute capital to the Master Tenant other than the amount of the Demand Note from the Sponsor. If the Master Tenant requires funds in excess of the Property net operating income to pay the Rent (subject to a limited right of deferral) or satisfy its other obligations under the Master Lease, it will need to call upon the Sponsor to contribute the amount of its Demand Note. However, no

assurance can be given that the amount of the Demand Note will be sufficient to enable the Master Tenant to pay the rent or to fund its obligations under the Master Lease, or that the Sponsor will be able to fund the Demand Note if called upon by the Master Tenant to do so. If the Master Tenant is unable to pay the Rent or satisfy its obligations under the Master Lease, the Master Tenant would be in default under the Master Lease. A Master Tenant default also constitutes an event of default under the Loan Agreement (as defined below), 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 were unable to enter into a new master lease for the Property, the returns to Purchasers would likely be materially adversely affected. In addition, if the Trust were unable to enter into a new master lease, it would likely become necessary for the Trust to effectuate a Transfer Distribution, in order to engage in leasing activities, which would likely give rise to adverse tax consequences to Purchasers. Absent insolvency or a bankruptcy by the Master Tenant, the Delaware Trustee may not be empowered to execute such replacement master lease. Furthermore, if the Master Tenant is unable to pay the rent or satisfy its obligations under the Master Lease, the Trust may be unable to pay the debt service on the Loan and the Lender could foreclose on the Property. In such event, the Purchasers could lose the entire value of their investment in the Property.

The Sponsor May Be Unable to Fulfill its Obligations Under the Demand Note. The Sponsor intends to capitalize the Master Tenant with a Demand Note in the amount of $475,000 and $200,000 in cash. However, there can be no assurance that the Sponsor will be able to satisfy its obligations pursuant to such Demand Note. The net worth or current assets of the Sponsor may be insufficient to support its obligations under the Demand Note at the time of being called. If the Sponsor is required to perform on outstanding or future demand notes, guaranties or other debt obligations or otherwise experiences an adverse financial event, it is possible that the Sponsor may not have sufficient funds or resources to perform its obligations under its Demand Note and may be unable to fulfill its obligations to the Master Tenant. In the event of the insolvency or bankruptcy of the Sponsor, the Master Tenant would be required to compete with any other creditor claims that may be asserted against the same assets of those entities and any secured creditor claims would be superior to those of the Master Tenant under the Demand Note, which is unsecured. The assets of the Sponsor and its affiliates are subject to the various risks of real estate ownership, syndication and management, including, but not limited, to market value fluctuations and uncertainty of profitability of business operations. The ultimate value of these existing assets will depend upon their ability to successfully implement their respective business plans, which in turn depends upon competition and other market factors. If the Sponsor is unable to pay its Demand Note when called upon, the Master Tenant may have insufficient funds to pay the Rent or property expenses, including without limitation the Base Rent upon which the Trust relies in order to be able to pay the debt service on the Loan. Any failure of the Master Tenant to pay the Rent would materially and adversely affect returns to the Purchasers, may cause the Trust to terminate the Master Lease, 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.

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 below)) 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 the Rent, although the issue is not completely settled under existing law, under Code Section 467, Beneficial Owners may be required to

report and pay tax on rent in accordance with the rent schedule attached to the Master Lease, even though the Master Tenant may have elected to defer the payment of a portion of such Rent. As a result, Beneficial Owners may be required to recognize rental income even though rent is not being fully paid, and therefore Beneficial Owners may have to use funds from other sources to pay tax on such income. *See "Summary of Master Lease."*

Risks Relating to an Investment in the Property

Valuation. The Lender obtained the Appraisal for the Property prepared by NVC, dated January 21, 2022, reflecting a market value for the Property "as is" of $83,000,000. The net aggregate purchase price of $83,002,313 for the Property (including closing costs and fees) is lower than the $91,607,314 aggregate purchase price of the Interests, which includes $54,531,314 in equity for the Interests, assuming the Maximum Offering Amount is sold, and $37,076,000 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.

Property Is Not a Diversified Investment. By the terms of the Trust Agreement (as well as the terms of the Loan Documents), the Trust generally is not permitted to acquire real property other than the Property or any other assets or make any other investments. Because an investment in Interests represents an investment in one property, it is not a fully diversified investment. 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 December 14, 2021 (the "**PCA**"), prepared for the Lender by Consulting Solutions Inc. ("**CSI**"). While the PCA identified no critical repairs or priority repairs. The PCA recommended recurring capital reserves for likely repairs and replacements necessary during the next 12 years (with 3% inflation) in the amount of $666,315.

Following completion of the sale of the Maximum Offering Amount, the Trust would have approximately $1,447,272 in reserves: $787,500 in the Supplemental Trust Reserve, and $109,962 from the Replacement Reserve, and $549,810 over the projected 10-year hold period in recurring capital expenditure reserves. This total is higher than the approximately $666,315 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 Supplemental Trust Reserve is insufficient (including due to the possibility that reimbursements and other compensation items due the Sponsor may be or have been drawn from resources credited, held or controlled by the Trust, including the Supplemental Trust Reserve), the Trust's Rent could be used by the Trust to reserve for or pay such expenses (instead of being used to pay distributions to Purchasers), or those expenses and costs could possibly be so significant as to require additional capital to be infused which could not be done except through a Transfer Distribution, which would likely have material and adverse tax consequences for Purchasers.

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 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 a non-invasive Phase I Environmental Site Assessment Report, dated December 14, 2021 (the "**Phase I Report**") prepared by CSI, based on a site visit conducted on December 7, 2021. 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 a recognized environmental condition ("**RECs**"), historical RECs, or controlled recognized environmental condition ("**CRECs**") in connection with the Property. No further investigation was recommended.

The preparers of the Phase I Report did not issue reliance letters entitling the Trust, or 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.

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 included an evaluation of mold. Based on CSI's site visit and its interview with 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. 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 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. Further, to the extent that the aggregate of the Organization and Offering Expenses, Loan-Related Costs and Other Closing Costs 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 and Governing Law. Any disputes arising from the Purchase Agreement, Master Lease, Trust Agreement, Springing LLC Agreement, and Asset Management Agreement (together the "**Offering Documents**") must be brought in a court of competent jurisdiction in Dallas, Texas. Additionally, the Purchaser waives his, hers, or 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 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.

Risks Related to Financing of the Property

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

interest charges and financing fees imposed by lenders or affiliates of the Sponsor might significantly reduce the profits or increase losses resulting from operation of the Property.

Although the Delaware Trustee can remove the Manager in certain limited circumstances, the Lender requires that there be an adequately capitalized successor Manager. This requirement may limit the ability of the Delaware Trustee to remove the Manager, since the exercise of such right would give rise to a default under the Loan 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 will 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 outstanding principal amount of the Loan. Financial market conditions in the future may affect the availability and cost of real estate loans, making real estate financing difficult or costly to obtain for potential buyers of the Property.

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

Availability of Financing and Market Conditions. Market fluctuations in real estate financing may affect the availability and cost of funds needed in the future for the Property. Moreover, credit availability has been restricted in the past and may become restricted again in the future. Restrictions upon the availability of real estate financing or high interest rates for real estate loans could adversely affect the Property and the ability of the Trust to sell the Property at a profit or at any price.

Risks Relating to the Operation of the Property

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

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

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 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.

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, 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 intends to capitalize the

Master Tenant with a Demand Note in the amount of $475,000 and $200,000 in cash. This Memorandum does not contain financial statements for the Sponsor, the Manager, or the Master Tenant.

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

Offering Risks

No 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 Organization and Offering Expenses, Sales Commissions, Marketing/Due Diligence Expense Allowances, the Managing Broker-Dealer Fee, Loan-Related Costs, Other Closing Costs, the Facilitation Fee (as defined below), 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.

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

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

Operation as a Limited Liability Company After a Transfer Distribution. If a Transfer Distribution occurs and the Property is transferred to the Springing LLC, the manager of the Springing LLC will have exclusive discretion in the management and control of the business and affairs of the Springing LLC. A copy of the limited liability 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 Operating Agreement."*

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

No Minimum Offering Contingency. There is no minimum amount of Offering proceeds that must be raised or minimum number of Purchasers required in connection with this Offering. Accordingly, if the Sponsor is unable to sell all of the Interests, the 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 Operating Partnership exercises the Exchange Right and such Purchaser does not desire to receive OP Units. 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 to reimburse the Manager or the Operating Partnership for reasonable and customary 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 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 may have the option to exchange its OP Units for cash or shares in NXRT (the form of consideration to be determined in NXRT'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 NXRT 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 NXRT shares may be impacted by the general volatility of the capital markets, the limited market for OP Units and NXRT shares, and the risks associated with the market for OP Units and NXRT shares. *See "Summary of Trust Agreement."*

The Sponsor estimates that the net distribution return on equity to Beneficial Owners in the Operating Partnership will be capped at approximately 2.25%, less monthly interest payments, as opposed to an average annual rate of 5.47% for the Trust. The Sponsor believes that this difference in return on equity will be offset in two ways.

First, following the exercise of the Exchange Right, the Beneficial Owners will have access to a diversified portfolio of investments not otherwise available in the Trust. Second, no sales commission will be paid to the Sponsor or its Affiliates upon the exercise of the Exchange Right.

Periodic Purchase Offer. 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.

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' acceptance of the treatment of any item of income, deduction, gain, loss, credit or any other item by a Purchaser and there can be no assurance that the IRS will not challenge any such treatment.

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

Acquisition of the Interests May Not Qualify as a Section 1031 Exchange. An Interest may not qualify under Code Section 1031 for tax-deferred exchange treatment, and even if it does a portion of the proceeds from a Purchaser's sale of his or her real property to be relinquished (each, a "**Relinquished Property**") could constitute taxable "boot" (as defined below). Whether any particular acquisition of an Interest will qualify as a tax-deferred exchange under Code Section 1031 depends on the specific facts involved, including, without limitation, the nature and use of the Relinquished Property and the method of its disposition, the use of a qualified intermediary and a qualified exchange escrow and the lapse of time between the sale of the Relinquished Property and the identification and acquisition of the replacement property (each, a "**Replacement Property**"). Neither the Sponsor nor its affiliates, counsel or agents are examining or analyzing any prospective Purchaser's circumstances to determine whether such Purchaser's acquisition of Replacement Property qualifies as a Section 1031 Exchange. **Moreover, no opinion or assurance is being provided to the effect that any individual prospective Purchaser's transaction will qualify under Code Section 1031. Such examinations or analyses are the sole responsibility of each prospective Purchaser, who must consult with his or her own legal, tax, accounting and financial advisors before purchasing an Interest.** If the factors surrounding a prospective Purchaser's disposition of the Relinquished Property and his or

her acquisition of the Interests do not meet the requirements of Code Section 1031, the disposition of the Relinquished Property will be taxed as a sale and the IRS will assess interest and possibly penalties for failure to timely pay such taxes. Also, merely designating an Interest in connection with a Purchaser's Section 1031 Exchange does not assure the Purchaser that there will be Interests available to purchase when the Purchaser executes the Purchase Agreement and actually causes his, her, or its qualified intermediary to transfer funds to complete the purchase of the Interests.

Form of Ownership. On July 20, 2004, the IRS issued Revenue Ruling 2004-86, 2004-33 I.R.B. 191, which held that, assuming the other requirements of Code Section 1031 are satisfied, a taxpayer's exchange of real property for an Interest in the DST described in the ruling satisfies the requirements of Code Section 1031. The IRS based its holding on the following conclusions: (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.

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 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.

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 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. In addition, the IRS could take the position that the increase in the purchase price of the Property paid by the Purchasers would not be considered as an interest in real estate and may be treated as "boot." In addition, to the extent that the portion of the debt acquired with the purchase of an Interest in the Property is less than the Purchaser's debt on the Relinquished Property, such difference will constitute "boot" and may be taxable depending on the Purchaser's basis in the Relinquished Property. In the event any item is determined to be "boot," the taxpayer will have current income for any such "boot" up to the amount of gain on the exchange of the real property. No opinion is being provided by the Trust, the Manager, the Sponsor or their affiliates or counsel with respect to the amount of "boot" in the transaction. Prospective Purchasers must consult their own independent tax advisor regarding these items.

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.

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

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

The Trust has been structured with a view to the trust addressed in Rev. Rul. 2004-86. However, distinctions exist between the Trust Agreement and other related arrangements and the trust and other related arrangements described in Revenue Ruling 2004-86. Tax Counsel believes these distinctions are not material. 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.

Rev. Proc. 2001-28 sets forth advance ruling guidelines for "true lease" status. We have not sought, and do not expect to request, a ruling from the IRS under Revenue Procedure 2001-28. These ruling guidelines provide certain criteria that the IRS will require to be satisfied in order to issue a private letter ruling that a lease is a "true lease" for federal income tax purposes. In the event of an examination by the IRS, the IRS and, ultimately, the courts of applicable jurisdiction, would consider these ruling guidelines, together with existing cases and rulings, for purposes of determining whether a lease qualifies as a true lease for federal income tax purposes. However, Tax Counsel does not believe that strict compliance with Rev. Proc. 2001-28 is required to conclude that the Master Lease should be characterized as a true lease for federal income tax purposes. Rather, Tax Counsel believes that satisfying most of the material ruling guidelines should be sufficient for purposes of determining the characterization of the Master Lease for federal income tax purposes. 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 Rev. Proc. 2001-28 and that the Master Lease should be treated as a true lease rather than as a financing for federal income tax purposes. Similarly, if the Master 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 Rev. Rule 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 not under the investment interest limitation rule. Credits from passive activities generally are limited to the tax attributable to the income from passive activities. Passive activities include trade or business activities in which the taxpayer does not materially participate and any rental activity. The Purchaser's income and loss from the Trust will constitute income and loss from passive activities. A taxpayer may deduct passive losses from rental real estate activities against other income if: (i) more than half of the personal services performed by the taxpayer in trades or businesses are performed in a real estate trade or business in which the taxpayer materially participates, and (ii) the taxpayer performs more than 750 hours of service during the tax year in real property trades or businesses in which the taxpayer materially participates. *See "Federal Income Tax Consequences - Other Tax Consequences - Limitations on Losses and Credits from Passive Activities."*

Limitation on Excess Business Losses. Under the recent Tax Cuts and Jobs Act of 2017 (the "**TCJA**"), excess business losses of a taxpayer other than a corporation are not allowed for the taxable year. Such losses are carried forward and treated as part of the taxpayer's net operating loss carryforward in subsequent taxable years. An excess business loss for the taxable year is the excess of aggregate deductions of the taxpayer attributable to trades or businesses of the taxpayer over the sum of aggregate gross income or gain of the taxpayer plus a threshold amount. The threshold amount, which is indexed for inflation, is $262,000 (or twice the applicable threshold amount in the case of a joint return) for 2021. 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. Under the TCJA, interest deductions for taxpayers with average annual gross receipts in excess of $25 million are in general deferred to the extent that annual business interest expense exceeds business interest income plus 30% of adjusted taxable income, subject to certain adjustments. On January 5, 2021, the Treasury and the IRS issued new final regulations under Code Section 163(j) (the "**2021 Final 163(j) Regulations**") and, in relevant part, clarified how taxpayers determine their ATI. Taxpayers generally determine their adjusted taxable income ("**ATI**") by starting with "tentative taxable income" and applying additions and subtractions as specified in the existing Treasury Regulations consistent with the statute. The 2021 Final 163(j) Regulations provide taxpayers the option of an alternative method in determining such subtraction where it may be computed as the lesser of: (i) any gain recognized on the sale or disposition of such property, or (2) any depreciation, depletion and amortization ("**DD&A**") with respect to such property. The 2021 Final 163(j) Regulations are complex and their application varies with the facts and circumstances particular to each prospective Purchaser. Thus, each prospective Purchaser should consult with his, her, or its tax advisor concerning as to the application of the 2021 Final 163(j) Regulations to an investment in an Interest.

A real estate trade or business, however, may elect out of the deferral regime, in which case the business must depreciate certain types of real property by the straight line method over slightly longer recovery periods under the alternative depreciation system (the "**ADS**") (i.e., 40 years for nonresidential property, 30 years for residential rental property, and 20 years for qualified interior improvements). While Purchasers may be eligible to make this election, there is considerable uncertainty as to the application of the new rules, which may depend in part upon a Purchaser's specific circumstances. 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 his Interest in the likely event that the Interest could not be considered Section 1231 Real Property (as defined below)).

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

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

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

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. Specifically, the U.S. Congress has proposed certain limitations on the deferral of gain for Section 1031 Exchanges that could, if enacted, restrict the ability to utilize a Section 1031 Exchange to achieve tax deferral on gain in connection with the disposition of real property or beneficial interests in a fixed investment trust. Additionally, the U.S. Congress periodically evaluates various proposed modifications to the Section 1031 Exchange rules that could, if enacted, prospectively repeal or restrict the ability to utilize a Section 1031 Exchange to achieve tax deferral on gain in connection with the disposition of real property or beneficial interests in a fixed investment trust. Any such change may or may not be retroactive with respect to transactions entered into or contemplated before the effective date of such change and could have a material adverse effect on an investment in an Interest.

The rules dealing with U.S. federal income taxation are constantly under review by persons involved in the legislative process and by the IRS and the U.S. Department of Treasury, resulting in revisions of resolutions and revised interpretations of established concepts as well as statutory changes. In particular, the TCJA , which generally takes effect for taxable years beginning on or after January 1, 2018 (subject to certain exceptions), makes many significant changes to the U.S. federal income tax laws. Further, the Coronavirus Aid, Relief, and Economic Security Act (the "**CARES Act**") was enacted into law on March 27, 2020 in response to the economic fallout of the COVID-19 pandemic and made various changes to the Code, many with retroactive effect. To date, the IRS has issued only limited guidance with respect to certain of the new provisions, and there are numerous interpretive issues that will require guidance. Technical corrections legislation may be needed to clarify certain aspects of the new law and give proper effect to Congressional intent. There can be no assurance, however, that technical clarifications or changes needed to prevent unintended or unforeseen tax consequences will be enacted by Congress in the near future.

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

Reportable Transaction Disclosure and List Maintenance. A taxpayer's ability to claim privilege on any communication with a federally authorized tax preparer involving a tax shelter is limited. In addition, taxpayers and material advisors must comply with disclosure and list maintenance requirements for reportable transactions. Reportable transactions include transactions that generate losses under Code Section 165 and may include certain large like-kind exchanges entered into by corporations. The Sponsor and Tax Counsel have concluded that the sale of an Interest should not constitute a reportable transaction. Accordingly, the Trust and Tax Counsel do not intend to make any filings pursuant to these disclosure or list maintenance requirements. There can be no assurances that the IRS will agree with this determination by the Trust and Tax Counsel. Significant penalties could apply if a party fails to comply with these rules, and such rules are ultimately determined to be applicable.

State and Local Taxes. In addition to federal income tax consequences, a prospective Purchaser should consider the state and local tax consequences of an investment in an Interest. Prospective Purchasers must consult with their own tax advisors concerning the applicability and impact of any state and local tax laws. Purchasers may be required to file state tax returns in some or all of the states where the Property are located in connection with the ownership of an Interest.

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 $54,531,314 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:

	Offering Proceeds	**Loan Proceeds**	**% of Offering Proceeds**	**% of Total Capitalization**
Purchase of Property				
Estimated Gross Offering Proceeds	$54,531,314	$37,076,000		
Organization and Offering Expenses (1)	$(327,188)	$0	0.60%	0.36%
Sales Commissions (2)	$(3,271,879)	$0	6.00%	3.57%
Marketing/Due Diligence Expense Allowances; Managing Broker-Dealer Fee (3) (4)	$(1,499,611)	$0	2.75%	1.64%
Proceeds Available for Investment	**$49,432,636**	**$0**	**9.35%**	**5.57%**
Down Payment for Purchase of Property (5) (6)	$49,432,636	$32,782,364	90.65%	89.75%
Loan-Related Costs (7)	$0	$392,596	0.00%	0.43%
Other Closing Costs (8)	$0	$394,718	0.00%	0.43%
Trust-Controlled Reserves (9)	$0	$3,287,500	0.00%	3.59%
Certain Lender-Controlled Reserves (10)	$0	$218,823	0.00%	0.24%
Use of Proceeds Available for Investment	**$49,432,636**	**$37,076,000**	**90.65%**	**94.43%**
Total Offering Expenses & Commissions (11)	$5,098,678	$0		
Estimated Gross Offering Proceeds	**$54,531,314**	**$37,076,000**	**100%**	**100%**

(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.

(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.

(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.

(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) The Sponsor will earn a fee for arranging the acquisition of the Property in the amount of $1,215,000, which is equal to 1.5% of the Purchase Price, for their management teams' services in the identification, negotiation, diligence, and acquisition of the Property (the "**Facilitation Fee**"). Pursuant to the Fee Sharing Agreement, an affiliate of Calida is entitled to receive 33.33% of the Facilitation Fee.

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

(8) "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, 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.

(9) The Loan proceeds funded $787,500 into the Supplemental Trust Reserve which will be Trust-controlled. To the extent that the actual Organization and Offering Expenses, Sales Commissions, Marketing/Due Diligence Expense Allowances, 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 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. Finally, the Trust established the Interest Reserve to meet future debt service and the Trust used $2,500,000 of the Loan proceeds to fund the initial contribution to the Interest Reserve.

(10) The Lender deducted and escrowed from the Loan proceeds a total of $109,962 for the Replacement Reserve. The Loan Documents also require the Imposition Reserve of $108,861 which was funded from the Loan proceeds.

(11) The aggregate of Organization and Offering Expenses, Sales Commissions, Managing Broker-Dealer Fee, and Marketing/Due Diligence Expense Allowance. 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 $327,188 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 $3,271,879.
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 $1,499,611. The Managing Broker-Dealer is an affiliate of the Sponsor.
Sponsor's Facilitation Fee:	The Sponsor will earn a Facilitation Fee of $1,215,000, which is equal to 1.5% of the Purchase Price, for their management teams' services in the identification, negotiation, diligence, and acquisition of the Property. Pursuant to the Fee Sharing Agreement, an affiliate of Calida is entitled to receive 33.33% of the Facilitation Fee.
Loan-Related Costs:	The Loan-Related Costs are $392,596 including (i) the fees and costs payable to Lender and its agents for the closing of the Loan, (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.
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 and Offering, estimated at $394,718. Such costs include, if applicable, transfer taxes, title charges, escrow fees, document preparation fees, legal fees (other than Lender legal fees), third party costs, recording fees, entity formation costs and other related costs.
Redemption of Class 2 Beneficial Interests held by the Contributor:	The Trust will redeem all of the Class 2 Beneficial Interests held by the Contributor as provided in the Contributor's Operating Agreement.
Other Costs and Reimbursements:	The Trust is responsible for funding the Supplemental Trust Reserve and paying certain costs including: (i) Sales Commissions estimated at $3,271,879, (ii) Managing Broker-Dealer Fee and Marketing/Due Diligence Expense Allowances estimated at $1,499,611, (iii) Organization and Offering Expenses estimated at $327,188, (iv) other closing costs estimated at $394,718, (v) Loan-Related Costs of $392,596, and (vi) the Facilitation Fee of $1,215,000.
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 2.00% of the monthly Gross Receipts (as defined in the Property Management Agreement) from the Property or a base fee of $6,500 per month. The Property Manager is also entitled to the Incentive Fee. All Property Management Fees shall be paid solely by the Master Tenant.
Asset Management Fee:	The Trust shall be obligated under the "**Asset Management Agreement**" to pay the Asset Manager an annual Asset Management Fee for supervising the services of the Property Manager, which will be equal to 0.30% of the Purchase Price equal to $243,000, paid monthly in arrears (an "**Asset Management Fee**"). The Asset Manager may, at its sole discretion, defer a portion or all of the Asset Management Fee and it intends to defer the 100% of the first year's and 75% of the second year's Asset Management Fee across the fourth through eighth year of the Asset Management Agreement. *See* Exhibit D for the Financial Forecast. The Asset Management Fee will be paid on a pro rata basis, monthly in arrears, and if

	the Asset Management Agreement terminates during any calendar year, shall be pro-rated for any such partial year. The Asset Management Fee will be paid to the Asset Manager, which is an affiliated entity of the Sponsor. Pursuant to the Fee Sharing Agreement, an affiliate of Calida is entitled to receive 33.33% of the Asset Management Fee. 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 shall receive a disposition fee from the Trust equal to 3.0% of the gross proceeds of the sale of the Property (the "**Disposition Fee**"). Pursuant to the Fee Sharing Agreement, an affiliate of Calida is entitled to receive 33.33% of the Disposition Fee.

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 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.

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

The Property is a multifamily apartment complex located at 2660 North Buffalo Drive, Las Vegas, Nevada 89128. Developed in 2021, the Property consists of 7.26 acres of land upon which two three-story residential buildings are situated housing a total of approximately 186,646 rentable square feet across 216 apartment units and four commercial units with approximately 4,654 square feet. The Property includes amenities such as a 6,000 square foot clubhouse, outdoor seating areas with large TVs, a resort-style pool, a dog park, and a full cardio and strength training facility, among others. As of February 2, 2022, the Property was 92.0% leased.

Property Features & Specifications

General Specifications

Property Name: Ely at Buffalo

Property Address: 2660 North Buffalo Drive, Las Vegas, Nevada 89128

Year Built: 2021

Site Area: Approximately 7.26 acres

Rentable Building Area: The Property contains 216 apartment units totaling 181,992 rentable square feet and four commercial units with approximately 4,654 square feet.

Unit Sizes/Floor Plans: The Property offers 30 studios /one bathroom units at an average of 576 square feet, 123 one bedroom/one bathroom units at an average of 726 square feet, 53 two bedroom/two bathroom units ranging from 1,054 to 1,276 square feet, and 10 three bedroom/two bathroom units at an average of 1,425 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
Studio	30	576	17,265
1 BR/1 BA	123	726	89,284
2 BR/2 BA	53	1,155	61,193
3 BR/2 BA	10	1,425	14,250
Total/Average	**216**	842	181,992

Parking: 354 total spaces: 127 regular parking spaces, 207 carport parking spaces, and 20 garage spaces.

Property Amenities: Property amenities include:

- Landscaped resort-style pool, spa and recreation decks
- Outdoor seating areas with large TVs
- Seating areas with fire pits
- Picnic and BBQ areas
- Outdoor billiards and ping pong tables

- Dog park
- Hammock farm
- 6,000 square foot clubhouse featuring:
- Resident lobby
- Hospitality bar with Wi-Fi
- Lounge with billiards and shuffle board
- Virtual reality game room
- Wi-Fi Lounge
- Full cardio and strength training facility

Individual Unit Amenities: Apartment Units features include:

- Minimum 9-foot ceilings in all units
- Contemporary designer fixtures and hardware including upgraded cabinetry and quartz countertops in all kitchens and bathrooms
- Stainless steel appliances, including microwave, dishwasher, range and refrigerator/freezer
- Quartz backsplash in kitchen
- Pantry closets
- Over-sized tub in all units
- Glass showers in select units
- Full-size showers in select units
- Upgraded bathroom tile surrounds
- Wood-inspired luxury vinyl plank flooring in the bathroom, living areas and kitchen
- Plush wall-to-wall carpeting in bedrooms and bedroom closets
- Custom designed walk-in closets in all units
- Coat closet in all units
- Pet-friendly
- Pre-wired for telephone, cable TV and high-speed Internet access
- Discounted cable/internet service

Construction Specifications

Buildings/Improvements: Two three-story buildings, and one clubhouse; four parking garages containing 127 garage spaces.

Exterior Composition: Wood frame and painted stucco.

Foundation: Concrete slab-on-grade with spread and perimeter footings.

Framing: Wood framed with a concrete first floor deck.

Roofs: Flat with a modified bitumen asphalt surface.

Doors and Windows: Metal building entry doors. Dual-pane, horizontally-sliding, vinyl assembly windows.

Electrical Wiring: Copper.

Heating/Cooling Systems: Heating and cooling is provided to apartments by individual thermostatically controlled electric split forced air systems.

Water, Waste and Vent: Domestic hot water is provided to the apartment units by individual electric, 4500 watt, 38-gallon capacity, seismically-strapped water heaters. Polyvinyl chloride

	waste and vent piping is present and plumbing supply lines at water heater connections were observed to be cross linked polyethylene.
Fire and Life Safety:	Hard wired electric with battery backup; sprinklers, alarms carbon monoxide detectors and fire extinguishers present.
Pools and Spas:	One heated resort-style swimming pool is located at the Property. The pool is surrounded by a concrete deck and a metal fence.

The Commercial Units

In addition to the 216 apartment units, the Property offers four commercial units totaling 4,654 square feet. The Commercial Units range in size between 602 and 1,247 square feet. The leases prospective tenants are anticipated to sign will be on triple net terms with an average lease rate of $22 per square foot per year. The Sponsor expects the prospective tenants to be local business offering, among other services, professional, financial, technology, and engineering or design services. The Sponsor does not intend to allow any bars, nightclubs, or other businesses that could cause any type of disturbance to the residents of the Apartment Units.

Appraisal

The Lender obtained the Appraisal for the Property prepared by NVC, dated January 21, 2022, reflecting a market value for the Property "as is" of $83,000,000. A copy of the Appraisal is available in the Digital Investor Kit.

Property Condition Report

CSI issued the PCA dated December 14, 2021. The PCA concluded that generally the Property is in overall good condition. The PCA identified no critical repairs or priority repairs. The PCA estimated physical needs of $521,440 over the next 12 years (or approximately $199 per unit, per year). With 3% inflation, this amount is $666,315 (or approximately $255 inflated per unit, per year). The physical needs over time provided for in the PCA include: (1) asphalt concrete seal coat; (2) striping, exterior walls (paint and finish); (3) common hallway (paint and carpet); (4) replacement of water heaters; and (5) routine replacement of unit flooring and refrigerators, microwaves, dishwashers, and clothes dryers. 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 CSI, based on a site visit conducted on December 7, 2021. 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 RECs. The Phase I Report did not identify any business environmental risks in connection with the site. No further investigation was recommended. A copy of the Phase I Report is available in the Digital Investor Kit.

Natural Hazards

According to the Federal Emergency Management Agency ("**FEMA**") map, most of the Property is located in Zone X (unshaded), which was determined to be outside the 0.2% annual chance floodplain and is not considered a flood hazard area. The PCA indicates that, according to FEMA's Map of Wind Zone in the United States, the Property is located in Zone I, which was determined to be wind speeds ranging from 130 to 255 mph.

Zoning

According to the Zoning Report prepared by Zoning-Info Inc., dated December 22, 2021 (the "**Zoning Report**"), the Property is zoned "C-PB" (Planned Business Park District within the Special Area Plan of the Las Vegas Technology Center-Phase 2). 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.

Agreements and Other Matters Affecting the Property

The Property may be subject to various easements, declarations, restrictions and other agreements of record with neighboring landowners, and local municipalities. The Sponsor has reviewed the agreements and other matters affecting the Property and believe 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 its affordable rental profile, competitive positioning, attractive amenity package and strategic location near major economic engines. The Sponsor also believe that the Property provides a favorable price given the lease-up opportunity, opportunity to potentially improve operational performance, and opportunity to enhance underlying asset value through the execution of strategic capital improvements, asset management and other value-add initiatives.

Investment Highlights

- ✓ *Stable multifamily product in top-tier investment market*
- ✓ *Strong suburban location with direct access to highly-regarded schools and regional connectors*
- ✓ *Close proximity to major economic engines*
- ✓ *Retain the Property Manager who is a market-leading local operator*
- ✓ *Co-Investment/alignment of interests*

Ownership Objectives

1. Preserve the Beneficial Owners' capital investment
2. Make monthly distributions starting at 3.35% per annum in year one increasing to 5.28% per annum in year ten, which may be partially tax-deferred as a result of depreciation and amortization expenses
3. Capitalize on potential rental premiums afforded by the direct access to highly-regarded and rated MountainView Hospital, with easy access to major economic drivers, robust development and thriving economic conditions in the local area
4. 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
5. Add value and improve asset quality through selective minor and non-structural capital improvements, thereby increasing rent and renter demand
6. 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

Opportunity to Collaborate with a Proven Las Vegas Apartment Operator/Developer: Calida. Founded by Douglas Eisner and Eric Cohen in 2007, Calida is a leading developer and operator of multifamily, mixed-use real estate properties and senior housing with more than 16,000 units developed or acquired. Calida's talented team of professionals strive to cultivate a unique vision for every project and thoughtfully execute each step in the process with precision and care. Calida hold itself to the highest standards of quality, design, risk management and reporting, an assertion shared by partners, investors and ultimately its residents. Calida challenges the perception of apartment living by developing designs and creating experience-driven amenities that seamlessly fit into to residents' fast-paced lives. Calida differentiates itself from the competition through thoughtful design and services, offering a chic, fun and urbane environment not found at other luxury apartment home communities. Calida residents live dynamic, exciting and socially connected lives and Calida apartment communities exemplify and facilitate these goals. Calida is led by a management team, whose members are described below.

Douglas Eisner - Mr. Eisner is Co-Founder and Managing Director of Calida and is responsible for finance, legal, and corporate operations for Calida and its affiliated entities. Prior to forming Calida in 2007, Mr. Eisner was with the Las Vegas City Partner for Alliance Residential Company

("**Alliance**"), which he joined in 2003. With Alliance, he was responsible for all aspects of the division's operations from sourcing and entitling development opportunities to overseeing construction and property management of the firm's projects in Las Vegas. Prior to joining Alliance, Mr. Eisner was with Lend Lease Real Estate Investments in their Capital Transactions department where he was focused on the acquisition of multifamily and commercial investments through direct investments and joint ventures throughout the western United States. Mr. Eisner graduated Summa Cum Laude from the University of Pennsylvania with a Bachelor of Arts in Economics and a Bachelor of Applied Science in Systems Engineering. He is a member of Young Presidents Organization. Additionally, he is a founding board member of Housing on Merit, a Code Section 501(c)(3) nonprofit organization focused on transitional housing for homeless female veterans.

Eric Cohen - Mr. Cohen is Co-Founder and Managing Director of Calida where he leads the Multifamily Development Platform, including sourcing investment opportunities, entitlements, design, and project operations. He has over 18 years of real estate experience specializing in multiple types of multifamily products including affordable housing, garden-style, mid-rise, and high-rise. Before forming Calida in 2007, Mr. Cohen opened the Las Vegas office for Trammell Crow Residential to oversee development. Prior to Trammell Crow Residential, Mr. Cohen spent over 7 years in South Florida with the Altman Companies and JPI Companies. While with Trammell Crow Residential, the Altman Companies, and JPI Companies, Mr. Cohen was responsible for the successful development and entitlement of more than 7,900 multifamily residential units valued at $1,500,000,000. Mr. Cohen holds a Bachelor of Arts and Science degree with an emphasis in Finance and Real Estate from Florida Atlantic University. He is a member of Young Presidents Organization.

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

Strong Local Economies

- Above-average job growth
- 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 Federal Home Loan Mortgage Corporation, commonly known as "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 June 30, 2021, NexPoint Real Estate Advisors and its affiliates invested in 146 multifamily real estate transactions with total gross real estate value exceeding $5.73 billion. During this period, NexPoint Real Estate Advisors has completed approximately 8,750 full and partial value add rehabs on unit interiors within its portfolio, achieving 23%+ annualized returns on capital invested in these upgrade programs.

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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. 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 Las Vegas MSA is in the southern part of Clark County, Nevada. A central part of the Las Vegas MSA is the Las Vegas Valley, a 600 square mile basin that includes the Las Vegas MSA's largest city, Las Vegas, as well as the other primary cities within the Las Vegas MSA. The Las Vegas MSA contains the largest concentration of people in the State of Nevada. Cities in the metropolitan area include Las Vegas, Henderson, North Las Vegas, and Boulder City.

The economy of the Las Vegas MSA is well supported by the education and tourism industries and remains an important source of employment and tax revenue for Las Vegas. Tourists and residents support the region's thriving shopping and convention sectors. The Las Vegas MSA has experienced an increase in population over the last five years, increasing the business opportunities within the region. In general, the economic outlook for the Las Vegas MSA is favorable.

Local Area Analysis

Economic Analysis

Population. The Las Vegas MSA has experienced annual population growth of 1.6% since 2010, which exceeds population growth in the State of Nevada over that period. Over the next five years, the Las Vegas MSA is expected to see annual growth slow down to 1.3%, which is higher than the projected rate of the State of Nevada.

Income. 40.4% of households in the Las Vegas MSA earn less than $50,000 annually. Within the State of Nevada, only 39.1% of households earn less than $50,000 annually.

Housing Stock. The bulk of housing in the Las Vegas MSA is concentrated in single-family homes which comprise 63.6% of the inventory. Overall, a similar portion of households in the Las Vegas MSA rent housing compared to the State of Nevada; home-ownership levels are estimated at 57.8% and 59.3% in the Las Vegas MSA and State of Nevada, respectively. At $339,728, the estimated value of owner-occupied homes in the Las Vegas MSA is on par with the State of Nevada's median of $340,481.

Employment Sector. Top employment sectors in the Las Vegas MSA include sales (12.3%), office/admin support (11.9%), and food preparation/serving (10.6%). Together, these three sectors comprise 34.9% of total employment. When compared with the State of Nevada, the Las Vegas MSA has a higher share of residents in the food preparation/serving industry.

Neighborhood Demographics and Projections

SELECTED NEIGHBORHOOD DEMOGRAPHICS AND PROJECTIONS			
2660 N Buffalo Drive Las Vegas, NV 89128	**1 Mile**	**3 Miles**	**5 Miles**
Population			
2026 Total Population	16,907	137,938	351,274

2021 Total Population	16,107	132,253	331,762
Annual Growth 2021 – 2026	0.97%	0.85%	1.15%
Households			
2026 Total Households	6,730	48,320	116,682
2021 Total Households	6,434	46,531	110,908
Annual Growth 2021 - 2026	4.60%	3.84%	5.21%
Owner-occupied Housing Units	42.9%	57.0%	65.2%
Income			
2021 Average Household Income	$94,831	$91,806	$100,147
2021 Unemployment Rate	3.40%	5.40%	5.50%

Source: ESRI

As shown above, the current population within a three-mile radius of the Property is 132,253, and the unemployment rate in the immediate one-mile radius is 3.4%. The formation of new households in the five-mile radius of the Property is expected to grow by 5.21% over the next five years. In summary, the neighborhood of the Property currently has an upper income demographic profile. Generally, the 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.

Demand for high quality apartments has been on the rise for several years, as institutional buyers have been aggressively acquiring available projects in the Las Vegas MSA. This activity and demand have also lead to a decline in direct capitalization rate expectations in recent months. The Sponsor anticipates this trend will continue for the foreseeable future as the market continues to shift to new price points for most apartment projects.

Additionally, the Sponsor anticipates the Las Vegas MSA's multifamily market to have continued stabilized occupancy and increasing rental rates. Considering the prospects for new construction, the local market area 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 and surrounding apartment developments are generally experiencing good levels of demand as compared to the overall area.

Market Trends Key Takeaways

- The vacancy rate in the Las Vegas MSA was 3.6% for the fourth quarter 2021; the vacancy rate has decreased by 230 bps from third quarter 2016.
- The one-year forecast projects a 3.9% vacancy rate in the Las Vegas MSA, representing an increase of 0.3% by fourth quarter 2022.
- Asking rent averages $1,440/unit in the Las Vegas MSA; future rent values are expected to increase by 18.7% by fourth quarter 2022.
- Inventory in the Las Vegas MSA has increased by 20.6% from fourth quarter 2016, while occupancy has increased by 3.3% over the same period.
- Between fourth quarter 2016 and fourth quarter 2021, completions averaged 3,161 units annually and reached a peak of 4,079 units in third quarter 2021.
- Between fourth quarter 2016 and fourth quarter 2021, demand averaged 3,824 units annually and peaked at 7,304 units in second quarter 2021.
- Annual demand for fourth quarter 2021 was 5,363 units, compared to the 3,577 units of annual supply.

Submarket Snapshot, Trends and Forecast: Northwest Las Vegas

- The submarket contains 10.2% of the Las Vegas MSA's apartment unit inventory.
- The inventory in the submarket has increased by 2,428 units since fourth quarter 2016.
- The current inventory level of 16,816 units is expected to increase by 154 units over the next four quarters.
- The submarket's average asking rent is $1,516/unit and $1.579 per square feet, which is more than Las Vegas MSA's average of $1,440/unit and $1.568 per square feet.
- Future rent values are expected to increase by 20.5% by fourth quarter 2022.
- The submarket's vacancy rate is 2.7%, which is less than the Las Vegas MSA's average of 3.6%.
- One-year forecasts project a 3.8% vacancy rate in the submarket, representing an increase of 110 bps by fourth quarter 2022.
- 5.0% of units in the submarket are offering concessions, compared to 8.0% for the Las Vegas MSA.

Multifamily Market Construction Key Takeaways

- There are 19 properties under construction in the Las Vegas MSA.
- Apartment properties within the under-construction phase have an average size of 358 units and range in size between 151 units and 875 units.
- Of the 6,805 units under construction, 66.4% are four or fewer stories.

Comparable Rental Properties.

Property	Year Built	Units	Average Square Feet	Average Effective Rent	Average Effective Per Square Feet
Inspire	2017	306	1,056	1,713	$1.62
Elysian at Tivoli	2021	359	955	2,393	$2.51
Elysian at Centennial Hills	2021	280	961	1,607	$1.67
Tanager	2019	267	948	2,472	$2.61
Vue at Centennial	2016	372	1,097	1,840	$1.68
Totals/Averages	**2019**	**317**	**1,003**	**$2,005**	**$2.02**
Ely at Buffalo	2021	216	843	**$1,473**	**$1.75**

Comparable Property Sales.

Property	Year Built	Units	Sale Price	Sale Price Per Unit	Sale Price Per Rentable Square Feet	Sale Date
Elysian at The Palms	2021	286	$116,500,000	$407,343	$456	Nov-21
Lyric	2014	376	$135,200,000	$359,574	$332	Nov-21
Cactus Hills	2019	210	$76,600,000	$364,762	$409	Nov-21
Elysian at Tivoli	2021	359	$164,473,684	$458,144	$480	Nov-21
Jade	2021	287	$124,500,000	$433,798	$545	Dec-21
Palladium	2007	390	$135,500,000	$347,436	$357	Dec-21
Totals/Averages		**318**	**$752,773,684**	**$395,176**	**$430**	
Ely at Buffalo	2021	216	$81,000,000	$375,000	$445	Feb-22

Las Vegas Market Overview

According to MPF Research Inc. ("**MPF**"), the Las Vegas MSA apartment market weathered the pandemic downturn well. Momentum carried throughout the recovery as the Las Vegas MSA apartment market achieved record rent growth and historic highs in occupancy during 2021. This is especially encouraging given that the Las Vegas MSA has one of the most prominent leisure/hospitality services industries in the nation, the sector hardest hit by job losses in the pandemic. Effective asking rents in the Las Vegas MSA rose 4.7% in fourth quarter 2021, taking prices up to a record 23.7% year-over-year. That annual rent increase ranked seventh best among the nation's largest 50 markets and second best among large markets in the western region, after Phoenix, Arizona. Performance strength was seen across the price spectrum in the Las Vegas MSA, particularly in top- and middle-tier product. Price growth was strongest in Class A units at 30.0%, followed by Class B units at 22.6%. All of Las Vegas MSA's submarkets realized year-over-year rent gains, with 10 of 12 submarkets reaching growth of 20% or higher. Enabling such rent growth in the past year was solid demand that pushed occupancy to near record levels. Apartment demand in 2021 registered at 5,363 units, well above the Las Vegas MSA apartment market's five-year average of roughly 3,900 units annually. All but one of Las Vegas MSA submarkets recorded strong demand. Meanwhile, the high-supply central Las Vegas submarket absorbed nearly 1,100 units for the year. Overall leasing activity in the Las Vegas MSA took occupancy up 0.9% year-over-year to 97.4%, which, along with third quarter 2021's occupancy reading of 97.5%, represented

the highest occupancy level seen in Las Vegas since RealPage, a property management software provider, began tracking the market in the 1990s. Occupancy rose across all product classes. Class A product reached 97.0%.

Las Vegas Market Outlook

According to MPF, the Las Vegas MSA's outlook is contingent upon a number of factors, mainly how fast the economy can recover locally and nationally. Employment in the Las Vegas MSA as of the year ending November 2021 remained down about 5% (or 56,900 jobs) compared to first quarter of 2020. Migration of California residents has benefitted the Las Vegas MSA during the downturn. Another factor will be new supply, as over 4,500 units are scheduled to be delivered in 2022. Although a modest inventory growth rate (2.0%) compared to many other large markets nationally, it is large enough to cause some softness in Class A performance due to lease-up challenges. In turn, RealPage forecasts the Las Vegas MSA apartment fundamentals to slow from current levels, before settling in closer to historical norms beginning in 2023.

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ACQUISITION CLOSING AND FINANCING TERMS

Prior to the Acquisition Closing, the Property was owned by the SPE which was, in turn, indirectly owned by the Sellers. In connection with the Acquisition Closing, on December 30, 2021, the SPE entered into the Acquisition Bridge which was used to pay off an existing mortgage loan on the Property, to pay transactional costs, and to redeem certain Sellers (directly or indirectly) from the SPE. As part of the foregoing, certain Sellers contributed their interests in the SPE to the JV Entity (resulting in the JV Entity being the 100% owner of the SPE) and the SPE transferred the TIC Interests to certain Sellers. At the Acquisition Closing on February 1, 2022, the JV Entity caused the Contributor to make the Contributor Contribution, which, together with the proceeds from the Loan: (1) enabled the SPE to acquire the TIC Interests and pay expenses and fees associated with the overall acquisition, and (2) enabled the SPE to pay off the Acquisition Bridge. As a result of the foregoing, the SPE became the sole owner of the Property and converted into a Delaware statutory trust under Delaware law (i.e., the Trust). The transactions comprising of the Acquisition Closing was based on the Purchase Price of $81,000,000 agreed upon by the Sellers and the JV Entity. The cash portion of the Contributor Contribution included proceeds of the Bridge Financing. The Sponsor and an affiliate of Calida will earn the Facilitation Fee for arranging the acquisition of the Property in the amount of $1,215,000, which is equal to 1.5% of the Purchase Price, for their management teams' services in the identification, negotiation, diligence, and acquisition of the Property in connection with the foregoing. 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 $37,076,000 Loan, with a 10-year term, interest-only payments and a fixed interest rate of 3.52% per annum. On a fully-loaded basis, the LTC ratio is expected to be approximately 40.47%.

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 KeyBank National Association, under the Fannie Mae DUS loan program. The Loan is "non-recourse" to the Trust except for standard non-recourse carve outs contained within the promissory note (the "**Loan Agreement**").

As Beneficial Owners in the Trust, the Purchasers are not required to execute personal guarantees for any portion of the Loan or an environmental indemnity agreement in favor of the Lender and will not incur any personal liability with respect to the operation of the Property or under the Loan Documents, including liability for environmental claims. However, since the Property secures the Trust's obligations under the Loan, Beneficial Owners could lose 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."*

Summary of Loan Terms	
Principal Amount	$37,076,000
Term; Maturity Date	Ten years, maturing on February 1, 2032
Interest Rate	3.52% per annum
Amortization	None
Late Charges	For any payment not timely made, the Trust will pay to the Lender, immediately without demand by the Lender, an amount equal to the delinquent amount then due under the Loan Documents multiplied by five percent. Late charges are paid in addition to (and not in lieu of) any interest payable at the default rate.
Repayment	Up to and including February 1, 2032, the Loan will be interest-only, resulting in debt service payments until such time of approximately $1,323,201 per year. If at any time the Lender receives any payment in respect of the Loan that is less than all amounts due and payable at such time, then the Lender may apply such payment to amounts then due and payable in any manner and in any order

	determined by the Lender or hold in suspense and not apply such payment at the Lender's election.
Additional Reserves from Loan Proceeds	The Loan Documents provide for the Replacement Reserve. The Trust used $109,962 of the Loan proceeds to fund its initial contribution to the Replacement Reserve, as required under the Loan Documents. As required by the Lender, the Trust also used $108,861 of the Loan proceeds to fund the Imposition Reserve. Finally, the Trust established the Interest Reserve to meet future debt service and the Trust used $2,500,000 of the Loan proceeds to fund the initial contribution to the Interest Reserve. In addition, the Trust has established (and controls) the Supplemental Trust Reserve. The Supplemental Trust Reserve was funded from Loan proceeds for costs and expenses associated with the Property, in the amount of $787,500.
Assumption	The Lender has agreed not to unreasonably withhold consent to the transfer of the Property and the assumption of the Loan if certain conditions are met. The Lender is entitled to receive any reasonable out-of-pocket costs and expenses, including reasonable attorney fees, incurred by the Lender in connection with such a transfer and may also be entitled to a transfer fee and a review fee plus processing and administrative fees associated with the transfer.
Permitted Transfers	Transfers of direct or indirect ownership interests in the Trust or the Master Tenant are generally prohibited under the Loan Documents. However, certain transfers of direct or indirect ownership interests in the Trust (e.g., transfers relating to estate planning, transfers due to death, transfers to a Springing LLC, or transfers relating to the Exchange Right) shall be approved by the Lender if the requesting transferor meets and evidences certain conditions as set forth in the Loan Documents.
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 Subordination Agreement (the "**Subordination Agreement**") pursuant to which the Master Lease will be subordinated to the Loan and the Master Tenant's interest in the Property and tenant leases has been assigned to the Lender as additional collateral.
Prepayment	At any time after the Prepayment Lockout Period (as defined in the Loan Documents), full (but not partial) prepayment of the principal balance and then-accrued interest of the Loan is permitted so long as the Trust provides at least 30 but not more than 60 days written notice (if given via U.S. Postal Service) or 20 days written notice (if given via facsimile, e-mail, or overnight courier) to the Lender. In addition to the full outstanding principal balance and then-accrued interest of such Loan, the Trust will also be required to pay the Lender the Prepayment Premium (as defined in the Loan Documents) and all other indebtedness. The "Prepayment Premium" will generally equal the greater of (i) one percent of the entire outstanding principal balance of the Loan, or (ii) the present value of the remaining scheduled payments as of the date of prepayment of principal and interest determined by discounting such payments by an amount equal to the principal being prepaid, provided such difference shall not be less than zero. Prepayment may also be required under the Loan Documents following any Casualty or Condemnation (each as defined in the Loan Documents) or during an Event of Default.
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.

Insurance

The following insurance coverages are required under the Loan Documents, among others:

- comprehensive "all risk" or "special form" insurance including loss caused by windstorms, acts of terrorism and loss of rents and/or business interruption insurance covering such risk;
- commercial general liability insurance, workmen's compensation insurance, and such other liability, errors and omissions, and fidelity insurance coverage; and
- builder's risk and public liability insurance, and other insurance in connection with completing repairs and replacements.

Events of Default

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

- Upon the failure by the Trust to pay any portion of the obligations when due and payable as provided in the Loan Documents;
- Upon the failure by the Trust to maintain the insurance coverage required by any Loan Document;
- Upon the failure by the Trust to comply with the provisions of the Loan Documents relating to its single asset status;
- Upon the determination that any representation, warranty, certification, financial statement or other information made or furnished at any time pursuant to the terms of the Loan Documents made by the Trust, its agents, the Master Tenant, any guarantor or any other person liable for the obligations, was materially false, inaccurate, or misleading;
- Upon the determination that any representation that fraud, gross negligence, willful misconduct, or material misrepresentation or material omission by or on behalf of the Trust, the Master Tenant, Key Principal (as defined in the Loan Documents), or any of their agents in connection with the Loan application, the Master Lease, any financial statements, or any requests for the Lender's consent to any proposed action.
- Upon the occurrence of any transfer not permitted by the Loan Documents;
- Upon the occurrence of a bankruptcy event with regard to the Trust, its agents, or the Master Tenant;
- Upon the commencement of a forfeiture action or proceeding;
- Upon the failure by the Trust to complete any repair related to fire, life, or safety issues in accordance with the terms of the Loan Documents;
- Upon the occurrence of the holder of any other debt instrument secured by a mortgage, deed of trust, or deed to secure debt on the Property or any interest therein of a right to declare all amounts due under that debt instrument immediately due and payable;
- Upon the termination, amendment, or modification of any Master Lease document not permitted by the Loan Documents;
- Upon the determination that any warranty, representation, certification, or statement of the Trust in the Master Lease, the Assignment of Leases and Rents, or any other Master Lease document is false, inaccurate or misleading in any material respect when made;
- Upon any default by the Trust or Master Tenant beyond any applicable grace period pursuant to the Loan Documents;
- Upon the failure of the Trust to enforce all remedies under the Master Lease against the Master Tenant;
- Upon the resignation or removal of the Manager as "manager" of the Trust without the consent of the Lender; or

- Upon the failure of a Key Principal to Control (as defined in the Loan Documents) the Trust, Signatory Trustee, and Master Tenant.

Remedies

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

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

- accelerating the Loan;
- receive disbursements from the reserve or escrow accounts and any collateral accounts;
- foreclosing on the Property and applying the proceeds from a sale of the Property; and
- all rights and remedies set forth in the DST Lockbox Schedule (as defined in the Loan Documents).

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 executed an Environmental Indemnity Agreement, pursuant to which the Trust will generally indemnify the Lender and its affiliates against environmental liabilities arising from ownership and operation of the Property. Purchasers are not directly subject to any such indemnification obligations.

Limited Recourse

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

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

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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.

Brian Mitts: Mr. Mitts serves as Executive Vice President and is a member of the investment committee for the Sponsor. Mr. Mitts serves numerous roles across the NexPoint platform ("**NREA**"), including: Chief Financial Officer, EVP-Finance and Treasurer of NexPoint Residential Trust, Inc. (NYSE: NXRT); Chief Financial Officer, Executive Vice President- Finance, Secretary and Treasurer of NexPoint Real Estate Finance, Inc. (NYSE: NREF); and Chief Financial Officer and Corporate Secretary of NexPoint Hospitality Trust (TSX.V-NHT.U). Mr. Mitts has served as a member of the board of directors for NXRT and NREF. Mr. Mitts is also a member of the investment committee of NREA, the external advisor of NXRT, NREF and NHT. Mr. Mitts co-founded NREA, as well as NXRT and other real estate businesses with Mr. McGraner and Mr. Dondero. Currently, Mr. Mitts leads NexPoint's financial reporting and accounting teams and is integral in financing and capital allocation decisions. Prior to co-founding NREA and NXRT, Mr. Mitts was Chief Operations Officer of Highland Funds Asset Management, L.P., the external advisor of open-end and closed-end funds where he managed the operations of these funds and helped develop new products. Mr. Mitts was also a co-founder of NexPoint Advisors, L.P., the parent of NREA. He has worked for NREA or one of its affiliates since 2007.

Matthew McGraner: Mr. McGraner serves as Executive Vice President and is a member of the investment committee for the Sponsor. Mr. McGraner serves numerous roles across NREA, including: Executive VP and Chief Investment Officer of NexPoint Residential Trust, Inc. (NYSE: NXRT); Executive VP and Chief Investment Officer of NexPoint Real Estate Finance, Inc. (NYSE: NREF); and Chief Investment Officer of NexPoint Hospitality Trust (TSX-V: NHT.U). Mr. McGraner has also served as a Managing Director at NREA since 2016. He previously served as a Managing Director at Highland from May 2013 through May 2016. With over 10 years of real estate, private equity and legal experience, his primary responsibilities are to lead the strategic direction and operations of the real estate platform at NexPoint, as well as source and execute investments, manage risk and develop potential business opportunities, including fundraising, capital markets transactions, 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 mergers and acquisitions and private equity transactions. Since joining the firm in 2013, Mr. McGraner has led the acquisition and financing of approximately $13.2 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 $3.4 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.

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 $15.3 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. Today, the NexPoint platform owns $10.2 billion of fee-earning real estate assets in various vehicles, including publicly traded REITs, closed-end funds, and private placements. As of December 31, 2021, the NexPoint platform has achieved a gross IRR of 29.4% and a multiple of capital contributed of 1.89x through 61 realized investments.

Since October 2013, entities affiliated with the Sponsor have, directly and indirectly, invested in 155 apartment communities totaling 51,997 units across 17 states (AR, AZ, CA, FL, GA, IA, ID, MD, MO, MS, NC, NV, OK, SC, TN, TX, VA) and 27 distinct markets with a cumulative acquisition price in excess of $6.48 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 February 15, 2022, NexPoint Real Estate Advisors' apartment portfolio consists of 64 apartment communities totaling 23,852 units held within sixteen 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.

No.	Entity	Property Name	City	State	Units	Year Built	Acquisition Date	Investment Type	Current As of 2/15/2022
1	DST	Elysian at Hughes Center	Las Vegas	NV	368	2021	2/1/2022	Equity	Yes
2	NFRO	Easton Village	Boise	ID	144	2019	1/20/2022	Equity	Yes
3	AA	Hudson Montford	Charlotte	NC	204	1999	12/31/2021	Equity	Yes
4	DST	Ely at Buffalo	Las Vegas	NV	216	2021	12/30/2021	Equity	Yes
5	NREF	Palisades at Pleasant Crossing	Rogers	AR	396	2017	12/29/2021	Preferred Equity	Yes
6	NREF	Ridgeview Place	Irving	TX	390	1984	12/19/2021	Preferred Equity	Yes
7	NXRT	Hudson High House	Cary	NC	302	1997	12/7/2021	Equity	Yes
8	NREF	Alexander at the District	Atlanta	GA	280	2007	10/26/2021	Preferred Equity	Yes
9	DST	Hickory Creek Ranch	Denton	TX	212	2018	10/4/2021	Equity	Yes
10	AA	Olea at Viera	Melbourne	FL	166	2021	9/17/2021	Equity	Yes
11	NXRT	Six Forks Station	Raleigh	NC	323	1986/1997	9/10/2021	Equity	Yes

No.	Entity	Property Name	City	State	Units	Year Built	Acquisition Date	Investment Type	Current As of 2/15/2022
12	NXRT	Creekside at Matthews	Matthews	NC	240	2001	6/30/2021	Equity	Yes
13	NXRT	Verandas at Lake Norman	Cornelius	NC	264	2005	6/30/2021	Equity	Yes
14	NXRT	The Fairways at San Marcos	Phoenix	AZ	352	1986	11/2/2020	Equity	Yes
15	NREF	Briar Forest Lofts	Houston	TX	320	2012	6/12/2020	Preferred Equity	Yes
16	NREF	Connection at Buffalo Pointe	Houston	TX	352	2012	5/29/2020	Preferred Equity	Yes
17	DST	Polo Glen	Rockledge	FL	252	2008	12/27/2019	Equity	Yes
18	DST	Elysian at Flamingo	Las Vegas	NV	360	2019	11/26/2019	Equity	Yes
19	NXRT	Bloom	Las Vegas	NV	528	1989/1995	11/22/2019	Equity	Yes
20	NXRT	Bella Solara	Las Vegas	NV	320	1989	11/22/2019	Equity	Yes
21	NXRT	Torreyana	Las Vegas	NV	315	1997	11/22/2019	Equity	Yes
22	NXRT	Arbors of Brentwood	Nashville	TN	346	1986	9/10/2019	Equity	Yes
23	NXRT	Pembroke Pines Apartments	Pembroke Pines	FL	1,520	1986/1990	8/30/2019	Equity	Yes
24	NXRT	Residences at Glenview Reserve	Nashville	TN	360	1989	7/17/2019	Equity	Yes
25	NXRT	Residences at West Place	Orlando	FL	342	2002	7/17/2019	Equity	Yes
26	NXRT	Summers Landing	Fort Worth	TX	196	1985	6/7/2019	Equity	Yes
27	NXRT	Bella Vista	Phoenix	AZ	248	1995	1/28/2019	Equity	Yes
28	NXRT	The Enclave	Phoenix	AZ	204	1994	1/28/2019	Equity	Yes
29	NXRT	The Heritage	Phoenix	AZ	204	1995	1/28/2019	Equity	Yes
30	DST	Andros Isles	Daytona Beach	FL	360	2011	9/26/2018	Equity	Yes
31	DST	Arboleda	Cedar Park	TX	312	2007	9/26/2018	Equity	Yes
32	DST	The Manor Homes of Arborwalk	Lee’s Summit	MO	280	2006	9/26/2018	Equity	Yes
33	AA	Landmark at Battleground Park	Greensboro	NC	240	1990	9/26/2018	Equity	Yes
34	NXRT	Brandywine I	Nashville	TN	300	1985	9/26/2018	Equity	Yes
35	NXRT	Brandywine II	Nashville	TN	332	1985	9/26/2018	Equity	Yes
36	NXRT	Crestmont Reserve	Dallas	TX	242	1988	9/26/2018	Equity	Yes
37	DST	Estates	Lewisville	TX	372	2006	9/26/2018	Equity	Yes

No.	Entity	Property Name	City	State	Units	Year Built	Acquisition Date	Investment Type	Current As of 2/15/2022
		at Vista Ridge							
38	DST	Fairways at Birkdale	Huntersville	NC	180	1997	9/26/2018	Equity	Yes
39	AA	Landmark at Glenview Reserve	Nashville	TN	360	1989	9/26/2018	Equity	Yes
40	AA	Governor's Green	Bowie	MD	478	1999	9/26/2018	Equity	Yes
41	DST	Landmark at Grand Oasis	Suwanee	GA	434	1998	9/26/2018	Equity	Yes
42	AA	Gulfstream Isles	Fort Myers	FL	936	1989	9/26/2018	Equity	No
43	AA	The Heights at Olde Towne	Portsmouth	VA	148	1972	9/26/2018	Equity	Yes
44	DST	Hidden Lake	San Antonio	TX	380	2004	9/26/2018	Equity	Yes
45	AA	The Lakes at Renaissance Park Apartments	Austin	TX	308	1987	9/26/2018	Equity	Yes
46	AA	The Myrtles at Olde Towne	Portsmouth	VA	246	2004	9/26/2018	Equity	Yes
47	AA	Oak Mill	Germantown	MD	400	1984	9/26/2018	Equity	Yes
48	AA	Quail Landing	Oklahoma City	OK	216	2000	9/26/2018	Equity	Yes
49	AA	Reserve at River Walk	Columbia	SC	220	1992	9/26/2018	Equity	Yes
50	AA	Stoney Ridge	Woodbridge	VA	264	1985	9/26/2018	Equity	Yes
51	AA	Summers Landing	Fort Worth	TX	196	1985	9/26/2018	Equity	No
52	DST	Towne Crossing	Mansfield	TX	268	2004	9/26/2018	Equity	Yes
53	AA	Victoria Park	Mint Hill	NC	380	1991	9/26/2018	Equity	Yes
54	DST	Walker Ranch	San Antonio	TX	325	2004	9/26/2018	Equity	Yes
55	DST	Landmark at West Place	Orlando	FL	342	2002	9/26/2018	Equity	Yes
56	DST	NREA Retreat DST	McKinney	TX	464	2009	9/17/2018	Equity	Yes
57	NXRT	Cedar Pointe	Nashville	TN	210	1988	8/24/2018	Equity	Yes
58	DST	NREA Estates DST	Phoenix	AZ	330	2001	7/12/2018	Equity	Yes
59	NFRO/ NRES	The Grayson	Spring	TX	330	2016	5/25/2018	Preferred Equity	No
60	NFRO	Royal Crest	Sacramento	CA	95	1968	4/27/2018	Preferred Equity	Yes

No.	Entity	Property Name	City	State	Units	Year Built	Acquisition Date	Investment Type	Current As of 2/15/2022
61	DST	NREA Meritage DST	Houston	TX	240	2008	3/30/2018	Equity	Yes
62	NREC	Cameron Creek	Phoenix	AZ	212	1988	3/1/2018	Preferred Equity	Yes
63	NREC	Oaks at Northgate & Leon Court	Durham	NC	386	1965	2/16/2018	Preferred Equity	No
64	NREC	Ashley Village	North Charleston	SC	260	1970/1976	2/5/2018	Preferred Equity	Yes
65	NFRO	Hue at Cityplace	Dallas	TX	244	2000	1/12/2018	Preferred Equity	Yes
66	NRES	The Flats	Des Moines	IA	329	1973	12/28/2017	Preferred Equity	No
67	AA	The Crossings at Ridgewood	Jackson	MS	432	1976	11/28/2017	Preferred Equity	Yes
68	NXRT	Atera Apartments	Dallas	TX	380	1995	10/25/2017	Equity	Yes
69	DST	NREA Adair DST	Sandy Springs	GA	232	2000	10/13/2017	Equity	Yes
70	NREC	Latitude Apartments & Casitas	Phoenix	AZ	672	1979	7/11/2017	Preferred Equity	Yes
71	NXRT	Rockledge	Atlanta	GA	708	1978/1979	6/30/2017	Equity	Yes
72	NXRT	Hollister Place	Houston	TX	260	1997	2/1/2017	Equity	Yes
73	AA	Connection at Buffalo Pointe	Houston	TX	352	2012	12/29/2016	Equity	Yes
74	AA	The Meritage	Houston	TX	240	2009	12/29/2016	Equity	No
75	NXRT	Old Farm	Houston	TX	734	1996/1998	12/29/2016	Equity	Yes
76	NXRT	Stone Creek at Old Farm	Houston	TX	190	1999	12/29/2016	Equity	Yes
77	DST	NREA Gardens DST	Denton	TX	384	2012/2014	12/12/2016	Equity	Yes
78	NXRT	The Colonnade	Phoenix	AZ	415	1970	10/11/2016	Equity	Yes
79	NMCT	Springs at Stone Oak Village	San Antonio	TX	360	2013	8/19/2016	Preferred Equity	Yes
80	NXRT	City View	West Palm Beach	FL	217	1970	7/27/2016	Equity	Yes
81	NREC	Casa del Rio St. Johns	Jacksonville	FL	458	1973-5	7/13/2016	Preferred Equity	No
82	AA	Rundberg West	Austin	TX	72	1985	1/29/2016	Equity	No
83	AA	Heron Pointe	Boynton Beach	FL	192	1989	1/27/2016	Equity	No

No.	Entity	Property Name	City	State	Units	Year Built	Acquisition Date	Investment Type	Current As of 2/15/2022
84	NMCT	Bell Midtown	Nashville	TN	170	2010	12/17/2015	Preferred Equity	No
85	AA	Yacht Club at Heritage Harbour	Bradenton	FL	392	2007	12/15/2015	Preferred Equity	No
86	AA	Serena Vista	Dallas	TX	120	1980	11/25/2015	Equity	No
87	NREC	Columns at White Oak	Newnan	GA	561	1991-2002	11/9/2015	Preferred Equity	No
88	NREC	Alexan Arts	Dallas	TX	368	2015	10/30/2015	Preferred Equity	No
89	NXRT	The Place at Vanderbilt	Fort Worth	TX	333	1984	10/30/2015	Equity	Yes
90	AA	Woodcrest Village	Atlanta	GA	344	1990	9/10/2015	Equity	No
91	NREC	Whisperwood	Columbus	GA	1,008	1980	8/31/2015	Preferred Equity	Yes
92	AA	Summit at 860	Nashville	TN	389	1966	8/18/2015	Equity	No
93	NMCT	Estates on Maryland	Phoenix	AZ	330	2001	8/5/2015	Equity	No
94	NXRT	Madera Point	Phoenix	AZ	256	1985	8/5/2015	Equity	Yes
95	NXRT	Pointe at the Foothills	Phoenix	AZ	528	1986	8/5/2015	Equity	No
96	NREO	Ashmore	Houston	TX	696	1978	7/26/2015	Equity	Yes
97	NREC	Floresta	Jupiter	FL	311	2004	6/4/2015	Preferred Equity	No
98	NREC	Feathersound	Clearwater	FL	276	1985	5/6/2015	Preferred Equity	No
99	NXRT	Seasons 704	West Palm Beach	FL	222	1986	4/15/2015	Equity	Yes
100	NREC	Venue at Hometown	Dallas	TX	209	2007	4/10/2015	Preferred Equity	No
101	NREC	Huntington Glen	Houston	TX	364	1982	3/31/2015	Preferred Equity	No
102	NREC	Ashmore	Dallas	TX	348	1996	3/13/2015	Preferred Equity	No
103	NREC	Emory	Dallas	TX	364	1998	3/13/2015	Preferred Equity	No
104	NXRT	Dana Point	Dallas	TX	264	1986	2/26/2015	Equity	No
105	NXRT	Heatherstone	Dallas	TX	152	1986	2/26/2015	Equity	No
106	NXRT	Versailles	Dallas	TX	388	1986	2/26/2015	Equity	Yes
107	NREC	City Park	Clearwater	FL	228	1990	2/12/2015	Preferred Equity	No
108	NXRT	Barrington Mill	Atlanta	GA	752	1984	2/6/2015	Equity	Yes
109	AA	Willow Pond	Dallas	TX	386	1974	2/2/2015	Equity	No
110	NXRT	Twelve 6 Ten at the Park	Dallas	TX	402	1984	1/15/2015	Equity	No
111	NXRT	Cornerstone	Orlando	FL	430	1986	1/15/2015	Equity	Yes

No.	Entity	Property Name	City	State	Units	Year Built	Acquisition Date	Investment Type	Current As of 2/15/2022
112	NREC	Midtown on Main	Mesa	AZ	472	1985	1/6/2015	Preferred Equity	No
113	NXRT	Southpoint Reserve at Stoney Creek	Fredericksburg	VA	156	1986	12/18/2014	Equity	Yes
114	NREO	The Cove at Briar Forest	Houston	TX	296	1979/1989	11/20/2014	Equity	No
115	NXRT	Sabal Palm at Lake Buena Vista	Orlando	FL	400	1988	11/4/2014	Equity	Yes
116	NXRT	Regatta Bay	Seabrook	TX	240	2003	11/4/2014	Equity	No
117	NXRT	The Crossings at Holcomb Bridge	Roswell	GA	268	1984	10/16/2014	Equity	No
118	NREC	Autumn Ridge	Phoenix	AZ	672	1979	10/31/2014	Preferred Equity	No
119	NXRT	The Arbors	Tucker	GA	140	1985	10/16/2014	Equity	No
120	NXRT	The Crossings	Marietta	GA	380	1985	10/16/2014	Equity	No
121	NXRT	The Knolls	Marietta	GA	312	1985	10/16/2014	Equity	No
122	NXRT	Timber Creek	Charlotte	NC	352	1984	9/30/2014	Equity	Yes
123	NXRT	Radbourne Lake	Charlotte	NC	225	1990	9/30/2014	Equity	Yes
124	NXRT	Belmont at Duck Creek	Dallas	TX	240	2001	9/30/2014	Equity	No
125	NXRT	Mandarin Reserve	Jacksonville	FL	520	1983	9/15/2014	Equity	No
126	NXRT	Courtney Cove	Tampa	FL	324	1981	8/20/2014	Equity	Yes
127	NXRT	Colonial Forest	Jacksonville	FL	174	1969	8/20/2014	Equity	No
128	NXRT	Park at Blanding	Orange Park	FL	117	1968	8/20/2014	Equity	No
129	NXRT	Park at Regency	Jacksonville	FL	159	1985	8/20/2014	Equity	No
130	NXRT	Jade Park	Daytona Beach	FL	144	1985	8/20/2014	Equity	No
131	NXRT	The Summit at Sabal Park	Tampa	FL	252	1990	8/20/2014	Equity	Yes
132	NREC	Riverside Villas	Fort Worth	TX	192	2009	8/15/2014	Preferred Equity	No
133	NXRT	Abbington Heights	Nashville	TN	274	1986	8/1/2014	Equity	No
134	NXRT	Willow Grove	Nashville	TN	244	1973	7/21/2014	Equity	Yes
135	NXRT	Woodbridge	Nashville	TN	220	1980	7/21/2014	Equity	Yes

No.	Entity	Property Name	City	State	Units	Year Built	Acquisition Date	Investment Type	Current As of 2/15/2022
136	NXRT	Beechwood Terrace	Nashville	TN	300	1984	7/21/2014	Equity	Yes
137	NXRT	Edgewater at Sandy Springs	Sandy Springs	GA	760	1986	7/18/2014	Equity	No
138	NREC	Marbella	Corpus Christi	TX	783	1978	7/14/2014	Preferred	Yes
139	NREC	Island Bay	Galveston	TX	458	1970	6/10/2014	Preferred Equity	No
140	AA	Honey Creek	Dallas	TX	656	1984	5/29/2014	Equity	No
141	NXRT	Willowdale Crossings	Frederick	MD	432	1979	5/15/2014	Equity	No
142	AA	Park Central	Dallas	TX	144	1977	5/9/2014	Equity	No
143	AA	Sevilla	Dallas	TX	104	1983	3/12/2014	Equity	No
144	NXRT	The Grove at Alban	Frederick	MD	290	1986	3/10/2014	Equity	No
145	AA	Lexington	Dallas	TX	164	1983	2/10/2014	Equity	No
146	NXRT	Cutter's Point	Grand Prairie	TX	196	1978	1/31/2014	Equity	Yes
147	NXRT	Eagle Crest	Irving	TX	447	1982	1/31/2014	Equity	Yes
148	NXRT	Silverbrook	Grand Prairie	TX	642	1982	1/31/2014	Equity	Yes
149	NXRT	Timberglen	Dallas	TX	304	1984	1/31/2014	Equity	No
150	NXRT	Arbors on Forest Ridge	Bedford	TX	210	1986	1/31/2014	Equity	Yes
151	NXRT	Meridian	Austin	TX	200	1985	1/31/2014	Equity	No
152	NXRT	Toscana	Dallas	TX	192	1986	1/31/2014	Equity	No
153	AA	Emerson Square	Denton	TX	192	2014	1/1/2014	Equity	No
154	NXRT	Miramar	Dallas	TX	314	1983	10/31/2013	Equity	No
155	AA	Gardens of Denton	Denton	TX	192	2012	1/1/2012	Equity	No
Total					**51,977**				

Real Estate Programs

The Sponsor is an affiliate of ten real estate-based companies directly or indirectly sponsored and/or advised by the NexPoint group of companies, including NXRT, NREF, NRESF, NXDT, VBHT, 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 September 30, 2021, NXRT's portfolio consisted of 15,033 multifamily units in 40 apartment communities across 11 major U.S. markets. NXRT is externally managed by NexPoint Real Estate Advisors, L.P. ("**NREA LP**"), through an agreement dated March 16, 2016, by and among NXRT, the NXRT Operating Partnership, and NREA LP. NREA LP conducts substantially all operations and provides asset management for real estate investments. NREA LP 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 of 1940.

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 $1.6 billion as of September 30, 2021. NXRT delivered a 464.9% total return to shareholders from April 1, 2015 through September 30, 2021, outperforming the MSCI US REIT Index ("**RMZ**") by 412.1% 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 of 1940 (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 September 30, 2021 NRESF held net assets valued at approximately $21.2 million.

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

The NexPoint Diversified Real Estate Trust (i.e., NXDT) is a closed-end fund advised by NexPoint that is in the process of converting to a diversified REIT. On August 28, 2020, shareholders approved the conversion proposal and amended NHF's fundamental investment policies and restrictions to permit NHF to pursue its new business. On March 31, 2021, NHF filed an application with the SEC to deregister as an Investment Company Act fund. NHF filed an amendment to the application with the SEC on September 13, 2021. NHF's management believes the SEC's review and approval process will be complete in the fourth quarter of 2021. At the time of deregistration from the Investment Company Act, NHF also intends to qualify as a REIT for U.S. federal income tax purposes.

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

NHF seeks to gain exposure to the real estate markets, in whole or in part, through investing in certain REIT Subsidiaries of NHF. NHF 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 NHF has elected to be taxed as a REIT and is generally subject to the same investment policies and restrictions of NHF.

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 September 30, 2021, NHT's portfolio consists of 11 properties, comprised of 1,607 rooms, throughout the U.S. in the select-service, limited-service and extended stay hospitality categories. Each property has a long-term franchise agreement with Marriott, Hilton or InterContinental Hotels Group sponsored brands. These brands have strong loyalty programs and NHT believes each property in the portfolio has the opportunity to generate outsized market share improvements and topline increases as leading select-service, limited-service or extended stay hotels in their respective submarkets. In addition to organic growth, NHT is expected to realize additional embedded growth

from its value-add, capital improvement strategy.

Throughout the COVID-19 pandemic, management has taken aggressive cost cutting measures to keep margins in line with historical standards. Like most of the hospitality industry, NHT experienced low occupancy, average daily room rate ("**ADR**"), and revenue per available room ("**RevPAR**") through the first quarter of 2020. However, as markets began to reopen in the second quarter, business increased. The third and fourth quarters experienced a material increase in margins, compared to the prior two quarters, as occupancies, ADR, and RevPAR improved. Performance in 2021 has picked up steadily. NHT's management is encouraged to see increased travel in the United States and believes performance will begin to improve as consumers return to a more normal level of activity and vaccination rates continue to increase.

JCAP/NSP

Jernigan Capital, Inc., or JCAP, was 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 19, 2021, the NSP platform consists of 38 wholly-owned self-storage facilities, as well as six others facilities in which NSP has invested. 100% of the facilities are located within the top-75 MSAs and 75% are located within the top-25 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.

Today, VBHT continues to focus on acquiring high yield, workforce single family rental ("**SFR**") homes located in secondary and tertiary markets. VBHT's experienced management team and best-in-class technology platform provide the ability to easily scale as the company enters new markets and increases acquisitions in existing markets. Management believes SFRs provide defensive, diversified asset-backed yields with a potential for an inflation hedge. As of September 30, 2021, VBHT owns approximately 16,000 homes in nineteen markets, primarily in the Midwest, the "Heartland," and the Southeast.

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 September 30, 2021, NREF's portfolio consisted of loans with an aggregate unpaid principal balance of $1.6 billion backed by single-family rental homes and multifamily apartment communities, had an average remaining term of 6.9 years (excluding common stock), and was 92.5% stabilized with a weighted average loan to value of 66.8% (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 – (five properties) – 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
- 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

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 $30.0 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 $101.3M 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 $29.5M 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
- Completed interior upgrades on 325 units, increasing effective rent per unit $69 per month and achieving 23.3% ROI
- Sold for $29.4M 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 $16.3M 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 $85.4M 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 $28.1M 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 $23.5M 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 $31.3M 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 $31.7M 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 $55.5M 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
- $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 $53.6M 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 $37.7M in gross sale proceeds, November 2021
- $1,228 effective rent per occupied unit at the sale date (10.9% increase since acquisition)

The levered IRR on redeemed equity investments is the compound annual rate of return calculated by NexPoint Advisors, L.P. based on the timing and amount of all equity contributions, distributions and net proceeds from sale of the properties.

Currently Operating DST Programs.

The following table presents programs sponsored by the Sponsor that were operating as of the date of this Memorandum. 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, 2021, as compared to the cash-on-cash return projected for the calendar year ending December 31, 2021 (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	2021 Actual Annualized Cash-on-Cash Return	2021 PPM Projected Cash-on-Cash Return
NREA Gardens, DST	12/16/2016	Multifamily Denton, TX	$48,207,733	49.65%	$24,633,987	6.24%	6.53%
NREA Adair, DST	10/30/2017	Multifamily Sandy Springs, GA	$46,700,121	51.82%	$24,742,538	6.28%	6.87%
NREA Meritage, DST	4/17/2018	Multifamily Houston, TX	$38,914,118	49.85%	$21,213,382	4.00%	5.70%
NREA Estates, DST	7/13/2018	Multifamily Phoenix, AZ	$49,572,188	53.32%	$24,963,221	5.61%	6.07%
NREA Retreat, DST	10/3/2018	Multifamily McKinney, TX	$70,379,976	53.55%	$35,125,712	4.59%	5.19%
NREA Southeast Portfolio Three, DST	11/26/2018	Multifamily GA, NC, TX	$140,197,031	54.70%	$72,403,877	4.57%	5.17%
NREA Southeast Portfolio One, DST	4/1/2019	Multifamily TX, MO, FL	$187,301,600	53.44%	$98,108,244	4.61%	5.15%
NexPoint Texas Multifamily Portfolio DST	10/7/2019	Multifamily TX	$121,009,892	49.62%	$60,961,892	4.34%	5.01%
NexPoint Flamingo DST	2/12/2020	Multifamily Las Vegas, NV	$107,805,976	49.02%	$58,277,704	5.05%	5.38%
NexPoint Polo Glen DST	2/28/2020	Multifamily Rockledge, FL	$57,060,303	53.34%	$29,944,929	5.00%	5.19%
NexPoint Gamma DST	12/9/2020	Industrial Mansfield, TX	$13,640,708	0.00%	$13,640,708	5.43%	5.43%
NexPoint Storage I DST	5/1/2021	Self-Storage GA, FL	$140,015,940	43.08%	$85,892,414	5.17%	4.50%
NexPoint Hickory DST	10/26/2021	Multifamily Denton, TX	$56,929,069	40.51%	$29,374,069	3.36%	3.36%
NexPoint Storage II DST	10/27/2021	Self-Storage GA, FL, CT	$84,015,966	30.13%	$65,083,306	4.15%	4.15%
NexPoint Life Sciences DST	12/6/2021	Life Sciences Stamford, CT	$163,369,074	39.43%	$52,064,905	2.53%	2.53%
NexPoint Storage III DST	12/31/2021	Self-Storage Florida	$187,155,013	49.16%	$46,150,052	3.83%	3.83%

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 and an affiliate of Calida will earn the Facilitation Fee of $1,215,000 for its services in the identification, negotiation, diligence, and acquisition of the Property.

Competition with Affiliates

The Sponsor and its affiliates are involved in the acquisition, development and management of real property and are facilitators of Section 1031 Exchanges. Any affiliated entity, whether or not currently existing, could compete with the Trust and the Beneficial Owners in the sale or operation of the Property. 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.

The Sponsor or its affiliates may own or operate additional properties that compete with the Property, including but not limited to a multifamily property known as "Elysian at Flamingo" located at 4150 S. Hualapai Way, Las Vegas, Nevada 89147, approximately 10 miles from the Property, which is owned by another investment program sponsored by the Sponsor. The Sponsor, through its NXRT affiliates, owns and operates three additional properties in the Las Vegas MSA. However, the Sponsor does not believe that these existing properties in the Las Vegas MSA compete with the Property because of the difference in the properties' age, unit mix, and prospective tenant profile. Additionally, the Sponsor believes that owning and operating these existing properties in the Las Vegas MSA in addition to the Property provides economies of scale and strategic advantages for operating and acquiring properties in the Las Vegas MSA.

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 sole limited partner, NXRT, share officers with the Sponsor.

Compensation and Reimbursements Irrespective of Property Profitability

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

Sale of the Property

If the Manager decides to sell the Property, the Property Manager, Sponsor or its affiliates may be paid the Disposition Fee or other fees and compensation on the sale of the Property. The right to receive or participate in the Disposition Fee or other fees and compensation may provide the Sponsor, an affiliate of the Property 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 were affiliates of the Sponsor could control the Springing LLC as members.

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SUMMARY OF MASTER LEASE

The Property will be leased by the Trust to the Master Tenant, NexPoint Buffalo Leaseco, LLC, pursuant to the Master Lease. The Master Lease is, with certain exceptions regarding Landlord Costs, an "absolute net" leases 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.

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) when Base Rent and Additional Rent have been fully paid, an amount equal to 90% of the amount by which annual gross revenues exceed the Supplemental Rent Breakpoint (as defined in the Master Lease and set forth in the table below). 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 (a) the Projected Uncontrollable Costs for any calendar year exceed the actual uncontrollable costs, Master Tenant is required to pay the Trust the amount of such excess; and (b) the actual uncontrollable costs for any calendar year exceed the Projected Uncontrollable Costs, Master Tenant is responsible for the payment of such excess, but is entitled to a reimbursement by offsetting such amount against monthly Additional Rent and (if necessary) annual Supplemental Rent.

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:

Lease Period	Base Rent	Gross Revenue Additional Rent Breakpoint	Additional Rent Annual Maximum	Gross Revenue Supplemental Rent Breakpoint
Year 1	$1,323,201	$2,783,000	$1,772,000	$4,555,000
Year 2	$1,323,201	$2,931,000	$1,832,750	$4,763,750
Year 3	$1,326,826	$2,992,000	$2,015,000	$5,007,000
Year 4	$1,323,201	$3,046,000	$2,075,750	$5,121,750
Year 5	$1,323,201	$3,110,000	$2,136,500	$5,246,500

Year 6	$1,323,201	$3,177,000	$2,136,500	$5,313,500
Year 7	$1,326,826	$3,249,000	$2,075,750	$5,324,750
Year 8	$1,323,201	$3,317,000	$2,075,750	$5,392,750
Year 9	$1,323,201	$3,391,000	$2,015,000	$5,406,000
Year 10	$1,323,201	$3,468,000	$2,015,000	$5,483,000

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, and payment of the Asset Management Fee shall be deferred. Any deferred and accrued Asset Management Fee shall be due and payable in full upon a disposition of the Property from the proceeds of the sale thereof. Deferral of rent may cause the Beneficial Owners to recognize taxable income prior to the time rent is actually paid to them. *See "Federal Income Tax Consequences - 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

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

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 indemnify the Trust, and its officers, directors, trustees, employees, and beneficial interest holders, including the Purchasers from claims, damages, losses and expenses, including reasonable attorneys' fees, incurred or asserted against the Trust by reason of the Master Tenant's gross negligence, willful misconduct, fraud, or breach of the Master Lease. The Master Tenant will also indemnify the Trust for any payments it is required to make in respect of any non-recourse carve-outs under the Loan Documents, if such payments are caused by: (i) Master Tenant's fraud, willful misconduct or misappropriation, (ii) Master Tenant's commission of a criminal act, (iii) the misapplication of Property funds by the Master Tenant, and / or (iv) damage or destruction to the Property caused by Master Tenant's gross negligence.

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. At the end of any calendar year, if the balance in a Supplemental Trust Reserve is less than $108,000 (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 Reserves 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 Sales Commissions, Marketing/Due Diligence Expense Allowances, Managing Broker-Dealer Fee and Organization and Offering Expenses allocable to each such sale. *See "Estimated Use of Proceeds"* and *"Compensation and Fees."*

Term

The Trust will terminate upon the first to occur of (i) a sale of the Property or (ii) a Transfer Distribution of the Property. The death, incapacity, dissolution, termination or bankruptcy of the Delaware Trustee, the 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.

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 Buffalo Manager, LLC, an affiliate of the Sponsor, will serve as the Manager of the Trust. The Manager of the Trust will be managed by senior members of the Sponsor's management team, which team is described below. The Manager is also the Signatory Trustee (as defined below) of the Trust. The Manager has the power and authority to manage the limited investment activities and substantially all of the 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.

As a result, the Trust may be required to effectuate a Transfer Distribution in order to take any of the above actions which may be necessary, in the Manager's sole discretion, to preserve and protect the Property. While the

Property will remain subject to the Loan after any such Transfer Distribution, the Beneficial Owners will no longer be considered to own, for federal income tax purposes, a direct ownership interest in the Property. Instead, the Beneficial Owners will become members in the Springing LLC, which will then own the Property. The Manager (or an affiliate of the Manager), will be the manager of the Springing LLC. *See "Summary of Certain Provisions of the "Springing LLC" Limited Liability Company Operating Agreement."*

Transfer Rights; Right of First Refusal

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

Any transferee 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.

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 below "Summary of Certain Provisions of "Springing LLC" Limited Liability Company Operating 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. 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.

Exchange Right

The Operating Partnership, a Delaware limited partnership, which acts as the operating partnership for NXRT (i.e., NexPoint Residential Trust, Inc.), 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 Section 721. *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.

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 interest 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 Partner in writing within 10 business days after the date on which the Manager mails the Notice of Exchange to the Beneficial Owner (the "**Dissenting Notice**").

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 to reimburse the Manager or the Operating Partnership for reasonable and customary 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 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 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 sixty business days of the Receipt Date and (ii) to any Dissenting Beneficial Owner the Cash Amount within one hundred eighty days of the Receipt Date.

Periodic Purchase Offer

The Sponsor or its affiliates may, but have no obligation to, 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 his, her or its Interests in the Trust in a manner that is consistent with the foregoing.

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

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

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

Rights of the Members of the Springing LLC. The Beneficial Owners will become members in the Springing LLC. The members of the Springing LLC will not have the right to take part in the management or control of the business or affairs of the Springing LLC, to transact any business for the Springing LLC, or to sign for or bind the Springing LLC. The members, however, will have the right to receive information required for federal income tax reporting and certain other financial information and to inspect certain records of the Springing LLC. Upon the

requisite vote of the members, the members will have the right to: (i) amend the Springing LLC Operating Agreement, subject to certain limitations specified in the Springing LLC Operating Agreement, with the consent of the manager, (ii) remove the manager for cause (as defined in the Springing LLC Operating Agreement), (iii) elect a successor manager, with the consent of the manager, (iv) elect a successor 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 Operating Agreement.

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

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

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

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

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

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

Meetings and Voting. A meeting of the members may be called at any time by the manager. The manager will call for a meeting following receipt of a written request of members holding more than 10% of the membership units of the Springing LLC. At a meeting of the members, the presence of members holding more than 50% of the membership interests, in person or by proxy, will constitute a quorum. A member may vote either in person or by written proxy signed by the member or by his, her or its duly authorized attorney-in-fact. 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 any sales commissions or mortgage brokerage fees due to outside brokers shall not be paid from these fees).

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

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

Power of Attorney. The manager of the Springing LLC will not be liable to any member of the Springing LLC or to the Springing LLC for honest mistakes of judgment, or for action or inaction, taken reasonably and in good faith for a purpose that was reasonably believed to be in the best interests of the Springing LLC, or for losses due to such mistakes, action or inaction, or for the negligence, dishonesty or bad faith of any employee, broker or other agent of the Springing LLC. However, this provision will not relieve the manager from liability attributable to 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 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 Pinnacle Property 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 one year and shall be automatically renewed on a month-to-month basis if not 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 2.00% of the monthly Gross Receipts (as defined in the Property Management Agreement) from the Property or a base fee of $6,500 per month. In addition, the Property Manager is entitled to the Incentive Fee which shall be equal to 15% of the difference between the annual Actual Property Net Operating Income (as defined in the Property Management Agreement) and the Budgeted Net Operating Income (as defined in the Property Management Agreement). In addition, the Property Manager shall be reimbursed for its expenses. 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 his, her or its own investigations and analysis of the Property and is encouraged to seek the advice of his, her or its own independent legal counsel, accountants, and real estate advisors.

Indemnity

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

No Tax Advice

Purchasers also will acquire their Interests without any representations from the Trust, the Sponsor, the 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 his own independent legal counsel and other tax advisors regarding the tax implications of an investment in an Interest, including whether or not such investment will qualify for deferral of gain under Code Section 1031, if so contemplated. *See "Federal Income Tax Consequences."*

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.

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SUMMARY OF ASSET MANAGEMENT AGREEMENT

Concurrently with the Acquisition Closing, 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	The Asset Management Agreement commenced on the date of the 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 an annual fee equal to 0.30% of the Purchase Price equal to $243,000. In addition, the Asset Manager will be reimbursed for its reasonable expenses. The Asset Management Fee payable to the Asset Manager will be payable solely by the Trust out of the income it receives from the Property. The asset management fee is subordinate in all respects in lien and payment to the lien and payment of the Loan. The Asset Manager may, at its sole discretion, defer a portion or all of the Asset Management Fee. The Asset Manager intends to defer the 100% of the first year's and 75% of the second year's Asset Management Fee across the fourth through eighth year of the Asset Management Agreement. The Asset Manager shall also receive the Disposition Fee from the Trust equal to 3.0% of the gross proceeds of the sale of the Property. Pursuant to the Fee Sharing Agreement, an affiliate of Calida is entitled to receive 33.33% of the Asset Management Fee and the Disposition Fee.
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. The Asset Manager will agree to indemnify the Trust and hold it harmless from all claims arising directly or indirectly out of any action taken by the Asset Manager that is not within the scope of its authority under the Asset Management Agreement.

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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 affect you significantly and does not address the tax issues that may be important to you if you are subject to special tax treatment, such as a Non-U.S. Person or a tax-exempt entity. Except where otherwise noted, this discussion addresses only federal income tax aspects of an investment in an Interest and does not address or discuss aspects of state and local taxation relating to such an investment. Each prospective Purchaser should consult his, her, or its own tax advisor about the specific tax consequences to him 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 or foreign tax laws. You should be aware that new administrative, legislative or judicial action could significantly change the tax aspects associated with an Interest. In particular, the TCJA and the CARES Act have 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 TCJA and the CARES Act. 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 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.

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 his 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 CB 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 his federal income tax liability, his 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 his proportionate share of the income of the Trust. 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 TCJA eliminated the specific exceptions under Code Section 1031 for securities and other intangible assets. Although the specific language providing for the exceptions has been eliminated, Tax Counsel believes that an analysis of these terms remains relevant and concluded that the Interests should not be treated as securities for purposes of Code Section 1031. However, due to the current lack of guidance regarding the scope of the TCJA's amendment to Code Section 1031, it is possible that the IRS could take a contrary position on these issues.

The Trust and the Sponsor have not received and will not request a private 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.

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

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

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

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

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

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 Rev. Proc. 2000-37, 2002-2 C.B. 308, which establishes a safe harbor for such exchanges. Each prospective Purchaser will have to determine with such his, her, or its own tax advisors whether an exchange engaged in by the prospective Purchaser satisfies the requirements of Code Section 1031.

Each Purchaser will have to determine with such Purchaser's own tax advisors whether an exchange engaged in by the Purchaser satisfies the requirements of Code Section 1031.

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

"Real Property" for Purposes of Code Section 1031. As discussed above, subject to certain transition rules, the TCJA limited Section 1031 Exchanges to 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. 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 such his, her, or 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.

Rev. Proc. 2001-28 sets forth advance ruling guidelines for "true lease" status. We have not sought, and do not expect to request, a ruling from the IRS under Revenue Procedure 2001-28. These ruling guidelines provide certain criteria that the IRS will require to be satisfied in order to issue a private letter ruling that a lease is a "true lease" for federal income tax purposes. In the event of an examination by the IRS, the IRS and, ultimately, the courts of applicable jurisdiction, would consider these ruling guidelines, together with existing cases and rulings, for purposes of determining whether a lease qualifies as a true lease for federal income tax purposes. However, Tax Counsel does not believe that strict compliance with Rev. Proc. 2001-28 is required to conclude that the Master Lease should be characterized as a true lease for federal income tax purposes. Rather, Tax Counsel believes that satisfying most of the material ruling guidelines should be sufficient for purposes of determining the characterization of the Master Lease for federal income tax purposes. 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 Rev. Proc. 2001-28 and that the Master Lease should be treated as a true lease rather than as a financing for federal income tax purposes. Similarly, if the Master 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 Rev. Rule 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 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. The TCJA also provides a 20% deduction on a taxpayer's "qualified business income" which sunsets for the taxable year ending December 31, 2025. This deduction, under Code Section 199A, reduces the highest marginal effective tax rate for ordinary income from 37% to 29.6% for income arising from a "qualified trade or business" conducted by a partnership, S corporation, or sole proprietorship. In the case of a partnership or S corporation, Code Section 199A applies at both the entity and individual partner or shareholder level. For taxpayers above certain income thresholds, the "qualified trade or business" must have sufficient amounts of W-2 wages paid or a combined sufficient amount of wages plus the unadjusted basis of certain property (including buildings, but not land).

On January 18, 2019, the IRS announced the release of final regulations providing guidance regarding many of the open issues and technical questions posed with respect to Code Section 199A following passage of the TCJA, including final rules relating to aggregation of certain real estate activities engaged in through multiple partnerships or S corporations, as well as enumerating certain factors relevant for determining real estate trade or business status. In the final regulations, the IRS elected not to apply the grouping rules of Code Section 469; however, the final regulations allow for aggregation of direct and indirectly held real estate businesses provided certain requirements set out in the final regulations are satisfied. Additionally, on January 18, 2019, the IRS announced the release of a related notice, Notice 2019-07, regarding a rental real estate trade or business safe harbor. In the notice, the IRS provided that certain taxpayers who meet the requirements of the notice will be allowed trade or business income treatment from certain "rental real estate enterprises." However, the rental real estate trade or business safe harbor is not available where the property used by the taxpayer is subject to a triple net lease. On September 24, 2019, the IRS issued Revenue Procedure 2019-38 and reaffirmed that real estate rented or leased under a triple net lease may not be included in a "rental real estate enterprise." Further, in Revenue Procedure 2019-38, the IRS defined a "triple net lease" as "a lease agreement that requires the tenant or lessee to pay taxes, fees, and insurance, and to pay for maintenance activities for a property in addition to rent and utilities." The definition of a triple net lease for the purpose of Revenue Procedure 2019-38 may overlap significantly with the Master Lease.

Prospective Purchasers should consult their own tax advisor regarding the possible application of Code Section 199A to their own particular circumstances.

Possible Adverse Tax Treatment for Closing Costs and Reserves. A portion of the proceeds of an Offering will be used to pay each Purchaser's pro rata share of closing costs, expenses, and other costs of the Offering. In addition, reserves, may be established using a portion of the proceeds of the Offering. Because the tax treatment of certain expenses of the Offering, closing 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 reserves, which may be taxable to those Investors 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.

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 he paid directly his share of expenses paid by the Trust.

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

Code Section 467 Rent Allocation. Under the Master Lease, if the Property's cash flow is insufficient to support all operating expenses and Base Rent and other payments, the Master Tenant may defer on a month-to-month basis a portion of the Additional Rent or Supplemental Rent payments, but only so long as the amount of Base Rent paid to or on behalf of the Trust is sufficient to fully service the Trust's payment obligations under the Loan Documents. Although the issue is not completely settled under existing law, under 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 federal income tax law allows an owner of improved real property to take depreciation deductions based on the entire cost of the depreciable improvements, even though such improvements are financed in part with borrowed funds. If, however, the purchase price of an Interest and the non-recourse liabilities to which 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. Prior to the TCJA, there were three categories of qualified improvement property (qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property) and each was subject to a 15-year recovery period. The TCJA eliminated these categories with the intention of establishing a single 15-year recovery period for all qualified improvement property. However, the Code as it was actually amended does not include this intended 15-year recovery period. As such, the Code as written subjects qualified improvement property to the 39- year recovery period that generally applies to real property. Due to the limitation on expenditures for improvements imposed upon the Trust, the Manager does not anticipate that the Trust will make significant expenditures for "qualified improvement property."

Under the TCJA, up to $1,000,000 of certain improvements made to non-residential real property after the property is first placed in service may be expensed and currently deducted for tax purposes during the taxable years beginning after December 31, 2017 and ending before January 1, 2026 (subject to certain limitations). Due to the limitations on expenditures for improvements imposed on the Trust, the Manager does not anticipate that the Trust will incur a significant amount of any such expenses. The amount of depreciation 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 non-depreciable assets that are part of the Property and special rules apply to the determination of the period and method that must be used to calculate depreciation with respect to property received in a Section 1031 Exchange. Each Purchaser will have to compute his, her or its own cost basis in the Property for tax purposes, including any adjustment to basis as may be required if a Purchaser is buying an Interest in the Trust in order to take advantage of the rules deferring the recognition of gain on real property under Code Section 1031, when computing depreciation allowed with respect to the Property.

Allocation of Liabilities. Any liabilities incurred by 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 his proportionate share of the liabilities that encumber the Property at the time of the acquisition of an Interest.

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

Although each Purchaser should be treated for federal income tax purposes as buying an undivided interest in the Property, it is possible the IRS may take the view that the amount by which the price of an undivided interest exceeds the pro rata share of the price paid by the Trust for the Property is not to be treated as a sale of real 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 disposition of the Property will be treated as an adjustment to sales price.

Possible Adverse Tax Treatment for Closing Costs and Reserves. A portion of the proceeds of the Offering will be used to pay each Purchaser's pro rata share of closing costs, expenses, and other costs of the Offering. In addition, a portion of the proceeds of the Offering may be treated as having been used to purchase an interest in reserves established by the Sponsor rather than for real estate. Because the tax treatment of certain expenses of the Offering, closing costs, financing costs or reserves is unclear and may vary depending upon the circumstances, no advice or opinion of Tax Counsel will be given regarding the tax treatment of such costs and the treatment of proceeds attributable to the reserves, which may be taxable to those 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 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 his or her federal income tax liability, a Purchaser will be entitled to deduct, consistent with his or her method of accounting, the Purchaser's share of reasonable administrative fees, trustee fees and other fees, if any, paid or incurred by the Trust as provided in Section 162 or 212 of the Code, which may be subject to the limitations applicable to miscellaneous itemized deductions. The TCJA suspended all miscellaneous itemized deductions for taxable years between 2018 and 2025. As such, a Beneficial Owner will not be able to deduct his or her share of such fees paid by the Trust during this period. 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 membership interests in the Springing LLC will be distributed to the Beneficial Owners. It is anticipated that the Manager or its affiliate will serve as the manager of the Springing LLC. The Springing LLC will be treated as a partnership for federal income tax purposes. A Transfer Distribution may occur under the circumstances set forth in the Trust Agreement without regard to the tax consequences that arise as a result of the transaction. Under current law, such a transfer should not be subject to federal income tax pursuant to Code Section 721. The transfer could be subject, however, to state or local income, transfer or other taxes. In addition, there can be no assurance that such transfer will not be taxable under the federal income or other tax laws 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. **PROSPECTIVE PURCHASERS SHOULD CONSULT THEIR OWN TAX ADVISORS REGARDING THE TAX CONSEQUENCES OF A TRANSFER DISTRIBUTION AND THE EFFECT OF THE PROPERTY BEING HELD BY THE SPRINGING LLC RATHER THAN THE TRUST.**

Likely Lack of Deferral of Tax upon Sale of Springing LLC Membership Interests. Unlike interests in the Trust, membership interests in the Springing LLC will not be treated as direct ownership interests in real property for federal income tax purposes (including for purposes of a like-kind exchange under Code Section 1031). Thus, if the Trust transfers the Property to the Springing LLC in a Transfer Distribution, it is unlikely that any of the Beneficial Owners who receive membership interests in the Springing LLC 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.

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.

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

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

Certain taxpayers can, in limited circumstances, deduct losses and credits from rental real estate activities against other income, such as salaries, interest, dividends, etc. A taxpayer qualifies for this exception to the passive loss rules described above if: (i) more than half of the personal services performed by the taxpayer in trades or businesses during a year are performed in real property trades or businesses in which the taxpayer materially participates, (ii) the taxpayer performs more than 750 hours of services during the year in real property trades or businesses in which the taxpayer materially participates, and (iii) the taxpayer elects to treat all interest in rental real estate as a single activity. Code Section 469(c) provides that a qualifying real estate professional must establish material participation in each separate rental activity. However, an exception allows a qualifying real estate

professional to elect to aggregate all interests in rental real estate for purposes of measuring material participation. In the case of a joint return, one spouse must satisfy both requirements. A real property trade or business is any real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing or brokerage trade or business. In determining whether a taxpayer performs more than half of his, her or its personal services in real property trades or businesses, services performed as an employee are disregarded unless the employee owns more than 5% of the employer. Purchasers should consult with their own tax advisor to determine if this rule applies to them.

Net Income and Loss of Each Purchaser. Each Purchaser will be required to determine his or her own net income or loss from the Property and the Trust for income tax purposes. Each Purchaser will be required to pay his share of expenses of the Property and the Trust, and will be entitled to his or her 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 his income.

Any gain or loss realized on the sale or exchange of an Interest will generally be treated as capital gain or loss, provided the seller is not deemed a "dealer" in real property. 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 his, her or its tax basis in his, her or its Interests. In addition, the Medicare Tax is likely to apply to any net gain realized on a taxable disposition of the Property.

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

Treatment of Gifts of Interests. Generally, no gain or loss is recognized for federal income tax purposes as a result of a gift of property. However, if a gift (including a charitable contribution) of an Interest is made at a time

when the Purchaser's share of the Property's non-recourse indebtedness exceeds the adjusted basis of the Purchaser in its Interest, the Purchaser may recognize gain for income tax purposes upon the transfer. Such gain, if any, will generally be treated as capital gain. Gifts of Interests may also be subject to a gift tax imposed under the rules generally applicable to all gifts of property.

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

If Property debt were to be cancelled without an accompanying foreclosure of the Property, then a Purchaser could have to recognize cancellation of debt income (subject to the applicability of one or more of the cancellation of debt exclusions, in which event such exclusion(s) might constitute only a "deferral" of such income effectuated by the Purchaser's reduction of tax attributes – including tax basis), which would be taxed as ordinary income, for federal income tax purposes. Also, the Purchaser would not be able to offset any such cancellation of debt income with any loss recognized by a Purchaser that would constitute a capital loss for federal income tax purposes (including any loss recognized by a Purchaser from the sale of his 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 his or her tax advisor concerning the impact, if any, of the alternative minimum tax on the Purchaser.

The Medicare Tax. Income and gain from passive activities may be subject to the Medicare Tax. Certain Purchasers who are U.S. individuals are subject to the Medicare Tax, an additional 3.8% tax on their "net investment income", and certain 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 such Purchaser is "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 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 nonleveraged 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 the TCJA, excess business losses of a taxpayer other than a corporation are not allowed for the taxable year. Such losses are carried forward and treated as part of the taxpayer's net operating loss carryforward in subsequent taxable years. An excess business loss for the taxable year is the excess of aggregate deductions of the taxpayer attributable to trades or businesses of the taxpayer over the sum of aggregate gross income or gain of the taxpayer plus a threshold amount. The threshold amount, which is indexed for inflation, is $262,000 (or twice the applicable threshold amount in the case of a joint return) for 2021. 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*.** Under the TCJA, Code Section 163(j) limits annual deductions for "business interest" expense to the sum of business interest income plus 30% of "adjusted taxable income" (plus certain floor plan financing interest of the taxpayer relating to financing the acquisition of motor vehicles held for sale or lease). Business interest in excess of the allowed current deduction may be carried forward indefinitely. The 2021 Final 163(j) Regulations clarified how taxpayers determine their ATI. Taxpayers generally determine their ATI by starting with "tentative taxable income" and applying additions and subtractions as specified in the existing Treasury Regulations consistent with the statute. The 2021 Final 163(j) Regulations provide taxpayers the option of an alternative method in determining such subtraction where it may be computed as the lesser of: (1) any gain recognized on the sale or disposition of such property, or (2) any DD&A with respect to such property.

Certain small businesses (in general, where the average annual gross receipts of the taxpayer for the three-year period ending with the prior taxable year do not exceed $25 million) are exempt from the foregoing rule. In the case of a partnership, the rule is applied at the partnership level.

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 ADS 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). Each prospective Purchaser should consult with his, her, or its tax advisor concerning the possible application of Code Section 163(j) to his, her, or its particular circumstances.

On November 26, 2018, the Department of Treasury and the IRS released an extensive set of proposed regulations under Code Section 163(j) which provide some guidance on certain open issues under Code Section 163(j) as revised by the TCJA. For example, the definition of "interest" has been expanded to include income and deductions from many items that have time-value components not treated as interest with respect to domestic taxpayers in the past (such as swaps). Further, adjusted taxable income is determined at the partnership level and to the extent the partnership has excess taxable income, the excess taxable income is allocated to the partners and used in determining each partner's adjusted taxable income. Finally, proposed regulations include proposed amendments to provide rules relating to the definition of a "real property trade or business" under Code Section 469(c)(7)(C) that is eligible to make the election discussed above. The proposed regulations define terms such as "real property," "real property operation," and "real property management," but reserve on the other categories of businesses that qualify as real property trades or businesses under Code Section 469(c)(7)(C). The preamble to the proposed regulations indicates that the categories of real property trades or businesses under Code Section 469(c)(7)(C) may be defined to not include trades or businesses that generally do not play a significant role in the creation, acquisition, or management of rental real estate.

On July 28, 2020, the Treasury and the IRS finalized the 2018 proposed regulations with some changes and released a new set of proposed regulations under Code Section 163(j). The final regulations under Code Section 163(j), among other things: (1) provide that the amount of any depreciation, amortization or depletion that is capitalized into inventory under Code Section 263A during taxable years beginning before January 2022 is added back to tentative taxable income when calculating ATI for that taxable year, regardless of the period in which the capitalized amount is recovered through cost of goods sold, and (2) remove certain items from the definition of "interest" such as debt issuance costs, guaranteed payments for the use of capital, hedging income and expense, commitment fees and other fees paid in connection with lending transaction. In addition, the new proposed regulations define terms such as "real property development" and "real property redevelopment" for purposes of Code Section 469(c)(7)(C). The final regulations were effective on July 28, 2020.

Each prospective Purchaser should consult with his, her, or its tax advisor concerning whether the retroactive application of the proposed regulations would be advantageous to his, her, or its particular circumstances. Further, each prospective Purchaser should be aware that the proposed regulations under Code Section 163(j) are subject to comment and change until finalized.

Tax Liability in Excess of Cash Distributions. It is possible that a Purchaser's tax liability resulting from its Interest will exceed its share of cash distributions from the Trust. This may occur, for example, because cash flow from the Property may be used to fund 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. *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 that penalties are applied to any portion of any understatement that was attributable to: (i) negligence or disregard of rules or regulations; (ii) any substantial understatement of income tax; or (iii) any substantial valuation misstatement. A 20% accuracy-related penalty is imposed on (i) listed or (ii) reportable transactions having a significant tax avoidance purpose. This penalty is increased to 30% if the transaction is not properly disclosed on the taxpayer's federal income tax return. Failure to disclose such a transaction can also prevent the applicable statute of limitations from running in certain circumstances and can subject the taxpayer to additional disclosure penalties ranging from $10,000 to $200,000,

depending on the facts of the transaction. Any interest attributable to unpaid taxes associated with a non-disclosed reportable transaction may not be deductible for federal income tax purposes.

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

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

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

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

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

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

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 federal income tax consequences described above, each prospective Purchaser should consider the state tax consequences of an investment in an Interest. A Purchaser's share of income or loss generally will be required to be included in determining its reportable income for state and local tax purposes. Under the TCJA, an individual or married filers cannot deduct more than $10,000 of combined state and local income and property taxes annually for taxable years beginning after December 31, 2017 and ending before January 1, 2026. Taxes attributable to income earned from the Interests should count towards the $10,000 limitation. 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 U.S. Department of Treasury, resulting in revisions of resolutions and revised interpretations of established concepts as well as statutory changes. In particular, the TCJA and CARES Act 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.

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 federal income tax counsel, securities counsel and finance co-counsel with respect to the Offering, and has not acted as real estate counsel or in any other capacity with respect to the Offering. Tax Counsel's tax opinion and advice to the Sponsor relates solely to federal income tax issues, and does not include advice on state or local income tax issues, property taxes, transfer taxes, stamp duty, lease tax or other non-income taxes, or any other non-tax issues. Tax Counsel does not represent the prospective Purchasers. Prospective Purchasers seeking legal advice should retain their own counsel, consult their own advisors about an investment in the Interests and conduct any due diligence they deem appropriate to verify the accuracy of the representations or information in this Memorandum.

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

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PLAN OF DISTRIBUTION

General

Subject to the terms and conditions set forth in this Memorandum and the Trust Agreement, the Trust is offering a maximum of $54,531,314 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 1.5% 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, Marketing/Due Diligence Expense Allowances, Organization and Offering Expenses, and Managing Broker-Dealer Fee 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.

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

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

Subscription Period

The Trust may hold 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 1, 2023. The Trust may, however, extend the Offering in its absolute and sole discretion. There is no assurance that all of the Interests will be sold.

Broker/Dealer Disqualifying Events

The Interests will be offered and sold pursuant to an exemption from the registration requirements of the Securities Act, in accordance with Rule 506(b) of Regulation D, and in compliance with any applicable state securities laws. Effective September 23, 2013, the SEC adopted amendments to Rule 506 requiring certain disclosures to customers in connection with Regulation D private placement offerings, which includes this Offering. Specifically, the amendments require that the Trust notify you if the broker/dealers selling Interests in this Offering have experienced certain specified "disqualifying events," including certain criminal convictions, certain court injunctions and restraining orders, final orders of certain state and federal regulators and certain SEC disciplinary orders and SEC cease-and-desist orders, among other events.

Berthel Fisher & Company Financial Services, Inc. On June 4, 2013, Berthel Fisher & Company Financial Services, Inc. ("**BFC**"), a broker-dealer involved in this offering, entered into a consent order (the "**SD Consent Order**") with the state of South Dakota Division of Securities. The SD Consent Order concerned alleged violations of South Dakota statute 47-31B-412(d)(13) and BFC's obligation to determine the suitability of the sale of certain alternative investments to some investors in South Dakota. BFC agreed to pay 12 investors a total of $69,000 in settlement of any claims they may have relating to the alleged violations.

Concorde Investment Services, LLC. Concorde Investment Services, LLC ("**Concorde**"), a broker-dealer involved in this offering, recently executed a participating broker-dealer agreement with NexPoint Securities, Inc., the Managing Broker-Dealer, to participate in this Offering. Concorde is subject to certain "disqualifying events" under Rule 506(d) of Regulation D that occurred prior to September 23, 2013, as set forth below.

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

The Sponsor is not aware of any other 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),

- 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 below);

(ii) has more than 15% of its assets in Sanctioned Countries (as defined below); 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 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
- (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.

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 his, her or its check or wired funds, if any, will be fully refunded by the Trust if (i) the conditions to closing set forth in the Purchase Agreement are not satisfied, or (ii) a prospective Purchaser is not accepted by the Trust. The Trust may accept or reject a prospective Purchaser's Purchase Agreement in its sole discretion. If the Trust does not accept a Purchase Agreement within 30 days of its submission then it 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, NXRT, the Operating Partnership, the Managing Broker-Dealer, and the Master Tenant. In addition to not being affiliated with HCMLP, the Sponsor, the Trust, the Manager, NXRT, the Operating Partnership, 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, Sponsor, the Trust, the Manager, NXRT, the Operating Partnership, the Managing Broker-Dealer, or the Master Tenant. Investment and business activities for the Sponsor and NexPoint (NexPoint Advisors, L.P.), the parent of the Sponsor, will continue in the ordinary course without material disruption because of the plan's effectiveness. The plan, however, provides for a monetization of HCMLP's assets and the establishment of a litigation sub-trust, including the appointment of a litigation trustee, whose sole purpose is to investigate, prosecute, settle, or otherwise resolve claims of HCMLP's estate; that is, the litigation trustee's mandate is to maximize the value of HCMLP's estate through litigation. The HCMLP litigation trustee (or its predecessor) has filed adversary complaints against several entities, including NexPoint and James Dondero. NexPoint and Mr. Dondero believe that the claims made against them are without merit and are vigorously contesting those claims.

NSP Litigation. As of the date of this Memorandum, NSP is involved in two putative shareholder class action matters concerning claims by former shareholders of JCAP that, among others, the proxy materials for a transaction whereby JCAP merged with an affiliate of NexPoint in an all-cash transaction and delisted its common

stock from the New York Stock Exchange were deficient, and the Merger was the result of a conflicted sale process that led to inadequate consideration. NSP believes these claims are without merit and intends to vigorously defend these actions.

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]

COPY NO. _____

NEXPOINT BUFFALO DST
PURCHASER QUESTIONNAIRE

Instructions for Purchase of Beneficial Interests in NexPoint Buffalo DST

PLEASE COMPLETE AND RETURN

Dear Prospective Purchaser:

Thank you for your interest in the offering of Class 1 Beneficial Interests ("**Interests**") in NexPoint Buffalo DST, a Delaware statutory trust, (the "**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)

ALL DOCUMENTS SHOULD BE DELIVERED TO:

NexPoint Real Estate Advisors IV, L.P.

c/o DST Systems

430 W. 7th Street

Kansas City, MO 64105

Fax: 972.752.3654

QUESTIONS?

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

Before deciding to subscribe, please read carefully the Confidential Private Placement Memorandum dated March 9, 2022, and all exhibits and supplements thereto (collectively, the "**Memorandum**") for the Interests in the Trust formed for the purpose of acquiring and owning a multifamily, Class A apartment community consisting of 216 units located at 2660 North Buffalo Drive, Las Vegas, Nevada 89128 and commonly known as Ely at Buffalo (the "**Property**"). The Trust will be managed by NexPoint Buffalo 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 OWN NEEDS, PURCHASE OBJECTIVES, AND FINANCIAL CAPABILITIES AND SHOULD MAKE HIS 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 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 certifies that he meets 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 and ii) if you are an entity (as opposed to a natural person), the entity documents described herein.

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.

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 $67,990 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, NA, as Escrow Agent for NexPoint Buffalo 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: _____

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:_____

Social Security No.: _____ Date of Birth: _____

Co-Investor/Spouse Name: _____

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

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: _____

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 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], ***excluding primary residence*** but including home furnishings and personal automobiles of more than $1,000,000.

☐ 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 issued by the Financial Industry Regulatory Authority ("**FINRA**"); and (2) whose license remains in good standing[2].

TRUST INVESTORS:

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

☐ 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).

[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] 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.

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, with total assets in excess of $5,000,000.

☐ The subscribing entity is a broker-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 an exempt reporting adviser under Section 203 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) 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(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) that (1) has at least $5,000,000 in assets under management; (2) was not formed for the specific purpose of acquiring the Interests; and (3) is directed by a person who has such knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of purchasing Interests.

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

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:

_____

_____

I acknowledge that the sale of the Interests has not been accompanied by the publication of any advertisement or any general solicitation, or been accomplished as the direct result of an investment seminar sponsored by the Sponsor or any of its affiliates.

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."

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 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.

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: $_____

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 (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.

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.

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: _____

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: _____

10. SPOUSAL CONSENT FOR INDIVIDUAL PURCHASERS

This section is applicable to 10 community property states: Alaska, Arkansas, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. Alaska is an opt-in community property state that gives 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*): _____

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 or her 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, and (iii) the Interests are otherwise a suitable purchase for the subscriber. We will maintain in our files documents disclosing the basis upon which the suitability of this subscriber was determined as well as documents establishing a pre-existing relationship with the subscriber.

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;

(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 5 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 Investment 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 5 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 5 years of the Effective Date, was the subject of a refusal order, 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 5 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

APPENDIX A

NEXPOINT BUFFALO DST
PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT ("**Agreement**") is made and effective as of the date Seller executes this Agreement ("**Effective Date**"), by and between NexPoint Buffalo 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 Buffalo Investment Co, LLC ("**Contributor**"), NexPoint Buffalo Manager, LLC ("**Manager**"), and The Corporation Trust Company (the "**Delaware Trustee**") have entered into the Trust Agreement of Seller dated February 1, 2022 (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 Confidential Private Placement Memorandum dated March 9, 2022 (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 multifamily, Class A apartment community consisting of 216 units located at 2660 North Buffalo Drive, Las Vegas, Nevada 89128 and commonly known as Ely at Buffalo (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 0.183% Interest to be acquired, which shall be allocated $100,000 in cash (for each 0.183% ownership interest in Seller purchased) (the "Cash Portion") and $67,990 in the nature of the attributed Loan debt (for each 0.183% 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 Buffalo 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.

1.3. Buyer's Deliveries. Concurrently with 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.

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 DST Systems, Inc. (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 Shares 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

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. 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 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 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 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 refusal and the approval of the Manager and the Purchased Interest may not be transferred if the transfer would cause there to be more than 1,999 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 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 his 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 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.

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 Seller, Sponsor, 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. 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 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.

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 Investor Questionnaire is true, correct and complete: the U.S. taxpayer identification number (i.e., social security number), and the home address; and (3) that the undersigned agrees to inform the Seller promptly if the undersigned becomes a 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 United States person.

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

6.31.1. 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.

6.31.2. 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.

6.31.3. 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 as defined in Section 4.9.1; 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.

6.31.4. 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).

6.31.5. 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.

6.31.6. The Buyer acknowledges that if, following Buyer's investment in the Company, 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 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.

6.31.7. 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 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.

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.

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 either party commences litigation for the judicial interpretation, enforcement, termination, cancellation, or rescission hereof, or for damages (including liquidated damages) for the breach hereof against the other party, then, in addition to any or all other relief awarded in such litigation, the substantially prevailing party therein shall be entitled to a judgment against the other for an amount equal to reasonable attorneys' fees and court and other costs incurred.

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.

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 30-DAY PERIOD, THE OFFER SHALL BE DEEMED REJECTED.

8.16. Waiver and Release. Buyer hereby waives all claims it might have against Lender for any loss, costs or damages, including any tax consequences arising from or relating to the organization structure or constitution of Seller and to Buyer's acquisition of an Interest.

[Signature Page Follows]

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

SELLER:

NexPoint Buffalo DST, a Delaware statutory trust

By: NexPoint Buffalo 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: _____
_____

ADDENDUM A

NEXPOINT BUFFALO DST
BAD ACTOR ADDENDUM

The undersigned purchaser ("**Purchaser**"), in connection with Purchaser's purchase (the "**Purchase**") of Interests in NexPoint Buffalo 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

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

1.5. Is subject to any order of the Commission entered within five years before the Purchase Date, as of the Purchase Date, 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 Buffalo Manager, LLC (the "**Manager**") the right to vote, in 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]

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 Buffalo DST, a Delaware statutory trust

By: _____(signature)

Name: _____(print)

Title: _____(print)

APPENDIX B

JOINDER TO THE TRUST AGREEMENT

This Joinder to the Trust Agreement of NexPoint Buffalo 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 Buffalo DST, a Delaware statutory trust (the "**Trust**");

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 Subscriber now desires to become a Class 1 Beneficial Owner (as such term is defined in the Trust Agreement of the Trust dated February 1, 2022 (the "**Trust Agreement**"), by and among NexPoint Buffalo Investment Co, LLC, as contributor, NexPoint Buffalo 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 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.

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]

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)

APPENDIX C

NEXPOINT BUFFALO DST
IRREVOCABLE PROXY

The undersigned Purchaser (the "**Purchaser**") of Class 1 beneficial interests in NexPoint Buffalo DST, a Delaware statutory trust (the "**Trust**"), irrevocably authorizes NexPoint Buffalo 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 Trust Agreement of the Trust dated February 1, 2022, 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)

EXHIBIT B

RENT ROLL

NexPoint Buffalo, DST

Ely at Buffalo located in Las Vegas, Nevada

Residential Rentable Area (As of September 26, 2021)

Unit Mix Detail by Unit Size							
Type	**% of Units**	**Number of Units**	**Average Square Feet**	**Total Square Feet**	**Number Vacant**	**Number Occupied**	**Current Average Rent**
A1	2.8%	6	615	3,690	0	6	1,343
A1	2.8%	6	536	3,216	0	6	1,190
A1A	4.2%	9	536	4,824	0	9	1,210
A1J	4.2%	9	615	5,535	1	8	1,288
A2	11.1%	24	751	18,024	1	23	1,380
A2A	17.6%	38	678	25,764	4	34	1,309
A2	3.7%	8	737	5,896	0	8	1,302
A3	20.4%	44	733	32,252	7	37	1,429
A5	1.4%	3	848	2,544	0	3	1,470
A5A	2.3%	5	764	3,820	0	5	1,400
A6	0.5%	1	984	984	0	1	1,475
B1	6.0%	13	1,153	14,989	1	12	1,725
B11A	6.0%	13	1,054	13,702	1	12	1,621
B1A	4.6%	10	1,081	10,810	2	8	1,618
B2	7.9%	17	1,276	21,692	1	16	1,789
C2	4.6%	10	1,425	14,250	0	10	2,148
Total /Average	**100.0%**	**216**	**842**	**181,992**	**18**	**198**	**1,473**

EXHIBIT C

TAX OPINION

[ATTACHED]

Baker & McKenzie LLP

300 East Randolph Street, Suite 5000
Chicago, IL 60601
United States

Tel: +1 312 861 8000
Fax: +1 312 861 2899
www.bakermckenzie.com

March 9, 2022

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

RE: NexPoint Buffalo DST

Dear Ladies and Gentlemen,

NexPoint Real Estate Advisors IV, L.P., a Delaware limited partnership (the "Company"), and NexPoint Buffalo 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 Confidential 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 Trust Agreement (the "Trust Agreement"); (iii) the form Limited Liability Company Agreement accompanying the Trust Agreement; (iv) the Master Lease (the "Lease"); (v) the Purchase Agreement and Purchaser Questionnaire; (vi) the Loan Documents; and (vii) the documents related to the Bridge Financing (collectively, the "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 9, 2022 (the "Representation Letter"), are true, complete and correct in all respects as of the date hereof.

Based on our review of the 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 Beneficial Owners should be treated as "grantors" of the Trust; (iii) as "grantors" of the Trust, the Beneficial Owners should be treated as owning an undivided fractional interest in the Property for federal income tax purposes; (iv) the Interests should not be treated as securities for purposes of Section 1031; (v) the Interests should not be treated as certificates of trust or beneficial interests for purposes of Section 1031; (vi) the Lease should be treated as a true lease and not a financing for federal income tax purposes; (vii) the Lease should be treated as a true lease and not a deemed partnership for federal income tax purposes; (viii) the 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.

[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.

Baker McKenzie.

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." Non-recognition 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. The Trust should be treated as an investment trust described in Treasury Regulations Section 301.7701-4(c) that is classified as a "trust" under Treasury Regulations Section 301.7701-4(a).

The Trust should be classified as a "trust" under Treasury Regulations Section 301.7701-4(a) because it (i) should be recognized as an entity separate from the Beneficial Owners

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[2] Treas. Reg. § 1.1031(a)(1); former Section 1031(a)(2)(C), (D), (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, or notes, other securities, or evidences of indebtedness or interest; interests in a partnership; certificates of trust or beneficial interest, or choses in action) are excluded from a Section 1031 Exchange. Although the specific language providing for non-qualification (for Section 1031 purposes) of interests in a partnership, securities, certificates of trust, and beneficial interests has been eliminated from the statute, an analysis of these terms remains relevant to the analysis and conclusion set forth herein that the Beneficial Owners should be treated as owning qualifying real property for federal income tax purposes.

[3] 2004-2 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

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

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, Signatory Trustee or the Manager.[11]

Specifically, the Beneficial Owners have no right or power to (i) contribute additional assets to the Trust (other than the initial contribution of cash in exchange for Interests), (ii) be involved in any manner in the operation or management of the Trust or its assets, (iii) cause the Trust to negotiate or renegotiate leases or loans, or (iv) cause the Trust to sell its assets and reinvest the proceeds of such sale.[12]

Additionally, the Trust Agreement generally requires the Manager to cause the Trust to comply with certain requirements, including, among others: (i) not engage in any business unrelated to the acquisition, development, ownership, management or operation of the Property, (ii) not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets any assets other than those related to the Property, (iii) not engage, seek or consent to any dissolution, winding up, liquidation, consolidation, merger, division (whether pursuant to a plan of division or otherwise), sale of all or substantially all of the Trust's assets, (iv) remain solvent and pay its debts and liabilities from its then available assets, (v) not fail to correct any known misunderstanding regarding the separate identity of such entity and has not and shall not identify itself as a division of any other Person (as defined in the Loan Documents), (vi) file its own tax returns, (vii) not commingle its funds or assets with those of any other Person and not participate in any cash management system

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9 2004-2 C.B. 191.
10 *Id*. (citing to Del. Code Ann. Title 12, §§ 3801-3824).
11 *See* the Trust Agreement at §6.13.
12 *Id*.

with any other Person other than as provided in the Cash Management Agreement (as defined in the Loan Documents), (viii) hold its assets in its own name, (ix) conduct its business in its name or in a name franchised or licensed to it by an entity other than an affiliate of itself or of the Trust, and (x) maintain its books, bank accounts, balance sheets, financial statements, accounting records, resolutions, agreements and other entity documents separate from any other Person and has not permitted, and will not permit, its assets to be listed as assets on the financial statement of any other entity except as required by generally accepted accounting principles.[13]

These requirements and prohibitions evidence an intent that the Trust be engaged in activities on its own behalf rather than as an agent of the Beneficial Owners. Lastly, because the Trust is organized as a DST, the Beneficial Owners may avail themselves only of the limited powers and privileges afforded to a beneficial owner under Delaware law. Thus, the Trust (as a DST) and the Beneficial Owners have substantially all of the same powers, limitations, and benefits as the trust that the IRS found to constitute an entity separate from its owners for federal income tax purposes in Revenue Ruling 2004-86. Accordingly, the Trust should be recognized for federal income tax purposes as an entity separate from the Beneficial Owners.

B. The Trust should be treated as an investment trust described in Treasury Regulations Section 301.7701-4(c).

A trust arrangement generally will be classified as a "trust" rather than another form of business entity for federal income tax purposes if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of a business for profit.[14] A trust with a single class of ownership interests that provides no power to vary the investments of the trust is classified as an investment trust that is treated as a "trust" for federal income tax purposes.[15] A trust with multiple classes of ownership interests that otherwise meets the description of an investment trust also will be classified as a "trust" for federal income tax purposes if the existence of multiple classes of ownership interests is incidental to the purpose of facilitating the direct investment in the trust's assets.[16] As discussed in greater detail below, the Trust should be treated as an investment trust described in Treasury Regulations Section 301.7701-4(c) 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, Signatory Trustee, or Manager to vary the investments of the Trust.

The courts and the IRS have considered the extent to which the powers granted under a

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13 *See* the Trust Agreement at §3.2(b).
14 Treas. Reg. § 301.7701-4(a).
15 Treas. Reg. § 301.7701-4(c)(1).
16 *Id*.

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, Signatory Trustee, and Manager in the Trust Agreement are consistent with the limited scope of powers applicable to an investment trust described in Treasury Regulations Section 301.7701-4(c).

a. Authorities.

(i) Case Law.

In *Commissioner v. Chase National Bank*,[17] the court addressed whether a state-law trust arrangement should be classified as a "trust" for federal income tax purposes. In that case, the depositor purchased shares of the common stock of several corporations and made up "units" consisting of a number of shares of the common stock of each corporation. The "units" were deposited in a trust, and then certificates in the trust were sold to investors. The trustee was vested with all of the rights of ownership of the shares except that the depositor controlled the voting rights of the shares and the trust instrument governed and restricted the disposal of the shares. Under the terms of the trust instrument, property deposited into the trust was held until some disposition of it was made consistent with the terms of the trust instrument. Further, distributions of currently available funds were required. No purchases were to be made by the trustee by way of reinvestment of funds or otherwise. The Second Circuit found that the trust instrument "prevented the trusts from being, or becoming, more than what are sometimes called strict investment trusts." The court concluded that the trust required "that the trust property was to be held for investment and not to be used as capital in the transaction of business for profit like a corporation organized for such a purpose. This distinction is what makes the difference tax-wise."[18]

In another opinion released on the same day as *Chase National Bank*, the Second Circuit reached a different result. In *Commissioner v. North American Bond Trust*,[19] the court recognized that, although the trust arrangement 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."[20] In making up new units, the depositor was not confined to the same bonds he had selected for the previous units. Additionally, the bonds of all units constituted a single pool in which each certificate holder shared according to his proportion of all the certificates issued. As

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17 122 F. 2d 540 (2d Cir. 1941).
18 *Id.* at 543.
19 122 F.2d 545 (2d Cir. 1941), *cert. denied*, 314 U.S. 701 (1942).
20 *Id.* at 546.

a result, the money from new investors could be used to purchase new bond issues that would in turn reduce the existing certificate holders' interests in the old bond issues. The depositor thus could take advantage of market variations in a manner that could improve the investment of the original investors through dilution of the original investment. Based on these facts, the court held that the depositor "had power, though a limited power, to vary the existing investments of all certificate holders at will . . ."[21] and, accordingly, that the trust was treated as taxable as an association rather than as a fixed investment trust.

(ii) Revenue Ruling 2004-86.

The analyses and conclusions of the IRS in Revenue Ruling 2004-86 are consistent with the Second Circuit's holdings in the cases discussed above. Revenue Ruling 2004-86 considered the situation in which an individual (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.[22] Under the terms of the lease, Mary was required to pay all taxes, assessments, fees or other charges imposed on Blackacre by federal, state or local authorities. In addition, Mary was required to pay all insurance, maintenance, ordinary repairs and utilities relating to Blackacre. Mary was free to sublease Blackacre to anyone she chose.

The rent paid by Mary to John was a fixed amount that could be adjusted by a formula described in the lease agreement that was based upon a fixed rate or an objective index, such as an escalator clause based upon the Consumer Price Index, but adjustment to the rate or index was not within the control of any of the parties to the lease. The rent paid by Mary was not contingent upon Mary's ability to lease the property or on her gross sales or net profits derived from Blackacre.[23]

On the same date that John acquired Blackacre and leased it to Mary, John also formed a trust under Delaware law to which he contributed fee title to Blackacre after entering into the loan with the Bank and the lease with Mary. Upon contribution, the trust assumed John's rights and obligations under the loan from the Bank as well as under the lease with Mary. In accordance with the 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

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21 *Id*.

22 The ruling does not indicate whether John is related to Mary, but given that the ruling states that Mary is not related to persons described in the ruling other than John, it can be assumed that she is related to him.

23 Although the lease from John to Mary is described in Revenue Ruling 2004-86 as a "net" lease, it is not clear whether the lessor or the lessee would be required to make capital improvements or major repairs to the property. Thus, the lease might be "double net," in which the lessor remains liable for certain capital improvements and repairs (such as repairs to the roof) instead of a "triple net" lease in which the lessee is responsible for the property in all events.

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.[24] In addition, the trustee could make only minor non-structural modifications to Blackacre, unless otherwise required by law. The trust agreement further provided that the trustee could engage in ministerial activities to the extent required to maintain and operate the trust under local law. In addition, the trustee could not enter into a written agreement with John or indicate to third parties that the trustee (or the trust) is his agent.

Immediately after John contributed his interest in Blackacre to the trust, he conveyed his entire interest in the trust to Dan and Michelle in exchange for interests in Whiteacre and Greenacre, respectively. Dan and Michelle were not related to the Bank or Mary (the lessee of Blackacre), and neither the trustee nor the trust was an agent of Dan or Michelle. Dan and Michelle desired to treat their acquired interests in the trust as replacement property pursuant to a Section 1031 like-kind exchange for their relinquished properties, Whiteacre and Greenacre, respectively.

Neither the trust, nor the trustee entered into a written agreement with John, Dan, or Michelle creating an agency relationship and in dealings with third parties, neither the trust

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[24] Revenue Ruling 2004-86, in its statement of facts, expressly provides that "[t]he trustee may not renegotiate the terms of the debt used to acquire [the property] and may not renegotiate the lease with [the tenant] or enter into leases with tenants other than [the tenant], except in the case of [the tenant's] bankruptcy or insolvency." We believe the correct interpretation of this provision is that the exception applies to renegotiating the financing as well as new leases.

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 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[25] involved a trust agreement that required the trustee to invest cash on hand between quarterly distribution dates only in specified short-term obligations maturing prior to the next distribution date and required to hold such obligations until maturity. The IRS concluded that, because the restrictions on the types of permitted investments limited the trustee to a fixed return similar to that earned on a bank account and eliminated any opportunity to profit from market fluctuations, the power to invest in such assets was not a power to vary the trust's investments.

Similarly, the IRS classified the trust arrangement described in Revenue Ruling 79-77,[26] which was formed to hold real property, as a "trust" for federal income tax purposes. The beneficiaries were required to approve all agreements entered into by the trustee and they were personally liable for the debts of the trust. The beneficiaries directed the trustee to enter into a 20-year lease that required the tenant to pay all taxes, assessments, fees, or other charges imposed on the property by federal, state, or local authorities. In addition, the tenant paid all insurance, maintenance, repairs, and utilities relating to the property. The trustee could determine whether to allow the tenant to make minor 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 actions to enforce any provisions of the lease.

The trust would terminate on the sale of substantially all of its assets or upon unanimous agreement of the beneficiaries. Based upon the above, the IRS classified the trust arrangement described in Revenue Ruling 79-77 as a "trust" for federal income tax purposes.

In contrast, the IRS concluded that the trust arrangement described in Revenue Ruling 78-371[27] was classified as a business entity rather than a "trust." Unlike the trust arrangement described in Revenue Ruling 79-77 that restricted the trustee to dealing with a single piece of property subject to a net lease, the trust arrangement in Revenue Ruling 78-371 expressly authorized the trustees to purchase and sell contiguous or adjacent real estate, to accept or reject certain contributions of contiguous or adjacent real estate, and to raze or erect any building or other structure or make any improvements to the land contributed to the trust. The trustees were also empowered to borrow money and to mortgage and lease the trust property. The IRS concluded in Revenue Ruling 78-371 that the trustee's power to engage

[25] 1975-1 C.B. 384.
[26] 1979-1 C.B. 448.
[27] 1978-2 C.B. 344.

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.[28] The courts and the IRS have concluded that even though a trustee may possess the power to sell trust assets under certain limited circumstances, such a trust arrangement can still qualify as an investment trust classified for federal income tax purposes as a "trust."[29] These authorities have clarified that, instead of the mere power to sell trust assets, it is the ability of the trustee to substitute new investments in order to take advantage of variations in the market that prohibit a trust arrangement from being treated as an investment trust classified as a "trust" for federal income tax purposes.

b. The Trust Agreement.

The powers and authority granted to the Trustees, Signatory Trustee, 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." 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 Lease and Loan; (b) comply with the terms of the Loan Documents; (c) collect rent and make distributions thereof; (d) enter into any agreements for purposes of completing tax-free exchanges of real property with a "qualified intermediary" as defined in Treasury Regulation Section 1.1031(k)-1; (e) notify the relevant parties of any defaults by them under the Transaction Documents (as defined in the Trust Agreement); (f) take any action which in the reasoned opinion of tax counsel to the Trust, should not have an adverse effect on either the treatment of the Trust as an "investment trust" within the meaning of 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 (including, without limitation, the Loan) secured by the Property.[30]

Additionally, the Trust Agreement expressly denies the Manager any power or authority, from and after the issuance of the Conversion Notice, to take an action that would cause the Trust to cease to be an investment trust described in Treasury Regulations Section 301.7701-4(c)).[31] Moreover, the Trust agreement expressly denies the Trustee, the Manager, the Beneficial Owners and/or the Trust any power and authority to take any other action which would cause the Trust to be treated as a business entity for federal income tax

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28 *Id.*

29 *See Comm'r v. N. Am. Bond Trust*, 122 F.2d 545 (2d Cir. 1941), *cert denied* 314 U.S. 701 (1941); *Pennsylvania Co. for Insurances on Lives and Granting Annuities v. U.S.*, 146 F.2d 392 (3d Cir. 1944); *see also* Rev. Rul. 78-149, 1978-1 C.B. 448; Rev. Rul. 73-460, 1973-2 C.B. 425.

30 *See* the Trust Agreement at §5.3(b).

31 *Id.*

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[32] Furthermore, the Trust Agreement provides that none of the Trustee, the Manager, the Beneficial Owners, and the Trust shall have any power or authority to undertake any actions that are not permitted to be undertaken by an entity that is treated as a "trust" within the meaning of Treasury Regulations Section 301.7701-4 and not treated as a "business entity" within the meaning of Treasury Regulations Section 301.7701-3.[33] Finally, as noted above, the Beneficial Owners generally have no right or power to make decisions for or to operate or manage the Trust.[34]

We believe that the material provisions of the Trust Agreement that are not included in the trust arrangement described in Revenue Ruling 2004-86 are consistent with treating the Trust as an investment trust. These provisions include, but are not limited to: (i) the power to sell the Trust's corpus; (ii) the potential termination of the Trust through any event that would cause a Transfer Distribution; and (iii) the potential transfer of the Property to 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.[35] None of the Trustees, Signatory Trustee, or the Manager has the power to purchase replacement investments with the proceeds from the sale of the Property.[36] Additionally, the power of the Manager to cause a sale of the Property is not unfettered, but instead can be exercised only after the Trust has owned the Property for two years.[37]

The sale of the Property under these circumstances is consistent with the objective of achieving an investment return on the assets comprising the initial trust estate when the Beneficial Owners acquired their interests therein. Because the sales proceeds cannot be reinvested by the Trustees, Signatory Trustee, or the Manager, the Trust Agreement does not confer the power to "better" the investments in the Trust by taking advantage of market variations. The assets that can be held by the Trust are restricted to the Property, and the cash reserves that accumulate between monthly distributions.[38] All cash reserves will be invested only in the types of debt instruments expressly permitted under Revenue Ruling 2004-86.[39] Accordingly, providing the Manager with the discretion concerning the timing and amount of the sale of the Property should not prevent the Trust from being treated as an investment trust that is classified as a "trust" for federal income tax purposes.

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32 *See* the Trust Agreement at §3.3(c)(7).
33 *See* the Trust Agreement at §3.3(c).
34 *See* the Trust Agreement at §6.13.
35 *See* the Trust Agreement at §§9.1 & 9.3.
36 *See* the Trust Agreement at §§3.3(c)(2) & 9.1.
37 *See* the Trust Agreement at §9.3.
38 *See* the Trust Agreement at §§3.2(b)(2) & 7.2.
39 *See* the Trust Agreement at §7.2.

Although no direct authority exists regarding the use of a Transfer Distribution in connection with a fixed investment trust, we believe the Transfer Distribution as used in the Trust Agreement is consistent with treating the Trust as a fixed investment trust for federal income tax purposes. We believe that the events that would cause a Transfer Distribution are not in any way expected or viewed as likely to occur, which supports the passive and fixed nature of the Trust. In addition, the Trust Agreement also grants the Class 1 Beneficial Owners a right of first refusal upon the receipt of a bona fide Third-Party Offer (as defined in the Trust Agreement).[40] As discussed in further detail in Part VII hereof, we believe that this right of first refusal is not inconsistent with the Trust's classification as a fixed investment trust because such right is indicative of a co-ownership arrangement, as opposed to joint operation of a business entity. Moreover, the Trust has represented that no Transfer Distribution is currently intended or anticipated and that to the knowledge of the 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 also should not be viewed as a power to vary the Trust's investments. In the case of the Exchange Right, such a transfer is only exercisable for a purchase price equal to the then fair market value of a Purchaser's Interest at such time in exchange for Units in the Operating Partnership (or cash, as the case may be).[41] The option price is tied directly to the fair market value as of the option exercise date as determined by an appraisal to be obtained at such time and is not nominal in relation to such value or discounted in any way.[42] The Exchange Right is discussed in further detail in Part VI.E below.

Although distinctions exist between the Trust Agreement and the trust arrangement described in Revenue Ruling 2004-86, we believe these distinctions are not material. These distinctions include, but are not limited to: (i) the ongoing role of the Company or its affiliate as Manager; (ii) the Trust's potential acceptance of multiple contributions over time, rather than through a single contribution; and (iii) the conversion of the Trust for tax purposes from a disregarded entity into an investment trust prior to the admission of purchasers. 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 (or its affiliate's) ongoing role as Manager should not be viewed as inconsistent with the analysis in Revenue Ruling 2004-86 or the case law because the Manager's powers are limited to those permitted to be exercised by a trustee of a fixed investment trust.

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40 *See* the Trust Agreement at §6.4.

41 *See* the Trust Agreement at §§10.1 & 10.4.

42 *See* the Trust Agreement at §10.4.

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 term and the amount of the Offering were established at the time the Trust Agreement was made. Additionally, the proceeds of the additional closings must be distributed to the Contributor. 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.[43] Accordingly, the conversion feature of the Trust from a disregarded entity to a fixed investment trust should be viewed on its own as a mere formation of the Trust as a fixed investment trust in a manner that is not inconsistent with the analysis under Revenue Ruling 2004-86.

Because none of these provisions permit the Trustees, Signatory Trustee or Manager to vary the investments of the Trust in a manner that results in the Beneficial Owners improving their investment results based on variations in the market, we believe they are consistent with treating the Trust as a fixed investment trust.

c. The Lease.

Under the terms of the Lease, the Master Tenant has the right, at the Master Tenant's cost and expense, to make structural and non-structural alterations to the Property, provided that any such alteration or addition when completed is of a character that does not impair the usefulness, materially reduce the market value of such Property, or violate the terms of any sublease.[44] 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.[45] Under Revenue Ruling 2004-86, the trustee is prohibited from making more than minor non-structural modifications to the property. We believe, however, that the alteration rights provided to the Master Tenant under the Lease should not be attributed to the Trustees, Signatory Trustee, or Manager and, therefore, are not inconsistent with treating the Trust as an investment trust for federal income tax purposes. The terms of the Lease do not provide the Trustees, Signatory Trustee, or Manager with the unfettered power to make structural modifications to the Property; such alteration rights are held solely by the Master Tenant. Moreover, the cost of any such alterations or additions will be born solely by the Master Tenant, not the Trust. Although not free from doubt, we believe that the alteration rights provided to the Master Tenant under the Lease should not violate the intent and purpose of Revenue Ruling 2004-86 or the underlying cases and rulings governing whether the Trustees, Signatory Trustee, or Manager possesses an impermissible right to vary the investments of the Trust.

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43 *See* the Trust Agreement at §3.3(a).
44 *See* the Lease at §11.1.
45 *See* the Trust Agreement at §3.3(c)(5).

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 often-cited principle that the economic substance of a transaction, and not its mere form, governs the tax treatment of a given transaction is a well-established doctrine of federal tax law.[46] The Treasury Regulations describing an investment trust applies this principle by providing that a trust arrangement that otherwise would be treated as an investment trust absent multiple classes of ownership interests nonetheless will be so treated if the multiple classes of ownership interests are incidental to the investment purpose of the trust.[47] 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.[48] 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.[49] 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

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46 *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").

47 Treas. Reg. § 301.7701-4(c).

48 *See* Treas. Reg. § 301.7701-4(c)(2), Example 2.

49 *See* Treas. Reg. § 301.7701-4(c)(2), Example 4.

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 Class 2 Beneficial Interests upon the issuance of Class 1 Beneficial Interests gives rise to multiple classes of ownership interests,[50] 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.[51] 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 Purchasers' 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.[52] 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 Purchasers 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.

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50 *See* the Trust Agreement at §6.14.
51 *See* the Trust Agreement at §§6.12 & 6.13.
52 *See* Trust Agreements § 6.12.

Based on the foregoing discussion, the Trust: (i) should be recognized as an entity separate from the Beneficial Owners for federal income tax purposes, and (ii) should be treated as an investment trust described in Treasury Regulations Section 301.7701-4(c). As a result, the Trust should be classified as a "trust" under Treasury Regulations Section 301.7701-4(a).

II. The 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.[53] A gratuitous transfer to a trust includes a transfer of cash to the trust in exchange solely for an interest in the trust.[54] The term "grantor" also includes any person who acquires an interest in a trust from a "grantor" of the trust if the interest acquired is an interest in an investment trust described in Treasury Regulations Section 301.7701-4(c).[55]

The Beneficial Owners will transfer cash 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.[56] 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.[57] Under Section 673, a grantor is treated as owning any portion of a trust in which the grantor has a reversionary interest in either the trust assets or the income therefrom if, as of the inception of that portion of the trust, the value of such interest exceeds 5% of the value of such portion. Under Section 677, a grantor is treated as the owner of any portion of a trust whose income, without the approval or consent of any adverse party is, or in the discretion of the grantor or a non-adverse party or both, may be distributed to the grantor or held or accumulated for future distribution to the grantor.[58]

Revenue Ruling 2004-86 also considered whether the purchase of interests in the trust

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53 Treas. Reg. § 1.671-2(e)(1).

54 Treas. Reg. § 1.671-2(e)(1), (2).

55 Treas. Reg. § 1.671-2(e)(3).

56 *See* Rev. Rul. 88-103, 1988-2 C.B. 304; Rev. Rul. 85-45, 1985-1 C.B. 183; and Rev. Rul. 85-13, 1985-1 C.B. 184; *see also* Treas. Reg. § 1.1001-2(c), Example 5.

57 Treas. Reg. § 1.671-2(a).

58 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).

arrangement by Dan and Michelle would be treated as an acquisition of interests in the real property (Blackacre) owned by the trust (in exchange for their interests in Whiteacre and Greenacre that were conveyed to John). The IRS concluded that Dan and Michelle should be treated as grantors of the trust when they acquire their interests in the trust from John, who had formed the trust. The IRS also concluded that, because Dan and Michelle have the right to distributions of all the income of the trust attributable to their undivided fractional interests, they should be treated under Section 677 as the owners of an aliquot portion of the trust, and all income, deductions and credits attributable to that portion are includible by Dan and Michelle in computing their taxable income. Because the owner of an undivided fractional interest of a trust is considered to own the trust assets attributable to that interest for federal income tax purposes, the IRS treated Dan and Michelle as each owning an undivided fractional interest in Blackacre for federal income tax purposes.

The IRS's treatment of Dan and Michelle as the owners of the trust's property for purposes of Section 1031 is consistent with the treatment by the IRS of grantors of a trust for Section 1033 purposes. Section 1033 is similar to Section 1031 in that it confers nonrecognition treatment on the involuntary conversion of property into similar or related-use property.[59] In several rulings, the IRS concluded that, because the owner of a grantor trust is treated as the owner of the trust's property for federal income tax purposes, whether replacement property was purchased by a grantor or the grantor's trust is of no consequence for Section 1033 purposes.[60]

Several of the rights accorded, directly and indirectly, under the Trust Agreement to the Beneficial Owners as "grantors" should result in the Beneficial Owners being treated 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.[61] Additionally, the Beneficial Owners have a total reversionary interest in the assets of the Trust. These rights of the Beneficial Owners as grantors should result in the Beneficial Owners being treated as owning direct interests in the Trust's assets under Sections 673 and 677 and therefore also for all federal income tax purposes, including Section 1031.

IV. The Interests should not be treated as securities for purposes of Section 1031.

If the Interests were determined to be securities for purposes of Section 1031, an investor would recognize gain, if any, on the exchange of property for an Interest to the extent the fair market value of the Interest received in the exchange exceeded the adjusted tax basis of the relinquished property.[62] For the reasons discussed below, the Interests should not constitute securities for purposes of Section 1031.[63]

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59 *See* Code § 1033(a).

60 *See* Rev. Rul. 88-103, 1988-2 C.B. 304; Rev. Rul. 70-376, 1970-2 C.B. 164.

61 *See* the Trust Agreement at §7.2.

62 Code § 1001.

63 Although the Interests may be "securities" for purposes of the Securities Act of 1933 or the Securities Exchange Act of 1934, it should be noted that this is not the relevant test for determining whether the Interests are securities for federal income tax purposes but, rather, only the starting point for the analysis.

Baker McKenzie.

A. Legislative History of Section 1031.

The exclusion of securities from Section 1031 was added to the predecessor to Section 1031 in 1923.[64] The legislation amended the predecessor to Section 1031 to include the following italicized language:

> When any such property held for *investment or for* productive use in trade or business (not including stock-in-trade or other property held primarily for sale, *and in the case of property held for investment not including stock, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest),* is exchanged for property of a like kind or use.

The reason for the addition of the language above was to prevent taxpayers from using the predecessor to Section 1031 to exchange investment securities, such as stocks and bonds, on a tax free basis. A letter from the Secretary of Treasury dated January 13, 1923, provided as follows:

> The revenue act of 1921 provides, in section 202, for the exchange of property held for investment for other property held for investment for other property of a like kind without the realization of taxable income. Under this section, a taxpayer who purchases a bond of $1,000 which appreciates in value may exchange that bond for another bond of the value of $1,000, together with $100 in cash (the $100 in cash representing the increase in the value of the bond while held by the taxpayer), without the realization of taxable income. This provision of the act is being widely abused. Many brokers, investment houses and bond houses have established exchange departments and are advertising that they will exchange securities for their customers in such a manner as to result in no taxable gain. Under this section, therefore, taxpayers owning securities which have appreciated in value are exchanging them for other securities and at the same time receiving a cash consideration without the realization of taxable income, but if the securities have fallen in value since acquisition will sell them and in computing net income deduct the amount of the loss on sale. This result is manifestly unfair and destructive of the revenues. The Treasury accordingly urges that the law be amended so as to limit the cases in which securities may be exchanged for other securities without the realization of taxable income to those cases where the exchange is in connection with the reorganization, consolidation or merger of one or more corporations.[65]

In response to the concern expressed in the letter above, Congress amended the predecessor

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64 *See, e.g.*, H.R. 13774, Public No. 545, 67th Cong., 4th Sess., ch. 294.
65 *Id.*

to Section 1031 to exclude securities.[66]

B. Use of the term "securities" in the Code.

The term "securities" is not defined in either Section 1031 or the Treasury Regulations promulgated thereunder. The term "securities" is narrowly defined in other Sections of the Code, including the following:

- Section 165(g) (defining the term "security" as "(A) a share of stock in a corporation; (B) a right to subscribe for, or to receive, a share of stock in a corporation; or (C) a bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or by a government or political subdivision thereof, with interest coupons or in registered form");
- Section 402(e)(4)(E)(i) (providing that "[t]he term 'securities' means only shares of stock and bonds or debentures issued by a corporation with interest coupons or in registered form");
- Section 1083(f) (stating that "the term 'stock or securities' means shares of stock in any corporation, certificates of stock or interest in any corporation, notes, bonds, debentures and evidences of indebtedness (including any evidence of an interest in or right to subscribe to or purchase any of the foregoing);[67] and
- Section 1236(c) (providing that "the term 'security' means any share of stock in any corporation, certificate of stock or interest in any corporation, note, bond, debenture, or evidence of indebtedness, or any evidence of an interest in or right to subscribe to or purchase any of the foregoing").

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.[68]

In addition, there are instances in the Code where a term is defined by specific reference to federal securities law, such as the following examples:

- Section 67(c)(2)(B)(i)(I) ("continuously offered pursuant to a public offering (within the meaning of Section 4 of the Securities Act of 1933, as amended)");
- Section 83(c)(3) ("so long as the sale of property at a profit could subject a person to suit under Section 16(b) of the Securities Exchange Act of 1934");

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66 *Id.*

67 Code § 1083 was repealed by the Gulf Opportunity Zone Act of 2005. *See* Pub. L. No. 109-135, § 402(a)(1), 119 Stat. 2610 (2005).

68 *See, e.g.*, I.R.S. Gen. Couns. Mem. 35242 (Feb. 16, 1973).

- Section 162(m)(2) ("the term 'publicly held corporation' means any corporation issuing any class of common equity securities required to be registered under Section 12 of the Securities Exchange Act of 1934");
- Section 277(b)(3) ("which for each day of any taxable year is a national securities exchange subject to regulation under the Securities Exchange Act of 1934 or a contract market subject to regulation under the Commodity Exchange Act"); and
- Section 409(e)(4)(A) ("a class of securities required to be registered under Section 12 of the Securities Exchange Act of 1934").

In *Plow Realty Co. of Texas v. Commissioner*,[69] the Tax Court addressed whether two mineral deeds, each conveying an undivided one-eighth interest in oil, gas, sulphur and other minerals, were "securities" for purposes of determining whether the gains from such conveyances constituted "personal holding company income" under Section 502(b) of the Internal Revenue Code of 1939. If such gains were "securities," and hence, "personal holding company income" as defined under the Internal Revenue Code of 1939, the gains would be subject to a 25% surtax.

The taxpayer contended that the mineral deeds were conveyances of an interest in real estate and not a sale of "securities." The Tax Court agreed:

> Under securities and exchange acts mineral deeds and assignments of mineral rights have been held to be "securities." But here we have a revenue statute and not a question of the exercise of police power by a state or the National Government for the protection of the public. The respondent's regulations define "stock or securities" in broad and comprehensive language, but even so, we do not think the instruments herein can be classified as securities under the revenue act. What we have here is two deeds of conveyance evidencing two private sales of undivided interests in realty, under which title passed to and became vested in the grantees. Such sales do not, in our opinion, under the circumstances here constitute a sale of securities under respondent's regulations.[70]

Based on this reasoning, the Tax Court held that the gains realized by the taxpayer upon the conveyance of the mineral deeds were not "personal holding company income" because the mineral deeds did not convey "securities."

In General Counsel Memorandum 35242,[71] the IRS stated that "[a]lthough [the definitions under Sections 165(g), 402(a)(3), 1083(f), and 1236(c)] do not control for purposes of Code §1031, we believe it persuasive that Congress has consistently defined the term 'securities'

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69 4 T.C. 600 (1945).
70 *Id.* at 608 (internal citation omitted).
71 I.R.S. Gen. Couns. Mem. 35242 (Feb. 16, 1973).

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 Exchange Commission believed such receipts constituted securities under the Securities Act of 1933 and the Securities Exchange Act of 1934. This conclusion is consistent with the Tax Court's position that property which constitutes a security under applicable securities laws is not necessarily a "security" for purposes of a specific provision of the Code.[72] The IRS further noted, in the proposed revenue ruling attached to the general counsel memorandum, that the "securities" exception to nonrecognition treatment was added to "preclude brokers, investment houses, and bond houses from arranging the tax free exchanges of appreciated securities for their clients."[73]

Based on the narrow scope of the definition of "securities" for various Code provisions, the IRS endorsement of this narrow definition in the Section 1031 context, and the Tax Court's conclusion that the definition of a "security" under applicable securities laws is irrelevant, we believe that the Interests should not be treated as securities for purposes of Section 1031.

V. The Interests should not be treated as certificates of trust or beneficial interests for purposes of Section 1031.

The non-recognition rules of Section 1031 do not apply to an exchange of certificates of trust or beneficial interests.[74] However, as concluded above, the Trust should be treated as a fixed investment trust within the meaning of Treasury Regulations Section 301-7701-4(c). Therefore, the Trust is considered to be a disregarded entity and the Beneficial Owners should be viewed as owning an underlying fractional interest in the Property (as opposed to an interest in the Trust itself for federal income tax purposes) because, for federal income tax purposes, the Trust is disregarded and viewed as if it does not exist. Thus, the Interests should not be viewed as prohibited certificates of trust or beneficial interests for purposes of Section 1031.

VI. The Lease should be treated as a true lease and not a financing for federal income tax purposes.

A. Generally.

We believe that the Lease has the hallmarks of a bona fide, true lease and, therefore, should

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72 *Plow Realty Co.*, 4 T.C. 600 (1945) (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).

73 I.R.S. Gen. Couns. Mem. 35242 (Feb. 16, 1973), (*citing* S. Rept. 1113, 67th Cong. (1927), 1939-1 (Part 2) C.B. 845-46).

74 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

be treated as such for federal income tax purposes. The economic substance of a leasing transaction is analyzed in light of all of the facts and circumstances.[75] Transactions structured as leases may be recharacterized for federal income tax purposes to reflect their economic substance.[76] For example, in appropriate circumstances a purported lease may be recharacterized as a conditional sales contract. Recharacterization of the Lease as a financing or other arrangement for federal income tax purposes would have significant adverse tax consequences. For example, if the Lease were recharacterized as a financing, then for federal income tax purposes, the Beneficial Owners would be treated as having immediately sold the acquired Interests in the Property to the Master Tenant and the Master Tenant would be treated as the owner of the Property for federal income tax purposes. As a result, a Purchaser attempting to participate in a Section 1031 Exchange would not be treated as having received qualified replacement property when the Purchaser acquired his 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 Purchasers, would be entitled to claim any depreciation deductions. To the extent that payments of "rent" were recharacterized as payments of interest and principal, the payment of principal would not be treated as the receipt of taxable income by the Purchasers and would not be deductible by the Master Tenant. All of these, and other, consequences could have a significant impact on the federal income tax consequences of an investment in the Property.

B. Revenue Procedure 2001-28.

It is possible that the Lease could be treated as a financing rather than a true lease for federal income tax purposes. There is, however, no bright-line test for making this determination. This issue will be analyzed in the context of Revenue Procedure 2001-28,[77] which sets forth guidelines for obtaining an advance ruling that a lease constitutes a true lease (and not a financing) for federal income tax purposes, as well as the federal income tax case law governing this area.

In recent cases, courts have conducted a two-part analysis to determine whether the purported lease should be respected for federal income tax purposes, including an analysis of whether (i) the purported lease should be disregarded as a "sham" transaction and, if not, (ii) whether the lessor retained a sufficient amount of the traditional benefits and burdens of ownership of the property. A leasing transaction will be deemed a sham, and thus disregarded, if it was entered into for the sole purpose of obtaining tax benefits and the transaction is devoid of any reasonable opportunity for economic profit (exclusive of tax benefits). A transaction is not a sham if there is either a business purpose or economic

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the analysis and conclusion set forth herein that the Beneficial Owners should be treated as owning qualifying real property for federal income tax purposes.

75 Joint Committee on Taxation, Technical Explanation of the Revenue Provisions of the "Reconciliation Act of 2010," as Amended, in Combination with the "Patient Protection and Affordable Care Act," 153 & n. 350 (2010).

76 *See, e.g.*, *Frank Lyon Co. v. U.S.*, 435 U.S. 561 (1976), *rev'g* 536 F.2d 746 (8th Cir. 1976); *Rice's Toyota World*, 752 F.2d 89 (4th Cir. 1985); *Helvering v. F. & R. Lazarus & Co.*, 308 U.S. 252 (1939); *Emershaw v. Comm'r*, T.C. Memo 1990-246.

77 2001-1 C.B. 1156.

substance to the transaction.[78] The business purpose test has been described as a subjective analysis examining the motivations for entering into a transaction,[79] while the economic substance analysis is described as an objective analysis focusing on whether the transaction has a reasonable opportunity of producing a profit (exclusive of tax benefits).[80] If a transaction is shown not to be a sham, the lessor must additionally retain sufficient benefits and burdens of ownership to be regarded as the owner for federal income tax purposes.[81] The essence of the courts' benefits and burdens analysis is an examination of whether the purported lessor is subject to the risks of ownership (*i.e.*, downside) and will enjoy the profits of the property (*i.e.*, upside).

Revenue Procedure 2001-28[82] sets forth advance ruling guidelines for "true lease" status. The Trust has not sought, and does not expect to request, a ruling from the IRS under Revenue Procedure 2001-28. These ruling guidelines provide certain criteria that the IRS will require to be satisfied in order to issue a private letter ruling that a lease is a true lease for federal income tax purposes. In the event of an examination by the IRS, the IRS and, ultimately, the courts of applicable jurisdiction, would consider these ruling guidelines, together with existing cases and other rulings, in determining whether the Lease qualifies as a true lease for federal income tax purposes. However, we do not believe that strict compliance with Revenue Procedure 2001-28 is required to conclude that the Lease should be characterized as a true lease for federal income tax purposes. Rather, we believe that satisfying most of the material ruling guidelines should be sufficient for this purpose. Accordingly, the following discussion reviews the factors considered relevant by the IRS under Revenue Procedure 2001-28 guidelines, as well as the relevant case law.[83]

C. Minimum Unconditional At-Risk Investment.

Under the Revenue Procedure, the lessor must make a minimum unconditional "at risk" investment in the property (the "Minimum Investment") when the lease begins, must maintain such Minimum Investment throughout the entire lease term, and such Minimum Investment must remain at the end of the lease term. The Minimum Investment must be an equity investment (the "Equity Investment") that includes only consideration paid, and

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78 *See Rice's Toyota World*, 752 F.2d 89; *Van Roekel v. Comm'r*, T.C. Memo 1989-74, *app. dism'd* 905 F.2d 80 (5th Cir. 1990); *Offermann v. Comm'r*, T.C. Memo 1988-236; *L. W. Hardy Co. Inc. v. Comm'r*, T.C. Memo 1987-63; *Greenbaum v. Comm'r*, T.C. Memo 1987-222; *Torres v. Comm'r*, 88 T.C. 702 (1987); *Mukerji v. Comm'r*, 87 T.C. 926 (1986).

79 *Levy v. Comm'r*, 91 T.C. 838, 854 (1988).

80 *Id. at* 838; *Rubin v. Comm'r*, T.C. Memo 1989-484; *Moser v. Comm'r*, T.C. Memo 1989-142, *aff'd* 914 F.2d 1040 (8th Cir. 1990); *Van Roekel* v. Comm'r, T.C. Memo 1989-74; *Offermann v. Comm'r*, T.C. Memo 1988-236; *Larsen v. Comm'r*, 89 T.C. 1229 (1987), *aff'd & rev'd sub nom Casebeer v. Comm'r.*, 909 F.2d 1360 (9th Cir. 1990).

81 *See Emershaw v. Comm'r*, T.C. Memo 1990-246, *aff'd* 949 F.2d 841 (6th Cir. 1991); *Rubin v. Comm'r*, T.C. Memo 1989-484; *Pearlstein v. Comm'r*, T.C. Memo 1989-621; *Moser v. Comm'r*, T.C. Memo 1989-142, *aff'd* 914 F.2d 1040 (8th Cir. 1990); *Van Roekel v. Comm'r*, T.C. Memo 1989-74; *Levy*, 91 T.C. 838.

82 2001-1 C.B. 1156. The guidelines were designed with equipment, rather than real estate, leveraged leases as a primary concern.

83 The factors enumerated in the case law are relevant to the guidelines as set forth in Revenue Procedure 2001-28; thus, for purposes of this analysis we refer to the case law factors within the framework of the guidelines.

personal liability incurred, by the lessor to purchase the property. The net worth of the lessor must be sufficient to satisfy any such personal liability.[84] We believe that satisfying the required Minimum Investment pursuant to the guidelines is also indicative of a lessor's retention of downside risk as required under the framework established by the case law.[85]

1. Initial Minimum Investment.

When the property is first placed in service or use by the lessee, the Minimum Investment must be equal to at least 20% of the cost of the property. The Minimum Investment must be unconditional: that is, the lessor must not be entitled to a return of any portion of the Minimum Investment through any arrangement, directly or indirectly, with the lessee, a shareholder of the lessee, or any party related to the lessee (within the meaning of Section 318 of the Code) (the "Lessee Group").[86] Each of the Purchasers will acquire his or her Interest in the Property (through the Trust) for an unconditional equity investment equal to approximately 59.53% of the cost of his or her Interest in the Property. None of the Purchasers 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).[87] The Trust and the Manager have represented to us that they anticipate that the equity invested in the Property by the Purchasers will equal at least 20% of the cost of the Property to the Trust at all times throughout the term of the Lease (disregarding fluctuations in value) and that, to their knowledge, no plans or intention exists to reduce such equity through distributions or refinancing of the Property or otherwise. It is impossible, however, to determine at this time whether the economic performance of the Property will comply with the above stated requirement of Revenue Procedure 2001-28. Accordingly, this estimation alone neither weighs in support nor against characterization of the Lease as a true lease for federal income tax purposes.

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84 Rev. Proc. 2001-28, 2001-1 C.B. 1156 § 4.01.

85 For example, courts have treated a lessor as the owner of property when the lessor has made cash investments substantially smaller than the 20% required by the Revenue Procedure 2001-28 guidelines. *See, e.g., Emershaw v. Comm'r*, T.C. Memo 1990-246 (6% investment); *Greenbaum v. Comm'r*, T.C. Memo 1987-222 (7% investment); *Hardy, L. W. Hardy Co. Inc. v. Comm'r*, T.C. Memo 1987-63 (17% investment).

86 Rev. Proc. 2001-28, 2001-1 C.B. 1156 § 4.01(1).

87 *Id*. at § 4.01(2).

3. Residual Investment.

Under Revenue Procedure 2001-28, the fair market value of the property at the end of the lease term must be estimated to be an amount equal to at least 20% of the original cost of the property. For this purpose, fair market value must be determined (i) without including in such value any increase or decrease for inflation or deflation during the lease term, and (ii) after subtracting from such value any cost to the lessor for removal and delivery of possession of the property to the lessor at the end of the lease term. In addition, under Revenue Procedure 2001-28, a reasonable estimate of the remaining useful life of the property at the end of the lease term must equal the longer of one year or 20% of the originally estimated useful life of the property.[88] The Trust and the Manager have represented that the Property is expected to have a value at the end of the Lease term or the anticipated time of sale that is at least 20% of the original cost of the Property and that the financial projections of the value of the Property at the end of the Lease term or the anticipated time of sale are not based on increases or decreases in inflation or deflation during the lease term and reflect the anticipated costs of sale. In addition, the Trust and the Manager have represented that a reasonable estimate of the remaining useful life of the Property at the end of its initial lease term should equal the longer of one year or 20% of the originally estimated useful life of the Property.

D. Lease Term and Renewal Options.

For purposes of determining whether the various requirements imposed by Revenue Procedure 2001-28 are satisfied, the lease term must include all renewal or extension periods except renewals or extensions at the option of the lessee at fair rental value at the time of such renewal or extension.[89] Because both the Equity Investment of the Purchasers and the Lease will terminate at the time of the anticipated sale, the anticipated time of sale might be used as the measuring period for purposes of determining the term of the Lease. One could also argue that the entire term of the Lease should be used as the applicable measuring period in determining whether the various requirements of Revenue Procedure 2001-28 have been met. We have considered each of these alternatives in reaching our conclusions herein concerning the application of Revenue Procedure 2001-28.

E. Purchase and Sale Rights.

Under Revenue Procedure 2001-28, no member of the Lessee Group may have a contractual right to purchase the property from the lessor at a price less than its fair market value at the time the right is exercised.[90] When the property is first placed in service or use by the lessee, the lessor may not have a contractual right to cause any party to purchase the property.[91] The lessor must also not have any present intention to acquire such a contractual right. A provision that permits the lessor to abandon the property to any party will be treated as a contractual right of the lessor to cause such party to purchase the

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88 *Id*. at § 4.01(3).
89 *Id*. at § 4.02.
90 *Id*. at § 4.03.
91 *Id*. at § 4.03.

property.[92] Despite this prohibition, both the IRS and the courts have recognized leases utilizing fixed-price purchase options as leases for federal income tax purposes. A number of courts have concluded that a true lease existed even when the lessee had the right to purchase the leased property at a fixed price so long as the purchase price represented an estimate of the fair market value of the leased property as of the option date, or was not nominal in relation to such value.[93] The Lease and other Transactional 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) and, therefore, should not cause the Lease to fail as a true lease for federal income tax purposes as the Exchange Right represents an estimate of the fair market value as of the option date and is not nominal in relation to such value.[94] Although not free from doubt, in light of the case law and rulings discussed above, the Exchange Right provided under the Trust Agreement should not cause the Lease to fail to be a true lease for federal income tax purposes.

F. Investment by Lessee.

No part of the cost of the property or the cost of improvements, modifications, or additions to the property ("Improvements"), may be furnished by any member of the Lessee Group. If the lease requires the lessee to maintain and keep the property in good repair during the term of the lease, ordinary maintenance and repairs performed by a member of the Lessee Group will not constitute an Improvement.[95]

While the Master Tenant may incur some obligations to construct improvements under one or more subleases, this should not affect the characterization of the Lease for federal income tax purposes. Under the Lease, the Master Tenant may be required to pay for certain tenant improvements associated with the Property. For example, the Master Tenant must throughout the term of the Lease take good care of the Property, put, keep and maintain the Property and every part thereof in a condition substantially the same as the condition of the Property as of the commencement of the Lease, and make all necessary repairs of whatsoever kind or nature.[96] We believe that any such improvements required to be constructed by the Master Tenant under the Lease are in the nature of maintenance

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92 *Id*. at § 4.03.

93 *See L. W. Hardy Co. Inc. v. Comm'r*, T.C. Memo 1987-63; *Transamerica Corp. v. U.S.*, 15 Cl. Ct. 420 (1988), *aff'd* 902 F.2d 1540 (Fed. Cir. 1990); *Cooper v. Comm'r*, 88 T.C. 84 (1987); *Belz Inv. Co. v. Comm'r*, 72 T.C. 1209 (1979), *aff'd* 661 F.2d 76 (6th Cir. 1981), *acq.* 1980-2 C.B. 1; *Northwest Acceptance Corp. v. Comm'r*, 58 T.C. 836 (1972), *aff'd* 500 F.2d 1222 (9th Cir. 1974); *Lockhart Leasing Co. v. Comm'r*, 54 T.C. 301 (1970), *aff'd* 446 F.2d 269 (10th Cir. 1971); *see also* Staff of the Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1984 (1984) ("Where [a] purchase option was more than nominal but relatively small in comparison with fair market value, the lessor was viewed as having transferred full ownership because of the likelihood that the lessee would exercise the option.").

94 *See* the Trust Agreement at §§10.1 & 10.4.

95 Rev. Proc. 2001-28, 2001-1 C.B. 1156 at § 4.04.

96 *See* the Lease at §6.1.

and repairs consistent with ordinary commercial practice and, therefore, should not prevent the Lease from qualifying as a true lease for federal income tax purposes.[97]

G. No Lessee Loans or Guarantees.

No member of the Lessee Group may lend to the lessor any of the funds necessary to acquire the property, or guarantee any indebtedness created in connection with the acquisition of the property by the lessor.[98] A guarantee by any member of the Lessee Group of the lessee's obligation to pay rent, properly maintain the property, or pay insurance premiums or other similar conventional obligations of a net lease does not constitute a guarantee of the indebtedness of the lessor.[99] There are no guarantees under the Lease or other Transaction Documents that violate this requirement.[100]

H. Profit Requirement.

The lessor must expect to receive a profit from the transaction apart from the value of or benefits obtained from the tax deductions, allowances, credits and other tax attributes arising from such transaction. Under the Revenue Procedure 2001-28 guidelines, this requirement is met if: (a) the aggregate amount required to be paid by the lessee to or for the lessor over the lease term plus the value of the residual investment exceed an amount equal to the sum of the aggregate disbursements required to be paid by or for the lessor in connection with the ownership of the property and the lessor's Equity Investment in the property, including any direct costs to finance the Equity Investment; and (b) the aggregate amount required to be paid to or for the lessor over the lease term exceeds by a reasonable amount the aggregate disbursements required to be paid by or for the lessor in connection

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97 In addition, in its private ruling practice under Revenue Procedure 75-21 (the predecessor to Revenue Procedure 2001-28, which included a similar requirement), the IRS has generally concluded that the making of an improvement by a tenant not permitted under this guideline will not affect the true lease analysis. *See* I.R.S. Priv. Ltr. Rul. 8712025 (Dec. 18, 1986); *see also* I.R.S. Gen. Couns. Mem. 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").

98 Rev. Proc. 2001-28, 2001-1 C.B. 1156 § 4.05.

99 *Id*. at § 4.05.

100 The Loan Documents grant the Lender, as collateral in connection with the Loan, a security interest in certain Collateral Accounts (as defined in the Loan Agreement) which include, among other things the Clearing Account (as defined in the Loan Agreement). The Clearing Account includes Collateral Account Funds (as defined in the Loan Agreement) which may include, among other funds, revenues from the Property belonging to the Master Tenant pursuant to the terms of the Lease. While the Lender does not have a presently vested direct security interest in any Collateral Account Funds that rightfully inure to the Master Tenant, in the event of an "Event of Default" under the Loan, certain of the Loan Documents grant the Lender the Trust's then-acquired interests in the Collateral Accounts and any Collateral Account Funds. This future interest granted to the Lender upon an "Event of Default" under the Loan and limited ability of the Lender to apply Collateral Account Funds rightfully belonging to the Master Tenant only after a "Master Lease Termination Event" (as defined in the Subordination Agreement), which is further limited by the terms of the Subordination Agreement to "amounts on deposit at such time", should not be viewed as the equivalent of the Master Tenant as a member of the Lessee Group lending to the Trust any of the funds necessary to acquire or a guaranteeing of indebtedness created in connection with the acquisition of the Property by the Trust. There are no guaranties with respect to the Bridge Financing, which is an obligation of NexPoint Advisors, L.P., an affiliate of the Contributor, and the Contributor (and not the Trust).

with the ownership of the property.[101] Similarly, the return of a profit to the lessor is arguably indicative of a true upside, sufficient to satisfy the sham transaction and benefits and burdens framework established by the case law.[102] The Trust and the Manager have represented to us that this requirement is expected to be satisfied.

I. Conclusion.

In light of the above factors, the Lease satisfies most of the pertinent material conditions set forth in Revenue Procedure 2001-28 that we believe are necessary for characterization as a true lease for federal income tax purposes. Likewise, under the framework established in the case law, the Lease bears the hallmarks of a bona fide lease. Accordingly, we believe that the Lease should be treated as a true lease rather than as a financing for federal income tax purposes.

VII. The Lease should be treated as a true lease and not a deemed partnership for federal income tax purposes.

It also is necessary to consider whether the Lease could be 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.[103] Case law provides that certain factors are indicative that a purported lease may in fact be a partnership for federal income tax purposes.[104]

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101 Rev. Proc. 2001-28, 2001-1 C.B. 1156 at § 4.06.

102 While the "Uncontrollable Costs" feature of the Lease could potentially be viewed as giving rise to a relationship similar to a cash flow lease (*e.g.*, if the pool of items included in the formulation of Uncontrollable Costs was so expansive as to include the totality of operating expenses, or a significant portion thereof, thereby changing the nature of the Lease), we believe that the limited categories included therein (*i.e.*, real estate taxes and similar impositions, insurance and utilities) are sufficiently tied to historic and anticipated costs and discrete in nature such that the Lease should still be properly viewed as a true lease and not an agency or financing arrangement. As such, the Uncontrollable Costs adjustment mechanism in the Lease should not be viewed as a sharing of profits or losses. In addition, if there is an increase in the amount of Uncontrollable Costs, such costs will only be offset to the extent of Additional Rent or Supplemental Rent; accordingly, if such rent amounts are unavailable, the burden for such costs remains with the Master Tenant.

103 Because the Property Manager will not be in privity of contract with the Trust, there should be little doubt that there is no partnership between the Property Manager and the Trust.

104 *See Haley v. Comm'r*, 203 F.2d 815 (5th Cir. 1953), *rev'g and rem'g* 16 T.C. 1509 (1951) (citing *Culbertson* and stating that a transaction will be treated as a partnership rather than a lease "if the agreements and the conduct of the parties . . . plainly show the existence of such [a partnership] relationship, and the intent to enter into it"); *Luna v. Comm'r*, 42 T.C. 1067 (1964) (outlining factors that will aid in the determination of whether a partnership exists for federal tax purposes: "[T]he following factors, none of which are conclusive, bear on this issue: The agreement of the parties and their conduct in executing its terms; the contributions if any, which each party has made to the venture; the parties' control over income and capital and the right of each to make withdrawals; whether each party was a principal and coproprietor, sharing a mutual proprietary interest in the net profits and having an obligation to share losses, or whether one party was the employee of the other; whether business was conducted in the joint name of the parties; whether the parties filed Federal partnership returns or otherwise represented that they were joint venturers; whether separate books of account were maintained for the venture; and

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.[105] The Lease specifically states that the parties do not intend to form a partnership or joint venture.[106] Likewise, the Lease provides that it is intended to be characterized as a true lease and that the parties shall reflect the Lease as such in all applicable books, records and reports, including income tax filings.[107]

2. Joint Contribution of Capital or Services.

Where persons combine their capital and services together in an enterprise such that they are required to deal with each other to realize the economic benefits from the property, the arrangement generally will be characterized as a partnership.[108] The Trust and the Master Tenant do not intend to pool either their capital or services. The Trust will make the Property available to the Master Tenant and will not participate in, or provide services to, the Master Tenant's business (except to the extent necessary to protect its investment in the Property). Similarly, the Master Tenant will not provide capital to enable the Trust to acquire or improve the Property and will not provide services to the Trust (except to the extent necessary to comply with its obligations under the Lease).

3. Joint Capital and Ownership of Capital and Earnings.

Another factor is whether the participants will have joint control over the capital and earnings of the venture.[109] The Master Tenant will have control over cash from the Property. However, the Master Tenant should not be deemed to have an ownership interest in the funds to which the Trust is entitled and it does not have the power to spend such funds except pursuant to the specific terms provided under the Lease. The Trust and the Master Tenant will each earn a separate profit. The Master Tenant will recognize income or loss based on the difference between the rent it receives on its subleases and the expenses

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whether the parties exercised mutual control over and assumed mutual responsibilities for the enterprise.") *Bussing v. Comm'r*, 88 T.C. 449 ("A partnership for federal income tax purposes is formed when the parties to a venture join together capital or services with the intent of conducting a business or enterprise and of sharing the profits and/or losses of the venture"). In *Bussing*, the parties entered into a multiparty sale lease-back transaction intended to qualify under *Frank Lyon*. In a sale lease-back transaction, rent payments generally offset amounts due under the debt incurred to purchase the asset, giving the purchaser-lessor an interest in the rent. Because of a remarketing agreement that enabled the seller-lessee to share along with the purchaser-lessor in the net residual value of the leased property and that the purchaser-lessor took the property subject to already existing debt and therefore bore a risk of loss if the debt was not repaid, the court determined this evidenced a partnership.

105 *Comm'r v. Culbertson*, 337 U.S. 733 (1949).

106 *See* the Lease at §§ 3.5 & 23.15.

107 *See* the Lease at §3.5.

108 *Bussing*, 88 T.C. 449; *Alhouse v. Comm'r*, T.C. Memo 1991-652.

109 *Luna v. Comm'r*, 42 T.C. 1067 (1964).

of leasing and operating the Property. The Trust will receive rent from the Master Tenant, including a fixed base rent payment payable monthly, and a percentage of gross rents earned on an annual basis (with estimated payments being made to the Trust on a monthly basis).[110] The Lease does not provide for any rental payments based on net operating income or net cash flow from the operation of the Property. Thus, none of these parties will jointly share in profits or losses; rather, each will bear its own separate risk that a profit will be realized.

4. Sharing of Profits as Co-proprietors.

Partners generally share profits as co-proprietors. A sharing of profits, however, is not alone sufficient to make partners or joint venturers out of participants in a business enterprise if the requisite element of co-ownership is not established.[111] A profit share in a lease can be received by a lessor as rent without the lessor becoming a partner in the enterprise. A share of net receipts, as opposed to gross receipts, is stronger evidence that a partnership relationship exists, but without more, should not cause a lease to be recharacterized as a partnership. Under the Lease, the Master Tenant receives rent from the sublease of the Property whereas the Trust receives rent from the Master Tenant. Under the Treasury Regulations, the sharing of gross rents, without more, is very unlikely to create a partnership arrangement.[112] The only sharing involved in the present case is the fact that the Trust might share in certain gross percentage rent, as a landlord and not as a partner, only to the extent such rent exceeds a set base.[113] Thus, the Trust and the Master Tenant

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110 *See* the Lease at §§4.1 & 4.4.

111 *See* Treas. Reg. § 301.7701-1(a)(2) (if an individual owner of farm property leases it to a farmer for a cash rental or a share of the crops, they do not necessarily create a separate entity for federal tax purposes); *Grandview Mines v. Comm'r*, 282 F.2d 700 (9th Cir. 1960), *aff'g* 32 T.C. 759 (1959) (46.5% of lessee's net profits from leased property; not recharacterized as partnership); *Freesen v. Comm'r*, 84 T.C. 920 (1985) ('The fact that the consideration paid for the use of property is a function of net profits, does not require a finding that a joint venture exists"); *see also U.S. v. Myra Foundation*, 382 F.2d 107 (8th Cir. 1967) (sharecropping arrangement not partnership even though landowner furnished seed, paid half of certain expenses, and participated in farming operations through a farm manager); *White's Iowa Manual Labor Inst. v. Comm'r*, T.C. Memo 1993-364 (same result); *Harlan E. Moore Charitable Trust v. U.S.*, 9 F.3d 623 (7th Cir. 1993) (same result); *Oblinger Trust v. Comm'r*, 100 T.C. 114 (1993); *cf. Bank of El Paso v. U.S.*, 509 F.2d 832 (5th Cir. 1975) (holding characterization as lease or partnership was a question for the jury and distinguishing *Myra Foundation*); Rev. Rul. 57-7, 1957-1 C.B. 435 (arrangements in which coin-operated entertainments were placed on premises and under which the owner of the premises received a percentage of the gross receipts were leases); *Manchester Music Co., Inc. v. U.S.*, 733 F. Supp. 473 (D.N.H. 1990) (reaching opposite conclusion from Rev. Rul. 57-7); *In re Acme Music Co., Inc.*, 196 B.R. 925 (W.D. Pa. 1996) (no partnership between owner of premises of operator of coin-operated entertainments where owner and operator shared only gross profits, not net profits); Rev. Rul. 92-49, 1992 –1 C.B. 433 (allowing taxpayers to elect how to report arrangements described in Rev. Rul. 57-7); *see also Duley v. Comm'r*, T.C. Memo 1981-246 (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); 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.

112 Treas. Reg. §1.761-1(a); Treas. Reg. §301.7701-1(a)(2) (when an owner of farm land leases property to a farmer for a cash rental or a share of the crops, the lease does not necessarily results in a separate entity for federal income tax purposes).

113 *See* the Lease at § 4.1. As noted above, we believe that the limited categories of expenses included in Uncontrollable Costs (*i.e.*, real estate taxes and similar impositions, insurance and utilities) are

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. In this case, the Master Tenant will not share in losses generated from an ownership interest in the Property. Further, in the case of the Lease, the Trust will lease the Property to the Master Tenant, and will not share in losses, if any, sustained by the Master Tenant with respect to operating and subletting of the Property.

6. Control Over the Business.

An arrangement whereby two or more persons share the profits of a common undertaking does not constitute a joint venture in the absence of the power to control.[114] 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.[115] Under the terms of the Lease, the Trust will have limited rights to participate in the management of the Property. The Master Tenant will have the right to manage the day-to-day operation of the Property. Any sublease by the Master Tenant does not require the consent of the Trust, so long as the term of such sublease terminates prior to the term of the Lease.[116] While any decision to sell or refinance the Property will be made by the Manager on behalf of the Trust, this right is typical for a lessor to possess as the owner of the Property and, therefore, does not support partnership characterization. In addition, the Trust Agreement grants the Beneficial Owners, or the Manager if no Beneficial Owner exercise its right, a right of first refusal upon the receipt by any Beneficial Owner of a bona fide Third-Party Offer.[117] This right is only operative upon the receipt of a Third-Party Offer, and the Beneficial Owner (or Manager, as the case may be) may only exercise such right on the same arm's length terms and conditions as contained in the bona fide Third-Party Offer. As such, the right of first refusal should not be viewed as a shared control arrangement.

7. Parties' Agreement and Conduct in Executing its Terms.

As stated above, the Lease specifically states that the parties do not intend to create a

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sufficiently tied to historic and anticipated costs and discrete in nature such that the Lease should still be properly viewed as a true lease and not a deemed partnership. As such, the Uncontrollable Costs adjustment mechanism in the Lease should not be viewed as a sharing of profits or losses and, therefore, is not indicative of a deemed partnership.

114 *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).

115 *See, e.g., Grandview Mines*, 282 F.2d 700; *Haley*, 203 F.2d 815.

116 *See* the Lease at §19.4.

117 *See* the Trust Agreement at §6.4.

partnership or joint venture.[118] Additionally, we believe the terms of the 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.[119]

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.[120] Under the 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.[121]

9. Filing of Tax Returns or Other Partnership Action.

Pursuant to the Lease, no partnership returns will be filed and the parties are prohibited from otherwise acting or holding themselves out as partners in a partnership.[122] Each party is specifically required to reflect the transactions represented by the Lease in all applicable books, records and reports (including, without limitation, income tax filings) in a manner consistent with true lease treatment. (i.e., in a manner reflecting a relationship between a landlord and tenant.)[123]

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,[124] 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

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118 *See* the Lease at §23.15.

119 *Sun Capital Partners III, LP v. New England Teamsters & Trucking Industry Pension Fund*, No. 16-1376 (1st Cir. 2019) (in deciding whether two private equity funds (the "Funds") had created a deemed partnership: "The fact that the Funds expressly disclaimed any sort of partnership between the Funds counts against a partnership finding as to several of the *Luna* factors.").

120 *Id* (applying the *Luna* factors "The Funds … kept separate books … a fact which tends to rebut partnership formation.")

121 *See* the Lease at §23.21.

122 *See* the Lease at §23.15; *Sun Capital*, No. 16-1376 (1st Cir. 2019) (applying the *Luna* factors "The Funds also filed separate tax returns … a fact which tends to rebut partnership formation.").

123 *See* the Lease at §3.5.

124 *See, e.g., Levy*, 91 T.C. 838; *Casebeer*, 909 F.2d 1360.

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.[125] While a transaction with no purpose other than to reduce taxes will not be recognized for federal income tax purposes, a transaction that has a meaningful business purpose and economic substance should be respected, regardless of whether the taxpayer also intended to reduce taxes.[126]

In *Frank Lyon Co. v. U.S.*,[127] the Supreme Court stated:

> Where . . . there is a genuine multiple-party transaction with economic substance which is compelled or encouraged by business or regulatory realities, is imbued with tax independent considerations, and is not

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125 *See Gregory*, 293 U.S. 465; *Rice's Toyota World v. Comm'r*, 81 T.C. 184, 196 (1983), *aff'd in part, rev'd in part and rem'd*, 752 F.2d 89 (4th Cir. 1985).

126 *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. U.S.*, 364 U.S. 361, 365 (1960) (citing *Gregory* regarding the legal right of a taxpayer to decrease or altogether avoid taxes); *ACM Partnership*, 157 F.3d at 248 n.31 ("[I]t is also well established that where a transaction objectively affects the taxpayer's net economic position, legal relations, or non-tax business interests, it will not be disregarded merely because it was motivated by tax considerations. In analyzing both the objective and subjective aspects of ACM's transaction in this case where the objective attributes of an economically substantive transaction were lacking, we do not intend to suggest that a transaction which has actual, objective effects on a taxpayer's non-tax affairs must be disregarded merely because it was motivated by tax considerations."); *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.").

127 435 U.S. 561 (1978).

> 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.[128]

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.*,[129] 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."[130] 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.[131] These objective and subjective aspects are not "discrete prongs of a 'rigid two-step analysis,'" but rather are related factors in the analysis of whether a transaction has sufficient substance, apart from its tax consequences, to be respected.[132]

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.[133] Other courts, however, have been reluctant to propose a threshold amount.[134]

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128 *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).

129 81 T.C. 184 (1983), *aff'd in part, rev'd in part and rem'd*, 752 F.2d 89 (4th Cir. 1985).

130 *Rice's Toyota World*, 752 F.2d at 91; *see also Horn v. Comm'r*, 968 F.2d 1229, 1237 (D.C. Cir. 1992) (before declaring a transaction an economic sham, the court should consider whether the transaction presented a reasonable prospect for economic gain).

131 *Casebeer*, 909 F.2d at 1363; *accord Lerman v. Comm'r*, 939 F.2d 44, 53-54 (3d Cir. 1991) (noting that a sham transaction is defined as a transaction that "has no business purpose or economic effect other than the creation of tax deductions" and holding that the taxpayer was not entitled "to claim "losses" when none in fact were sustained").

132 *Id.* at 1363; *see also Jacobson v. Comm'r*, 915 F.2d 832, 837 (2d Cir. 1990) (the determination of economic substance looks to whether the transaction has any "practical economic effects other than the creation of income tax losses"); *Weller v. Comm'r*, 270 F.2d 294, 297 (3d Cir. 1959) (transactions that do not change the flow of economic benefits are disregarded if they do not change the taxpayer's financial position); *Northern Ind. Pub. Serv. Co. v. Comm'r*, 115 F.3d 506 (7th Cir. 1997), *aff'g*, 105 T.C. 341 (1995) (the IRS could not set aside transactions which resulted "in actual, non-tax related changes in economic position."); *Larsen*, 89 T.C. 1229; *cf. Kirchman v. Comm'r*, 862 F.2d. 1486 (11th Cir. 1989) (existence of a nontax business purpose does not mandate the recognition of a transaction that otherwise 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).

133 *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).

134 *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).

In *United Parcel Service of America, Inc. v. Commissioner*,[135] the Eleventh Circuit reversed the Tax Court[136] on the issue of economic substance in finding that the restructuring by United Parcel Service ("UPS") of its excess-value business had both real economic effects and a business purpose. The Court reasoned that setting up a transaction (that otherwise has economic substance) with tax planning in mind is permissible as long as it figures in a bona fide, profit-seeking business purpose. In its finding that UPS' transaction had a valid business purpose, the Court noted that "a "business purpose" does not mean a reason for a transaction that is free of tax considerations. Rather, a transaction has a "business purpose" . . . as long as it figures in a bona fide, profit-seeking business."[137]

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.[138] 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."[139] For example, the Joint Committee Report specifically provides that "[l]easing transactions, like all other types of transactions, will continue to be analyzed in light of all the facts and circumstances."[140] 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.

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135 254 F.3d 1014 (11th Cir. 2001), *rev'g*, T.C. Memo 1999-268.

136 T.C. Memo 1999-268

137 *United Parcel Service of America, Inc*., 254 F.3d at 1019.

138 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).

139 *See also* Joint Committee on Taxation, Technical Explanation of the Revenue Provisions of the "Reconciliation Act of 2010," as amended, in combination with the "Patient Protection and Affordable Care Act" (JCX-18-10) (Mar. 21, 2010) [hereinafter "Joint Committee Report"], at 152 ("[T]he provision does not change present law standards in determining when to utilize the economic substance analysis.").

140 *Id.*

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."[141] Regarding the first category of transactions to which the economic substance doctrine is not relevant, the Joint Committee Report states that "[if] the realization of the tax benefits of a transaction is consistent with the Congressional purpose or plan that the tax benefits were designed by Congress to effectuate, it is not intended that such tax benefits be disallowed."[142] 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."[143] The Joint Committee Report further provides that the economic substance doctrine does not apply to the following four basic business transactions: (i) the choice between capitalizing a business enterprise with debt or equity; (ii) a U.S. person's choice between utilizing a foreign corporation or a domestic corporation to make a foreign investment; (iii) the choice to enter a transaction or series of transactions that constitute a corporate organization or reorganization under subchapter C of the Code; and (iv) the choice to use a related-party entity in a transaction, provided that the arm's-length standard of Section 482 and other applicable concepts are satisfied.[144]

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."[145] The House Report goes on to note that, "as under present law, whether a particular transaction meets the requirements for specific treatment under any of these provisions is a question of facts and circumstances."[146]

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").[147] The LB&I Directive lists factors tending to show that it likely would be

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141 *Id.* at 152-53.
142 *Id.* at 152 n. 344.
143 *Id.* at 152.
144 *Id.* at 152-53.
145 H.R. Rep. 111-443 at 296.
146 *Id.*
147 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?*,

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.[148]

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.[149] 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 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.*, corporation, partnership, 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'

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).

148 *Id.*

149 *See, e.g., Klamath Strategic Investment Fund v. U.S.*, 568 F.3d 537, (5th Cir. 2009); *Coltec v. U.S.*, 454 F.3d 1340 (Fed. Cir. 2006); *United Parcel Service of America, Inc.*, 254 F.3d at 1014.

economic positions are meaningfully changed as a result of entering into the transactions herein; and (ii) there is a substantial purpose (apart from federal income tax effects) for the Beneficial Owners for entering into the transactions. Such substantial purpose is to enable each Beneficial Owner to be treated as a direct owner of a portion of the Property for federal income tax purposes. Furthermore, each Beneficial Owner's economic position changes in a meaningful way as it will be given an opportunity to own an interest in the Property in a manner that it might not otherwise be able to do on its own accord due to its respective individual financial limitations. In addition, each Beneficial Owner will have a right to its pro rata share of all income and loss generated by the bona fide, profit-seeking business of operating the Property, and the allocation of all economic benefits and burdens associated with the Property will correspond to the respective Interest owned by each Beneficial Owner. For the foregoing reasons, the transactions and contractual arrangements herein should be respected under the economic substance doctrine.

B. Sham Transaction Doctrine.

1. Applicable Rules.

Under the sham transaction doctrine, a transaction may be disregarded if it constitutes a factual sham or an economic sham. A factual sham is a purported transaction that is not executed as a factual matter.[150] In contrast, an economic sham is a transaction that has occurred, but is devoid of economic substance.[151] In general, the economic sham doctrine will not be applied if the taxpayer can prove that there is either a business purpose for, or economic substance to, the given transaction.[152]

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.[153] 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.[154] The Third Circuit nevertheless recognized that "it is well established that where a transaction objectively affects the taxpayer's net economic

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150 *Brown v. Comm'r*, 85 T.C. 968, 1000 (1985), *aff'd sub nom*, *Sochin v. Comm'r*, 843 F.2d 351 (9th Cir. 1988); Brion D. Graber, *Can the Battle be Won? Compaq, the Sham Transaction Doctrine, and a Critique of Proposals to Combat the Corporate Tax Shelter Dragon*, 149 U. Pa. L. Rev. 355, 362-63 (Nov. 2000).

151 *Gregory*, 293 U.S. 465; *Knetsch*, 364 U.S. at 366 ("There may well be single-premium annuity payments with non-tax substance which create an 'indebtedness' for the purposes of Section 23(b) of the 1939 Code and Section 163(a) of the 1954 Code. But this one is a sham."); *Goldstein*, 364 F.2d at 742 ("[T]ransactions that lack all substance, utility, purpose, and which can only be explained on the ground the taxpayer sought an interest deduction in order to reduce his taxes, will also be so transparently arranged that they can candidly be labeled 'shams.'"), *cert. denied*, 385 U.S. 1005 (1967); *Alessandra v. Comm'r*, T.C. Memo 1995-238.

152 *Rice's Toyota World*, 81 T.C. at 203 ("Our analysis does not end here. Mr. Rice's failure to focus on the business or non-tax aspects of the transaction is not necessarily fatal to petitioner's claim. If an objective analysis of the investment indicates a realistic opportunity for economic profit which would justify the form of the transaction, it will not be classified as a sham."); *see also Frank Lyon Co.*, 435 U.S. 561.

153 157 F.3d 231, 263 (3d Cir. 1998).

154 *Id.* at 247.

position, legal relations, or non-tax business interests, [a transaction] would not be disregarded merely because it was motivated by tax considerations."[155] The transaction at issue in *Boca Investerings Partnership v. U.S.*[156] was similar to the *ACM* transaction, but the District Court for the District of Columbia respected the partnership transactions at issue in that case. The *Boca* court concluded that the partnership had been formed as a valid investment partnership. It had the potential to make a profit or loss from its activities, and the partners were not sheltered from economic risk or guaranteed a specific return on their respective partnership investments.

The Fifth and Eighth Circuits have held that certain foreign tax credit planning strategies implemented to achieve tax benefits must be recognized under the sham transaction doctrine because the transactions were sufficiently imbued with both economic substance and business purpose. The Fifth Circuit in *Compaq Computer Corporation v. Commissioner*[157] 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.[158] As a result, Compaq could credit the foreign taxes associated with the dividend.[159] The Eighth Circuit came to a similar conclusion in *IES Industries, Inc. v. U.S.*,[160] which reversed a district court decision that a purchase and sale of ADRs were sham transactions.

There are a number of cases in this area that are difficult to reconcile. Nevertheless, the main point that appears to underlie all of the cases is the principle enunciated by Judge Learned Hand in *Gregory v. Helvering—i.e.*, that tax motivated transactions are not *per se* invalid, provided there is some non-tax business purpose for the transaction.[161]

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

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155 *Id.* at 248, fn. 31.

156 167 F. Supp. 2d 298 (D.D.C. 2001).

157 277 F.3d 778 (5th Cir. 2001), *rev'g*, 113 T.C. 214 (1999).

158 *Id*. at 786-87.

159 *Id*. at 788.

160 *IES Industries, Inc. v. U.S.*, 253 F.3d 350 (8th Cir. 2001), *rehearing denied sub nom.*, *Alliant Energy Corp. v. U.S.*, 2001 U.S. App. LEXIS 24929 (8th Cir. 2001) (the facts of *Compaq Computer* and of *IES Industries* are in large part identical because the strategy upon which the transactions were based was developed and marketed by the same securities broker).

161 69 F.2d 809, 810 (2d Cir. 1934) ("Anyone may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes.") *aff'd.* 293 U.S. 465 (1935).

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.[162] 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."[163]

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.'"[164] "To determine the substance of the transactions, we consider all of their aspects that shed any light upon their true character."[165]

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.[166] For example, in *Court Holding*, a corporation entered into an oral agreement to sell its sole asset; however, before the sale was consummated, the corporation's tax attorney advised that the sale would result in the imposition of a large income tax on the corporation. To avoid this tax liability, and upon advice of its tax attorney, the corporation changed the transaction by having the corporation declare a liquidating dividend to its shareholders, and having the shareholders enter into a written agreement with the same purchaser on substantially the same terms and conditions previously agreed upon by the corporation. The Supreme Court affirmed the Tax Court's holding that the sale by the shareholders was in substance a sale by the corporation.

The application of any substance-over-form doctrine is extremely fact specific, which has led courts to render somewhat inconsistent rulings in this area.[167] 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."[168]

A subset or derivation of the substance-over-form doctrine is the step transaction doctrine.

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162 *See Gregory*, 293 U.S. 465 (1935); *Rice's Toyota World*, 81 T.C. at 196.
163 *AWG Leasing Trust v. U.S.*, 592 F. Supp. 2d 953 (N.D. Ohio 2008).
164 *Principal Life Ins. Co. & Subs. v. U.S.*, 70 Fed. Cl. 144 (2006).
165 *Communications Satellite Corp. v. U.S.*, 625 F.2d 997, 1000 (1980).
166 *Court Holding Co.*, 324 U.S. 331.
167 *See, e.g., ACM Partnership*, 157 F.3d at 263 (3d Cir. 1998); *Boca Investerings Partnership*, 167 F. Supp. 2d 298.
168 69 F.2d 809, 810 (2d Cir. 1934) *aff'd.* 293 U.S. 465 (1935).

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.[169] 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.[170]

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.[171] 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.[172] 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.[173] 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*.[174] The IRS in *Grove* attempted to reorder a donation of stock followed by a redemption as a redemption of the stock followed by a gift of cash.[175] 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.[176] 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.

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169 Stephen S. Bowen, *The End Result Test*, 72 TAXES 722 (December 1994).

170 *Esmark, Inc. v. Comm'r*, 90 T.C. 171, 196 (1988) ("Respondent proposes to recharacterize the tender offer/redemption as a sale of the Vickers shares followed by a self-tender. This characterization does not simply combine steps; it invents new ones. Courts have refused to apply step-transaction in this manner"), *aff'd without published opinion*, 886 F.2d 1318 (7th Cir. 1989).

171 T.C. Memo 2002-97.

172 *Id*.

173 *Id*.

174 490 F.2d 241, 247 (2d Cir. 1973).

175 *Id*. at 245.

176 *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.").

2. Analysis.

The contractual arrangements and the transactions at issue should be respected according to their form because their form is consistent with their underlying substance, the acquisition by the Beneficial Owners of an undivided fractional interest in the Property, and there is a substantial business purpose for such form. Moreover, the allocation of all economic benefits and burdens associated with the Property corresponds to the respective Interest in the Trust owned by each Beneficial Owner such that the substance of the economic arrangement among the parties is consistent with the form.

The step transaction doctrine should not be applicable to the Trust's contractual arrangements. In this case, the Purchasers constitute a separate, diverse and unrelated group desiring to acquire a portion of the Property as offered by the Trust under a private placement of the Interests. Thus, the ultimate result of the contractual arrangements (*i.e.*, collective ownership of the Property by an unrelated group of Purchasers) can only be achieved if the intermediate steps of (i) the Trust acquiring the Property, and (ii) offering the Interests for sale to the Purchasers 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 Purchasers) should not significantly change the resulting federal income tax effect of the Trust's contractual arrangements.

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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 his or her tax advisor in determining whether to purchase an Interest. Other than as set forth herein, this opinion may not be relied upon, 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

Baker McKenzie.

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.

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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

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.

ASSUMPTIONS AND NOTES FOR THE FORECAST

1 Acquisition

Trust	Purchase Price	Acquisition Date	Appraised As-Is Value	Date of Value
NexPoint Buffalo DST	$81,000,000	2/1/2022	$83,000,000	12/6/2021

2 Financing

Borrower	Lender	Loan Amount	Interest Rate	Term	Amortization
NREA Buffalo DST	KeyBank	$37,076,000	3.52%	10-years	Interest only for full term

3 Maximum Offering Amount

Total Acquisition Costs[1]	Total Offering Proceeds	Total Capitalization[2]	Total Class 1 & Class 2 Interests[3]
$83,002,313	$54,531,314	$91,607,314	$54,531,314

1. Includes the Purchase Contract price, transactional closing costs, fees and financing closing costs.
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 amount of the Supplemental Reserve Account, and the payment of the Facilitation Fee in the amount of $1,215,000.
3. The annualized cash-on-cash return is calculated based on sum of Class 1 Beneficial Interests being sold to Investors (up to 100% ownership of the Trust).

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	$4,411,019	$4,787,024	$5,077,543	$5,279,653+
Organic Rent Growth Factor	9.0%	7.0%	5.0%	3.0%
Deductions	10.81%	6.56%	6.51%	6.49%
Vacancy	8.00%	5.00%	5.00%	5.00%
Other Rent Deductions	2.81%	1.56%	1.51%	1.49%
Miscellaneous Income	$684,360	$723,587	$743,302	$763,558+
Misc. Income Growth		5.73%	2.72%	2.73%
Controllable Expenses	$752,074	$770,881	$790,159	$809,919+
Utility Expenses	$197,640	$202,581	$207,646	$212,837+
Insurance Expenses	$57,100	$58,528	$59,991	$61,490+
Real Estate Taxes[1]	$356,074	$462,773	$485,911	$510,207+

1. Real estate tax forecast is based upon notice provided by Clark County Nevada Tax Assessor's office for 2022, 2023 and 2024 with 5% general inflation projected for the proceeding years of our hold period.

5 Management Fees

Fee	Rate	Annual Estimate	Recipient
Asset Management	0.30% of Purchase Price	$303,750[1]	Asset Manager
Property Management	2.00% of Effective Gross Receipts	Variable	Pinnacle Property Management Services, LLC

1. The Asset Manager may, at its sole discretion, defer a portion or all of the Asset Management Fee. The Asset Manager intends to defer the 100% of the first year's and 75% of the second year's Asset Management Fee across the fourth through eighth year of the Asset Management Agreement.

6 Master Lease Rent Schedule

Fee	Annual	Payable
(1) Base Rent	$1,326,826 (maximum)	Monthly in arrears
(2) Additional Rent[1]	$2,136,500 (maximum)	Monthly in arrears; year-end reconciliation within 90 days after the end of each year
Additional Rent Breakpoint	Year 1: $1,772,000 - Year 10: $2,015,000	
(3) Supplemental Rent	90% of the amount by which annual Gross Receipts exceeds the Supplemental Rent Breakpoint	Monthly in arrears; year-end reconciliation within 90 days after the end of each year
Supplemental Rent Breakpoint	Year 1: $4,555,000 - Year 10: $5,483,000	

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, and the Master Tenant will pay to the Trust (as Additional Rent) the amount, if any, by which the Projected Uncontrollable Costs are greater than the actual uncontrollable costs.

7 Reserve Accounts

The Loan proceeds will be used to fund in advance $109,962 into a Lender-controlled reserve account required under the Loan Documents. The Trust will also establish (and control) the Supplemental Trust Reserve in the initial amount of $787,500, which will be funded from the Loan proceeds, such amount being available to Master Tenant for Landlord Costs and Replacement Reserve requirements. Any amount remaining in the reserve accounts upon the sale of the Property shall be distributed to the Investors based on their respective pro rata Interests.

Account	Initial Deposit	Future Funding
Replacement Reserve	$109,962	$549,810
Supplemental Trust Reserve	$787,500	$302,310
Total	$897,462	$852,120

8 Capital Expenditures and Improvements

Category	$ Needed	Notes
Immediate Needs	$0	N/A
Estimated Long-Term Needs	$666,315	Next 12-years recurring capital reserves, inflated at 3.0%
Total Anticipated Needs	$666,315	Current & future funding forecast to exceed anticipated needs by 2.63x[1]

Property Improvements[2]	$787,500	Non-structural value-added capital improvements to units, amenities, landscape and buildings

1. The Trust would have approximately $787,500 in the Supplemental Trust Reserve and $109,962 in the Replacement Reserve and the financial forecast calls for an additional $302,310 of Supplemental Rent to be escrowed from operations for future recurring capital needs. This totals $1,749,582 in capital reserves for the projected 10-year hold period, and compares favorably to the approximately $666,315 in inflated estimated capital repair items estimated by the PCA.
2. For a detailed account of anticipated property improvements, please *see "The Property – Anticipated Improvements."*

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 from the Cost Approach section of the Appraisal. Based on certain amounts provided by the Clark County Tax Assessor and independent appraiser, depreciable basis is allocated as indicated in the chart below. The building allocation amount is depreciated over 27.5 years and the land is depreciated annually according to the Modified Accelerated Cost Recovery System (MACRS) 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 (%)	83.58%	16.42%
Allocation ($)[1]	$73,630,420	$14,470,571

1. Offering price less initial reserves.

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DST UNDERWRITING MODEL

NEXPOINT
REAL ESTATE ADVISORS

Investment Summary
Ely at Buffalo

OFFERING SUMMARY

Offering Price	
First Year Pro Forma Net Operating Income	$ 3,163,276
Capitalization Rate [1]	3.59%
Offering Price	**$ 91,607,314**
Loan Proceeds @ 40.47%	37,076,000
Offering Proceeds @ 59.53%	$ 54,531,314

Financing Terms	
Mortgage Principal	$ 37,076,000
Interest Rate	3.52%
Amortization	Full Term Interest Only
Annual Interest Only Payment	$ 1,323,201
Maturity Date	March 1, 2032

Forecasted Year 1 Return	
Additional Rent	$ 1,772,000
Asset Management Fee [2]	-
Cash from Additional Rent	$ 1,772,000
Supplemental Rent	57,181
Trust Reserve Contribution	-
Net Cash Flow	**$ 1,829,181**
Annualized Cash on Cash Return	**3.35%**

ESTIMATED USES OF PROCEEDS

Sources	
Offering Proceeds	$ 54,531,314
Loan Proceeds	$ 37,076,000
Total Sources	**$ 91,607,314**

Application		% of Offering Proceeds	% of Total Proceeds
Selling Commissions and Fees			
Selling Commission	$ 3,271,879	6.00%	3.57%
Managing Broker-Dealer Fee	817,970	1.50%	0.89%
Marketing/ DD Expense Allowances	681,641	1.25%	0.74%
Organization and Offering Expenses	327,188	0.60%	0.36%
Total	$ 5,098,678	9.35%	5.57%
Costs of Acquisition			
Total Acquisition Costs	$ 83,002,313		90.61%
Plus Trust Reserves	3,287,500		3.59%
Plus Lender Reserves	218,823		0.24%
Total	$ 86,508,636		94.43%
Total Application	**$ 91,607,314**		

Total Acquisition Costs		
Real Estate Acquisition Price		$ 81,000,000
Contribution Fee		1,215,000
		$ 82,215,000
Acquisition Closing Costs		
Title & Recording Costs	$ 120,744	
Acquisition & Due Diligence Costs	143,473	
Legal Costs	130,500	
		$ 394,718
Financing Closings Costs		
Loan-Related Costs	$ 303,921	
Lender & Acquisition Finance Expenses	88,675	
		$ 392,596
Total Acquisition Costs		**$ 83,002,313**

[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.*

DST UNDERWRITING MODEL

NEXPOINT
REAL ESTATE ADVISORS

Net Operating Income Summary
Ely at Buffalo

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Gross Potential Rent	$ 4,411,019	$ 4,787,024	$ 5,077,543	$ 5,279,653	$ 5,440,239	$ 5,605,709	$ 5,776,212	$ 5,951,901	$ 6,132,934	$ 6,319,473
Deductions	(476,844)	(313,868)	(330,662)	(342,739)	(352,621)	(362,803)	(373,294)	(384,104)	(395,241)	(406,717)
Total Rent	$ 3,934,175	$ 4,473,156	$ 4,746,881	$ 4,936,914	$ 5,087,618	$ 5,242,906	$ 5,402,918	$ 5,567,797	$ 5,737,692	$ 5,912,755
Miscellaneous Income	684,360	723,587	743,302	763,558	786,465	810,059	834,361	859,392	885,174	911,729
Effective Gross Income	$ 4,618,535	$ 5,196,742	$ 5,490,183	$ 5,700,472	$ 5,874,083	$ 6,052,965	$ 6,237,279	$ 6,427,189	$ 6,622,866	$ 6,824,484
Repairs and Maintenance	251,424	257,710	264,152	270,756	278,879	287,245	295,863	304,738	313,881	323,297
Payroll	343,834	352,430	361,241	370,272	381,380	392,821	404,606	416,744	429,247	442,124
Advertising and Promotions	77,868	79,815	81,810	83,855	86,371	88,962	91,631	94,380	97,211	100,128
General and Administrative	78,948	80,927	82,956	85,035	87,587	90,214	92,921	95,708	98,579	101,537
Total Controllable Expenses	$ 752,074	$ 770,881	$ 790,159	$ 809,919	$ 834,216	$ 859,243	$ 885,020	$ 911,571	$ 938,918	$ 967,085
Utilities	197,640	202,581	207,646	212,837	219,222	225,798	232,572	239,550	246,736	254,138
Taxes	356,074	462,773	485,911	510,207	535,717	562,503	590,628	620,159	651,167	683,726
Insurance	57,100	58,528	59,991	61,490	63,335	65,235	67,192	69,208	71,284	73,423
Total Non-Controllable Expenses	$ 610,814	$ 723,881	$ 753,547	$ 784,534	$ 818,274	$ 853,537	$ 890,393	$ 928,917	$ 969,188	$ 1,011,287
Property Management Fee	92,371	103,935	109,804	114,009	117,482	121,059	124,746	128,544	132,457	136,490
Total Other Expenses	$ 92,371	$ 103,935	$ 109,804	$ 114,009	$ 117,482	$ 121,059	$ 124,746	$ 128,544	$ 132,457	$ 136,490
Total Operating Expenses	$ 1,455,259	$ 1,598,697	$ 1,653,510	$ 1,708,462	$ 1,769,972	$ 1,833,839	$ 1,900,158	$ 1,969,032	$ 2,040,563	$ 2,114,862
Net Operating Income	**$ 3,163,276**	**$ 3,598,045**	**$ 3,836,673**	**$ 3,992,010**	**$ 4,104,111**	**$ 4,219,126**	**$ 4,337,120**	**$ 4,458,157**	**$ 4,582,303**	**$ 4,709,622**

Exit & Return Scenarios for DST Investors

Cumulative Cash Returned to DST Investors Pre-Sale	**10,827,438**	**13,264,921**	**15,850,443**	**18,455,228**	**21,224,258**	**24,105,446**
Investors Breakeven Cap Rate (Excluding Distributions)	4.26%	4.38%	4.50%	4.62%	4.75%	4.91%
Sponsor's Sale Exit Forecast: Base Case [1]						
Sale Price	96,567,311	99,273,557	102,049,887	104,897,819	107,818,887	110,814,637
Cap Rate	4.25%	4.25%	4.25%	4.25%	4.25%	4.25%
Sale Price per Unit	447,071	459,600	472,453	485,638	499,162	513,031
Sale Price per NRSF	530.61	545.48	560.74	576.39	592.44	608.90
Sale Price per Land SF	305.36	313.91	322.69	331.70	340.93	350.41
Annual Property Value Appreciation/Depreciation	1.1%	1.4%	1.6%	1.8%	2.0%	2.1%
Projected Cost of Sale (lender/broker/disposition fees)	5.0%	5.0%	5.0%	5.0%	5.0%	4.5%
Loan Repayment	(37,076,000)	(37,076,000)	(37,076,000)	(37,076,000)	(37,076,000)	(37,076,000)
Return on Sale to DST Investors	**54,662,945**	**57,233,879**	**59,871,393**	**62,576,928**	**65,351,942**	**68,751,979**
Total Return to DST Investors	**65,490,384**	**70,498,800**	**75,721,836**	**81,032,156**	**86,576,200**	**92,857,424**
Annual Capital Appreciation	**4.0%**	**4.9%**	**5.6%**	**6.1%**	**6.5%**	**7.0%**
Equity Multiple	**1.201x**	**1.293x**	**1.389x**	**1.486x**	**1.588x**	**1.703x**

[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.*

DST UNDERWRITING MODEL

NEXPOINT
REAL ESTATE ADVISORS

Net Operating Income Summary
Ely at Buffalo

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Net Operating Income	$ 3,163,276	$ 3,598,045	$ 3,836,673	$ 3,992,010	$ 4,104,111	$ 4,219,126	$ 4,337,120	$ 4,458,157	$ 4,582,303	$ 4,709,622

Exit & Return Scenarios for DST Investors

Cumulative Cash Returned to DST Investors Pre-Sale	**10,827,438**	**13,264,921**	**15,850,443**	**18,455,228**	**21,224,258**	**24,105,446**
Sponsor's Sale Exit Forecast: Aggressive Case [1]						
Sale Price	117,260,306	120,546,462	123,917,720	127,375,923	130,922,934	134,560,631
Cap Rate	3.50%	3.50%	3.50%	3.50%	3.50%	3.50%
Sale Price per Unit	542,872	558,085	573,693	589,703	606,125	622,966
Sale Price per NRSF	644.32	662.37	680.90	699.90	719.39	739.38
Sale Price per Land SF	370.79	381.18	391.84	402.78	413.99	425.49
Annual Property Value Appreciation/Depreciation	5.6%	5.3%	5.0%	4.9%	4.8%	4.7%
Projected Cost of Sale (lender/broker/disposition fees)	5.0%	5.0%	5.0%	5.0%	5.0%	4.5%
Loan Repayment	(37,076,000)	(37,076,000)	(37,076,000)	(37,076,000)	(37,076,000)	(37,076,000)
Return on Sale to DST Investors	**74,321,291**	**77,443,139**	**80,645,834**	**83,931,127**	**87,300,787**	**91,429,403**
Total Return to DST Investors	**85,148,729**	**90,708,060**	**96,496,277**	**102,386,355**	**108,525,045**	**115,534,848**
Annual Capital Appreciation	**11.2%**	**11.1%**	**11.0%**	**11.0%**	**11.0%**	**11.2%**
Equity Multiple	**1.561x**	**1.663x**	**1.77x**	**1.878x**	**1.99x**	**2.119x**
Sponsor's Sale Exit Forecast: Conservative Case [1]						
Sale Price	86,402,331	88,823,709	91,307,794	93,855,943	96,469,530	99,149,939
Cap Rate	4.75%	4.75%	4.75%	4.75%	4.75%	4.75%
Sale Price per Unit	400,011	411,221	422,721	434,518	446,618	459,027
Sale Price per NRSF	474.76	488.06	501.71	515.71	530.08	544.80
Sale Price per Land SF	273.21	280.87	288.72	296.78	305.05	313.52
Annual Property Value Appreciation/Depreciation	-1.1%	-0.5%	0.0%	0.3%	0.6%	0.8%
Projected Cost of Sale (lender/broker/disposition fees)	5.0%	5.0%	5.0%	5.0%	5.0%	4.5%
Loan Repayment	(37,076,000)	(37,076,000)	(37,076,000)	(37,076,000)	(37,076,000)	(37,076,000)
Return on Sale to DST Investors	**45,006,214**	**47,306,523**	**49,666,404**	**52,087,146**	**54,570,054**	**57,612,191**
Total Return to DST Investors	**55,833,653**	**60,571,444**	**65,516,847**	**70,542,374**	**75,794,312**	**81,717,637**
Annual Capital Appreciation	**0.5%**	**1.8%**	**2.9%**	**3.7%**	**4.3%**	**5.0%**
Equity Multiple	**1.024x**	**1.111x**	**1.201x**	**1.294x**	**1.39x**	**1.499x**

[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.*

DST UNDERWRITING MODEL

NEXPOINT
REAL ESTATE ADVISORS

Forecasted Statement of Cash Flows
Ely at Buffalo

		Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
EFFECTIVE GROSS REVENUE		**$ 4,618,535**	**$ 5,196,742**	**$ 5,490,183**	**$ 5,700,472**	**$ 5,874,083**	**$ 6,052,965**	**$ 6,237,279**	**$ 6,427,189**	**$ 6,622,866**	**$ 6,824,484**
Total Expenses		1,455,259	1,598,697	1,653,510	1,708,462	1,769,972	1,833,839	1,900,158	1,969,032	2,040,563	2,114,862
NET OPERATING INCOME		$ 3,163,276	$ 3,598,045	$ 3,836,673	$ 3,992,010	$ 4,104,111	$ 4,219,126	$ 4,337,120	$ 4,458,157	$ 4,582,303	$ 4,709,622
Master Lease Rent											
BASE RENT											
(Debt Service)		1,323,201	1,323,201	1,326,826	1,323,201	1,323,201	1,323,201	1,326,826	1,323,201	1,323,201	1,323,201
Master Tenant Base Income [1]		$ 4,540	$ 9,100	$ 11,700	$ 14,300	$ 16,800	$ 20,000	$ 22,000	$ 24,800	$ 27,200	$ 29,900
ADDITIONAL RENT											
Additional Rent Breakpoint		$ 2,783,000	$ 2,931,000	$ 2,992,000	$ 3,046,000	$ 3,110,000	$ 3,177,000	$ 3,249,000	$ 3,317,000	$ 3,391,000	$ 3,468,000
Additional Rent		1,772,000	1,832,750	2,015,000	2,075,750	2,136,500	2,136,500	2,075,750	2,075,750	2,015,000	2,015,000
Asset Management Fee [2]	0.30%	-	(60,750)	(243,000)	(303,750)	(364,500)	(364,500)	(303,750)	(303,750)	(243,000)	(243,000)
Additional Rent Cash Flow [3]		$ 1,772,000	$ 1,772,000	$ 1,772,000	$ 1,772,000	$ 1,772,000	$ 1,772,000	$ 1,772,000	$ 1,772,000	$ 1,772,000	$ 1,772,000
Additional Rent Cash on Cash Return	**3.25%**	**3.25%**	**3.25%**	**3.25%**	**3.25%**	**3.25%**	**3.25%**	**3.25%**	**3.25%**	**3.25%**	**3.25%**
SUPPLEMENTAL RENT											
Supplemental Rent Breakpoint		$ 4,555,000	$ 4,763,750	$ 5,007,000	$ 5,121,750	$ 5,246,500	$ 5,313,500	$ 5,324,750	$ 5,392,750	$ 5,406,000	$ 5,483,000
Master Tenant Suppplemental [4]	10%	6,353	43,299	48,315	57,876	62,761	73,942	91,254	103,441	121,690	134,152
Supplemental Rent	90%	57,181	389,694	434,831	520,883	564,849	665,482	821,289	930,965	1,095,211	1,207,369
Trust Reserve Account		-	-	-	-	-	-	(7,767)	(98,181)	(98,181)	(98,181)
Supplemental Rent Cash Flow [5]		**$ 57,181**	**$ 389,694**	**$ 434,831**	**$ 520,883**	**$ 564,849**	**$ 665,482**	**$ 813,522**	**$ 832,784**	**$ 997,030**	**$ 1,109,188**
Supplemental Rent Cash on Cash Return		**0.10%**	**0.71%**	**0.80%**	**0.96%**	**1.04%**	**1.22%**	**1.49%**	**1.53%**	**1.83%**	**2.03%**
Total Cash Flow		$ 1,829,181	$ 2,161,694	$ 2,206,831	$ 2,292,883	$ 2,336,849	$ 2,437,482	$ 2,585,522	$ 2,604,784	$ 2,769,030	$ 2,881,188
Total Cash on Cash Return		**3.35%**	**3.96%**	**4.05%**	**4.20%**	**4.29%**	**4.47%**	**4.74%**	**4.78%**	**5.08%**	**5.28%**
FORECASTED PRINCIPAL AMORTIZATION											
Beginning Loan Balance		$ 37,076,000	$ 37,076,000	$ 37,076,000	$ 37,076,000	$ 37,076,000	$ 37,076,000	$ 37,076,000	$ 37,076,000	$ 37,076,000	$ 37,076,000
Principal Amortization		-	-	-	-	-	-	-	-	-	-
Ending Balance		$ 37,076,000	$ 37,076,000	$ 37,076,000	$ 37,076,000	$ 37,076,000	$ 37,076,000	$ 37,076,000	$ 37,076,000	$ 37,076,000	$ 37,076,000
Yield		**3.35%**	**3.96%**	**4.05%**	**4.20%**	**4.29%**	**4.47%**	**4.74%**	**4.78%**	**5.08%**	**5.28%**
TAX ANALYSIS FOR NON-1031 INVESTOR											
Estimated Taxable Income (Loss)		(848,289)	(515,775)	(470,638)	(384,587)	(340,621)	(239,987)	(91,947)	(72,685)	91,560	203,718
Estimated Tax Refund / Benefit	@ 37.0% rate	(313,867)	(190,837)	(174,136)	(142,297)	(126,030)	(88,795)	(34,021)	(26,894)	33,877	75,376
Yield Net of Tax Benefit		2,143,048	2,352,531	2,380,968	2,435,180	2,462,878	2,526,278	2,619,543	2,631,678	2,735,153	2,805,812
Effective Tax Equivalent Yield [6]		6.24%	6.85%	6.93%	7.09%	7.17%	7.35%	7.62%	7.66%	7.96%	8.17%

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 CR MW DST, LLC as the sole member of the Master Tenant. Such amounts will not be available for distributions to the Trust or the Investors.
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.

Forecasted Statement of Cash Flows
Ely at Buffalo

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%.

NEXPOINT
REAL ESTATE ADVISORS

Forecasted Statement of Cash Flows
Ely at Buffalo

FORECASTED LENDER RESERVE ACCOUNTS

Replacement Reserve Account		**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Year 6**	**Year 7**	**Year 8**	**Year 9**	**Year 10**
Beginning Balance		$ 218,823	$ 273,804	$ 328,785	$ 371,921	$ 406,749	$ 419,588	$ 453,189	$ 421,670	$ 453,968	$ 485,586
Contribution from Trust Reserve		54,981	54,981	54,981	54,981	54,981	54,981	54,981	54,981	54,981	54,981
Recurring Replacements (per the PCA)		-	-	(11,845)	(20,153)	(42,142)	(21,380)	(86,500)	(22,682)	(23,363)	(158,364)
Interest Income	0.00%	-	-	-	-	-	-	-	-	-	-
Ending Balance		$ 273,804	$ 328,785	$ 371,921	$ 406,749	$ 419,588	$ 453,189	$ 421,670	$ 453,968	$ 485,586	$ 382,204

FORECASTED SUPPLEMENTAL TRUST RESERVE ACCOUNT		**Year 1**	**Year 2**	**Year 3**	**Year 4**	**Year 5**	**Year 6**	**Year 7**	**Year 8**	**Year 9**	**Year 10**
Beginning Balance	*per unit*	$ 787,500	$ 689,319	$ 591,138	$ 492,957	$ 394,776	$ 296,595	$ 198,414	$ 108,000	$ 108,000	$ 108,000
Reserve Contribution from Cash Flow		-	-	-	-	-	-	7,767	98,181	98,181	98,181
Contribution to Lender Reserves	$ 255	(54,981)	(54,981)	(54,981)	(54,981)	(54,981)	(54,981)	(54,981)	(54,981)	(54,981)	(54,981)
Recurring Capital Improvements	$ 200	(43,200)	(43,200)	(43,200)	(43,200)	(43,200)	(43,200)	(43,200)	(43,200)	(43,200)	(43,200)
Value-Add CapEx - Interior Upgrades	$ -	-	-	-	-	-	-	-	-	-	-
Value-Add CapEx - Common Area & Amenit	$ -	-	-	-	-	-	-	-	-	-	-
Interest Income	0.00%	-	-	-	-	-	-	-	-	-	-
Ending Balance		$ 689,319	$ 591,138	$ 492,957	$ 394,776	$ 296,595	$ 198,414	$ 108,000	$ 108,000	$ 108,000	$ 108,000
Total Capital Expenditure		43,200	43,200	55,045	63,353	85,342	64,580	129,700	65,882	66,563	201,564
Total Capital Expenditure per unit		200	200	255	293	395	299	600	305	308	933

DST UNDERWRITING MODEL

NEXPOINT
REAL ESTATE ADVISORS

MASTER LEASE SUMMARY **Ely at Buffalo**

Estimated Gross Offering Procee $54,531,314

Lease Period	Base Rent (Debt Service)	Additional Rent Breakpoint	Additional Rent Annual Maximum	Supplemental Rent Breakpoint	Projected Supplemental Rent
Year 1	$1,323,201	$2,783,000	$1,772,000	$4,555,000	$57,181
Year 2	$1,323,201	$2,931,000	$1,832,750	$4,763,750	$389,694
Year 3	$1,326,826	$2,992,000	$2,015,000	$5,007,000	$434,831
Year 4	$1,323,201	$3,046,000	$2,075,750	$5,121,750	$520,883
Year 5	$1,323,201	$3,110,000	$2,136,500	$5,246,500	$564,849
Year 6	$1,323,201	$3,177,000	$2,136,500	$5,313,500	$665,482
Year 7	$1,326,826	$3,249,000	$2,075,750	$5,324,750	$813,522
Year 8	$1,323,201	$3,317,000	$2,075,750	$5,392,750	$832,784
Year 9	$1,323,201	$3,391,000	$2,015,000	$5,406,000	$997,030
Year 10	$1,323,201	$3,468,000	$2,015,000	$5,483,000	$1,109,188